

House Calendar

Wednesday, March 16, 2022

72nd DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 PM

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ACTION CALENDAR

Action Postponed Until March 16, 2022

Action Under Rule 52

J.R.S. 44

Joint resolution providing for a Joint Assembly to vote on the retention of six Superior Judges

(For text see House Journal March 10, 2022)

NEW BUSINESS

Third Reading

H. 244

An act relating to authorizing the natural organic reduction of human remains

H. 500

An act relating to prohibiting the sale of mercury lamps in the State

H. 523

An act relating to reducing hydrofluorocarbon emissions

Amendment to be offered by Rep. Shaw of Pittsford to H. 523

By striking out Sec. 2, 10 V.S.A. § 573, in its entirety and inserting in lieu thereof the following:

Sec. 2. 10 V.S.A. § 573 is amended to read:

§ 573. MOTOR VEHICLE AIR CONDITIONING

(a) ~~After January 1, 1991, no~~ No person, ~~for compensation,~~ may perform service on motor vehicle air conditioners, unless that person uses equipment that is certified by the Underwriters Laboratories, or an institution determined by the Secretary to be comparable, as meeting the Society of Automotive Engineers standard applicable to equipment for the extraction and reclamation of refrigerant or a substitute prohibited under section 586 of this title from motor vehicle air conditioners.

* * *

H. 606

An act relating to community resilience and biodiversity protection

H. 655

An act relating to establishing a telehealth licensure and registration system

Committee Bill for Second Reading

H. 722

An act relating to final reapportionment of the House of Representatives.

(Rep. Copeland Hanzas of Bradford will speak for the Committee on Government Operations.)

Favorable with Amendment

H. 266

An act relating to an incremental approach to health insurance coverage for hearing aids

Rep. Goldman of Rockingham, for the Committee on Health Care, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

(a) The General Assembly recognizes the range of negative health outcomes that are associated with untreated hearing loss, including cognitive decline, dementia, falls, social isolation, and depression. All Vermonters should have access to hearing aids and related services, yet many health plans do not cover them. Vermont Medicaid currently covers hearing aids, while most health insurance plans offered in the commercial health insurance market do not. Federal law prohibits or preempts the State from regulating the benefits provided through plans covering more than half of the population of this State, including Medicare and self-funded employer plans. Medicare does not cover hearing aids and related services, and neither do most self-funded employer plans.

(b) In 2021 Acts and Resolves No. 74, Sec. E.227, the General Assembly directed the Department of Financial Regulation and other interested stakeholders to review Vermont's benchmark plan establishing the State's essential health benefits for qualified health plans offered through the Vermont Health Benefit Exchange and recommend whether to request federal approval to modify the benchmark plan to provide certain benefits, including hearing aids. On March 2, 2022, the Green Mountain Care Board voted to approve a recommendation from the Department of Vermont Health Access to add coverage to the benchmark plan for up to one hearing aid per ear every three years and an annual hearing exam. The Department of Vermont Health Access

is pursuing a change to Vermont's benchmark plan with the federal government for coverage for hearing aids and hearing exams to begin in Vermont's individual and small group insurance markets in January 2024.

(c) The purpose of this bill is to ensure continued coverage of hearing aids and related services in Vermont Medicaid, affirm ongoing efforts to make hearing aids and related services part of Vermont's benchmark plan, and make hearing aids and related services more accessible to Vermont residents by requiring coverage in large group health insurance plans, which comprise the remaining segment of the commercial health insurance market over which Vermont has regulatory authority and which do not currently offer these benefits.

Sec. 2. ESSENTIAL HEALTH BENEFITS; BENCHMARK PLAN;
HEARING AIDS; REPORT

On or before November 1, 2022, the Department of Vermont Health Access shall provide an update to the Health Reform Oversight Committee regarding the status of the Department's application to the Centers for Medicare and Medicaid Services to modify the essential health benefits in Vermont's benchmark plan to include coverage of hearing aids and related services beginning in plan year 2024.

Sec. 3. 33 V.S.A. § 1901k is added to read:

§ 1901k. MEDICAID COVERAGE FOR HEARING AIDS AND
AUDIOLOGY SERVICES

Vermont Medicaid shall provide coverage for medically necessary hearing aids and audiology services when delivered by a health care professional practicing within the scope of the professional's license, including audiologic examinations, hearing screenings, fitting of hearing aids, prescriptions for hearing aid batteries, and other services as defined by the Department of Vermont Health Access by rule.

Sec. 4. 8 V.S.A. § 4088I is added to read:

§ 4088I. COVERAGE FOR HEARING AIDS

(a) As used in this section:

(1) "Health insurance plan" means a group health insurance policy or health benefit plan offered by a health insurance company, nonprofit hospital or medical service corporation, or health maintenance organization, but does not include:

(A) a qualified health benefit plan or reflective health benefit plan offered in accordance with 33 V.S.A. chapter 18, subchapter 1;

(B) a health benefit plan offered by an intermunicipal insurance association to one or more entities providing educational services pursuant to 24 V.S.A. chapter 121, subchapter 6; or

(C) a policy or plan providing coverage for a specified disease or other limited benefit coverage.

(2) “Hearing aid” means any small, wearable electronic instrument or device designed and intended for the ear for the purpose of aiding or compensating for impaired human hearing and any related parts, attachments, or accessories, including earmolds and associated remote microphones that pair with hearing aids to improve word comprehension in difficult listening situations in live or telecommunication settings. The term does not include cords, large-audience assisted listening devices, such as those designed for auditoriums, or stand-alone assisted listening devices that can function without a hearing aid.

(3) “Hearing aid professional services” means the practice of fitting, selecting, dispensing, selling, or servicing hearing aids, or a combination, including:

(A) evaluation for a hearing aid;

(B) fitting of a hearing aid;

(C) programming of a hearing aid;

(D) hearing aid repairs;

(E) follow-up adjustments, servicing, and maintenance of a hearing aid;

(F) ear mold impressions; and

(G) auditory rehabilitation and training.

(4) “Hearing care professional” means an audiologist or hearing aid dispenser licensed under 26 V.S.A. chapter 67, a physician licensed under 26 V.S.A. chapter 23 or 33, a physician assistant licensed under 26 V.S.A. chapter 31, or an advanced practice registered nurse licensed under 26 V.S.A. chapter 28, working within that professional’s scope of practice.

(b) A health insurance plan shall cover the cost of a hearing aid for each ear and the associated hearing aid professional services when the hearing aid or aids are prescribed, fitted, and dispensed by a hearing care professional.

The coverage shall include hearing aid batteries when prescribed by a hearing care professional.

(c)(1) The coverage provided by a health plan for hearing aids and associated services shall be limited only by medical necessity.

(2) A covered individual may select a hearing aid that exceeds the limits set forth in subdivision (1) of this subsection and pay the additional cost.

(d) The coverage required by this section shall not be subject to a deductible, co-payment, or coinsurance provision that is less favorable to a covered individual than the deductible, co-payment, or coinsurance provisions that apply generally to other nonprimary care items and services under the health insurance plan.

(e) A covered individual who has exhausted all applicable internal review procedures provided by the health insurance plan shall have the right to an independent external review as set forth in section 4089f of this title.

Sec. 5. EFFECTIVE DATES

(a) Sec. 4 (8 V.S.A. § 4088I) shall take effect on January 1, 2024 and shall apply to all health insurance plans issued on and January 1, 2024 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event later than January 1, 2025.

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

and that after passage the title of the bill be amended to read: “An act relating to health insurance coverage for hearing aids”

(Committee Vote: 9-1-1)

Amendment to be offered by Rep. Goldman of Rockingham to the recommendation of amendment of the Committee on Health Care to H. 266

In Sec. 5, effective dates, following “issued on and” by inserting the word “after”

H. 287

An act relating to patient financial assistance policies and medical debt protection

Rep. Black of Essex, for the Committee on Health Care, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 221, subchapter 10 is added to read:

Subchapter 10. Patient Financial Assistance

§ 9481. DEFINITIONS

As used in this subchapter:

(1) “Amount generally billed” means the amount a large health care facility generally bills to individuals for emergency or other medically necessary health care services, determined using the “look-back method” set forth in 26 C.F.R. § 1.501(r)-5(b)(3).

(2) “Credit reporting agency” means a person who, for fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating information concerning a consumer’s credit or other information for the purpose of furnishing a credit report to another person.

(3) “Health care provider” means a person, partnership, corporation, facility, or institution licensed, certified, or otherwise authorized by law to provide professional health care services in this State to an individual during that individual’s medical care, treatment, or confinement.

(4) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a physical, dental, behavioral, or mental health condition or substance use disorder, including procedures, products, devices, and medications.

(5) “Household income” means income calculated in accordance with the financial methodologies for determining financial eligibility for advance premium tax credits under 26 C.F.R. § 1.36B-2, including the method used to calculate household size, with the following modifications:

(A) domestic partners, and any individual who is considered a dependent of either partner for federal income tax purposes, shall be treated as members of the same household;

(B) married individuals who file federal income tax returns separately but could file jointly, and any individual who is considered a dependent of one or both spouses for federal income tax purposes, shall be treated as members of the same household;

(C) married individuals who are living separately while their divorce is pending shall not be treated as members of the same household, regardless of whether they are filing federal income tax returns jointly or separately; and

(D) household income for individuals who are not required to file a federal income tax return, and for undocumented immigrants who have not filed a federal income tax return, shall be calculated as if they had filed a federal income tax return.

(6) “Large health care facility” means each of the following health care providers:

(A) a hospital licensed pursuant to chapter 43 of this title;

(B) an outpatient clinic or facility affiliated with or operating under the license of a hospital licensed pursuant to chapter 43 of this title; and

(C) an ambulatory surgical center licensed pursuant to chapter 49 of this title.

(7) “Medical creditor” means a large health care facility to whom a consumer owes money for health care services.

(8) “Medical debt” means a debt arising from the receipt of health care services.

(9) “Medical debt collector” means an individual or entity that regularly collects or attempts to collect, directly or indirectly, medical debts originally owed or due, or asserted to be owed or due, to another individual or entity.

(10) “Medically necessary health care services” means health care services, including diagnostic testing, preventive services, and after care, that are appropriate to the patient’s diagnosis or condition in terms of type, amount, frequency, level, setting, and duration. Medically necessary care must:

(A) be informed by generally accepted medical or scientific evidence and be consistent with generally accepted practice parameters as recognized by health care professions in the same specialties as typically provide the procedure or treatment, or diagnose or manage the medical condition;

(B) be informed by the unique needs of each individual patient and each presenting situation; and

(C) meet one or more of the following criteria:

(i) help restore or maintain the patient’s health;

(ii) prevent deterioration of or palliate the patient’s condition; or

(iii) prevent the reasonably likely onset of a health problem or detect an incipient problem.

(11) “Patient” means the individual who receives or received health care services and shall include a parent if the patient is a minor or a legal guardian if the patient is a minor or adult under guardianship.

(12) “Vermont resident” means an individual, regardless of citizenship and including undocumented immigrants, who resides in Vermont, is employed by a Vermont employer to deliver services for the employer in this

State in the normal course of the employee's employment, or attends school in Vermont, or a combination of these. The term includes an individual who is living in Vermont at the time that services are received but who lacks stable permanent housing.

§ 9482. FINANCIAL ASSISTANCE POLICIES FOR LARGE HEALTH CARE FACILITIES

(a) Each large health care facility in this State shall develop a written financial assistance policy that, at a minimum, complies with the provisions of this subchapter and any applicable federal requirements.

(b) The financial assistance policy shall:

(1) apply, at a minimum, to all emergency and other medically necessary health care services that the large health care facility offers;

(2) provide free or discounted care to Vermont residents and to individuals who live in Vermont at the time the services are delivered but who lack stable permanent housing, as follows:

(A) for an uninsured patient with household income at or below 250 percent of the federal poverty level (FPL), a 100 percent discount from the amount generally billed for the services received, resulting in free care;

(B) for an uninsured patient with household income between 250 and 400 percent FPL, a minimum of a 40 percent discount from the amount generally billed for the services received;

(C) for a patient with health insurance or other coverage for the services delivered and with household income at or below 250 percent FPL, a waiver of all out-of-pocket costs that would otherwise be due from the patient;

(D) for a patient with health insurance or other coverage for the services delivered and with household income between 250 and 400 percent FPL, a minimum of a 40 percent discount on the patient's out-of-pocket costs; and

(E) for patients with household income at or below 600 percent FPL, catastrophic assistance in the event that the large health care facility's medical bills for a patient's care exceed 20 percent of the patient's household income, in which case the facility shall reduce the amount due from the patient to 20 percent of the patient's household income; and

(3) include all of the following:

(A) the eligibility criteria for financial assistance;

(B) the basis for calculating amounts charged to patients;

(C) the method and process for applying for financial assistance, including the information and documentation that the facility may require a patient to provide as part of the application;

(D) the reasonable steps that the facility will take to determine whether a patient is eligible for financial assistance;

(E) the facility's billing and collections policy, including the actions the facility may take in the event of nonpayment, such as collections action and reporting to credit reporting agencies;

(F) an appeals process for patients who are denied financial assistance or who believe the amount of financial assistance granted is inconsistent with the policy or the provisions of this subchapter; and

(G) a plain language summary of the policy.

(c) The owners or governing body of the large health care facility shall approve the facility's financial assistance policy and shall review and approve the policy at least once every three years.

(d) A large health care facility may require a patient to be a Vermont resident as a condition of eligibility for financial assistance but shall not impose any requirements regarding the duration of a patient's status as a Vermont resident.

§ 9483. IMPLEMENTATION OF FINANCIAL ASSISTANCE POLICY

(a) In addition to any other actions required by applicable State or federal law, a large health care facility shall take the following steps before seeking payment for any emergency or medically necessary health care services:

(1) determine whether the patient has health insurance or other coverage for the services delivered, including whether the health care services may be covered in whole or in part by an automobile insurance, a worker's compensation, or other type of policy;

(2) if the patient is uninsured, offer to provide the patient with information on how to apply for, and offer to connect the patient with help in applying for, public programs that may assist with health care costs; provided, however, that an undocumented immigrant's refusal to apply for public programs shall not be grounds for denying financial assistance under the facility's financial assistance policy;

(3) offer to provide the patient with information on how to apply for, and offer to connect the patient with help in applying for, health insurance and

private programs that may assist with health care costs; provided, however, that a patient's refusal to apply for private health insurance shall not be grounds for denying financial assistance under the facility's financial assistance policy;

(4) if available, use information in the facility's possession to determine the patient's eligibility for free or discounted care based on the criteria set forth in subdivision 9482(b)(2) of this subchapter; and

(5) offer to the patient, at no charge, a financial assistance policy application and assistance in completing the application.

(b) A large health care facility shall determine a patient's eligibility for financial assistance as follows:

(1)(A) The facility shall determine a patient's household income using the patient's most recent federal or state income tax return.

(B)(i) The facility shall give each patient the option to submit pay stubs, documentation of public assistance, or other documentation of household income that the Department of Vermont Health Access identifies as valid documentation for purposes of this subchapter in lieu of or in addition to an income tax return.

(ii) A patient who is an undocumented immigrant shall also be given the option to submit other documentation of household income, such as a profit and loss statement, in lieu of an income tax return.

(C) The facility shall not require any additional information to verify income beyond the sources of information set forth in subdivisions (A) and (B) of this subdivision (1).

(2) The facility may grant financial assistance to a patient notwithstanding the patient's failure to provide one of the required forms of household income documentation and may rely on, but not require, other evidence of eligibility.

(3) The facility may grant financial assistance based on a determination of presumptive eligibility relying on information in the facility's possession but shall not presumptively deny an application based on that information.

(4)(A) The facility may, but is not required to, include an asset test in its financial assistance eligibility criteria. If the facility chooses to include an asset test in its financial assistance eligibility criteria, the asset test shall only apply to liquid assets. For purposes of determining financial assistance eligibility, liquid assets shall not include the household's primary residence, any 401(k) or individual retirement accounts, or any pension plans.

(B) Any limit on liquid assets for purposes of financial assistance eligibility shall be set at a dollar amount not less than 400 percent of the federal poverty level for the relevant household size for the year in which the health care services were delivered.

(c)(1) Within 30 calendar days following receipt of an application for financial assistance, the large health care facility shall notify the patient in writing as to whether the application is approved or disapproved or, if the application is incomplete, what information is needed to complete the application.

(2) If the facility approves the application for financial assistance, the facility shall provide the patient with a calculation of the financial assistance granted and a revised bill.

(3) If the facility denies the application for financial assistance, the facility shall allow the patient to submit an appeal within 60 days following receipt of the facility's decision. The facility shall notify the patient of its approval or denial of the patient's appeal within 60 days following receipt of the appeal.

(d)(1) A large health care facility or medical debt collector shall, at a minimum, offer to any patient who qualifies for financial assistance a payment plan and shall not require the patient to make monthly payments that exceed five percent of the patient's gross monthly household income.

(2) A large health care facility or medical debt collector shall not impose any prepayment or early payment penalty or fee on any patient and shall not charge interest on any medical debt owed by a patient who qualifies for the facility's financial assistance program.

(e) A large health care facility shall not discriminate on the basis of race, color, sex, sexual orientation, gender identity, marital status, religion, ancestry, national origin, citizenship, immigration status, primary language, disability, medical condition, or genetic information in its provision of financial assistance or in the implementation of its financial assistance policy.

§ 9484. PUBLIC EDUCATION AND INFORMATION

(a) Each large health care facility shall publicize its financial assistance policy widely by:

(1) making the financial assistance policy and application form easily accessible online through the facility's website and through any patient portal or other online communication portal used by the facility's patients;

(2) providing paper copies of the financial assistance policy and application form upon request at no charge, both by mail and at the facility's office; for hospitals, copies shall also be available in the hospital's patient reception and admissions areas and in the locations in which patient billing and financial assistance services are provided;

(3) providing oral and written translations of the financial assistance policy upon request;

(4) notifying and informing members of the community served by the facility about the financial assistance policy in a manner reasonably calculated to reach the members of the community who are most likely to need financial assistance, including members who are non-native English speakers, provided that these efforts shall be commensurate with the facility's size and income; and

(5) conspicuously displaying notices of and information regarding the financial assistance policy in the facility's offices; for hospitals, the notices and information shall be posted in the hospital's patient reception and admissions areas and in the locations in which patient billing and financial assistance services are provided.

(b) Each large health care facility shall directly notify individuals who receive care from the facility about the facility's financial assistance policy by, at a minimum:

(1) offering a paper copy of the financial assistance policy to each patient as part of the patient's first visit or, in the case of a hospital, during the intake and discharge processes; and

(2) including a conspicuous written notice on billing statements, whether sent by the facility or by a medical debt collector, stating that financial assistance is available to some patients based on income and including:

(A) a telephone number that the patient can call to request a financial assistance application and to receive information about the financial assistance policy and the application process; and

(B) the specific website address at which copies of the policy and application are available.

(c) All written or oral attempts by a medical creditor or medical debt collector to collect a medical debt arising from health care services delivered by a large health care facility shall include information for the patient about the relevant financial assistance policy or policies.

§ 9485. PROHIBITION ON SALE OF MEDICAL DEBT

No large health care facility shall sell its medical debt.

§ 9486. PROHIBITION OF WAIVER OF RIGHTS

Any waiver by a patient or other individual of any protection provided by or any right of the patient or other individual under this subchapter is void and shall not be enforced by any court or any other person.

§ 9487. ENFORCEMENT

The Office of the Attorney General has the same authority to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions for violations of this subchapter as is provided under 9 V.S.A. chapter 63, subchapter 1.

Sec. 2. HOSPITAL FINANCIAL ASSISTANCE POLICIES; PLAIN

LANGUAGE SUMMARY; 2025 HOSPITAL BUDGET REVIEW

Each hospital licensed under 18 V.S.A. chapter 43 shall submit a plain language summary of its financial assistance policy to the Green Mountain Care Board during the hospital fiscal year 2025 budget review process.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022, with large health care facilities coming into compliance with the provisions of Sec. 1 (18 V.S.A. 221, subchapter 10) not later than July 1, 2024.

(Committee Vote: 9-1-1)

H. 399

An act relating to incarceration terms for criminal defendants who are primary caretakers of dependent children

Rep. Donnally of Hyde Park, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

The purpose of this act is to:

(1) prevent unnecessary harm to children caused by separation from parents, guardians, caretakers, or family members during incarceration; and

(2) ensure the fair and compassionate treatment of children whose parents, guardians, caretakers, or family members are involved in the criminal justice system by affording certain basic considerations to these children when decisions are made that affect them.

Sec. 2. 13 V.S.A. § 7030 is amended to read:

§ 7030. SENTENCING ALTERNATIVES

(a) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime; the history and character of the defendant; the defendant's family circumstances and relationships; the impact of any sentence upon the defendant's minor children; the need for treatment; and the risk to self, others, and the community at large presented by the defendant:

* * *

Sec. 3. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PRODUCTION OF RECORDS

* * *

(g) The presentence investigation report ordered by the court under this section or section of 204a of this title shall set forth information concerning the defendant's custodial relationships pursuant to 13 V.S.A. § 7030.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

(**Committee Vote: 11-0-0**)

H. 475

An act relating to the classification system for criminal offenses

Rep. LaLonde of South Burlington, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 1023 is amended to read:

§ 1023. SIMPLE ASSAULT

(a) A person is guilty of simple assault if he or she:

(1) attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; ~~or~~

(2) negligently causes bodily injury to another with a deadly weapon; or

(3) attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) A person who is convicted of simple assault ~~shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both~~ commits a Class B misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00, unless the offense is committed in a fight or scuffle entered into by mutual consent, in which case a person convicted of simple assault shall be imprisoned not more than 60 days or fined not more than \$500.00, or both commits a Class D misdemeanor.

Sec. 2. 13 V.S.A. § 1024 is amended to read:

§ 1024. AGGRAVATED ASSAULT

(a) A person is guilty of aggravated assault if the person:

(1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life;

(2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon;

(3) for a purpose other than lawful medical or therapeutic treatment, the person intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to the other person without the other person's consent a drug, substance, or preparation capable of producing the intended harm;

(4) with intent to prevent a law enforcement officer from performing a lawful duty, the person causes physical injury to any person; or

(5) is armed with a deadly weapon and threatens to use the deadly weapon on another person.

(b) A person found guilty of violating a provision of subdivision (a)(1) or (2) of this section ~~shall be imprisoned for not more than 15 years or fined not more than \$10,000.00, or both~~ commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$10,000.00.

(c) A person found guilty of violating a provision of subdivision (a)(3), (4), or (5) of this section ~~shall be imprisoned for not more than five years or fined not more than \$5,000.00, or both~~ commits a Class D felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$5,000.00.

* * *

Sec. 3. 13 V.S.A. § 1026 is amended to read:

§ 1026. DISORDERLY CONDUCT

(a) A person is guilty of disorderly conduct if ~~he or she~~ the person, with intent to cause public inconvenience or annoyance, or recklessly creates a risk thereof:

(1) engages in fighting or in violent, tumultuous, or threatening behavior;

(2) makes unreasonable noise;

(3) in a public place, uses abusive or obscene language;

(4) without lawful authority, disturbs any lawful assembly or meeting of persons; or

(5) obstructs vehicular or pedestrian traffic.

(b) A person who is convicted of disorderly conduct ~~shall be imprisoned for not more than 60 days or fined not more than \$500.00, or both. A person who is convicted of a second or subsequent offense under this section shall be imprisoned for not more than 120 days or fined not more than \$1,000.00, or both~~ commits a Class D misdemeanor.

Sec. 4. 13 V.S.A. § 1026a is amended to read:

§ 1026a. AGGRAVATED DISORDERLY CONDUCT

(a) A person is guilty of aggravated disorderly conduct if he or she engages in a course of conduct directed at a specific person with the intent to cause the person inconvenience or annoyance, or to disturb the person's peace, quiet, or right of privacy and:

(1) engages in fighting or in violent, tumultuous, or threatening behavior;

(2) makes unreasonable noise;

(3) in a public place, uses abusive or obscene language; or

(4) threatens bodily injury or serious bodily injury, or threatens to commit a felony crime of violence as defined in section 11a of this title.

(b) A person who is convicted of aggravated disorderly conduct ~~shall be imprisoned not more than 180 days or fined not more than \$2,000.00, or both~~ commits a Class C misdemeanor.

Sec. 5. 13 V.S.A. § 1027 is amended to read:

§ 1027. DISTURBING PEACE BY USE OF TELEPHONE OR OTHER
ELECTRONIC COMMUNICATIONS

(a) A person who, with intent to terrify, intimidate, threaten, harass, or annoy, makes contact by means of a telephonic or other electronic communication with another and makes any request, suggestion, or proposal that is obscene, lewd, lascivious, or indecent; threatens to inflict injury or physical harm to the person or property of any person; or disturbs, or attempts to disturb, by repeated telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet, or right of privacy of any person at the place where the communication or communications are received ~~shall be fined not more than \$250.00 or be imprisoned not more than three months, or both. If the defendant has previously been convicted of a violation of this section or of an offense under the laws of another state or of the United States that would have been an offense under this section if committed in this State, the defendant shall be fined not more than \$500.00 or imprisoned for not more than six months, or both~~ commits a Class D misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$250.00.

* * *

Sec. 6. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF PROTECTED PROFESSIONAL; ASSAULT WITH
BODILY FLUIDS

(a)(1) A person convicted of a simple or aggravated assault against a protected professional as defined in subdivision (d)(1) of this section while the protected professional is performing a lawful duty, or with the intent to prevent the protected professional from performing ~~his or her~~ the professional's lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, ~~shall:~~

~~(1)(A) for the first offense, be imprisoned not more than one year~~ commits a Class B misdemeanor;

~~(2)(B) for the second offense and subsequent offenses, be imprisoned not more than 10 years~~ commits a Class C felony.

(2) Notwithstanding section 53 of this title, a person who violates this subsection shall not be subject to an additional fine beyond that provided in sections 1023 and 1024 of this title.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a protected professional while the person is performing a lawful duty.

(2) A person who violates this subsection ~~shall be imprisoned not more than one year or fined not more than \$1,000.00, or both~~ commits a Class B misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.

* * *

Sec. 7. 13 V.S.A. § 1028a is amended to read:

§ 1028a. ASSAULT OF CORRECTIONAL OFFICER; ASSAULT WITH
BODILY FLUIDS

(a)(1) A person convicted of a simple or aggravated assault against an employee of the Department of Corrections whose official duties or job classification includes the supervision or monitoring of a person on parole, probation, or serving any sentence of incarceration whether inside or outside a correctional facility, and who was performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, ~~shall:~~

~~(1)(A)~~ for the first offense, ~~be imprisoned not more than one year~~ commits a Class B misdemeanor; and

~~(2)(B)~~ for the second offense and subsequent offenses, ~~be imprisoned not more than 10 years~~ commits a Class C felony.

(2) Notwithstanding section 53 of this title, a person who violates this subsection shall not be subject to an additional fine beyond that provided in sections 1023 and 1024 of this title.

(b) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with:

(1) any person lawfully present in a correctional facility unless the person's presence within the facility requires the contact; or

(2) an employee of a correctional facility acting in the scope of employment unless the employee's scope of employment requires the contact.

(c) A person who violates subsection (b) of this section ~~shall be imprisoned not more than two years or fined not more than \$1,000.00, or both~~ commits a Class A misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.

(d) A sentence imposed for a conviction of this section shall be served consecutively with and not concurrently with any other sentence.

Sec. 8. 13 V.S.A. § 1030 is amended to read:

§ 1030. VIOLATION OF AN ABUSE PREVENTION ORDER, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

(a) A person who intentionally commits an act prohibited by a court or who fails to perform an act ordered by a court, in violation of an abuse prevention order issued under 15 V.S.A. chapter 21 or 33 V.S.A. chapter 69, a protective order that concerns contact with a child and is issued under 33 V.S.A. chapter 51, or an order against stalking or sexual assault issued under 12 V.S.A. chapter 178, after the person has been served notice of the contents of the order as provided in those chapters; or in violation of a foreign abuse prevention order or an order against stalking or sexual assault issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia ~~shall be imprisoned not more than one year or fined not more than \$5,000.00, or both~~ commits a Class B misdemeanor.

(b) A person who is convicted of a second or subsequent offense under this section or is convicted of an offense under this section and has previously been convicted of domestic assault under section 1042 of this title, first degree aggravated domestic assault under section 1043 of this title, or second degree aggravated domestic assault under section 1044 of this title ~~shall be imprisoned not more than three years or fined not more than \$25,000.00, or both~~ commits a Class E felony.

* * *

Sec. 9. 13 V.S.A. § 1031 is amended to read:

§ 1031. INTERFERENCE WITH ACCESS TO EMERGENCY SERVICES

A person who, during or after the commission of a crime, willfully prevents or attempts to prevent a person from seeking or receiving emergency medical assistance, emergency assistance from a third party, or emergency assistance from law enforcement ~~shall be imprisoned not more than one year or fined not more than \$5,000.00, or both~~ commits a Class B misdemeanor.

Sec. 10. 13 V.S.A. § 1042 is amended to read:

§ 1042. DOMESTIC ASSAULT

Any person who attempts to cause or willfully or recklessly causes bodily injury to a family or household member or willfully causes a family or

household member to fear imminent serious bodily injury ~~shall be imprisoned not more than 18 months or fined not more than \$5,000.00, or both~~ commits a Class B misdemeanor and shall, in addition to the penalty for that offense, be imprisoned not more than an additional six months.

Sec. 11. 13 V.S.A. § 1043 is amended to read:

§ 1043. FIRST DEGREE AGGRAVATED DOMESTIC ASSAULT

(a) A person commits the crime of first degree aggravated domestic assault if the person:

(1) attempts to cause or willfully or recklessly causes serious bodily injury to a family or household member; ~~or~~

(2) uses, attempts to use, or is armed with a deadly weapon and threatens to use the deadly weapon on a family or household member; or

(3) commits the crime of domestic assault and has been previously convicted of aggravated domestic assault.

(b) A person who commits the crime of first degree aggravated domestic assault ~~shall be imprisoned not more than 15 years or fined not more than \$25,000.00, or both~~ commits a Class C felony and shall, in addition to the penalty for that offense, be imprisoned not more than an additional five years.

(c) Conduct constituting the offense of first degree aggravated domestic assault under this section shall be considered a violent act for the purpose of determining bail.

Sec. 12. 13 V.S.A. § 1044 is amended to read:

§ 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

(a) A person commits the crime of second degree aggravated domestic assault if the person:

(1) Commits the crime of domestic assault and such conduct violates:

(A) specific conditions of a criminal court order in effect at the time of the offense imposed to protect that other person;

(B) a final abuse prevention order issued under 15 V.S.A. § 1103 or a similar order issued in another jurisdiction;

(C) a final order against stalking or sexual assault issued under 12 V.S.A. § 5133 or a similar order issued in another jurisdiction; or

(D) a final order against abuse of a vulnerable adult issued under 33 V.S.A. § 6935 or a similar order issued in another jurisdiction.

(2) Commits the crime of domestic assault; and:

(A) has a prior conviction within the last 10 years for violating an abuse prevention order issued under section 1030 of this title; or

(B) has a prior conviction for domestic assault under section 1042 of this title or a prior conviction in another jurisdiction for an offense that, if committed within the State, would constitute a violation of section 1042 of this title.

(3) As used in this subsection:

(A) "Issued in another jurisdiction" means issued by a court in any other state; in a federally recognized Indian tribe, territory, or possession of the United States; in the Commonwealth of Puerto Rico; or in the District of Columbia.

(B) "Prior conviction in another jurisdiction" means a conviction issued by a court in any other state; in a federally recognized Indian tribe, territory, or possession of the United States; in the Commonwealth of Puerto Rico; or in the District of Columbia.

(b) A person who commits the crime of second degree aggravated domestic assault ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

* * *

Sec. 13. 13 V.S.A. § 1062 is amended to read:

§ 1062. STALKING

Any person who intentionally stalks another person ~~shall be imprisoned not more than two years or fined not more than \$5,000.00, or both~~ commits a Class A misdemeanor.

Sec. 14 13 V.S.A. § 1063 is amended to read:

§ 1063. AGGRAVATED STALKING

(a) A person commits the crime of aggravated stalking if the person intentionally stalks another person, and:

(1) such conduct violates a court order that prohibits stalking and is in effect at the time of the offense;

(2) has been previously convicted of stalking or aggravated stalking;

(3) has been previously convicted of an offense an element of which involves an act of violence against the same person;

(4) the person being stalked is under 16 years of age; or

(5) had a deadly weapon, as defined in section 1021 of this title, in his or her ~~the person's~~ possession while engaged in the act of stalking.

(b) A person who commits the crime of aggravated stalking ~~shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both~~ commits a Class D felony.

* * *

Sec. 15. 13 V.S.A. § 1201 is amended to read:

§ 1201. BURGLARY

(a) A person is guilty of burglary if ~~he or she~~ the person enters any building or structure knowing that ~~he or she~~ the person is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault, or unlawful mischief. This provision shall not apply to a licensed or privileged entry, or to an entry that takes place while the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in the building or structure after the license or privilege expires or after the premises no longer are open to the public.

(b) As used in this section:

(1) “Building,” “premises,” and “structure” shall, in addition to their common meanings, include and mean any portion of a building, structure, or premises that differs from one or more other portions of such building, structure, or premises with respect to license or privilege to enter, or to being open to the public.

(2) “Occupied dwelling” means a building used as a residence, either full time or part time, regardless of whether someone is actually present in the building at the time of entry.

(c)(1) A person convicted of burglary ~~shall be imprisoned not more than 15 years or fined not more than \$1,000.00, or both~~ commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.

(2) A person convicted of burglary and who carries a dangerous or deadly weapon, openly or concealed, shall, in addition to the penalty for the underlying crime, be imprisoned not more than 20 five years ~~or fined not more than \$10,000.00, or both.~~

(3) A person convicted of burglary into an occupied dwelling:

~~(A) shall be imprisoned not more than 25 years or fined not more than \$1,000.00, or both; or~~

~~(B) shall, in addition to the penalty for the underlying crime, be imprisoned not more than 30 five years or fined not more than \$10,000.00, or both, if the person carried a dangerous or deadly weapon, openly or concealed, during commission of the offense.~~

(4) When imposing a sentence under this section, the court shall consider as an aggravating factor whether, during commission of the offense, the person entered the building when someone was actually present or used or threatened to use force against the occupant.

Sec. 16. 13 V.S.A. § 1204 is amended to read:

§ 1204. MAKING OR HAVING BURGLAR'S TOOLS

A person who manufactures or knowingly has in ~~his or her~~ the person's possession any engine, machine, tool, or implement, adapted and designed for cutting through, forcing or breaking open any building, room, vault, safe, or other depository, in order to steal therefrom money or other property, knowing the same to be adapted and designed for such purpose, with intent to use or employ the same therefor, ~~shall be imprisoned not more than 20 years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

Sec. 17. 13 V.S.A. § 2405 is amended to read:

§ 2405. KIDNAPPING

* * *

~~(b) Kidnapping is punishable by a maximum sentence of life imprisonment or a fine of not more than \$50,000.00, or both a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$50,000.00. It is, however, an affirmative defense which that reduces the penalty to imprisonment for not more than 30 years or a fine of not more than \$50,000.00, or both, a Class B felony that the defendant voluntarily caused the release of the victim alive in a safe place before arraignment without having caused serious bodily injury to the victim.~~

Sec. 18. 13 V.S.A. § 2406 is amended to read:

§ 2406. UNLAWFUL RESTRAINT IN THE SECOND DEGREE

(a) A person commits the crime of unlawful restraint in the second degree if the person:

(1) not being a relative of a person under ~~the age of 18 years of age,~~ knowingly takes, entices, or harbors that person, without the consent of the person's custodian, knowing that he or she has no right to do so; or

(2) knowingly takes or entices from lawful custody or harbors any person who is mentally incompetent, or other person entrusted by authority of law to the custody of another person or an institution, without the consent of the person or institution, knowing that he or she has no right to do so; or

(3) knowingly restrains another person.

(b) It is a defense to a prosecution under this section that the defendant acted reasonably and in good faith to protect the person from imminent physical or emotional danger.

(c) Unlawful restraint in the second degree is ~~punishable by imprisonment for not more than five years or a fine of not more than \$25,000.00, or both a~~ Class D felony.

Sec. 19. 13 V.S.A. § 2407 is amended to read:

§ 2407. UNLAWFUL RESTRAINT IN THE FIRST DEGREE

(a) A person commits the crime of unlawful restraint in the first degree if that person:

(1) knowingly restrains another person under circumstances exposing that person to a risk of serious bodily injury; or

(2) holds another person in a condition of involuntary servitude.

(b) Unlawful restraint in the first degree is ~~punishable by imprisonment for not more than 15 years or a fine of not more than \$50,000.00, or both a~~ Class C felony.

Sec. 20. 13 V.S.A. § 2451 is amended to read:

§ 2451. CUSTODIAL INTERFERENCE

(a) A person commits custodial interference by taking, enticing, or keeping a child from the child's lawful custodian, knowingly, without a legal right to do so, when the person is a relative of the child and the child is less than 18 years ~~old~~ of age.

(b) A person who commits custodial interference ~~shall be imprisoned not more than five years or fined not more than \$5,000.00, or both~~ commits a Class D felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$5,000.00.

* * *

Sec. 21. 13 V.S.A. § 608 is amended to read:

§ 608. ASSAULT AND ROBBERY

(a) A person who assaults another and robs, steals, or takes from ~~his or her~~ the other person or in ~~his or her~~ the other person's presence money or other property that may be the subject of larceny ~~shall be imprisoned for not more than 10 years~~ commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined.

(b) A person who, being armed with a dangerous weapon, assaults another and robs, steals, or takes from ~~his or her~~ the other person or in ~~his or her~~ the other person's presence money or other property that may be the subject of larceny shall, in addition to the penalty for the underlying crime, be imprisoned for not more than ~~15~~ five years nor less than one year.

(c) If in the attempt or commission of an offense under subsection (a) or (b) of this section, a person causes bodily injury, ~~such~~ the person shall, in addition to the penalty for the underlying crime, be imprisoned for not more than ~~20~~ five years nor less than one year. ~~Any penalty imposed under this subsection shall be in lieu of any penalty imposed under subsection (a) or (b) of this section.~~

Sec. 22. 13 V.S.A. § 2303 is amended to read:

§ 2303. PENALTIES FOR FIRST AND SECOND DEGREE MURDER

(a)(1) ~~The punishment for murder~~ Murder in the first degree shall be a Class A felony punishable by imprisonment for:

(A) a minimum term of not less than 35 years and a maximum term of life; or

(B) life without the possibility of parole.

(2) ~~The punishment for murder~~ Murder in the second degree shall be a Class A felony punishable by imprisonment for:

(A) a minimum term of not less than 20 years and a maximum term of life; or

(B) life without the possibility of parole.

(3) Notwithstanding any other provision of law, this subsection shall apply only if the murder was committed on or after ~~the effective date of this act~~ May 1, 2006.

(b) ~~The punishment for murder~~ Murder in the first degree shall be a Class A felony punishable by imprisonment for life and for a minimum term of

35 years unless a jury finds that there are aggravating or mitigating factors ~~which that~~ justify a different minimum term. If the jury finds that the aggravating factors outweigh any mitigating factors, the court may set a minimum term longer than 35 years, up to and including life without parole. If the jury finds that the mitigating factors outweigh any aggravating factors, the court may set a minimum term at less than 35 years but not less than 15 years.

(c) ~~The punishment for murder~~ Murder in the second degree shall be a Class A felony punishable by imprisonment for life and for a minimum term of 20 years unless a jury finds that there are aggravating or mitigating factors which that justify a different minimum term. If the jury finds that the aggravating factors outweigh any mitigating factors, the court may set a minimum term longer than 20 years, up to and including life without parole. If the jury finds that the mitigating factors outweigh any aggravating factors, the court may set a minimum term at less than 20 years but not less than 10 years.

* * *

(g) Subsections (b)–(f) of this section shall apply only if the murder was committed before ~~the effective date of this act~~ May 1, 2006, and:

(1) the defendant was not sentenced before ~~the effective date of this act~~ May 1, 2006; or

(2) the defendant’s sentence was stricken and remanded for resentencing pursuant to the Vermont Supreme Court’s decision in *State v. Provost*, 2005 VT 134 (2005).

(h) Notwithstanding section 53 of this title, a person who violates this section shall not be fined.

Sec. 23. 13 V.S.A. § 2304 is amended to read:

§ 2304. MANSLAUGHTER- PENALTIES

A person who commits manslaughter shall be fined not more than \$3,000.00 or imprisoned for not less than one year nor more than 15 years, or both commits a Class C felony and shall, in addition to the penalty for that offense, be imprisoned not more than an additional five years, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$3,000.00.

Sec. 24. 13 V.S.A. § 1378 is amended to read:

§ 1378. NEGLECT

(a) A caregiver who intentionally or recklessly neglects a vulnerable adult ~~shall be imprisoned not more than 18 months or fined not more than \$10,000.00, or both~~ commits a Class B misdemeanor and shall, in addition to the penalty for that offense, be imprisoned not more than an additional six months.

(b) A caregiver who violates subsection (a) of this section, and as a result of such neglect, serious bodily injury occurs to the vulnerable adult, ~~shall be imprisoned not more than 15 years or fined not more than \$10,000.00, or both~~ commits a Class C felony and shall, in addition to the penalty for that offense, be imprisoned not more than an additional five years, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$10,000.00.

Sec. 25. 13 V.S.A. § 205 is amended to read:

§ 205. INTERMARRIAGE OF OR FORNICATION BY PERSONS

PROHIBITED TO MARRY

Persons between whom marriages are prohibited by the laws of this State ~~who shall not~~ intermarry or commit fornication with each other ~~shall be imprisoned not more than five years or fined not more than \$1,000.00, or both.~~ A person who violates this section commits a Class D felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.

Sec. 26. 13 V.S.A. § 1379 is amended to read:

§ 1379. SEXUAL ABUSE

(a) A person who volunteers for or is paid by a caregiving facility or program shall not engage in any sexual activity with a vulnerable adult. It shall be an affirmative defense to a prosecution under this subsection that the sexual activity was consensual between the vulnerable adult and a caregiver who was hired, supervised, and directed by the vulnerable adult. A person who violates this subsection ~~shall be imprisoned for not more than two years or fined not more than \$10,000.00, or both~~ commits a Class A misdemeanor.

(b) No person, whether or not the person has actual knowledge of the victim's vulnerable status, shall engage in sexual activity with a vulnerable adult if:

- (1) the vulnerable adult does not consent to the sexual activity; or

(2) the person knows or should know that the vulnerable adult is incapable of resisting, declining, or consenting to the sexual activity due to his or her specific vulnerability or due to fear of retribution or hardship.

(c) A person who violates subsection (b) of this section ~~shall be:~~

(1) ~~imprisoned for not more than five years or fined not more than \$10,000.00, or both,~~ commits a Class D felony if the sexual activity involves lewd and lascivious conduct;

(2) ~~imprisoned for not more than 20 years or fined not more than \$10,000.00, or both~~ commits a Class B felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$10,000.00, if the sexual activity involves a sexual act.

(d) A caregiver who violates subsection (b) of this section ~~shall be:~~

(1) ~~imprisoned for not more than seven years or fined not more than \$10,000.00, or both~~ commits a Class D felony and shall, in addition to the penalty for that offense, be imprisoned not more than an additional two years, if the sexual activity involves lewd and lascivious conduct.

(2) ~~imprisoned for not more than 25 years or fined not more than \$10,000.00, or both~~ commits a Class B felony and shall, in addition to the penalty for that offense, be imprisoned not more than an additional five years, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$10,000.00, if the sexual activity involves a sexual act.

Sec. 27. 13 V.S.A. § 2601 is amended to read:

§ 2601. LEWD AND LASCIVIOUS CONDUCT

A person guilty of open and gross lewdness and lascivious behavior ~~shall be imprisoned not more than five years or fined not more than \$300.00, or both~~ commits a Class D felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$300.00.

Sec. 28. 13 V.S.A. § 2601a is amended to read:

§ 2601a. PROHIBITED CONDUCT

(a) No person shall engage in open and gross lewdness.

(b) A person who violates this section ~~shall:~~

(1) ~~be imprisoned not more than one year or fined not more than \$300.00, or both~~ commits a Class B misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$300.00, for a first offense; and

~~(2) be imprisoned not more than two years or fined not more than \$1,000.00, or both commits a Class A misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00, for a second or subsequent offense.~~

Sec. 29. 13 V.S.A. § 2602 is amended to read:

§ 2602. LEWD OR LASCIVIOUS CONDUCT WITH CHILD

(a)(1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.

(2) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

(b) A person who violates subsection (a) of this section shall be:

(1) For a first offense, ~~imprisoned not less than two years and not more than 15 years, and, in addition, may be fined not more than \$5,000.00, or both commits a Class C felony provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$5,000.00 and shall:~~

(A) in addition to the penalty for that offense, be imprisoned not more than an additional five years; and

(B) be imprisoned not less than two years.

(2) For a second offense, ~~imprisoned not less than five years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both commits a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$25,000.00 and shall be imprisoned not less than five years.~~

(3) For a third or subsequent offense, ~~imprisoned not less than 10 years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both commits a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$25,000.00 and shall be imprisoned not less than 10 years.~~

(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subdivision (b)(2) of this section shall include at least a five-year term of imprisonment and a sentence ordered pursuant to subdivision (b)(3) of this section shall include at least a 10-year term of imprisonment. The five-year and 10-year terms of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough,

or any other type of early release until the expiration of the five-year or 10-year term of imprisonment.

(2) The court may depart downwardly from the five-year and 10-year terms of imprisonment required by subdivisions (b)(2) and (3) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety.

(d) A person convicted of violating subdivision (b)(2) or (3) of this section shall be sentenced under section 3271 of this title.

* * *

Sec. 30. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

* * *

(b) No person shall intentionally view, photograph, film, or record in any format:

(1) the intimate areas of another person without that person's knowledge and consent while the person being viewed, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy; or

(2) the intimate areas of another person without that person's knowledge and consent and under circumstances in which the person has a reasonable expectation of privacy.

(c) No person shall display or disclose to a third party any image recorded in violation of subsection (b), (d), or (e) of this section.

(d) No person shall intentionally conduct surveillance or intentionally photograph, film, or record in any format a person without that person's knowledge and consent while the person being surveilled, photographed, filmed, or recorded is in a place where he or she would have a reasonable expectation of privacy within a home or residence. Bona fide private investigators and bona fide security guards engaged in otherwise lawful activities within the scope of their employment are exempt from this subsection.

(e) No person shall intentionally photograph, film, or record in any format a person without that person's knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in sexual conduct.

* * *

(j) ~~For a first offense, a person who violates subsection (b), (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both commits a Class A misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.~~ For a second or subsequent offense, a person who violates subsection (b), (d), or (e) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both commits a Class E felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$5,000.00. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both commits a Class D felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$5,000.00.

Sec. 31. 13 V.S.A. § 2606 is amended to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT
CONSENT

* * *

(b)(1) A person violates this section if he or she knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm. A person may be identifiable from the image itself or information offered in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. A person who violates this subdivision (1) ~~shall be imprisoned not more than two years or fined not more than \$2,000.00, or both commits a Class A misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$2,000.00.~~

(2) A person who violates subdivision (1) of this subsection with the intent of disclosing the image for financial profit ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both commits a Class D felony.~~

* * *

Sec. 32. 13 V.S.A. § 2632 is amended to read:

§ 2632. PROSTITUTION

(a) A person shall not:

(1) occupy a place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation;

(2) knowingly permit a place, structure, building, or conveyance owned by the person or under the person's control to be used for the purpose of prostitution, lewdness, or assignation;

(3) receive or offer, or agree to receive, a person into a place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation;

(4) permit a person to remain in a place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation;

(5) direct, take or transport, or offer or agree to take or transport a person to a place, structure, building, or conveyance or to any other person knowingly, or with reasonable cause to know that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

(6) procure or solicit or offer to procure or solicit a person for the purpose of prostitution, lewdness, or assignation;

(7) reside in, enter or remain in a place, structure, or building or enter or remain in a conveyance for the purpose of prostitution, lewdness, or assignation;

(8) engage in prostitution, lewdness, or assignation; or

(9) aid or abet prostitution, lewdness, or assignation, by any means whatsoever.

(b) A person who violates a provision of subsection (a) of this section ~~shall be fined not more than \$100.00 or may be imprisoned not more than one year~~ commits a Class B misdemeanor. For a second offense, such person ~~shall be imprisoned for not more than three years~~ commits a Class A misdemeanor. Notwithstanding section 53 of this title, a person who violates this section shall not be fined more than \$100.00.

Sec. 33. 13 V.S.A. § 2635 is amended to read:

§ 2635. SLAVE TRAFFIC

(a) A person shall not:

(1) induce, entice, or procure a person to come into the State or to go from the State for the purpose of prostitution or for any immoral purpose or to enter a house of prostitution in the State;

(2) willfully or knowingly aid such person in obtaining transportation to or within the State for such purposes;

(3) place a person in the charge or custody of another person for immoral purposes or in a house of prostitution;

(4) induce, entice, procure, or compel such person to reside in a house of prostitution; or

(5) induce, entice, procure, or compel such person to live a life of prostitution.

~~(b) A person violating a provision hereof shall be imprisoned not more than 10 years nor less than one year or fined not more than \$2,000.00 nor less than \$200.00, or both~~ who violates this section commits a Class C felony and shall be imprisoned not less than one year, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$2,000.00 or less than \$200.00.

Sec. 34. 13 V.S.A. § 2636 is amended to read:

§ 2636. UNLAWFUL PROCUREMENT

(a) A person shall not:

(1) induce, entice, procure, or compel a person, for the purpose of prostitution or for any other immoral purposes, to enter a house of prostitution;

(2) receive money or other valuable consideration for or on account of placing a person in a house of prostitution;

(3) pay money or other valuable consideration to procure a person for the purpose of placing such person for immoral purposes in a house of prostitution, with or without the person's consent; or

(4) knowingly receive money or other valuable thing for or on account of procuring or placing a person in a house of prostitution for immoral purposes, with or without the person's consent.

~~(b) A person violating a provision hereof shall be punished as provided in section 2635 of this title~~ who violates this section commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$2,000.00 or less than \$200.00.

Sec. 35. 13 V.S.A. § 2637 is amended to read:

§ 2637. APPROPRIATING OR LEVYING UPON EARNINGS OF PROSTITUTE

(a) A person shall not:

(1) hold, detain, or restrain a person in a house of prostitution for the purpose of compelling such person, directly or indirectly, by the person's voluntary or involuntary service or labor, to pay, liquidate, or cancel a debt, dues, or obligations incurred or claimed to have been incurred in such house of prostitution; or

(2) accept, receive, levy, or appropriate money or other valuable thing from the proceeds or earnings of a person engaged in prostitution.

(b) An acceptance, receipt, levy, or appropriation of such money or valuable thing shall be presumptive evidence of lack of consideration.

(c) A person who violates a provision of this section ~~shall be punished as provided in section 2635 of this title~~ commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$2,000.00 or less than \$200.00.

Sec. 36. 13 V.S.A. § 2652 is amended to read:

§ 2652. HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under ~~the age of 18 years of age~~ for the purpose of having the person engage in a commercial sex act;

(2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion for the purpose of having the person engage in a commercial sex act;

(3) compel a person through force, fraud, or coercion to engage in a commercial sex act;

(4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture;

(5) subject a person to labor servitude;

(6) recruit, entice, harbor, transport, provide, or obtain a person for the purpose of subjecting the person to labor servitude; or

(7) benefit financially or by receiving anything of value from participation in a venture, knowing that a person will be subject to labor servitude as part of the venture.

(b) A person who violates subsection (a) of this section ~~shall be imprisoned for a term up to and including life or fined not more than \$500,000.00, or both commits a Class A felony.~~

* * *

Sec. 37. 13 V.S.A. § 2653 is amended to read:

§ 2653. AGGRAVATED HUMAN TRAFFICKING

(a) A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

(1) the offense involves a victim of human trafficking who is a child ~~under the age of 18 years of age;~~

(2) the person has previously been convicted of a violation of section 2652 of this title;

(3) the victim of human trafficking suffers serious bodily injury or death; or

(4) the actor commits the crime of human trafficking under circumstances that constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

(b) A person who violates this section ~~shall be imprisoned not less than 20 years and a maximum term of life or fined not more than \$100,000.00, or both commits a Class A felony and shall be imprisoned not less than 20 years.~~

(c) The provisions of this section do not limit or restrict the prosecution for murder or manslaughter.

Sec. 38. 13 V.S.A. § 2654 is amended to read:

§ 2654. PATRONIZING OR FACILITATING HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) permit a place, structure, or building owned by the person or under the person's control to be used for the purpose of human trafficking;

(2) receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or

(3) permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

(b) A person who violates this section ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

Sec. 39. 13 V.S.A. § 2655 is amended to read:

§ 2655. SOLICITATION

(a) No person shall knowingly solicit a commercial sex act from a victim of human trafficking.

(b) A person who violates this section ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

Sec. 40. 13 V.S.A. § 2802b is amended to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT
MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of ~~himself or herself~~ themselves to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) Except as provided in subdivision (3) of this subsection, a minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to 33 V.S.A. chapter 52, and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children), and shall not be subject to the requirements of chapter 167, subchapter 3 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in ~~family court as the Family Division~~ under subdivision (b)(1) of this section or prosecuted for a Class C misdemeanor in ~~district court~~ the Criminal Division

under chapter 64 of this title (sexual exploitation of children), but shall not be subject to the requirements of chapter 167, subchapter 3 of this title (sex offender registration), provided that, notwithstanding section 53 of this title, the minor shall not be fined.

(4) Notwithstanding any other provision of law, the records of a minor who is adjudicated delinquent under this section shall be expunged when the minor reaches 18 years of age.

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section ~~shall be fined not more than \$300.00 or imprisoned for not more than six months, or both~~ commits a Class C misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$300.00.

* * *

Sec. 41. 13 V.S.A. § 2807 is amended to read:

§ 2807. PENALTY

A person who violates any provision of section 2802, 2802a, 2803, 2804, 2804a, or 2804b of this title ~~shall be imprisoned not more than one year or fined not more than \$1,000.00, or both~~ commits a Class B misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$1,000.00.

Sec. 42. 13 V.S.A. § 2825 is amended to read:

§ 2825. PENALTIES

(a) A person who violates section 2822, 2823, or 2824 of this title ~~shall be imprisoned not more than 10 years or fined not more than \$20,000.00, or both~~ commits a Class C felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$20,000.00.

(b) Upon conviction for a violation of section 2822, 2823, or 2824 of this title of a person who has earlier been convicted under any of those sections, the person shall be ~~imprisoned not less than one year nor more than 15 years or fined not more than \$50,000.00, or both~~ punished for a Class C felony and shall:

(1) in addition to the penalty for that offense, be imprisoned not more than an additional five years; and

(2) be imprisoned not less than one year.

(c) A person who violates section 2827 this title by possessing or accessing with intent to view a photograph, film, or visual depiction, including a depiction stored electronically, ~~which that~~ constitutes:

(1) a clearly lewd exhibition of a child's genitals or anus, other than a depiction of sexual conduct by a child, ~~shall be imprisoned not more than two years or fined not more than \$5,000.00, or both~~ commits a Class A misdemeanor;

(2) sexual conduct by, with, or on a child, ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

(d) A person who violates section 2827 of this title after being convicted of a previous violation of the same section ~~shall be imprisoned not more than 10 years or fined not more than \$50,000.00, or both~~ commits a Class C felony.

(e) A person who violates section 2828 of this title ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

Sec. 43. 13 V.S.A. § 3252 is amended to read:

§ 3252. SEXUAL ASSAULT

* * *

(f)(1) A person who violates subsection (a), (b), (d), or (e) of this section ~~shall be imprisoned not less than three years and for a maximum term of life and, in addition, may be fined not more than \$25,000.00~~ commits a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$25,000.00 and shall be imprisoned not less than three years.

(2) A person who violates subsection (c) of this section ~~shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$10,000.00~~ commits a Class B felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$10,000.00.

* * *

Sec. 44. 13 V.S.A. § 3253 is amended to read:

§ 3253. AGGRAVATED SEXUAL ASSAULT

(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances ~~which~~ that constitute the crime of kidnapping.

(4) The actor has previously been convicted in this State of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense ~~which~~ that would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed in this State.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is under ~~the age of~~ 13 years of age and the actor is at least 18 years of age.

(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence₂, or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

~~(b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$50,000.00~~ commits a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$50,000.00, and shall be imprisoned not less than 10 years.

(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

(2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years.

* * *

Sec. 45. 13 V.S.A. § 3253a is amended to read:

§ 3253a. AGGRAVATED SEXUAL ASSAULT OF A CHILD

(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child ~~under the age of 16 years of age~~ in violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances ~~which~~ that constitute the crime of kidnapping.

(4) The actor has previously been convicted in this State of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense ~~which~~ that would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this State.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence, or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child ~~shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00~~ commits a Class A felony, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$50,000.00. A sentence ordered pursuant to subsection (b) of this section shall include at least a 25-year term of imprisonment. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.

Sec. 46. 13 V.S.A. § 3257 is amended to read:

§ 3257. SEXUAL EXPLOITATION OF A PERSON UNDER THE
SUPERVISION OF THE DEPARTMENT OF CORRECTIONS

(a) A correctional employee, contractor, or other person providing services to offenders on behalf of the Department of Corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall not engage in a sexual act with:

(1) a person who the employee, contractor, or other person providing services knows is confined to a correctional facility; or

(2) any offender being supervised by the Department of Corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider knows or reasonably should have known that the offender is being supervised by the Department, unless the offender and the employee, contractor, or person providing services were married, parties to a civil union, or engaged in a consensual sexual relationship at the time of sentencing for the offense for which the offender is being supervised by the Department.

(b) A person who violates subsection (a) of this section ~~shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

Sec. 47. 13 V.S.A. § 3258 is amended to read:

§ 3258. SEXUAL EXPLOITATION OF A MINOR

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section ~~shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both~~ commits a Class B misdemeanor, provided that, notwithstanding section 53 of this title, the person shall not be fined more than \$2,000.00.

(c) A person who violates subsection (a) of this section and who abuses ~~his or her~~ the person's position of power, authority, or supervision over the minor in order to engage in a sexual act ~~shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

Sec. 48. 13 V.S.A. § 3259 is amended to read:

§ 3259. SEXUAL EXPLOITATION OF A PERSON IN THE CUSTODY OF
A LAW ENFORCEMENT OFFICER

(a) No law enforcement officer shall engage in a sexual act with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer.

(b) A person who violates subsection (a) of this section ~~shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

Sec. 49. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

(Committee Vote: 11-0-0)

H. 548

An act relating to miscellaneous cannabis establishment procedures

Rep. Gannon of Wilmington, for the Committee on Government Operations, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 862a is added to read:

§ 862a. SYNTHETIC AND HEMP-DERIVED CANNABINOIDS

The Board shall have the authority to regulate synthetic cannabinoids and hemp-derived cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol.

Sec. 2. 7 V.S.A. § 881 is amended to read:

§ 881. RULEMAKING; CANNABIS ESTABLISHMENTS

(a) The Board shall adopt rules to implement and administer this chapter in accordance with subdivisions (1)–(7) of this subsection.

(1) Rules concerning any cannabis establishment shall include:

* * *

(I) regulation of additives to cannabis and cannabis products, including those cannabidiol derived from hemp and substances that are toxic or designed to make the product more addictive, more appealing to persons under 21 years of age, or to mislead consumers;

* * *

(3) Rules concerning product manufacturers shall include:

(A) requirements that a single package of a cannabis product shall not contain more than 50 milligrams of THC, except in the case of:

(i) cannabis products that are not consumable, including topical preparations; and

(ii) solid concentrates, oils, and tinctures; and

(iii) cannabis products sold to a dispensary pursuant to 18 V.S.A. chapter 86 and regulations issued pursuant to that chapter;

* * *

(5) Rules concerning retailers shall include:

* * *

(C) requirements that if the retailer sells hemp or hemp products, the hemp and hemp products are clearly labeled as such ~~and displayed separately from cannabis and cannabis products;~~

(D) requirements for opaque, child-resistant packaging of ~~cannabis and~~ cannabis products at point of sale to customer; and

* * *

Sec. 3. 7 V.S.A. § 884 is amended to read:

§ 884. CANNABIS ESTABLISHMENT IDENTIFICATION CARD

(a) Every owner, principal, and employee of a cannabis establishment shall obtain an identification card issued by the Board. A person may apply for an identification card prior to obtaining employment with a licensee. An employee identification card shall authorize the person to work for any licensee.

(b)(1) Prior to issuing the identification card, the Board shall obtain from the Vermont Crime Information Center a copy of the person's Vermont fingerprint-based criminal history records, out-of-state criminal history records, and criminal history records from the Federal Bureau of Investigation.

(2) The Board shall adopt rules that set forth standards for determining whether a person should be denied a cannabis establishment identification card because of his or her criminal history record based on factors that demonstrate whether the applicant presently poses a threat to public safety or the proper functioning of the regulated market. Nonviolent drug offenses shall not automatically disqualify an applicant.

(c) Once an identification card application has been submitted, a person may serve as an employee of a cannabis establishment pending the background check, provided the person is supervised in his or her duties by someone who is a cardholder. The Board shall issue a temporary permit to the person for this purpose, which shall expire upon the issuance of the identification card or disqualification of the person in accordance with this section.

(d) An identification card shall expire one year after its issuance or, in the case of owners and principals, upon the expiration of the cannabis establishment's license, whichever occurs first.

Sec. 4. 7 V.S.A. § 901(d)(3) is amended to read:

(3)(A) Except as provided in ~~subdivision~~ subdivisions (B) and (C) of this subdivision (3), an applicant and its affiliates may obtain a maximum of one type of each type of license as provided in subdivisions (1)(A)–(E) of this subsection (d). Each license shall permit only one location of the establishment.

* * *

(C) An applicant and its affiliates may obtain multiple testing laboratory licenses.

Sec. 5. 7 V.S.A. § 907 is amended to read:

§ 907. RETAILER LICENSE

(a) A retailer licensed under this chapter may:

(1) purchase cannabis from a licensed cultivator, wholesaler, or integrated licensee, and cannabis products from a licensed wholesaler, product manufacturer, integrated licensee, and dispensary; and

(2) transport, possess, package, and sell cannabis and cannabis products to the public for consumption off the registered premises.

* * *

Sec. 6. 7 V.S.A. § 909(c) is added to read:

(c) An integrated licensee shall comply with the provisions of subsection 908(f) of this title and have its cannabis or cannabis products tested by an independent licensed testing laboratory.

Sec. 7. 18 V.S.A. § 4230h is amended to read:

§ 4230h. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE

PROHIBITED

(a) No person shall manufacture concentrated cannabis by chemical extraction or chemical synthesis using butane or hexane ~~unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title.~~

* * *

Sec. 8. 2019 Acts and Resolves No. 164, Sec. 8(a)(1) is amended to read:

(a)(1) The cannabis plant, cannabis product, and useable cannabis possession limits for a registered dispensary set forth in 18 V.S.A. chapter 86 shall no longer apply on and after February 1, 2022. A dispensary shall be permitted to cultivate cannabis and manufacture cannabis products for the purpose of transferring or selling such products to an integrated licensee on or after April 1, 2022 until October 1, 2022 and engaging in the activities permitted by 7 V.S.A. chapter 33.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 9-2-0)

H. 551

An act relating to prohibiting racially and religiously restrictive covenants in deeds

Rep. Grad of Moretown, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

While racially and religiously restrictive covenants have been held unenforceable by courts since the U.S. Supreme Court's 1948 decision in *Shelley v. Kramer*, 344 U.S. 1 (1948), no State law currently exists to remove or render these covenants void and to put an end to what was an invidious, historical practice of discrimination in the United States. This practice was responsible, in part, for preventing Americans of BIPOC and religious minority backgrounds from fully participating in one of the greatest expansions of wealth and prosperity in this country's history through federally backed mortgages and freely available homeownership. It is the intent of the General Assembly that this act prohibit racially and religiously restrictive covenants from ever being used in Vermont again, regardless of their enforceability, and that it establish a process for their removal from existing real estate transaction records.

Sec. 2. 27 V.S.A. § 546 is added to read:

§ 546. RACIALLY AND RELIGIOUSLY RESTRICTIVE COVENANTS IN DEEDS PROHIBITED; PROCESS FOR REMOVAL

(a)(1) A deed, mortgage, plat, or other recorded device recorded on or after July 1, 2022 shall not contain a covenant, easement, or any other restrictive or reversionary interest purporting to restrict the ownership or use of real property on the basis of race or religion.

(2) A covenant, easement, or any other restrictive or reversionary interest in a deed, mortgage, plat, or other recorded device purporting to restrict the ownership or use of real property on the basis of race or religion is declared contrary to the public policy of the State of Vermont and shall be void and unenforceable. This subdivision shall apply to a restrictive covenant executed at any time.

(b) A restrictive covenant, easement, or similar restrictive or reversionary interest prohibited by subsection (a) of this section may be released by the owner of the real property interest subject to the covenant by recording a Certificate of Release of Certain Prohibited Covenants. The real property

owner may record the certificate prior to recording a deed conveying the property or at any other time the owner discovers that the prohibited covenant exists. The certificate may be prepared without assistance of an attorney but shall conform substantially to the following Certificate of Certain Prohibited Covenants form:

“CERTIFICATE OF RELEASE OF CERTAIN PROHIBITED COVENANTS

Town of Record: _____

Date of Instrument containing prohibited covenant(s): _____

Instrument Type: _____

Deed Book _____ Page _____ or Plat Book _____ Page _____

Name(s) of Current Owner(s): _____

Real Property Description: _____

The covenant contained in the above-mentioned instrument is released from the above-described real property to the extent that it contains terms purporting to restrict the ownership or use of the property as prohibited by 27 V.S.A. § 546(a).

The undersigned is/are the legal owner(s) of the property described herein.

Given under my/our hand(s) this _____ day of _____, 20__.

(Current Owners)

(1) For an acknowledgment in an individual capacity:

State of Vermont [County] of _____

This record was acknowledged before me on _____ by _____

Date _____ Name(s) of individual(s) _____

Signature of notary public _____

Stamp _____ [_____]

Title of office _____ [My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of Vermont [County] of _____

This record was acknowledged before me on _____ by _____
Date _____ Name(s) of individual(s) _____ as _____
(type of authority, such as officer or trustee) of _____ (name of
party on behalf of whom record was executed).

Signature of notary public _____

Stamp [_____]

Title of office _____ [My commission expires: _____]

The clerk has satisfied the requirements of 32 V.S.A. § 1671.”

Sec. 3. 32 V.S.A. § 1671 is amended to read:

§ 1671. TOWN CLERK

(a) For the purposes of this section, a “page” is defined as a single side of a leaf of paper on which is printed, written, or otherwise placed information to be recorded or filed. The maximum covered area on a page shall be 7 1/2 inches by 14 inches. All letters shall be at least one-sixteenth inch in height or in at least eight-point type. Unless otherwise provided by law, the fees to the town clerks shall be as follows:

(1) For recording a trust mortgage deed as provided in 24 V.S.A. § 1155, \$15.00 per page;

* * *

(g) When a fee applies under this section, no fee shall be required for the recordation of:

(1) a Certificate of Release of Certain Prohibited Covenants pursuant to 27 V.S.A. § 546(b); or

(2) a deed correction subject to 27 V.S.A. § 546(a).

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

(Committee Vote: 11-0-0)

Rep. Mattos of Milton, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Judiciary.

(Committee Vote:11-0-0)

H. 635

An act relating to secondary enforcement of minor traffic offenses

Rep. Colston of Winooski, for the Committee on Government Operations, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL OF CERTAIN MOTOR VEHICLE OFFENSES; REPORT

(a)(1) The Commissioner of Public Safety shall examine the following motor vehicle violations for the purpose of making recommendations as to whether the statutes should be repealed, modified, or limited to secondary enforcement:

(A) 23 V.S.A. § 307 (failure to carry a registration certificate);

(B) 23 V.S.A. § 511(c) (failure to display registration sticker or failure to display unobstructed license numbers);

(C) 23 V.S.A. § 512 (failure to display number plate on trailer or semi-trailer);

(D) 23 V.S.A. § 615 (operation by an individual with a learner's permit);

(E) 23 V.S.A. § 1023 (pedestrian-control signals);

(F) 23 V.S.A. §§ 1052 (crossing except at crosswalks), 1054 (pedestrians to use right half of crosswalks), 1055 (pedestrians on roadways), 1056 (highway solicitations), and 1058 (duties of pedestrians);

(G) 23 V.S.A. § 1125 (obstructing windshield or windows);

(H) 23 V.S.A. §§ 1134 (possession or consumption of alcohol or cannabis by operator), 1134a (possession or consumption of alcohol or cannabis by passenger) and 1134b(a) (using tobacco in a motor vehicle with child present);

(I) 23 V.S.A. § 1221 (condition of vehicle);

(J) 23 V.S.A. §§ 1243 (headlights), 1244 (illumination required), 1245 (illumination required on motorcycles), 1248 (taillights), and 1249 (directional signal lights); and

(K) 23 V.S.A. § 1259 (safety belts; persons 18 years of age or older).

(2) The Commissioner may make recommendations for repeal, modification, or designation for secondary enforcement of other motor vehicle violations at the Commissioner's discretion.

(b) The Commissioner shall report the recommendations to the House and Senate Committees on Government Operations and on Transportation not later than October 1, 2022.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

Favorable

H. 482

An act relating to the Petroleum Cleanup Fund

Rep. Satcowitz of Randolph, for the Committee on Natural Resources, Fish, and Wildlife, recommends the bill ought to pass.

(Committee Vote: 9-0-2)

Rep. Feltus of Lyndon, for the Committee on Appropriations, recommends the bill ought to pass.

(Committee Vote:11-0-0)

H. 715

An act relating to the Clean Heat Standard.

(Rep. Briglin of Thetford will speak for the Committee on Energy and Technology.)

Rep. Scheu of Middlebury, for the Committee on Appropriations, recommends the bill ought to pass.

(Committee Vote: 6-4-1)

Amendment to be offered by Reps. Harrison of Chittenden, Fagan of Rutland City, and Murphy of Fairfax to H. 715

First: In Sec. 2, 30 V.S.A. chapter 94, in section 8121, by inserting a subsection (e) to read as follows:

(e) The Commission's order implementing the Clean Heat Standard shall not take effect until after an act affirming the March 15, 2023 report on projected costs and benefits of the Clean Heat Standard is passed by the General Assembly and is enacted into law in accordance with Chapter II, § 11

of the Vermont Constitution. In the absence of such an act, the Public Utility Commission shall take no further action in developing and implementing the Clean Heat Standard.

Second: In Sec. 3, Public Utility Commission implementation, by striking out subsection (i) in its entirety and inserting in lieu thereof a new subsection (i) to read as follows:

(i) Reports. On or before March 15, 2023 and January 15, 2024, the Commission shall submit a written report to and hold hearings with the House Committees on Energy and Technology and on Natural Resources, Fish, and Wildlife and the Senate Committees on Finance and on Natural Resources and Energy detailing the efforts undertaken to establish the Clean Heat Standard pursuant to this act.

(1) The 2023 report shall include modeled impacts of the Clean Heat Standard on customers, including impacts to customer rates and fuel bills for participating and nonparticipating customers, fossil fuel reductions, and greenhouse gas reductions. The modeled impacts shall estimate high, medium, and low price and GHG reduction impacts.

(2) The 2024 report shall update the estimates provided in the 2023 report.

Senate Proposal of Amendment

H. 701

An act relating to cannabis license fees

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

First: By striking out Sec. 7, 7 V.S.A. § 910, in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 7 V.S.A. §§ 910 and 911 are added to read:

§ 910. CANNABIS ESTABLISHMENT FEE SCHEDULE

The following fees shall apply to each person or product licensed by the Board:

(1) Cultivators.

(A) Outdoor cultivators.

(i) Outdoor cultivator tier 1. Outdoor cultivators with up to 1,000 square feet of plant canopy or fewer than 125 cannabis plants in an outdoor cultivation space shall be assessed an annual licensing fee of \$750.00.

(ii) Outdoor cultivator tier 2. Outdoor cultivators with up to

2,500 square feet of plant canopy in an outdoor cultivation space shall be assessed an annual licensing fee of \$1,875.00.

(iii) Outdoor cultivator tier 3. Outdoor cultivators with up to 5,000 square feet of plant canopy in an outdoor cultivation space shall be assessed an annual licensing fee of \$4,000.00.

(iv) Outdoor cultivator tier 4. Outdoor cultivators with up to 10,000 square feet of plant canopy in an outdoor cultivation space shall be assessed an annual licensing fee of \$8,000.00.

(v) Outdoor cultivator tier 5. Outdoor cultivators with up to 20,000 square feet of plant canopy in an outdoor cultivation space shall be assessed an annual licensing fee of \$18,000.00.

(vi) Outdoor cultivator tier 6. Outdoor cultivators with up to 37,500 square feet of plant canopy in an outdoor cultivation space shall be assessed an annual licensing fee of \$34,000.00.

(B) Indoor cultivators.

(i) Indoor cultivator tier 1. Indoor cultivators with up to 1,000 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$1,500.00.

(ii) Indoor cultivator tier 2. Indoor cultivators with up to 2,500 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$3,750.00.

(iii) Indoor cultivator tier 3. Indoor cultivators with up to 5,000 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$8,000.00.

(iv) Indoor cultivator tier 4. Indoor cultivators with up to 10,000 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$16,000.00.

(v) Indoor cultivator tier 5. Indoor cultivators with up to 15,000 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$36,000.00.

(vi) Indoor cultivator tier 6. Indoor cultivators with up to 25,000 square feet of plant canopy in an indoor cultivation space shall be assessed an annual licensing fee of \$75,000.00.

(C) Mixed cultivator tiers.

(i) Mixed cultivator tier 1. Mixed cultivators with the following at the same licensed premises shall be assessed an annual licensing fee of

\$2,250.00: up to 1,000 square feet of plant canopy in an indoor cultivation space and up to 125 cannabis plants in an outdoor cultivation space.

(ii) Mixed cultivator tier 2. Mixed cultivators with the following at the same licensed premises shall be assessed an annual licensing fee of \$5,625.00: up to 2,500 square feet of plant canopy in an indoor cultivation space and up to 312 cannabis plants in an outdoor cultivation space.

(iii) Mixed cultivator tier 3. Mixed cultivators with the following at the same licensed premises shall be assessed an annual licensing fee of \$5,500.00: up to 1,000 square feet of plant canopy in an indoor cultivation space and up to 625 cannabis plants in an outdoor cultivation space.

(iv) Mixed cultivator tier 4. Mixed cultivators with the following at the same licensed premises shall be assessed an annual licensing fee of \$9,500.00: up to 1,000 square feet of plant canopy in an indoor cultivation space and up to 1,250 cannabis plants in an outdoor cultivation space.

(v) Mixed cultivator tier 5. Mixed cultivators with the following at the same licensed premises shall be assessed an annual licensing fee of \$19,500.00: up to 1,000 square feet of plant canopy in an indoor cultivation space and up to 2,500 cannabis plants in an outdoor cultivation space.

(2) Wholesalers. Wholesalers shall be assessed an annual licensing fee of \$4,000.00.

(3) Manufacturers.

(A) Manufacturer tier 1. Manufacturers that process and manufacture cannabis in order to produce cannabis products without using solvent-based extraction and not more than \$10,000.00 per year in cannabis products based on the manufacturer's total annual sales in cannabis products shall be assessed an annual licensing fee of \$750.00.

(B) Manufacturer tier 2. Manufacturers that process and manufacture cannabis in order to produce cannabis products without using solvent-based extraction shall be assessed an annual licensing fee of \$2,500.00.

(C) Manufacturer tier 3. Manufacturers that process and manufacture cannabis in order to produce cannabis products using all allowable methods of extraction, including solvent-based extraction, shall be assessed an annual licensing fee of \$15,000.00.

(4) Retailers. Retailers that sell cannabis and cannabis products to consumers shall be assessed an annual licensing fee of \$10,000.00.

(5) Testing laboratories. Testing laboratories shall be assessed an annual licensing fee of \$1,500.00.

(6) Integrated licensees. Integrated licensees shall be assessed an annual licensing fee of \$100,000.00.

(7) Employees. Cannabis establishments licensed by the Board shall be assessed an annual licensing fee of \$50.00 for each employee.

(8) Products. Retailers and integrated licensees shall be assessed an annual product licensing fee of \$50.00 for every type of cannabis and cannabis product that is sold in accordance with this chapter.

(9) Local licensing fees. Cannabis establishments licensed by the Board shall be assessed an annual local licensing fee of \$100.00 in addition to each fee assessed under subdivisions (1)–(6) of this section. Local licensing fees shall be distributed to the municipality in which the cannabis establishment is located pursuant to section 846(c) of this title.

(10) One-time fees.

(A) All applicants for a cannabis establishment license shall be assessed an initial one-time application fee of \$1,000.00.

(B) An applicant may choose to be assessed an initial one-time intent-to-apply fee of \$500.00. If the applicant subsequently seeks a license within one year after paying the intent-to-apply fee, the initial one-time application fee of \$1,000.00 shall be reduced by \$500.00.

§ 911. FEE WAIVER AND REDUCTION; SOCIAL EQUITY APPLICANTS

The Cannabis Control Board may, in its discretion and pursuant to adopted rule or readily accessible policy, or both, reduce or waive cannabis establishment application and licensing fees for social equity applicants as defined by the Board, including individuals from communities that historically have been disproportionately impacted by cannabis prohibition and individuals directly and personally impacted by cannabis prohibition.

Second: By striking out Sec. 10, effective dates, and its reader assistance heading in their entirety and inserting in lieu thereof the following:

* * * Regulation of the Medical Cannabis Registry * * *

Sec. 10. REPEAL

(a) Due to the failure of the House bill entitled “An act relating to fiscal year 2022 budget adjustments” (H.679), for which the report of the committee of conference was considered and adopted on the part of the Senate on February 24, 2022 and on the part of the House on March 8, 2022, to become law prior to March 1, 2022, 18 V.S.A. chapter 86 (therapeutic use of cannabis)

was repealed on March 1, 2022 pursuant to 2020 Acts and Resolves No. 164, Sec. 11. Accordingly, Secs. 59a (amendments to implementation of medical cannabis registry) and 59b (amendments to the effective dates of 2020 Acts and Resolves No. 164) of H.679 are now obsolete.

(b) If H.679 becomes law, then Secs. 59a and 59b of that act are repealed.

Sec. 11. REGULATION OF THE MEDICAL CANNABIS REGISTRY

Emergency rules identical to the proposed final rules entitled “Rule 3: Medical Cannabis” and “Rule 4: Compliance and Enforcement” that were filed with the Legislative Committee on Administrative Rules on March 9, 2022 shall be deemed to meet the standard for the adoption of emergency rules pursuant to 3 V.S.A. § 844(a) if adopted as emergency rules prior to the permanent rules entitled “Rule 3: Medical Cannabis” and “Rule 4: Compliance and Enforcement” becoming effective.

* * * Effective Date * * *

Sec. 12. EFFECTIVE DATE

This act shall take effect on passage.

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

An act relating to cannabis license fees and the regulation of the medical cannabis registry.

(For text see House Journal February 2, 2022)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 727

An act relating to the exploration, formation, and organization of union school districts and unified union school districts.

(Rep. Conlon of Cornwall will speak for the Committee on Education.)

H. 731

An act relating to technical corrections for the 2022 legislative session.

(Rep. LaClair of Barre Town will speak for the Committee on Government Operations.)

Favorable with Amendment

H. 353

An act relating to pharmacy benefit management

Rep. Cordes of Lincoln, for the Committee on Health Care, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTENT

It is the intent of the General Assembly to increase access to needed medications by making prescription drugs more affordable and accessible to Vermonters by increasing State regulation of pharmacy benefit managers and pharmacy benefit management. It is also the intent of the General Assembly to stabilize and safeguard against the loss of more independent and community pharmacies, where pharmacists provide personalized care to Vermonters and help them with their health care needs, including medication management, medication adherence, and health screenings.

Sec. 2. 18 V.S.A. chapter 221, subchapter 9 is amended to read:

Subchapter 9. Pharmacy Benefit Managers

§ 9471. DEFINITIONS

As used in this subchapter:

* * *

(2) “Health insurer” is defined by section 9402 of this title and shall include:

(A) a health insurance company, a nonprofit hospital and medical service corporation, and health maintenance organizations;

(B) an employer, labor union, or other group of persons organized in Vermont that provides a health plan to beneficiaries who are employed or reside in Vermont; and

(C) the State of Vermont and any agent or instrumentality of the State that offers, administers, or provides financial support to State government; and

~~(D) Medicaid, and any other public health care assistance program.~~

* * *

§ 9472. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES
WITH RESPECT TO HEALTH INSURERS AND COVERED

PERSONS

(a) A pharmacy benefit manager that provides pharmacy benefit management for a health plan ~~shall discharge its duties with reasonable care and diligence and be fair and truthful under the circumstances then prevailing that a pharmacy benefit manager acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims~~ has a fiduciary duty to its health insurer client that includes a duty to be fair and truthful toward the health insurer, to act in the health insurer's best interests, and to perform its duties with care, skill, prudence, and diligence. In the case of a health benefit plan offered by a health insurer as defined by subdivision 9471(2)(A) of this title, the health insurer shall remain responsible for administering the health benefit plan in accordance with the health insurance policy or subscriber contract or plan and in compliance with all applicable provisions of Title 8 and this title.

(b) A pharmacy benefit manager shall provide notice to the health insurer that the terms contained in subsection (c) of this section may be included in the contract between the pharmacy benefit manager and the health insurer.

(c) A pharmacy benefit manager that provides pharmacy benefit management for a health plan shall do all of the following:

(1) Provide all financial and utilization information requested by a health insurer relating to the provision of benefits to beneficiaries through that health insurer's health plan and all financial and utilization information relating to services to that health insurer. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection ~~may~~ shall not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) to State and federal government officials;

(C) when authorized by 9 V.S.A. chapter 63;

~~(C)~~(D) when ordered by a court for good cause shown; or

~~(D)~~(E) when ordered by the Commissioner as to a health insurer as defined in subdivision 9471(2)(A) of this title pursuant to the provisions of Title 8 and this title.

(2) Notify a health insurer in writing of any proposed or ongoing activity, policy, or practice of the pharmacy benefit manager that presents, directly or indirectly, any conflict of interest with the requirements of this section.

(3) With regard to the dispensation of a substitute prescription drug for a prescribed drug to a beneficiary in which the substitute drug costs more than the prescribed drug and the pharmacy benefit manager receives a benefit or payment directly or indirectly, disclose to the health insurer the cost of both drugs and the benefit or payment directly or indirectly accruing to the pharmacy benefit manager as a result of the substitution.

(4) ~~Unless the contract provides otherwise, if~~ If the pharmacy benefit manager derives any payment or benefit for the dispensation of prescription drugs within the State based on volume of sales for certain prescription drugs or classes or brands of drugs within the State, pass that payment or benefit on in full to the health insurer.

(5) Disclose to the health insurer all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefit manager and any prescription drug manufacturer that relate to benefits provided to beneficiaries under or services to the health insurer's health plan, including formulary management and drug-switch programs, educational support, claims processing, and pharmacy network fees charged from retail pharmacies and data sales fees. A pharmacy benefit manager providing information under this subsection may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a health insurer under this subsection ~~may~~ shall not be disclosed by the health insurer to any person without the consent of the pharmacy benefit manager, except that disclosure may be made by the health insurer:

(A) in a court filing under the consumer protection provisions of 9 V.S.A. chapter 63, provided that the information shall be filed under seal and that prior to the information being unsealed, the court shall give notice and an opportunity to be heard to the pharmacy benefit manager on why the information should remain confidential;

(B) when authorized by 9 V.S.A. chapter 63;

(C) when ordered by a court for good cause shown; or

(D) when ordered by the Commissioner as to a health insurer as defined in subdivision 9471(2)(A) of this title pursuant to the provisions of Title 8 and this title.

(d) At least annually, a pharmacy benefit manager that provides pharmacy benefit management for a health plan shall disclose to the health insurer, the Department of Financial Regulation, and the Green Mountain Care Board the aggregate amount the pharmacy benefit manager retained on all claims charged to the health insurer for prescriptions filled during the preceding calendar year in excess of the amount the pharmacy benefit manager reimbursed pharmacies.

(e) A pharmacy benefit manager contract with a health insurer shall not contain any provision purporting to reserve discretion to the pharmacy benefit manager to move a drug to a higher tier or remove a drug from its drug formulary any more frequently than two times per year.

(f)(1) A pharmacy benefit manager shall not require a covered person purchasing a covered prescription drug to pay an amount greater than the lesser of:

(A) the cost-sharing amount under the terms of the health benefit plan;

(B) the maximum allowable cost for the drug; or

(C) the amount the covered person would pay for the drug, after application of any known discounts, if the covered person were paying the cash price.

(2) Any amount paid by a covered person under subdivision (1) of this subsection shall be attributed toward any deductible and, to the extent consistent with Sec. 2707 of the Public Health Service Act (42 U.S.C. § 300gg-6), the annual out-of-pocket maximums under the covered person's health benefit plan.

(g) Compliance with the requirements of this section is required for pharmacy benefit managers entering into contracts with a health insurer in this State for pharmacy benefit management in this State.

§ 9473. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

WITH RESPECT TO PHARMACIES

(a) Within 14 calendar days following receipt of a pharmacy claim, a pharmacy benefit manager or other entity paying pharmacy claims shall do one of the following:

(1) Pay or reimburse the claim.

(2) Notify the pharmacy in writing that the claim is contested or denied. The notice shall include specific reasons supporting the contest or denial and a description of any additional information required for the pharmacy benefit manager or other payer to determine liability for the claim.

(b) A participation contract between a pharmacy benefit manager and a pharmacist shall not prohibit, restrict, or penalize a pharmacy or pharmacist in any way from disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate, including:

(1) the nature of treatment, risks, or alternatives to treatment;

(2) the availability of alternate therapies, consultations, or tests;

(3) the decision of utilization reviewers or similar persons to authorize or deny services;

(4) the process that is used to authorize or deny health care services; or

(5) information on finance incentives and structures used by the health insurer.

~~(b)~~(c) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

~~(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;~~

~~(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug;~~

~~(3) require a pharmacy to pass through any portion of the insured's co-payment, or patient responsibility, to the pharmacy benefit manager or other payer;~~

(2) prohibit a pharmacy or pharmacist from discussing information regarding the total cost for pharmacist services for a prescription drug;

~~(4)~~(3) prohibit or penalize a pharmacy or pharmacist for providing information to an insured regarding the insured's cost-sharing amount for a prescription drug; or

~~(5)~~(4) prohibit or penalize a pharmacy or pharmacist for the pharmacist or other pharmacy employee disclosing to an insured the cash price for a prescription drug or selling a lower cost drug to the insured if one is available.

(d) A pharmacy benefit manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure of information to the Commissioner, law enforcement, or State and federal government officials, provided that:

(1) the recipient of the information represents that the recipient has the authority, to the extent provided by State or federal law, to maintain proprietary information as confidential; and

(2) prior to disclosure of information designated as confidential, the pharmacist or pharmacy:

(A) marks as confidential any document in which the information appears; and

(B) requests confidential treatment for any oral communication of the information.

(e) A pharmacy benefit manager shall not terminate a contract with or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

(1) disclosing information about pharmacy benefit manager practices, except for information determined to be a trade secret under State law or by the Commissioner, when disclosed in a manner other than in accordance with subsection (d) of this section; or

(2) sharing any portion of the pharmacy benefit manager contract with the Commissioner pursuant to a complaint or query regarding the contract's compliance with the provisions of this chapter.

(e)(f) For each drug for which a pharmacy benefit manager establishes a maximum allowable cost in order to determine the reimbursement rate, the pharmacy benefit manager shall do all of the following:

(1) Make available, in a format that is readily accessible and understandable by a pharmacist, the actual maximum allowable cost for each drug and the source used to determine the maximum allowable cost, which shall not be dependent upon individual beneficiary identification or benefit stage.

(2) Update the maximum allowable cost at least once every seven calendar days. In order to be subject to maximum allowable cost, a drug must be widely available for purchase by all pharmacies in the State, without limitations, from national or regional wholesalers and must not be obsolete or temporarily unavailable.

(3) Establish or maintain a reasonable administrative appeals process to allow a dispensing pharmacy provider to contest a listed maximum allowable cost.

(4)(A) Respond in writing to any appealing pharmacy provider within 10 calendar days after receipt of an appeal, provided that, except as provided in subdivision (B) of this subdivision (4), a dispensing pharmacy provider shall file any appeal within 10 calendar days from the date its claim for reimbursement is adjudicated.

(B) A pharmacy benefit manager shall allow a dispensing pharmacy provider to appeal after the 10-calendar-day appeal period set forth in subdivision (A) of this subdivision (4) if the prescription claim is subject to an audit initiated by the pharmacy benefit manager or its auditing agent.

(5) For a denied appeal, provide the reason for the denial and identify the national drug code and a Vermont-licensed wholesaler of an equivalent drug product that may be purchased by contracted pharmacies at or below the maximum allowable cost.

(6) For an appeal in which the appealing pharmacy is successful:

(A) make the change in the maximum allowable cost within 30 business days after the redetermination; and

(B) allow the appealing pharmacy or pharmacist to reverse and rebill the claim in question.

~~(d)~~(g) A pharmacy benefit manager shall not:

(1) require a claim for a drug to include a modifier or supplemental transmission, or both, to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by Medicaid; or

(2) restrict access to a pharmacy network or adjust reimbursement rates based on a pharmacy's participation in a 340B contract pharmacy arrangement.

(h)(1) A pharmacy benefit manager or other third party that reimburses a 340B covered entity for drugs that are subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing program shall not reimburse the 340B covered entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies that are not 340B covered entities, and the pharmacy benefit manager shall not assess any fee, charge-back, or other adjustment on the 340B covered entity on the basis that the covered entity participates in the 340B program as set forth in 42 U.S.C. § 256b.

(2) With respect to a patient who is eligible to receive drugs that are subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing program, a pharmacy benefit manager or other third party that makes payment for the drugs shall not discriminate against a 340B covered entity in a manner that prevents or interferes with the patient's choice to receive the drugs from the 340B covered entity.

(i) A pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in this State an amount less than the amount the pharmacy benefit manager reimburses a pharmacy benefit manager affiliate for providing the same pharmacist services.

(j) A pharmacy benefit manager shall not restrict, limit, or impose requirements on a licensed pharmacy in excess of those set forth by the Vermont Board of Pharmacy or by other State or federal law, nor shall it withhold reimbursement for services on the basis of noncompliance with participation requirements.

(k) A pharmacy benefit manager shall provide notice to all participating pharmacies prior to changing its drug formulary.

Sec. 3. 18 V.S.A. § 3802 is amended to read:

§ 3802. PHARMACY RIGHTS DURING AN AUDIT

Notwithstanding any provision of law to the contrary, whenever a health insurer, a third-party payer, or an entity representing a responsible party conducts an audit of the records of a pharmacy, the pharmacy shall have a right to all of the following:

* * *

(2) If an audit is to be conducted on-site at a pharmacy, the entity conducting the audit:

(A) shall give the pharmacy at least 14 days' advance written notice of the audit and the specific prescriptions to be included in the audit; ~~and~~

(B) ~~may~~ shall not audit a pharmacy on Mondays or on weeks containing a federal holiday, unless the pharmacy agrees to alternative timing for the audit; ~~and~~

~~(3) Not to have an entity~~

(C) shall not audit claims that:

~~(A)(i)~~ were submitted to the pharmacy benefit manager more than 18 months prior to the date of the audit, unless:

- (i)(I) required by federal law; or
- (ii)(II) the originating prescription was dated within the 24-month period preceding the date of the audit; or
- (B)(ii) exceed 200 selected prescription claims.

(3) If any audit is to be conducted remotely, the entity conducting the audit:

(A) shall give the pharmacy at least seven business days following the pharmacy's confirmation of receipt of the notice of the audit to respond to the audit; and

(B) shall not audit claims that:

(i) were submitted to the pharmacy benefit manager more than three months prior to the date of the audit or on a date earlier than that for which the pharmacy could electronically retransmit a corrected claim; or

(ii) exceed five selected prescription claims.

* * *

(19) To have the preliminary audit report delivered to the pharmacy within ~~60~~ 30 days following the ~~conclusion of the audit~~ pharmacy's preliminary response.

* * *

(21) To have a final audit report delivered to the pharmacy within ~~120~~ 30 days after the end of the appeals period, as required by section 3803 of this title.

* * *

(24) To have all payment data related to audited claims, including:

(A) payment amount;

(B) any direct and indirect remuneration (DIR) or generic effective rate (GER) fees assessed or other financial offsets;

(C) date of electronic payment or check date and number;

(D) the specific contracted reimbursement basis for each claim, including its basis, such as maximum allowable cost (MAC), wholesale acquisition cost (WAC), average wholesale price (AWP), or average manufacturer price (AMP); and

(E) the respective values used to calculate each claim payment.

Sec. 4. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

* * *

(d)(1) A health insurer or pharmacy benefit manager shall permit a beneficiary of a plan offered by the health insurer to fill a prescription at the in-network pharmacy of the beneficiary's choice and, except with respect to pharmacies owned or operated, or both, by a health care facility, as defined in 18 V.S.A. § 9432, shall not impose differential cost-sharing requirements based on the choice of pharmacy or otherwise promote the use of one pharmacy over another.

(2) A health insurer or pharmacy benefit manager shall permit a participating network pharmacy to perform all pharmacy services within the lawful scope of the profession of pharmacy as set forth in 26 V.S.A. chapter 36.

(3) A health insurer or pharmacy benefit manager shall adhere to the definitions of prescription drugs and the requirements and guidance regarding the pharmacy profession established by State and federal law and the Vermont Board of Pharmacy and shall not establish classifications of or distinctions between prescription drugs, impose penalties on prescription drug claims, attempt to dictate the behavior of pharmacies or pharmacists, or place restrictions on pharmacies or pharmacists that are more restrictive than or inconsistent with State or federal law or with rules adopted or guidance provided by the Board of Pharmacy.

(4) The provisions of this subsection shall not apply to Medicaid.

Sec. 5. DEPARTMENT OF FINANCIAL REGULATION; PHARMACY
BENEFIT MANAGEMENT; REPORT

(a) The Department of Financial Regulation, in consultation with interested stakeholders, shall consider:

(1) whether pharmacy benefit managers should be required to be licensed to operate in this State;

(2) whether pharmacy benefit managers should be prohibited from conducting or participating in spread pricing;

(3) in collaboration with the Board of Pharmacy, whether any amendments to the Board's rules are needed to reflect necessary distinctions or appropriate limitations on pharmacist scope of practice;

(4) whether there should be a minimum dispensing fee that pharmacy benefit managers and health insurers must pay to pharmacies and pharmacists for dispensing prescription drugs;

(5) how a pharmacy should be reimbursed for a claim if a pharmacy benefit manager denies a pharmacy's appeal in whole or in part, including whether the pharmacy should be allowed to submit a claim to the health insurer for the balance between the pharmacy benefit manager's reimbursement and the pharmacy's reasonable acquisition cost plus a dispensing fee;

(6) whether there is a problem in Vermont of pharmacies soliciting health insurance plan beneficiaries directly to market the pharmacy's services and, if so, how best to address the problem; and

(7) other issues relating to pharmacy benefit management and its effects on Vermonters, on pharmacies and pharmacists, and on health insurance in this State.

(b) On or before January 15, 2023, the Department of Financial Regulation shall provide its findings and recommendations regarding the issues described in subsection (a) of this section to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

Sec. 6. APPLICABILITY

(a) The provisions of Sec. 1 of this act (18 V.S.A. chapter 221, subchapter 9, pharmacy benefit managers) shall apply to a contract or health plan issued, offered, renewed, recredentialed, amended, or extended on or after the effective date of this act, including any health insurer that performs claims processing or other prescription drug or device services through a third party.

(b) A person doing business in this State as a pharmacy benefit manager on or before the effective date of this act shall have six months following the effective date of this act to come into compliance with the provisions of Sec. 1 of this act (18 V.S.A. chapter 221, subchapter 9, pharmacy benefit managers).

Sec. 7. 2021 Acts and Resolves No. 74, Sec. E.227.2 is amended to read:

Sec. E.227.2 REPEAL

18 V.S.A. § 9473(d)(g) (pharmacy benefit managers; 340B entities) is repealed on ~~January 1, 2023~~ April 1, 2024.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

(Committee Vote: 10-0-1)

Rep. Durfee of Shaftsbury, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Health Care.

(Committee Vote:9-0-2)

H. 465

An act relating to boards and commissions

Rep. Higley of Lowell, for the Committee on Government Operations, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Repeal of Vermont Educational Health Benefits Commission * * *

Sec. 1. REPEAL OF VERMONT EDUCATIONAL HEALTH BENEFITS
COMMISSION

2017 Acts and Resolves No. 85, Sec. H.7 (Vermont Educational Health Benefits Commission) is repealed.

* * * Repeal of Study Committee on Sales and Use Tax * * *

Sec. 2. REPEAL OF STUDY COMMITTEE ON SALES AND USE TAX

2012 Acts and Resolves No. 143, Sec. 53 (study committee on sales and use tax) is repealed.

* * * Repeal of Committee on Enhancing Vermont's Software and
Information Technology Economy * * *

Sec. 3. REPEAL OF ENHANCING VERMONT'S SOFTWARE AND
INFORMATION TECHNOLOGY ECONOMY

2012 Acts and Resolves No. 143, Sec. 53a (enhancing Vermont's software and information technology economy) is repealed.

* * * Repeal of Youth in Agriculture, Natural Resources, and
Food Production Consortium * * *

Sec. 4. 21 V.S.A. chapter 14 is amended to read:

~~CHAPTER 14. YOUTH IN AGRICULTURE, NATURAL RESOURCES,
AND FOOD PRODUCTION~~

~~§ 1151. LEGISLATIVE FINDINGS AND PURPOSE~~

~~(a) The General Assembly finds that:~~

~~(1) Agriculture, natural resources, and food production play a central role in the economy and culture of Vermont.~~

~~(2) Farms and farm-based industries are experiencing an ever-increasing need for workers who are willing to work the hours involved in farming and who have the multiple skills necessary to handle successfully the multiple and varied responsibilities of farming.~~

~~(3) Farms have always provided the environment for youth to acquire workplace skills such as responsibility, creativity, and initiative and occupational skills ranging from plant and animal science to economics and to grow therefore into sought-after workers by a wide variety of employers.~~

~~(4) Programs such as the Farm Youth Corps have provided the infrastructure that is necessary to connect youth to careers in agriculture, natural resources, and food production.~~

~~(5) Programs that have provided youth with the opportunity to work on farms have declined due to reductions in federal funding.~~

~~(b) Therefore, it is the purpose of this chapter to create and support programs for youth that will engage them in agriculture, natural resources, and food production in order to:~~

~~(1) Provide them an opportunity to engage in work that provides them with hands-on learning and allows them to develop a strong work ethic and vital workplace and occupational skills that will be valuable in any career they might pursue.~~

~~(2) Encourage youth to pursue pathways to careers in agriculture, natural resources, and food production.~~

~~(3) Provide farmers with young short-term workers and the opportunity to mentor future, long-term employees.~~

~~(4) Ensure that youth are aware of the benefits of agriculture, natural resources, and food production to themselves and to Vermont.~~

~~§ 1152. YOUTH IN AGRICULTURE, NATURAL RESOURCES, AND~~

~~FOOD PRODUCTION CONSORTIUM; CREATION~~

~~(a) There is created a Youth in Agriculture, Natural Resources, and Food Production Consortium of program providers in order that programs to build pathways to careers in agriculture, natural resources, and food production may be connected, developed, and supported in a coordinated manner. The Consortium shall comprise employees of the Department of Labor assigned by the Commissioner of Labor; employees of the Agency of Education assigned~~

~~by the Secretary of Education; employees of the Agency of Agriculture, Food and Markets appointed by the Secretary of Agriculture, Food and Markets; employees of the Agency of Natural Resources appointed by the Secretary of Natural Resources; representatives of the Extension Service of the University of Vermont selected by the Service; and representatives from agriculture, food, and natural resources businesses appointed by the Secretary of Agriculture, Food and Markets.~~

~~(b) The consortium shall be attached to the Department of Labor for administrative support. It shall elect its own chair and meet as required to fulfill its obligations under this chapter.~~

~~§ 1153. YOUTH IN AGRICULTURE, NATURAL RESOURCES, AND~~

~~FOOD PRODUCTION CONSORTIUM; POWERS AND DUTIES~~

~~(a) The Consortium shall be charged with the oversight of the development and coordination of programs in agriculture, natural resources, and food production, and education to connect youths' experiences in agriculture, natural resources, and food production to their in-school learning and develop pathways for pursuing further education related to agriculture or natural resources. It shall seek to coordinate and connect programs around common standards, coordinate resources, provide a clearinghouse for information and technical assistance, establish a strong business and education partnership, identify missing components of the system, and oversee funds made available for the express purpose of implementing these pathways. It shall endeavor to sustain and expand programming in agriculture, natural resources, and food production on a statewide basis in order to affect middle and secondary school students in Vermont. The Consortium shall seek to ensure the effectiveness of all the programs in reaching large numbers of students, and in so far as possible, seek to provide programs in all regions of the State through a statewide system with uniform availability, eligibility, and funding requirements to make such opportunities available to all students.~~

~~(b) Among the programs to be reviewed and coordinated by the Consortium are projects that involve agriculture and the environment; programs within the elementary and middle school system that provide hands-on learning, such as "Ag in the Classroom" sponsored by the Agency of Agriculture, Food and Markets, and "Forest, Fields, and Futures" sponsored by UVM Extension; and secondary school programs in agriculture and natural resources-related areas in education; "Smokeyhouse" and other career technical education, agriculture, and natural resources programs offered by high schools and regional CTE centers. In addition, it shall review and coordinate programs such as the Youth Conservation Corps and the Farm~~

~~Youth Corps of the Department of Labor, which has offered summer employment for students on farms, and other summer employment programs and alternative programs for in-school youth operated outside the public school funding system.~~

~~(e) [Repealed.] [Repealed.]~~

~~* * * Repeal of the Department of Labor Advisory Council * * *~~

Sec. 5. 21 V.S.A. § 1306 is amended to read:

§ 1306. ~~ADVISORY COUNCIL; MEMBERS; TERMS~~

~~(a) The Governor shall appoint a State Department of Labor Advisory Council composed of eight members from the general public to include four employer representatives and four employee representatives who may fairly be regarded as employees because of their vocations, employment, and affiliations. Appointment of the four employee representatives, at least one of whom shall have experience in workers' compensation law and one of whom shall be a member of a building trade, shall be made from a list of qualified individuals submitted by the Vermont State Labor Council, the Vermont State Employees' Association, and the Vermont National Education Association. Appointment of the four employer representatives shall be made from a list of qualified individuals submitted by the Vermont Chamber of Commerce, Associated General Contractors of Vermont, and Vermont Businesses for Social Responsibility. The Council members shall be appointed for staggered terms of four years. The Council shall meet at least three times a year.~~

~~(b) The Council shall advise the Commissioner regarding formulating policies by discussing the problems related to the functions and duties of the Department in order to develop impartial solutions and approaches to these issues.~~

~~(c) The Commissioner may establish subcommittees composed solely of labor or management representatives and use a portion of the Council's meeting time to meet with these subcommittees.~~

~~(d) Each member of the Council who is not a salaried official or State employee or is not otherwise compensated through employment for attending Council meetings is entitled to per diem compensation and reimbursement for expenses as provided in 32 V.S.A. § 1010. [Repealed.]~~

~~* * * Repeal of Working Group on State Workforce Development * * *~~

Sec. 6. ~~REPEAL OF WORKING GROUP ON STATE WORKFORCE~~

~~DEVELOPMENT~~

2017 Acts and Resolves No. 69, Sec. E.1 (State workforce development system; report) is repealed.

* * * Repeal of Council Advisory Committee * * *

Sec. 7. 20 V.S.A. § 2410 is amended to read:

§ 2410. ~~COUNCIL ADVISORY COMMITTEE~~

~~(a) Creation. There is created the Council Advisory Committee to provide advice to the Council regarding its duties under this subchapter.~~

~~(1) The Committee shall specifically advise and assist the Council in developing procedures to ensure that allegations of unprofessional conduct by law enforcement officers are investigated fully and fairly, and to ensure that appropriate action is taken in regard to those allegations.~~

~~(2) The Committee shall be advisory only and shall not have any decision-making authority.~~

~~(b) Membership. The Committee shall be composed of five individuals appointed by the Governor. The Governor may solicit recommendations for appointments from the Chair of the Council.~~

~~(1) Four of these members shall be public members who during incumbency shall not serve and shall have never served as a law enforcement officer or corrections officer and shall not have an immediate family member who is serving or has ever served as either of those officers.~~

~~(2) One of these members shall be a retired law enforcement officer.~~

~~(c) Assistance. The Executive Director of the Council or designee shall attend Committee meetings as a resource for the Committee.~~

~~(d) Reimbursement. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than five meetings per year. Such payments shall be derived from the budget of the Council. [Repealed.]~~

* * * Boards and Commissions; Per Diem Compensation * * *

Sec. 8. 32 V.S.A. § 1010 is amended to read:

§ 1010. MEMBERS OF CERTAIN BOARDS

(a) Except for those members serving ex officio or otherwise regularly employed by the State, the members of the following boards shall be entitled to receive ~~\$50.00~~ in per diem compensation:

- (1) Board of Bar Examiners
- (2) Board of Libraries
- (3) Vermont Milk Commission
- (4) Board of Education
- (5) State Board of Health
- (6) Emergency Board
- (7) Board of Liquor and Lottery
- (8) Human Services Board
- (9) State Fish and Wildlife Board
- (10) State Board of Mental Health
- (11) Vermont Employment Security Board
- (12) Capitol Complex Commission
- (13) Natural Gas and Oil Resources Board
- (14) Transportation Board
- (15) Vermont Veterans' Home Board of Trustees
- (16) Advisory Council on Historic Preservation
- (17) The Electricians' Licensing Board
- (18) [Repealed.]
- (19) Emergency Personnel Survivors Benefit Review Board
- (20) Community High School of Vermont Board
- (21) Parole Board

(b)(1) Notwithstanding any other provision of law, members of professional or occupational licensing boards or commissions, advisory boards or commissions, appeals boards, promotional boards, interstate boards, supervisory boards and councils, or any other boards, commissions, or similar entities that are not listed in subsection (a) of this section but are otherwise entitled by act of the General Assembly to receive per diem compensation, shall be entitled to receive per diem compensation ~~in the amount of \$50.00 per day~~ for each day devoted to official duties. ~~This subsection shall not reduce the amount of per diem compensation provided by act of the General Assembly to members of boards or commissions entitled to receive more than \$50.00 per day.~~

(2) "Per diem" means the amount of compensation to which a member of a statutory board or commission is entitled for:

(A) attendance at a regular or special meeting of such board or commission or any committee thereof; or

(B) performance of other duties directly related to the efficient conduct of necessary board business as assigned and approved by the chairperson, provided that payment for such duties shall be at the per diem rate prorated for actual time spent performing duties. Proration shall be calculated based on an eight-hour day. Under no circumstances shall the daily payment exceed the per diem amount.

(c) The members of the boards and commissions, including those members serving ex officio or otherwise regularly employed by the State, shall be entitled to receive their actual and necessary expenses when away from home or office upon their official duties.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, a member shall not be entitled to receive State per diem compensation for any meeting or other official duty for which specific compensation is provided by another source.

(e) The budget report of the Governor for each fiscal year shall contain a separate schedule disclosing the current per diem compensation and allowable expense reimbursement for appointed members of all boards, commissions, councils, and committees and all other statutory-created management, policy making, or advisory bodies of the Executive Branch who do not receive a salary, whether appointed by the Governor or not, and the recommendations for the next fiscal year. The appropriations committees of the General Assembly shall review the recommendations and include in a separate section of the annual appropriations act the per diem compensation and allowable expense reimbursement for each such body, which shall constitute the appropriation for per diem compensation and allowable expense reimbursement increases for members of such bodies for the next fiscal year. Per diem compensation authorized under this section shall be not less than \$50.00 per day. The Governor may authorize per diem compensation and expense reimbursement in accordance with this section for members of boards and commissions, including temporary study commissions, created by Executive Order executive order.

~~(f) Members of the Parole Board shall be entitled to receive \$100.00 per diem for each day of official duties together with reimbursement of reasonable expenses incurred in the performance of their duties. [Repealed.]~~

* * * Boards and Commissions; Executive Appointments * * *

Sec. 9. 3 V.S.A. § 269 is added to read:

§ 269. BOARDS AND COMMISSIONS; EXECUTIVE APPOINTMENTS

(a) When applying for a State board or commission position that is appointed by the Governor or designee, an applicant shall not be required to disclose, or required to authorize the disclosure of, personal financial information as part of the application process unless an applicant's personal financial history is relevant to the applicant's ability to faithfully and competently perform the fiduciary responsibilities of the State board or commission position.

(b) This section shall not bar:

(1) requiring the applicant to affirm that the applicant is in compliance with constitutional or code of ethics requirements; or

(2) requiring the applicant to consent to the Governor's office accessing records that would be necessary to investigate an alleged violation of constitutional or code of ethics requirements.

Sec. 10. BOARD AND COMMISSION APPLICATIONS; CRIMINAL RECORDS; PERSONAL FINANCIAL HISTORY; REPORT

(a) On or before December 1, 2022, the Office of Boards, Commissions, and Public Service shall report to the House and Senate Committees on Government Operations with a list of:

(1) State board or commission positions appointed by the Governor or designee for which personal financial records are relevant to an applicant's ability to perform the fiduciary responsibilities of the position; and

(2) State board or commission positions appointed by the Governor or designee for which criminal background checks are relevant to an applicant's ability to perform the duties and responsibilities of the position.

(b) As used in this section, "State board or commission" has the same meaning as in 2019 Acts and Resolves No. 61, Sec. 1.

* * * Effective Date * * *

Sec. 11. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

(Committee Vote: 10-1-0)

Rep. Harrison of Chittenden, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Government Operations and when further amended as follows:

In Sec. 8, 32 V.S.A. § 1010 (members of certain boards), by striking out subsections (e)–(f) in their entireties and inserting in lieu thereof new subsections (e)–(g) to read as follows:

(e) Per diem compensation authorized under this section for members of boards, commissions, councils, and committees and all other management, policymaking, or advisory bodies, including temporary study commissions, of the Executive Branch, whether appointed by the Governor or not, shall be not less than \$50.00 per day and shall be approved pursuant to this subsection.

(1) The annual budget report of the Governor submitted to the General Assembly as required by 32 V.S.A. § 306 shall contain a separate schedule, by entity, that provides the per diem compensation rate established for the current fiscal year and the per diem rate proposed for the next fiscal year. This schedule shall also provide, by entity, the total per diem amounts paid and total expenses reimbursed for all members of the entity in the most recently ended fiscal year.

(2) In the annual budget documentation submitted to the House and Senate Committees on Appropriations, any agency or department that administers funds for a board, commission, council, and committee and all other management, policymaking, or advisory bodies, including temporary study commissions, shall provide a list of the entities and the current and projected per diem rate and expense reimbursement for each entity.

~~(f) Members of the Parole Board shall be entitled to receive \$100.00 per diem for each day of official duties together with reimbursement of reasonable expenses incurred in the performance of their duties. [Repealed.]~~

(g) The Governor may authorize per diem compensation and expense reimbursement in accordance with this section for members of boards, commissions, councils, and committees and all other management, policymaking, or advisory bodies, including temporary study commissions, created by executive order. Per diems and expense reimbursement authorized under this subsection shall be effective as of the effective date of the executive order but shall subsequently be reviewed and approved pursuant to the approval process of subsection (e) of this section during the next budgetary cycle.

(Committee Vote:11-0-0)

H. 518

An act relating to the creation of the Municipal Fuel Switching Grant Program

Rep. Sibia of Dover, for the Committee on Energy and Technology, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Findings * * *

Sec. 1. FINDINGS; MUNICIPAL ENERGY RESILIENCE

The General Assembly finds that:

(1) Vermont's municipalities own and operate more than 2,000 buildings and facilities, which are used to provide services to its citizens, including libraries; storing town vehicles; providing space for civic engagement; and connecting citizens to healthcare, education, and commercial interests.

(2) Vermont's Global Warming Solutions Act sets aggressive targets for greenhouse gas emissions reductions, and the heating of buildings provide significant opportunities for meeting these targets.

(3) The volatile cost of fossil fuel heating is often one of the largest line items in a municipal budget, which impacts the residential and commercial taxpayers in that municipality.

(4) A modest expansion to the State Energy Management Program, established in 29 V.S.A. § 168, made in 2019 can assist municipalities with responding to the greenhouse gas emissions targets set forth in the Global Warming Solutions Act.

(5) Connecting technical resources at the local, regional, and State level and expanding the State's energy management program to include municipal buildings will promote increased resilience and sustained connection to critical services for all Vermonters.

Sec. 2. MUNICIPAL ENERGY RESILIENCE; DEPARTMENT OF BUILDINGS AND GENERAL SERVICES; ASSESSMENTS

(a) Energy resilience assessments. On or before September 1, 2022, the Department of Buildings and General Services shall issue a request for proposal for a comprehensive energy resilience assessment of covered municipal buildings and facilities.

(b) Request for proposal. The Commissioner of Buildings and General Services shall contract with an independent third party to conduct the assessment described in subsection (a) of this section. The assessment shall be completed on or before January 15, 2024.

(c) Application. A covered municipality, in coordination with a regional planning commission that shall assist a municipality in developing plans, shall submit an application to the Department of Buildings and General Services to receive an assessment of its buildings and facilities pursuant to the guidelines established in subsection (e) of this section.

(d) Scope. For each covered municipality, the assessment described in subsection (a) of this section shall include a scope of work, cost, and timeline for completion for each building or facility. The assessment shall also include:

(1) recommendations for improvements that reduce the operating and maintenance costs, enhance comfort, and reduce energy intensity in a municipal building or facility, including:

(A) the improvement or replacement, or both, of heating, ventilation and air conditioning systems;

(B) the use of a renewable energy source for heating systems, provided that recommendations for the use of a heating systems that uses fossil fuels is not eligible; and

(C) improvements to the buildings or facilities thermal envelope;

(2) an evaluation on the reasonableness of battery storage and EV charging stations and recommended locations, as applicable;

(3) an evaluation of the potential for on-site renewable energy generation options and recommendation on the one most feasible, as applicable;

(4) an estimate of costs for each recommendation;

(5) an estimate of system and equipment life cycle costs and consumption data; and

(6) the potential to phase the scope of work and suggest a prioritized order of completion separate from the energy assessment scope.

(e) Administration. The Department of Buildings and General Services shall establish guidelines for a covered municipality to receive an assessment and shall require at a minimum that:

(1) the covered municipality has access to high-speed Internet as defined in the State’s Telecommunication Plan set forth in 30 V.S.A. § 202c or a plan is in place by 2024 to ensure access to high-speed Internet;

(2) the municipality commits for at least a five-year period to have or create at least one space in a building that is being assessed that is available to the public to enable work, education, and health monitoring or telehealth; and

(3) any building that is assessed is compliant with the American Disabilities Act at the time the project is completed.

(f) Definition. As used in this section, “covered municipality” means a city, town, fire district or incorporated village, and all other governmental incorporated units.

Sec. 3. MUNICIPAL ENERGY RESILIENCE GRANT PROGRAM

(a) Program established. In fiscal year 2023, there is established the Municipal Energy Resilience Grant Program to award grants to:

(1) make recommendations to municipalities on the use of renewable and efficient heating systems; and

(2) make necessary improvements to reduce emissions by reducing fossil fuel usage and increasing efficiency in municipally owned buildings.

(b) Definition. As used in this section, “covered municipality” means a city, town, fire district or incorporated village, and all other governmental incorporated units.

(c) Administration; implementation.

(1) Grant awards. The Department of Buildings and General Services, in coordination with Efficiency Vermont, through the State Energy Management Program, shall administer the Program, which shall award grants for the following:

(A) not more than \$200,000.00 to each covered municipality for approved projects for weatherization, thermal efficiency, to supplement or replace fossil fuel heating systems with more efficient renewable energy heating systems, and any other expenditures necessary for the project to be eligible for funding under federal law and guidelines; and

(B) not more than \$4,000.00 to each covered municipality to facilitate community meetings and communication about municipal energy resilience.

(2) Grant program design. The Department of Buildings and General Services, in consultation with Efficiency Vermont; the Vermont League of

Cities and Towns; regional planning commissions; and experts in the field of thermal enclosure, energy efficiency, and renewable building space systems, shall design the Program. The Program shall include a streamlined and minimal application process for a municipality to apply directly to the Department of Buildings and General Services or with the assistance of a regional planning commission. The Program design shall establish:

(A) an outreach and education plan by regional planning commissions, including specific tactics to reach and support each covered municipality;

(B) an equitable system for distributing grants statewide on the basis of need according to a system of priorities, including the following ranked in priority order:

(i) a municipality with the highest energy burden community needs and lowest resources, as defined in Efficiency Vermont's 2019 Energy Burden Report;

(ii) a municipality that may not have administrative support to apply for grants;

(iii) geographic location;

(iv) community size; and

(v) whether another division of the municipality has already received a grant;

(C) guidelines for renewable and energy efficiency buildings systems resilience, durability, health, and efficiency measures and costs that will be eligible for grant funding; and

(D) eligibility criteria for covered municipalities, including written commitment by the municipality to conduct community workshops and a self-assessment.

(d) Coordination. The Department of Buildings and General Services shall coordinate with any other State entities and agencies working with covered municipalities to provide grants for the Program.

(e) Funding. The Program shall be funded by the American Rescue Plan Act Capital Projects Fund.

(f) Assessment. A covered municipality is only eligible for a grant under this section if an assessment of its buildings and facilities has been conducted pursuant to Sec. 2 of this act.

Sec. 4. MUNICIPAL ENERGY RESILIENCE GRANT PROGRAM;

APPROPRIATION

In fiscal year 2023, the amount of \$48,400,000.00 shall be appropriated from the American Rescue Plan Act (ARPA) from the Capital Projects Fund to the Municipal Energy Resilience Grant Program for use as follows:

(1) The amount of \$2,400,000.00 shall be appropriated to the Agency of Commerce and Community Development for regional planning commissions to assist with grant and assessment applications and provide programming and technical assistance to covered municipalities.

(2) The amount of \$46,000,000.00 shall be appropriated to the Department of Buildings and General Services to be used as follows:

(A) \$5,000,000.00 for hiring a contractor to conduct assessments pursuant to Sec. 2 of this act;

(B) \$1,000,000.00 for grants to covered municipalities to facilitate community meetings and communication about municipal energy resilience; and

(C) \$40,000,000.00 for grants to covered municipalities for weatherization, thermal efficiency, and to supplement or replace heating systems with more efficient renewable energy heating systems.

* * * Municipal Energy Loan Program * * *

Sec. 5. 29 V.S.A. § 168a is added to read:

§ 168a. MUNICIPAL ENERGY LOAN PROGRAM

(a) Authority. The Department of Buildings and General Service is authorized to provide financing to municipalities through the Municipal Energy Loan Program for equipment replacement, studies, weatherization, construction of improvements affecting the use of energy resources, the implementation of energy efficiency and conservation measures, and the use of renewable resources.

(b) Loan eligibility and criteria. The Commissioner shall establish for the Program described in subsection (a) of this section:

(1) criteria to determine eligibility for funding, including repayment terms;

(2) a priority basis for the selection process that ensures equitable allocation of funds to municipalities, considering at least financial need, geographic distribution, and ability to repay; and

(3) loan conditions that ensure accountability by a municipality receiving funds.

(c) Definitions. As used in this section:

(1) “Energy efficiency improvement” has the same meaning as in section 168 of this title.

(2) “Municipality” means a city, town, fire district or incorporated village, and all other governmental incorporated units.

(3) “Renewables” has the same meaning as in 30 V.S.A. § 8002.

(4) “Resource conservation measures” has the same meaning as in section 168 of this title.

Sec. 6. 29 V.S.A. § 168b is added to read:

§ 168b. MUNICIPAL ENERGY REVOLVING FUND

(a) Creation. There is established the Municipal Energy Revolving Fund to provide financing for the Municipal Energy Loan Program established in section 168a of this title.

(b) Monies in the Fund. The Fund shall consist of:

(1) monies appropriated to the Fund or that are paid to it under authorization of the Emergency Board;

(2) loan repayment by municipalities; and

(3) fees for administrative costs paid by municipalities, which may be fixed by the Commissioner subject to the approval of the Secretary of Administration.

(c) Repayment terms. A municipality receiving funding shall repay the Fund through its regular operating budget according to a schedule established by the Commissioner. Repayment may include charges of fees for administrative costs over the term of the repayment.

(d) Fund administration.

(1) The Commissioner of Finance and Management may anticipate receipts to this Fund and issue warrants based thereon.

(2) The Commissioner of Buildings and General Services shall maintain accurate and complete records of all receipts by and expenditures from the Fund.

(3) All balances remaining at the end of a fiscal year shall be carried over to the following year.

(e) Definitions. As used in this section:

(1) “Energy efficiency improvement” has the same meaning as in section 168 of this title.

(2) “Renewables” has the same meaning as in 30 V.S.A. § 8002.

(f) Annual report. Beginning on or before January 15, 2023 and annually thereafter, the Commissioner of Buildings and General Services shall report to the House Committees on Corrections and Institutions and on Energy and Technology and the Senate Committee on Institutions on the expenditure of funds from the Municipal Energy Revolving Fund. For each fiscal year, the report shall include a summary of each project receiving funding and the municipality’s expected savings. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

Sec. 7. MUNICIPAL ENERGY REVOLVING FUND; FY 2023

APPROPRIATION; REPORT

(a) In FY 2023, to the extent permitted by federal law, the following amounts shall be transferred to the Department of Buildings and General Services from the Department of Public Service for the Municipal Energy Revolving Fund, as established in 29 V.S.A. § 168b:

(1) not more than \$750,000.00 from the Energy Efficiency Revolving Loan Fund Capitalization Grant allocated in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 pursuant to the process set forth in 32 V.S.A. § 5; and

(2) not more than \$1,500,000.00 from the Energy Efficiency and Renewable Energy Block Grant Fund in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 pursuant to the process set forth in 32 V.S.A. § 5.

(b) On or before January 15, 2023, the Department of Public Service shall report to the House Committee on Energy and Technology and the Senate Committee on Finance on the total grant amounts approved by the State and transferred to the Municipal Energy Revolving Fund pursuant to subsection (a) of this section.

Sec. 8. 2015 Acts and Resolves No. 58, Sec. E.112, as amended by 2019 Acts and Resolves No. 72, Sec. E.112, is further amended to read:

Sec. E.112 ENERGY EFFICIENCY; STATE BUILDINGS AND FACILITIES

* * *

(b) Notwithstanding any provision of Title 30 of the Vermont Statutes Annotated, Public Service Board order, or other provision of law to the contrary:

(1) The Department and Efficiency Vermont (EVT) shall augment the Program for a preliminary period of ~~eight~~ 11 years commencing in fiscal year 2016 under which EVT shall provide the Department with support for the Program to deliver cost-effective energy efficiency and conservation measures to State buildings and facilities, with the goal of this pilot to create a self-sustaining program at the Department, with annual savings from energy projects exceeding the annual cost to staff the Program. The Department and EVT may agree to continue conducting this augmented Program in subsequent fiscal years, after considering recommendations for improvement based on evaluation of the preliminary period.

* * *

(2) In addition to the requirements of subdivision (1) of this subsection, the project shall include provision by EVT of support for personnel to implement the Program during fiscal years 2016 to ~~2023~~ 2027.

* * *

(B) Under this subdivision (2), EVT shall provide up to \$290,000 during fiscal year 2016. For the remaining ~~seven~~ 10 fiscal years, EVT shall ~~provide an additional amount sufficient to support annual salary and benefit adjustments~~ make available under agreement with the Department an additional amount sufficient to support annual salary and benefit adjustments. These funds shall be received in the Facilities Operations Fund established in 29 V.S.A. § 160a, and may be spent using excess receipts authority. Efficiency Vermont and the Department may agree to adjust the funding committed to this Program based on a joint evaluation that annual energy savings generated by this Program exceed the annual cost of the staff positions.

(3) The Public Service Board shall adjust any performance measures applicable to EVT to recognize the requirements of this section.

(c) The Department and EVT shall execute a new or amended memorandum of understanding to implement this section, which shall include targets for future energy savings, a process for determining how savings targets are met, and details of EVT's commitment for personnel over ~~an eight-year~~ a 10-year time period.

(d) On or before October 1 of each year commencing in 2016 and ending in ~~2023~~ 2027, the Department and EVT shall provide a joint report on the implementation of this section.

* * *

(5) The report to be submitted in 2019 ~~and, in 2023, and in 2027~~ shall contain an evaluation of the Program authorized under this section and any resulting recommendations, including recommendations related to Program continuation beyond ~~2023~~ 2027.

* * *

Sec. 9. FY 2023; APPROPRIATION; DEPARTMENT OF BUILDINGS
AND GENERAL SERVICES; REGIONAL PLANNING
COMMISSIONS; POSITIONS

(a) Department of Buildings and General Services. Two full-time, limited-service positions are created in the Department of Buildings and General Services in fiscal years 2023 for three fiscal years as part of the expanded State Energy Management Program, as set forth between Efficiency Vermont and the Department of Public Service. The positions shall be responsible for determining project eligibility; coordinating with regional planning commissions to recruit and coordinate auditors, engineers, and contractors; and providing financing technical assistance for municipalities implementing projects. These positions shall be funded by Efficiency Vermont pursuant to the authority set forth in 2015 Acts and Resolves No. 58, Sec. E.112, as amended by 2019 Acts and Resolves No. 72, Sec. E.112. No additional budget appropriation or State funds shall be used for these positions.

(b) Regional planning commissions. The amount of \$2,400,000.00 in General Funds shall be appropriated to the Agency of Commerce and Community Development's Community Development Program to fund staffing at each regional planning commission in fiscal years 2023 and 2024 to solicit, coordinate, and develop projects for covered municipalities through the Municipal Energy Resilience Grant Program. The funding to RPCs shall be distributed as follows:

(1) Fifty-five percent of the funds shall be divided equally among the regional planning commissions.

(2) Forty-five percent of the funds shall be allocated according to the number of Vermont member municipalities in each regional planning commission as of July 1, 2022.

* * * Effective Date * * *

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

and that after passage the title of the bill be amended to read: “An act relating to municipal energy resilience initiatives”

(Committee Vote: 9-0-0)

Rep. Harrison of Chittenden, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Energy and Technology and when further amended as follows:

First: In Sec. 3, municipal energy resilience grant program, in subdivision (a)(1), by striking out “renewable and” and inserting in lieu thereof “more”; in subdivision (c)(1)(A) by striking out “\$200,000.00” and inserting in lieu thereof “\$250,000.00”; and in subdivision (c)(1)(A), by striking out “renewable energy”

Second: In Sec. 4, municipal energy resilience grant program; appropriation, by adding the following at the end of subdivision (1):

“The funding to regional planning commissions shall be distributed as follows:

(A) Fifty-five percent of the funds shall be divided equally among the regional planning commissions.

(B) Forty-five percent of the funds shall be allocated according to the number of Vermont member municipalities in each regional planning commission as of July 1, 2022.”

and by striking out subdivision (2)(B) in its entirety and inserting in lieu thereof a new subdivision (2)(B) to read as follows:

“(B) \$1,000,000.00 for costs associated with administering the grant program; and”

and in subdivision (2)(C) by striking out “heating systems with more efficient renewable energy” and inserting in lieu thereof “less efficient”

Third: In Sec. 7, municipal energy revolving fund; FY 2023 appropriation; report, in subdivision (a)(1), by striking out “\$750,000.00” and inserting in lieu thereof “\$800,000.00”, and in subdivision (a)(2), by striking out “\$1,500,000.00” and inserting in lieu thereof “\$2,000,000.00”

Fourth: In Sec. 9, FY 2023, appropriation; Department of Buildings and General Services; regional planning commissions; positions, in the section title, by striking out “regional planning commissions”; in subsection (a) by inserting “; State Energy Management Program” after “Department of Buildings and General Services” and by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Department of Buildings and General Services; Municipal Energy Resilience Grant Program. Two full-time, limited-service positions are created in the Department of Buildings and General Services in fiscal year 2023 for three fiscal years to administer the Municipal Energy Resilience Grant Program created in Sec. 3 of this act. The positions shall be funded from the amount of \$1,000,000.00 for administrative costs appropriated in Sec. 4(2)(B) of this act.

(Committee Vote:10-0-1)

Rep. Elder of Starksboro, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Energy and Technology and Appropriations and when further amended as follows:

First: In Sec. 6, 29 V.S.A. § 168b, in subsection (b) in subdivision (1), by striking out “or that are paid to it under authorization of the Emergency Board” and inserting “and” after “;”, by striking out “; and” from subdivision (b)(2) and inserting “;”, and by striking out subdivision (3) in its entirety.

Second: In Sec. 6, 29 V.S.A. § 168b, in subsection (c), by striking out “Repayment may include charges of fees for administrative costs over the term of the repayment.”

Third: By adding a Sec. 6a to read as follows:

Sec. 6a. MUNICIPAL ENERGY REVOLVING FUND; DEPARTMENT OF
BUILDINGS AND GENERAL SERVICES; FEE
RECOMMENDATION

On or before January 15, 2023, the Commissioner of Buildings and General Services shall submit a recommendation to the House Committee on Ways and Means and the Senate Committee on Finance for a fee amount to be charged to pay for administrative costs associated with the Municipal Energy Revolving Fund.

(Committee Vote:10-0-1)

H. 533

An act relating to converting civil forfeiture of property in drug-related prosecutions into a criminal process

Rep. Leffler of Enosburgh, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 32 is amended to read:

§ 32. JURISDICTION; CRIMINAL DIVISION

(a) The Criminal Division shall have jurisdiction to try, render judgment, and pass sentence in prosecutions for felonies ~~and~~, misdemeanors, and drug forfeiture proceedings pursuant to 18 V.S.A. chapter 84, subchapter 2.

(b) The Criminal Division shall have jurisdiction to try and finally determine prosecutions for violations of bylaws or ordinances of a village, town, or city, except as otherwise provided.

(c) The Criminal Division shall have jurisdiction of the following civil actions:

- (1) appeals of final decisions of the Judicial Bureau;
- (2) DUI license suspension hearings filed pursuant to 23 V.S.A. chapter 24;
- (3) extradition proceedings filed pursuant to 13 V.S.A. chapter 159;
- ~~(4) drug forfeiture proceedings under 18 V.S.A. chapter 84, subchapter 2;~~
- ~~(5)~~(4) fish and wildlife forfeiture proceedings under 10 V.S.A. chapter 109;
- ~~(6)~~(5) liquor forfeiture proceedings under 7 V.S.A. chapter 19;
- ~~(7)~~(6) hearings relating to refusal to provide a DNA sample pursuant to 20 V.S.A. § 1935;
- ~~(8)~~(7) automobile forfeiture and immobilization proceedings under 23 V.S.A. chapters 9 and 13;
- ~~(9)~~(8) sex offender proceedings pursuant to 13 V.S.A. §§ 5411(e) and 5411d(f);
- ~~(10)~~(9) restitution modification proceedings pursuant to 13 V.S.A. § 7043(k);

~~(11)~~(10) municipal parking violation proceedings pursuant to 24 V.S.A. § 1974a(e), if the municipality has established an administrative procedure enabling a person to contest the violation, and the person has exhausted the administrative procedure;

~~(12)~~(11) proceedings to enforce 9 V.S.A. chapter 74, relating to energy efficiency standards for appliances and equipment;

~~(13)~~(12) proceedings to enforce 30 V.S.A. § 53, relating to commercial building energy standards.

Sec. 2. 18 V.S.A. chapter 84, subchapter 2 is amended to read:

Subchapter 2. Forfeiture

§ 4241. SCOPE

* * *

(c) Notwithstanding the provisions of this section, the following property shall not be subject to seizure and forfeiture under this subchapter:

(1) Homestead real property, as defined in 27 V.S.A. chapter 3.

(2) U.S. currency totaling \$200.00 or less.

(3) A motor vehicle of \$2,000.00 or less in market value.

(4) Stolen property and contraband. Stolen property shall be promptly returned to the rightful owner, and contraband shall be disposed of according to applicable State law. The Criminal Division of the Superior Court may impose reasonable conditions, including the use of photographic evidence, to protect access to the property subject to this subsection and its use in later proceedings.

(d) The Attorney General shall advise the publications that law enforcement agencies may use to establish the market value of a motor vehicle.

§ 4242. SEIZURE

(a) The ~~court~~ Criminal Division of the Superior Court may issue at the request of the State ex parte a preliminary order or process to seize or secure property for which forfeiture is sought and to provide for its custody. Process for seizure of such property shall issue only upon a showing of probable cause that the property is subject to forfeiture. Application ~~therefor~~ for a preliminary order or process and issuance, execution, and return of the order or process shall be subject to provisions of applicable law.

(b) Any property subject to forfeiture under this subchapter may be seized upon process. Seizure without process may be made when:

(1) the seizure is incident to an arrest with probable cause or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a forfeiture proceeding under this subchapter; ~~or~~

(3) the seizure is incident to a valid warrantless search.

(c) The State may temporarily secure property pending a request of the State ex parte for a preliminary order or process pursuant to this section.

~~(e)(d)~~ If property is seized without process under subdivision (b)(1) or (3) of this section and the State intends to seek forfeiture under this subchapter, the State shall forthwith petition the ~~court~~ Criminal Division for a preliminary order or process under subsection (a) of this section.

~~(d)(e)~~ Notwithstanding subsection 4241(b) of this title, all regulated drugs the possession of which is prohibited under this chapter are contraband and shall be automatically forfeited to the State and destroyed.

§ 4242a. PROMPT POSTSEIZURE PROCEEDINGS

(a) Following the seizure of property for which the State seeks forfeiture pursuant to section 4241 of this title, a defendant or any owner, co-owner, or regular user of the property has a right to a prompt postseizure hearing.

(b) A defendant, owner, co-owner, or regular user may petition the Criminal Division having jurisdiction for a prompt postseizure hearing.

(c) The State shall notify any owner, co-owner, or regular user of the property of which the State is aware, after a reasonable search of public records, that property has been seized pursuant to this subchapter, and the owner, co-owner, or regular user of the property may request a prompt postseizure hearing.

(d) The Criminal Division shall hold a prompt postseizure hearing:

(1) as a separate hearing; or

(2) at the same time as a hearing pursuant to Rule 41(f) of the Vermont Rules of Criminal Procedure, a probable cause determination, a post-arraignment hearing, or other pretrial hearing.

(e) A party, by agreement of all parties or for good cause shown, may move for an extension of the hearing date. Any motion may be supported by an affidavit, sworn statement, or other submission.

(f) The Criminal Division shall order the return of the seized property if it finds:

(1) the seizure was invalid;

(2) a criminal charge has not been filed and no extension of the filing period established under this section is available;

(3) the property is not reasonably required to be held as evidence; or

(4) the final judgment will likely be in favor of the defendant or any other person with an interest in the property.

(g) The provisions of this section do not apply to contraband.

§ 4243. JUDICIAL CRIMINAL FORFEITURE PROCEDURE

(a) Conviction or agreement required. An asset is subject to forfeiture by judicial determination as a criminal sanction under section 4241 of this title and 13 V.S.A. § 364 if:

(1) a person is convicted of the criminal offense related to the action for forfeiture and the State establishes by clear and convincing evidence that the property is an instrument of or represents the proceeds of the underlying offense; or

(2) a person enters into an a plea agreement or other agreement with the prosecutor, including an agreement under which he or she the person is not charged with a criminal offense related to the action for forfeiture subjecting the person to forfeiture under section 4241 of this title; or

(3) a person is granted immunity or a reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

(b) Evidence. The State may introduce into evidence in the judicial forfeiture case the fact of a conviction in the Criminal Division Discovery. Discovery related to the criminal forfeiture proceeding is subject to the Vermont Rules of Criminal Procedure.

(c) Burden of proof. The State bears the burden of proving by clear and convincing evidence that the property is an instrument of or represents the proceeds of the underlying offense.

~~(d) Notice. Within 60 days from when the seizure occurs, the State shall notify any owners, possessors, and lienholders of the property of the action, if known or readily ascertainable. Upon motion by the State, a court may extend the time period for sending notice for a period not to exceed 90 days for good cause shown. Notice of proposed forfeiture.~~

(1) The loss of property subject to forfeiture shall be considered as a criminal sanction as part of and following the prosecution of the crime that subjects the individual with an interest in the property to forfeiture of property pursuant to section 4241 of this title. Upon the State's determination that it will seek forfeiture, the State shall file a Notice of Proposed Forfeiture as shall be a separate document not later than 30 days prior to trial or at the Criminal Division's discretion. The Notice of Proposed Forfeiture shall include the following information:

(A) the facts upon which the forfeiture is requested, including a description of the property subject to forfeiture and the type and quantity of regulated drug involved;

(B) the time, date, and place of the seizure;

(C) the names of the apparent owner or owners, lienholders who have properly recorded their interests, and any other person appearing to have an interest, and, in the case of a conveyance, the name of the person holding title; the registered owner; and the make, model, and year of the conveyance;

(D) the current location and custodian of the seized property; and

(E) warning that seized property may be forfeited as a sanction related to the crime for which the individual was charged, as part of a sentencing consideration, as part of a plea agreement, or through other means for the court to oversee.

(2) The Notice of Potential Collateral Consequences of Conviction required pursuant to 13 V.S.A. chapter 231 shall include notification of the provisions of this subchapter.

(3) The State shall serve the Notice in accordance with the Vermont Rules of Criminal Procedure. The State shall inform any owners, possessors, and lienholders of the property of the action, if known or readily ascertainable. In addition, the State shall cause the Notice to be published in a newspaper of general circulation in the State, as ordered by the Criminal Division.

(4) The Notice shall not be read to the jury of the underlying prosecution.

(5) The State may amend the Notice at any time before trial of the underlying prosecution.

(6) The Criminal Division may grant an unlimited number of 30-day extensions for the filing of the Notice if, for each extension, the court determines that probable cause is shown and additional time is warranted.

~~(e) Return of property. If notice is not sent in accordance with subsection (d) of this section, and no time extension is granted or the extension period has expired, the law enforcement agency shall return the property to the person from whom the property was seized. An agency's return of property due to lack of proper notice does not restrict the agency's authority to commence a forfeiture proceeding at a later time. Nothing in this subsection shall require the agency to return contraband, evidence, or other property that the person from whom the property was seized is not entitled to lawfully possess.~~

~~(f) Filing of petition. The State shall file a petition for forfeiture of any property seized under section 4242 of this title promptly, but not more than 14 days from the date the preliminary order or process is issued. The petition shall be filed in the Superior Court of the county in which the property is located or in any court with jurisdiction over a criminal proceeding related to the property.~~

~~(g) Service of petition. A copy of the petition shall be served on all persons named in the petition as provided for in Rule 4 of the Vermont Rules of Civil Procedure. In addition, the State shall cause notice of the petition to be published in a newspaper of general circulation in the State, as ordered by the court. The petition shall state:~~

~~(1) the facts upon which the forfeiture is requested, including a description of the property subject to forfeiture, and the type and quantity of regulated drug involved;~~

~~(2) the names of the apparent owner or owners, lienholders who have properly recorded their interests, and any other person appearing to have an interest; and, in the case of a conveyance, the name of the person holding title, the registered owner, and the make, model, and year of the conveyance.~~

§ 4244. FORFEITURE HEARING HEARINGS

~~(a) Within 60 days following service of notice of seizure and forfeiture under section 4243 of this title, a claimant may file a demand for judicial determination of the forfeiture. The demand must be in the form of a civil complaint accompanied by a sworn affidavit setting forth the facts upon which the claimant intends to rely, including, if relevant, the noncriminal source of the asset or currency at issue. The demand must be filed with the court~~

administrator in the county in which the seizure occurred. Defendant's forfeiture hearing. The Criminal Division shall consider the loss of property subject to forfeiture as a criminal sanction as part of and following the prosecution of the underlying crime. The Criminal Division has discretion to schedule the criminal forfeiture hearing as soon as practicable after the defendant's conviction of the offense subjecting the person to forfeiture under section 4241 of this title, including concurrent with sentencing. The hearing shall be conducted by the Criminal Division without a jury.

(b) The court shall hold a hearing on the petition as soon as practicable after, and in any event no later than 90 days following, the conclusion of the criminal prosecution. Exceptions to the conviction requirement. The Criminal Division may waive the conviction requirements of section 4243 of this title and subsection (a) of this section and grant title to the subject property to the State if the State files a motion not fewer than 90 days after seizure and shows by a preponderance of the evidence that, before conviction, the defendant:

- (1) died;
- (2) was deported by the U.S. government;
- (3) abandoned the property; or
- (4) fled the jurisdiction.

(c) A lienholder who has received notice of a forfeiture proceeding may intervene as a party. If the court finds that the lienholder has a valid, good faith interest in the subject property which is not held through a straw purchase, trust, or otherwise for the actual benefit of another and that the lienholder did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law, the court upon forfeiture shall order compensation to the lienholder to the extent of the lienholder's interest. Proportionality.

(1) The defendant, owner, co-owner, or other regular user of the property may petition the Criminal Division to determine whether the forfeiture is unconstitutionally excessive under the Constitutions of the State of Vermont or the United States. At the Criminal Division's discretion, it may hold a proportionality hearing:

(A) as a separate hearing; or

(B) at the same time as a hearing pursuant to Rule 41(f) of the Vermont Rules of Criminal Procedure, a prompt postseizure proceeding pursuant to section 4242a of this title or a forfeiture hearing pursuant to section 4244 of this title.

(2) The defendant has the burden of establishing that the forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the Criminal Division without a jury. In determining whether the forfeiture is unconstitutionally excessive, the Criminal Division may consider all relevant factors including:

(A) the seriousness of the underlying crime and its impact on the community, including the duration of the activity, use of a firearm, and harm caused by the defendant;

(B) the extent to which the defendant participated in the underlying crime;

(C) the extent to which the subject property was used in committing the crime;

(D) whether the underlying crime was completed or attempted;

(E) the hardship to the defendant if the forfeiture of a motor vehicle would deprive the defendant of the defendant's livelihood; and

(F) if forfeiture of the subject property is an undue hardship to the defendant's family.

(3) In determining the value of the instrumentality subject to forfeiture, the Criminal Division may consider all relevant facts related to the fair market value of the property, including any publications identified by the Attorney General pursuant to subsection 4241(d) of this title.

(4) The Criminal Division shall not consider the value of the subject property to the State in determining whether the forfeiture is unconstitutionally excessive.

~~(d) The court shall not order the forfeiture of property if an owner, co-owner, or person who regularly uses the property, other than the defendant, shows by a preponderance of the evidence that the owner, co-owner, or regular user did not consent to or have any express or implied knowledge that the property was being or was intended to be used in a manner that would subject the property to forfeiture, or that the owner, co-owner, or regular user had no reasonable opportunity or capacity to prevent the defendant from using the property. Lienholder hearing. The Criminal Division shall not order the forfeiture of property subject to a lienholder's interest without a hearing upon petition by the lienholder, other than the defendant. A lienholder who has received notice of a criminal forfeiture proceeding may petition the Criminal Division at any time before it enters judgment in the prosecution of the underlying offense or grants a motion pursuant to subsection (b) of this section. The Criminal Division shall hear the petition within 30 days after its~~

filing or at the court's discretion. The hearing shall be conducted by the Criminal Division without a jury and the hearing may be consolidated with any other hearing before the trial in the underlying prosecution. If a lienholder shows by clear and convincing evidence that the lienholder has a valid, good faith interest in the subject property that is not held through a straw purchase, trust, or otherwise for the actual benefit of another and that the lienholder did not at any time have actual knowledge or reason to believe that the property was being or would be used in violation of the law, the Criminal Division shall order return of the property to the lienholder or compensation to the lienholder to the extent of value of the lienholder's interest, whichever is of less cost or expense to effectuate.

(e) The proceeding shall be against the property and shall be deemed civil in nature. The State shall have the burden of proving all material facts by clear and convincing evidence. Innocent owner hearing. The Criminal Division shall not order the forfeiture of property of an owner, co-owner, or person who regularly uses the property, other than the defendant, without a hearing upon petition by the owner, co-owner, or person who regularly uses the property.

(1) An owner, co-owner, or person who regularly uses the property, other than the defendant, may petition the Criminal Division at any time before it enters judgment in the prosecution of the underlying offense or grants a motion pursuant to subsection (b) of this section.

(2) The petition may be a simple written statement that sets forth:

(A) the right, title, or interest in the property of the owner, co-owner, or person who regularly uses the property;

(B) the time and circumstances of the acquisition of the interest in the property;

(C) additional relevant facts supporting the petition; and

(D) a request for the return of the property or other relief sought by the owner, co-owner, or person who regularly uses the property.

(3) The Criminal Division shall hear the petition within 30 days after its filing or at the court's discretion. The hearing shall be conducted by the Criminal Division without a jury and the hearing may be consolidated with any other hearing before the trial in the underlying prosecution.

(4) The owner, co-owner, or person who regularly uses the property, other than the defendant, has the burden to prove by clear and convincing evidence the validity of ownership interest or regular use. If the owner, co-owner, or person who regularly uses the property meets the burden, the State

has the burden to prove by clear and convincing evidence that the owner, co-owner, or regular user did consent to or have actual knowledge that the property was being or was intended to be used in a manner that would subject the property to forfeiture. If the State fails to meet its burden, the Criminal Division shall order return of the property. As used in this subsection and subsection (d) of this section, “actual knowledge” means a direct and clear awareness of information, a fact, or a condition.

(5) The Criminal Division may impose reasonable conditions, including the use of photographic evidence, to protect access to property subject to this section and its use in later proceedings.

~~(f) The court shall make findings of fact and conclusions of law and shall issue a final order. If the petition is granted, the court shall order the property held for evidentiary purposes, delivered to the State Treasurer, or, in the case of regulated drugs or property which is harmful to the public, destroyed Judgment. The Criminal Division shall enter judgment:~~

(1) dismissing the forfeiture proceeding and returning the subject property to the rightful owner if the State fails to meet its burden in the underlying criminal prosecution or the defendant’s forfeiture hearing pursuant to subsection (a) of this section except, in the case of regulated drugs or property that is harmful to the public, the subject property shall be destroyed;

(2) forfeiting the subject property if the State meets its burden in the underlying criminal prosecution and the forfeiture proceedings pursuant to subsection (a) of this section; or

(3) following a hearing or at court’s discretion pursuant to a stipulation or plea agreement.

§ 4244a. APPEAL

The defendant may appeal the Criminal Division’s decision regarding the seizure of forfeiture of property following final judgment in the forfeiture proceeding pursuant to the Vermont Rules of Criminal Procedure.

§ 4245. REMISSION OR MITIGATION OF FORFEITURE TO THE STATE’S ATTORNEY

(a) On petition filed within 90 days after completion of a forfeiture proceeding, a court that issued a forfeiture order pursuant to section 4244 of this title request by an owner, co-owner, or person who regularly uses the property, other than by the defendant, made at any time before the Criminal Division enters judgment in the prosecution of the underlying offense or grants a motion pursuant to subsection (b) of section 4244 a State’s Attorney may

~~order exercise prosecutorial discretion and determine~~ that the forfeiture be remitted or mitigated. The ~~petition request~~ shall be sworn and shall include all information necessary for its resolution or shall describe where such information can be obtained. Upon receiving a ~~petition request~~, the ~~court~~ State's Attorney shall investigate and may conduct ~~a-an~~ hearing interview if in ~~its~~ the State's Attorney's judgment it would be helpful to the resolution of the ~~petition request~~. The ~~court~~ State's Attorney shall either approve or reject the ~~petition request~~ within ~~90~~ 30 days.

(b) The ~~court~~ State's Attorney may remit or mitigate a forfeiture pursuant to this subchapter upon finding that relief should be granted to avoid extreme hardship or upon finding that the ~~petitioner requestor~~ has a valid, good faith interest in the property ~~which that~~ is not held through a straw purchase, trust, or otherwise for the benefit of another ~~and that the petitioner did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law.~~

* * *

§ 4247. DISPOSITION OF PROPERTY

(a) Whenever property is forfeited and delivered to the State Treasurer under this subchapter, the State Treasurer shall, ~~no~~ not sooner than 90 days ~~of~~ after the date the property is delivered but not later than one year after the property is delivered, sell the property at a public sale held under 27 V.S.A. chapter ~~13~~ 18, subchapter 7.

(b) The proceeds from the sale of forfeited property, upon exhaustion of all appeals or at the Criminal Division's discretion, shall be used first to pay restitution to any victim of the underlying crime, then to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) ~~45~~ 55 percent shall be distributed among:

- (i) the Office of the Attorney General;
- (ii) the Department of State's Attorneys and Sheriffs; and
- (iii) State and local law enforcement agencies.

(B) ~~The Governor's Criminal Justice and Substance Abuse Cabinet~~ State Treasurer is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law enforcement agencies for their proportionate participated

participation in the prosecution or enforcement effort resulting in the forfeiture for expenses incurred, including controlled drug-buy money, investigation costs, salaries, benefits, overtime, and any other actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Upon determination of the allocations, the Treasurer shall forward promptly distribute the allocated amounts to the appropriate agency's operating funds. Notwithstanding the provisions of this subsection (b), 10 percent of the proceeds distributed pursuant to subdivision (A) of this subdivision (1) shall be directed as follows:

(i) five percent to the Evidence-Based Education and Advertising Fund established in 33 V.S.A. § 2004a; and

(ii) five percent to the Center for Crime Victim Services.

(2) The remaining ~~55~~ 45 percent shall be deposited in the General Fund.

* * *

§ 4248a. LIMITATION ON FEDERAL ADOPTION

(a) A State or local law enforcement agency shall not transfer or offer for adoption property seized from a defendant, owner, co-owner, or regular user of the property pursuant to this subchapter to a federal agency for the purpose of forfeiture under 18 U.S.C. chapter 46 or other federal law unless the seized property includes U.S. currency exceeding \$25,000.00. This subsection only applies to seizure by State or local law enforcement agencies pursuant to their own authority under State law and without involvement of the U.S. government. Nothing in this subsection shall be construed to limit State or local agencies from participating in joint task forces with the U.S. government.

(b) State and local law enforcement agencies are prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the U.S. government if the State or local law enforcement agency violates subsection (a) of this section. Any payments or forfeiture proceeds that violate subsection (a) of this section shall be directed to the State's General Fund.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

(Committee Vote: 11-0-0)

Rep. Squirrell of Underhill, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Judiciary and when further amended as follows:

In Sec. 2, 18 V.S.A. chapter 84, subchapter 2, in section 4247, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The proceeds from the sale of forfeited property, upon exhaustion of all appeals or at the Criminal Division's discretion, shall be used first to pay restitution to any victim of the underlying crime, then to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:

(1)(A) 45 percent shall be distributed among:

- (i) the Office of the Attorney General;
- (ii) the Department of State's Attorneys and Sheriffs; and
- (iii) State and local law enforcement agencies.

(B) ~~The Governor's Criminal Justice and Substance Abuse Cabinet~~ State Treasurer is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law enforcement agencies that participated for their proportionate participation in the prosecution or enforcement effort resulting in the forfeiture for expenses incurred, including controlled drug-buy money, investigation costs, salaries, benefits, overtime, and any other actual expenses for involved personnel. ~~The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the~~ Upon determination of the allocations, the Treasurer shall ~~forward promptly distribute~~ the allocated amounts to the appropriate agency's operating funds.

(2) The remaining 55 percent shall be deposited in the General Fund.

(Committee Vote:11-0-0)

H. 534

An act relating to sealing criminal history records

Rep. Colburn of Burlington, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7601 is amended to read:

§ 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the Criminal Division of the Superior Court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

~~(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction and includes operating a vehicle under the influence of alcohol or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title. “Predicate offense” shall not include misdemeanor possession of cannabis, a disorderly conduct offense under section 1026 of this title, or possession of a controlled substance in violation of 18 V.S.A. § 4230(a), 4231(a), 4232(a), 4233(a), 4234(a), 4234a(a), 4234b(a), 4235(b), or 4235a(a). [Repealed.]~~

(4) “Qualifying crime” means:

~~(A) a misdemeanor offense that is not:~~

~~(i) a listed crime as defined in subdivision 5301(7) of this title;~~

~~(ii) an offense involving sexual exploitation of children in violation of chapter 64 of this title;~~

~~(iii) an offense involving violation of a protection order in violation of section 1030 of this title;~~

~~(iv) prostitution as defined in section 2632 of this title, or prohibited conduct under section 2601a of this title; or~~

~~(v) a predicate offense;~~

~~(B) a violation of subsection 3701(a) of this title related to criminal mischief;~~

~~(C) a violation of section 2501 of this title related to grand larceny;~~

~~(D) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title;~~

~~(E) a violation of 18 V.S.A. § 4223 related to fraud or deceit;~~

~~(F) a violation of section 1802 of this title related to uttering a forged or counterfeited instrument;~~

~~(G) a violation of 18 V.S.A. § 4230(a) related to possession and cultivation of cannabis;~~

~~(H) a violation of 18 V.S.A. § 4231(a) related to possession of cocaine;~~

~~(I) a violation of 18 V.S.A. § 4232(a) related to possession of LSD;~~

~~(J) a violation of 18 V.S.A. § 4233(a) related to possession of heroin;~~

~~(K) a violation of 18 V.S.A. § 4234(a) related to possession of depressant, stimulant, and narcotic drugs;~~

~~(L) a violation of 18 V.S.A. § 4234a(a) related to possession of methamphetamine;~~

~~(M) a violation of 18 V.S.A. § 4234b(a) related to possession of ephedrine and pseudoephedrine;~~

~~(N) a violation of 18 V.S.A. § 4235(b) related to possession of hallucinogenic drugs;~~

~~(O) a violation of 18 V.S.A. § 4235a(a) related to possession of ecstasy; or~~

~~(P) any offense for which a person has been granted an unconditional pardon from the Governor.~~

(A) all misdemeanor offenses except:

(i) a listed crime as defined in subdivision 5301(7) of this title;

(ii) a violation of chapter 64 of this title relating to sexual exploitation of children;

(iii) a violation of section 1030 of this title relating to a violation of an abuse prevention order, an order against stalking or sexual assault, or a protective order concerning contact with a child;

(iv) a violation of chapter 28 of this title related to abuse, neglect, and exploitation of a vulnerable adult;

(v) a violation of subsection 2605(b) or (c) of this title related to voyeurism;

(vi) a violation of subdivisions 352(1)–(10) of this title related to cruelty to animals;

(vii) a violation of section 1026a of this title related to aggravated disorderly conduct;

(viii) a violation of section 3006 of this title related to neglect of duty by a public officer;

(ix) a violation of section 5409 of this title related to failure to comply with sex offender registry requirements;

(x) a violation of section 2802, 2802a, 2803, 2804, or 2804b of this title related to obscenity;

(xi) a violation of section 1455 of this title related to hate motivated crimes; and

(xii) a violation of section 1456 of this title related to burning of a religious symbol; and

(B) the following felonies:

(i) a violation of section 1201 of this title related to burglary, excluding any burglary into an occupied dwelling, unless the person was 25 years of age or younger at the time of the offense and did not carry a dangerous or deadly weapon during the commission of the offense;

(ii) designated felony property offenses as defined in subdivision (5) of this subsection;

(iii) offenses relating to possessing, cultivating, selling, dispensing, or transporting regulated drugs, including violations of 18 V.S.A. § 4230(a) and (b), 4231(a) and (b), 4232(a) and (b), 4233(a) and (b), 4233a(a), 4234(a) and (b), 4234a(a) and (b), 4234b(a) and (b), 4235(b) and (c), or 4235a(a) and (b); and

(iv) any offense for which a person has been granted an unconditional pardon from the Governor.

(5) “Designated felony property offense” means:

(A) a felony violation of 9 V.S.A. § 4043 related to fraudulent use of a credit card;

(B) section 1801 of this title related to forgery and counterfeiting;

(C) section 1802 of this title related to uttering a forged or counterfeited instrument;

(D) section 1804 of this title related to counterfeiting paper money;

(E) section 1816 of this title related to possession or use of credit card skimming devices;

- (F) section 2001 of this title related to false personation;
- (G) section 2002 of this title related to false pretenses or tokens;
- (H) section 2029 of this title related to home improvement fraud;
- (I) section 2030 of this title related to identity theft;
- (J) section 2501 of this title related to grand larceny;
- (K) section 2531 of this title related to embezzlement;
- (L) section 2532 of this title related to embezzlement by officers or servants of an incorporated bank;
- (M) section 2533 of this title related to embezzlement by a receiver or trustee;
- (N) section 2561 of this title related to receiving stolen property;
- (O) section 2575 of this title related to retail theft;
- (P) section 2582 of this title related to theft of services;
- (Q) section 2591 of this title related to theft of rented property;
- (R) section 2592 of this title related to failure to return a rented or leased motor vehicle;
- (S) section 3016 of this title related to false claims;
- (T) section 3701 of this title related to unlawful mischief;
- (U) section 3705 of this title related to unlawful trespass;
- (V) section 3733 of this title related to mills, dams, or bridges;
- (W) section 3761 of this title related to unauthorized removal of human remains;
- (X) section 3767 of this title related to grave markers and ornaments;
- (Y) chapter 87 of this title related to computer crimes; and
- (Z) 18 V.S.A. § 4223 related to fraud or deceit in obtaining a regulated drug.

(6) “Subsequent offense” means the conviction of a crime committed by the person who is the subject of a petition to seal a criminal history record that arose out of a new incident or occurrence after the person was convicted of the crime to be sealed.

Sec. 2. 13 V.S.A. § 7602 is amended to read:

§ 7602. ~~EXPUNGEMENT AND SEALING OF RECORD,~~

POSTCONVICTION; PROCEDURE

~~(a)(1) A person may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction if:~~

~~(A) the person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence;~~

~~(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense;~~

~~(C) pursuant to the conditions set forth in subsection (g) of this section, the person was convicted of a violation of 23 V.S.A. § 1201(a) related to operating under the influence of alcohol or other substance, excluding a violation of that section resulting in serious bodily injury or death to any person other than the operator, or related to operating a school bus with a blood alcohol concentration of 0.02 or more or operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; or~~

~~(D) pursuant to the conditions set forth in subsection (h) of this section, the person was convicted under 1201(c)(3)(A) of a violation of subdivision 1201(a) of this title related to burglary when the person was 25 years of age or younger, and the person did not carry a dangerous or deadly weapon during commission of the offense.~~

~~(2) The State's Attorney or Attorney General shall be the respondent in the matter.~~

~~(3) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner an order of expungement and provide notice of the order in accordance with this section.~~

~~(4) This section shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal or expunge a record of a conviction for a felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.~~

~~(b)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:~~

~~(A) At least five years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and~~

~~conditions of an indeterminate term of probation that commenced at least five years previously.~~

~~(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.~~

~~(C) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.~~

~~(D) The court finds that expungement of the criminal history record serves the interests of justice.~~

~~(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and the court finds that:~~

~~(A) sealing the criminal history record better serves the interests of justice than expungement; and~~

~~(B) the person committed the qualifying crime after reaching 19 years of age.~~

~~(e)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:~~

~~(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.~~

~~(B) The person has not been convicted of a felony arising out of a new incident or occurrence in the last seven years.~~

~~(C) The person has not been convicted of a misdemeanor during the past five years.~~

~~(D) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.~~

~~(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interests of justice.~~

~~(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:~~

~~(A) sealing the criminal history record better serves the interests of justice than expungement; and~~

~~(B) the person committed the qualifying crime after reaching 19 years of age.~~

~~(d) For petitions filed pursuant to subdivision (a)(1)(B) of this section, unless the court finds that expungement would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be expunged in accordance with section 7606 of this title if the following conditions are met:~~

~~(1) The petitioner has completed any sentence or supervision for the offense.~~

~~(2) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.~~

~~(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a conviction for possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:~~

~~(1) The petitioner shall bear the burden of establishing that his or her conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.~~

~~(2) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.~~

~~(f) Prior to granting an expungement or sealing under this section for petitions filed pursuant to subdivision 7601(4)(D) of this title, the court shall make a finding that the conduct underlying the conviction under section 1201 of this title did not constitute a burglary into an occupied dwelling, as defined in subdivision 1201(b)(2) of this title. The petitioner shall bear the burden of establishing this fact.~~

~~(g) For petitions filed pursuant to subdivision (a)(1)(C) of this section, only petitions to seal may be considered or granted by the court. This subsection shall not apply to an individual licensed as a commercial driver pursuant to~~

~~23 V.S.A. chapter 39. Unless the court finds that sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be sealed in accordance with section 7607 of this title if the following conditions are met:~~

~~(1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.~~

~~(2) At the time of the filing of the petition:~~

~~(A) the person has only one conviction of a violation of 23 V.S.A. § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and~~

~~(B) the person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of 23 V.S.A. § 1201(a).~~

~~(3) Any restitution ordered by the court has been paid in full.~~

~~(4) The court finds that sealing of the criminal history record serves the interests of justice.~~

~~(h) For petitions filed pursuant to subdivision (a)(1)(D) of this section, unless the court finds that expungement or sealing would not be in the interests of justice, the court shall grant the petition and order that the criminal history record be expunged or sealed in accordance with section 7606 or 7607 of this title if the following conditions are met:~~

~~(1) At least 15 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 15 years previously.~~

~~(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of a violation of subdivision 1201(e)(3)(A) of this title.~~

~~(3) Any restitution ordered by the court has been paid in full.~~

~~(4) The court finds that expungement or sealing of the criminal history record serves the interests of justice.~~

(a) Petition.

(1) A person may file a petition with the court requesting sealing of a criminal history record related to a conviction under the following circumstances:

(A) The person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense.

(B) The person was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence.

(C) The person was convicted of a violation of 23 V.S.A. § 1201(a) related to operating under the influence of alcohol or other substance, provided that:

(i) the violation did not:

(I) result in serious bodily injury or death to any person other than the operator;

(II) involve operating a school bus with a blood alcohol concentration of 0.02 or more; or

(III) involve operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; and

(ii) the person is not licensed as a commercial driver pursuant to 23 V.S.A. chapter 39.

(2) The State's Attorney or Attorney General shall be the respondent in the matter.

(3) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner an order of sealing and provide notice of the order in accordance with this section.

(4) This section shall not apply to an individual licensed as a commercial driver pursuant to 23 V.S.A. chapter 39 seeking to seal a record of a conviction for a felony offense committed in a motor vehicle as defined in 23 V.S.A. § 4.

(b) Offenses that are no longer prohibited by law.

(1) For petitions filed pursuant to subdivision (a)(1)(A) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(A) The petitioner has completed any sentence or supervision for the offense.

(B) Any restitution and surcharges ordered by the court have been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

(2) For petitions filed pursuant to subdivision (a)(1)(A) of this section for a conviction for possession of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:

(A) The petitioner shall bear the burden of establishing that the petitioner's conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.

(B) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed by the petitioner.

(c) Qualifying misdemeanors. For petitions filed to seal a qualifying misdemeanor pursuant to subdivision (a)(1)(B) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least three years have elapsed since the date on which the person satisfied the judgement.

(2) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

(3) The court finds that sealing of the criminal history record serves the interests of justice.

(d) Qualifying felony offenses. For petitions filed to seal a qualifying felony pursuant to subdivision (a)(1)(B) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least seven years have elapsed since the date on which the person satisfied the judgement.

(2) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that

payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

(3) The court finds that sealing of the criminal history record serves the interests of justice.

(e) Qualifying DUI misdemeanor. For petitions filed to seal a qualifying DUI misdemeanor pursuant to subdivision (a)(1)(C) of this section, the court shall grant the petition and order that the criminal history record be sealed if the following conditions are met:

(1) At least ten years have elapsed since the date on which the person satisfied the judgment for the conviction.

(2) At the time of the filing of the petition:

(A) the person has only one conviction of a violation of 23 V.S.A. § 1201, which shall be construed in accordance with 23 V.S.A. § 1211; and

(B) the person has not been convicted of a subsequent offense since the person was convicted of a violation of 23 V.S.A. § 1201(a).

(3) Any restitution and surcharges ordered by the court for any crime of which the person has been convicted has been paid in full, provided that payment of surcharges shall not be required if the surcharges have been waived by the court pursuant to section 7282 of this title.

(4) The court finds that sealing of the criminal history record serves the interests of justice.

Sec. 3. 13 V.S.A. § 7604 is amended to read:

§ 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for ~~expungement~~ sealing pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

Sec. 4. 13 V.S.A. § 7605 is amended to read:

§ 7605. DENIAL OF PETITION

If a petition for ~~expungement~~ sealing is denied by the court pursuant to this chapter, no further petition shall be brought for at least two years, unless a shorter duration is authorized by the court.

Sec. 5. 13 V.S.A. § 7607 is amended to read:

§ 7607. EFFECT OF SEALING

(a) Order and notice. Upon entry of an order to seal, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if ~~he or she~~ the person had never been arrested, convicted, or sentenced for the offense and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont Crime Information Center (VCIC), the arresting agency, the Restitution Unit of the Vermont Center for Crime Victim Services, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

(b) Effect.

(1) Except as provided in subsection (c) of this section, upon entry of a sealing order, the order shall be legally effective immediately and the person whose record is sealed shall be treated in all respects as if ~~he or she~~ the person had never been arrested, convicted, or sentenced for the offense.

(2) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed.

(3) The response to an inquiry from any member of the public regarding a sealed record shall be that "NO CRIMINAL RECORD EXISTS."

(c) Exceptions; convictions. Notwithstanding any other provision of law or a sealing order, entities may access sealed records only in the following circumstances:

(1) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence ~~or involving the same defendant.~~

(2) ~~A criminal justice agency as defined in 20 V.S.A. § 2056a may use the criminal history record sealed in accordance with section 7602 or 7603 of this title without limitation for criminal justice purposes as defined in 20 V.S.A. § 2056a. A sealed record of a prior violation of 23 V.S.A. § 1201(a) shall be admissible as a predicate offense for the purpose of imposing an enhanced penalty for a subsequent violation of that section, in accordance with the provisions of 23 V.S.A. § 1210. A person or a court in possession of an order issued by a court regarding a matter that was subsequently sealed may file or cite to that decision in any subsequent proceeding. The party or court filing or citing to that decision shall ensure that information regarding the identity of the defendant in the sealed record is redacted.~~

(3) For sentencing in subsequent offenses, the court and parties in a criminal case shall have access to sealed records as follows:

(A) misdemeanors for three years;

(B) qualifying DUI offenses for five years; and

(C) qualifying felony property offenses and selling, dispensing, or transporting a regulated drug offenses for seven years.

(4) The Department of Corrections shall have access to sealed records for the purpose of conducting risk assessments and making supervision decisions as follows:

(A) misdemeanors for three years;

(B) qualifying DUI offenses for five years; and

(C) qualifying felony property offenses and selling, dispensing, or transporting a regulated drug offenses for seven years.

(5) The State's Attorney and Attorney General may disclose information contained in a sealed criminal history record when required to meet their otherwise legally required discovery obligations.

(6) Upon request, the Victim's Compensation Program shall be provided with a copy, redacted of all information identifying the offender, of the affidavit for the sole purpose of verifying the expenses in a victim's compensation application submitted pursuant to section 5353 of this title.

(7) The sealing of a criminal record shall not affect the authority of the Restitution Unit to enforce a restitution order in the same manner as a civil judgment, pursuant to subdivision 5362(c)(2) of this title.

(d) Exceptions; dismissed charges. The prosecution shall have access to cases dismissed without prejudice for three years. The prosecution may object to the loss of access at three years by proving that the loss of access would pose a "significant risk to public safety."

(e) Process.

(1) The court shall bar viewing of the sealed offense in any accessible database that it maintains.

(2) Until all charges on a docket have been sealed, the case file shall remain publicly accessible.

(3) When all charges on a docket have been sealed, the case file shall become exempt from public access.

(e)(f) Special index.

(1) The court shall keep a special index of cases that have been sealed together with the sealing order. The index shall list only the name of the person convicted of the offense, ~~his or her~~ the person's date of birth, the docket number, and the criminal offense that was the subject of the sealing.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Except as provided in ~~subsection~~ subsections (c) and (d) of this section, inspection of the sealing order may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) The Court Administrator shall establish policies for implementing this subsection.

Sec. 6. 13 V.S.A. § 7611 is added to read:

§ 7611. UNAUTHORIZED DISCLOSURE

A state or municipal employee or contractor or any agent of the court, including an attorney and an employee or contractor of the attorney, who in the course of their official duties knowingly discloses sealed criminal history record information without authorization shall be assessed a civil penalty of not more than \$1,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

Sec. 7. 24 V.S.A. § 2002 is added to read:

§ 2002. EXPUNGEMENT OF MUNICIPAL VIOLATION RECORDS

(a) Expungement. Three years following the satisfaction of a judgment resulting from an adjudication of a municipal violation, the Judicial Bureau shall make an entry of "expunged" and notify the municipality of such action, provided the person has not been adjudicated for any subsequent municipal violations during that time. The data transfer to the municipality shall include the name, date of birth, ticket number, and offense. Violations of offenses adopted pursuant to 24 V.S.A. chapter 117 shall not be eligible for expungement under this section.

(b) Effect of expungement.

(1) Upon entry of an expungement order, the order shall be legally effective immediately and the individual whose record is expunged shall be

treated in all respects as if the individual had never been adjudicated of the violation.

(2) Upon an entry of expunged, the case will be accessible only by the Clerk of the Court for the Judicial Bureau or the Clerk's designee. Adjudications that have been expunged shall not appear in the results of any Judicial Bureau database search by name, date of birth, or any other data identifying the defendant. Except as provided in subsection (c) of this section, any documents or other records related to an expunged adjudication that are maintained outside the Judicial Bureau's case management system shall be destroyed.

(3) Upon receiving an inquiry from any person regarding an expunged record, the Judicial Bureau and the municipality shall respond that "NO RECORD EXISTS."

(c) Exception for research entities. Research entities that maintain adjudication records for purposes of collecting, analyzing, and disseminating criminal justice data shall not be subject to the expungement requirements established in this section. Research entities shall abide by the policies established by the Court Administrator and shall not disclose any identifying information from the records they maintain.

(d) Policies for implementation. The Court Administrator shall establish policies for implementing this section.

(e) Application. This section shall apply to municipal violations that occur on and after July 1, 2022.

Sec. 8. 23 V.S.A. § 2303 is amended to read:

§ 2303. EXPUNGEMENT OF VIOLATION RECORDS

* * *

(e) Application. This section shall apply to municipal violations that occur on and after July 1, 2021.

Sec. 9. AUTOMATIC SEALING STUDY COMMITTEE

(a) Creation. There is created the Legislative Criminal Record Sealing Study Committee for the purpose of recommending to the General Assembly a proposal for phasing in a policy of automatically sealing criminal history records that no longer have value as a criminal justice tool.

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

(1) two current members of the House of Representatives, not all from the same political party, who shall be appointed by the Speaker of the House; and

(2) two current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(c) Powers and duties.

(1) The Committee shall study:

(A) which criminal offenses are appropriate for automatic sealing, the time period in which those offenses become eligible for sealing, and any other appropriate criteria; and

(B) the mechanism for automatic sealing and any resources required for the proposal in subdivision (1)(A) of this subsection (c).

(2) On or before November 15, 2022, the Committee shall submit proposed legislation to the General Assembly.

(d) Assistance. For purposes of scheduling meetings and preparing recommended legislation, the Committee shall have the assistance of the Office of Legislative Operations, the Office of Legislative Counsel, and the Joint Fiscal Office.

(e) Meetings.

(1) The Office of Legislative Counsel shall call the first meeting of the Committee on or before August 1, 2022.

(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 Committee shall cease to exist on December 31, 2022.

(f) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

(Committee Vote: 9-2-0)

Rep. Squirrell of Underhill, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Judiciary and when further amended as follows:

By striking out Sec. 9, automatic sealing study committee, in its entirety and by renumbering the remaining section to be numerically correct.

(Committee Vote:11-0-0)

H. 711

An act relating to the creation of the Opioid Settlement Advisory Committee and the Opioid Abatement Special Fund

Rep. Garofano of Essex, for the Committee on Human Services, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 93 is amended to read:

CHAPTER 93. TREATMENT OF OPIOID ADDICTION USE DISORDER

Subchapter 1. Treatment of Opioid Use Disorder

* * *

Subchapter 2. Opioid Settlement

§ 4771. PURPOSE

It is the purpose of this subchapter to comply with any opioid litigation settlements to which the State or municipalities within the State were a party regarding the management and expenditure of monies received by the State. While an opioid litigation settlement may designate a portion of the monies for local or State use, this subchapter applies to only monies from abatement accounts funds.

§ 4772. OPIOID SETTLEMENT ADVISORY COMMITTEE

(a) Creation. There is created the Opioid Settlement Advisory Committee to provide advice and recommendations regarding remediation spending from the Opioid Abatement Special Fund established pursuant to this subchapter.

(b) Membership.

(1) The Advisory Committee shall be composed of the following members and shall reflect the diversity of Vermont in terms of gender, race, age, ethnicity, sexual orientation, gender identity, disability status, and socioeconomic status and ensure inclusion of individuals with lived experience of opioid use disorder and their family members whenever possible:

(A) the Commissioner of Health or designee, who shall serve as a nonvoting chair;

(B) the Commissioner of Mental Health or designee;

(C) the Chief Prevention Officer established pursuant to 3 V.S.A. § 2321;

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

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

(F) a primary care prescriber with experience providing medication-assisted treatment within the Blueprint for Health hub and spoke model, appointed by the Executive Director of the Blueprint for Health, to provide a statewide perspective on the provision of medication-assisted treatment services;

(G) an individual with experience providing substance misuse prevention services and education programming, appointed by the Substance Misuse Prevention Oversight and Advisory Council, to provide a statewide perspective on prevention services and education;

(H) an individual with experience providing substance misuse treatment or recovery services, appointed by the Clinical Director of the Alcohol and Drug Abuse Program or its successor, to provide a statewide perspective on the provision of treatment or recovery, or both;

(I) a provider with academic research credentials, appointed by the University of Vermont, to provide a statewide perspective on academic research relating to opioid use disorder;

(J) two individuals with lived experience of opioid use disorder, including at least one of whom is in recovery, one member appointed by the Howard Center's Safe Recovery program and one member appointed by the Vermont Association of Mental Health and Addiction Recovery, to provide a statewide perspective on the experience of living with opioid use disorder;

(K) an assistant judge, appointed by the Vermont Association of County Judges; and

(L) ten individuals, each employed by or an agent of a different city or town that collectively reflect Vermont's diverse population and geography, appointed by the Vermont League of Cities and Towns.

(2)(A) The term of office of each appointed member shall be four years. Of the members first appointed, 11 shall be appointed for a term of three years and 11 shall be appointed for a term of four years. Members shall hold office for the term of their appointments and until their successors have been appointed. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. Members are eligible for reappointment.

(B) A member may be removed from the Advisory Committee by the member's appointing entity for cause, which includes only neglect of duty, gross misconduct, conviction of a crime, or inability to perform the responsibilities of the office. The Chair of the Advisory Committee shall simultaneously notify the Governor, the Speaker of the House, and the President Pro Tempore that the member has been removed from the Advisory Committee.

(c) Powers and duties. The Advisory Committee shall demonstrate broad ongoing consultation with individuals living with opioid use disorder about their direct experience with related systems, including medication-assisted treatment, residential treatment, recovery services, harm reduction services, overdose, supervision by the Department of Corrections, and involvement with the Department for Children and Families' Family Services Division. To that end, the Advisory Committee shall demonstrate consultation with individuals with direct lived experience of opioid use disorder, frontline support professionals, the Substance Misuse Advisory Council, and other stakeholders to identify spending priorities as related to opioid use disorder prevention, intervention, treatment, and recovery services and harm reduction strategies for the purpose of providing recommendations to the Governor, the Department of Health, and the General Assembly on prioritizing spending from the Opioid Abatement Special Fund. The Advisory Committee shall consider:

(1) the impact of the opioid crisis on communities throughout Vermont, including communities' abatement needs and proposals for abatement strategies and responses;

(2) the perspectives of and proposals from opioid use disorder prevention coalitions, recovery centers, and medication-assisted treatment providers; and

(3) the ongoing challenges of the opioid crisis on marginalized populations, including individuals who have a lived experience of opioid use disorder.

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

(e) Presentation. Annually, the Advisory Committee shall present its recommendations for expenditures from the Opioid Abatement Special Fund established pursuant to this subchapter to the Department of Health and concurrently submit its recommendations in writing to the House Committees on Appropriations and on Humans Services and the Senate Committees on Appropriations and on Health and Welfare.

(f) Meetings.

(1) The Commissioner of Health shall call the first meeting of the Advisory Committee to occur on or before June 30, 2022.

(2) The Advisory Committee shall meet at least quarterly but not more than six times per calendar year.

(3) The Advisory Committee shall adopt procedures to govern its proceedings, including voting procedures and how the staggered terms shall be apportioned among members.

(4) All meetings of the Advisory Committee shall be consistent with Vermont's Open Meeting Law pursuant to 1 V.S.A. chapter 5, subchapter 2.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Advisory Committee serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than six meetings per year. These payments shall be appropriated from the Opioid Abatement Special Fund.

(2) Other members of Advisory Committee 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 per year. These payments shall be appropriated from the Opioid Abatement Special Fund.

§ 4773. DESIGNATION OF LEAD STATE AGENCY

The Department of Health shall serve as the lead State agency and single point of contact for submitting requests for funding to the national settlement fund administrator. Approved requests shall be disbursed to the Department for deposit into the Opioid Abatement Special Fund established in section 4774 of this subchapter.

§ 4774. OPIOID ABATEMENT SPECIAL FUND

(a)(1) There is created the Opioid Abatement Special Fund, a special fund established and managed pursuant to 32 V.S.A. chapter 7, subchapter 5 and administered by the Department of Health. The Opioid Abatement Special Fund shall consist of all abatement account fund monies disbursed by the national settlement fund administrator to the Department.

(2) The Department shall include a spending plan, informed by the recommendations of the Opioid Settlement Advisory Committee established pursuant to section 4772 of this subchapter, as part of its annual budget submission, and once approved, the Department shall request to have the funds formally released from the national abatement accounts fund. The Department shall disburse monies from the Opioid Abatement Special Fund pursuant to 32 V.S.A. chapter 7, subchapter 3.

(3) Disbursements from the Opioid Abatement Special Fund shall supplement and not supplant or replace any existing or future local, State, or federal government funding for infrastructure, programs, supports, and resources, including health insurance benefits, federal grant funding, and Medicaid and Medicare funds.

(b) Expenditures from the Opioid Abatement Special Fund shall be used for the following opioid prevention, intervention, treatment, recovery, harm reduction, and evaluation activities:

(1) preventing overdose deaths and other harms;

(2) treatment of opioid use disorder;

(3) support for individuals in treatment and recovery and their families;

(4) connecting individuals who need help to the help needed;

(5) addressing the needs of criminal justice-involved persons;

(6) addressing the needs of pregnant or parenting individuals and their families, including babies with neonatal abstinence syndrome;

(7) preventing overprescribing and ensuring appropriate prescribing and dispensing of opioids;

(8) preventing the misuse of opioids;

(9) educating law enforcement and other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs and providing wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events;

(10) supporting efforts to provide leadership, planning, coordination, facilitation, training, and technical assistance to abate the opioid epidemic;

(11) researching opioid abatement;

(12) implementing other evidence-based or evidence-informed programs or strategies that support prevention, harm reduction, treatment, or recovery of opioid use disorder and any co-occurring substance use or mental health disorder; and

(13) the cost of the administrative, technical, and legal assistance provided to the Advisory Committee by the Department of Health.

(c) Priority for expenditures from the Opioid Abatement Special Fund shall be aimed at reducing overdose deaths, including the following:

(1) promoting the appropriate use of naloxone and other U.S. Food and Drug Administration-approved drugs to reverse opioid overdoses, specifically:

(A) expanding training for first responders, schools, community support groups, families; and

(B) increasing distribution to individuals who are uninsured or whose health insurance does not cover the needed goods and services;

(2) increasing access to medication-assisted treatment and other opioid-related treatment, specifically:

(A) increasing distribution of medication-assisted treatment to individuals who are uninsured or whose health insurance does not cover the needed goods and services;

(B) providing education to school-based and youth-focused programs that discourage or prevent misuse, including how to access opioid use disorder treatment;

(C) providing medication-assisted education and awareness training to health care providers, emergency medical technicians, law enforcement, and other first responders; and

(D) providing treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allows or integrates medication and other support services;

(3) assisting pregnant and postpartum individuals, specifically;

(A) enhancing services for expanding screening, brief intervention, and referral to treatment (SBIRT) services to non-Medicaid eligible or uninsured pregnant individuals;

(B) expanding comprehensive evidence-based or evidence-informed treatment and recovery services, including medication-assisted treatment, for individuals with co-occurring opioid use disorder and other substance or mental health disorders for up to 12 months postpartum; and

(C) providing comprehensive wraparound services to pregnant and postpartum individuals with opioid use disorder, including housing, transportation, job placement, training, and child care;

(4) expanding treatment for neonatal abstinence syndrome (NAS), specifically:

(A) expanding comprehensive evidence-based or evidence-informed recovery support for babies with NAS;

(B) expanding services for better continuum of care to address infant needs and support the parent-child relationship; and

(C) expanding long-term treatment and services for medical monitoring of babies with NAS and their families;

(5) expanding the availability of warm handoff programs and recovery services, specifically:

(A) expanding services such as navigators and on-call teams to begin medication-assisted treatment in hospital emergency departments;

(B) expanding warm handoff services to transition to recovery services;

(C) broadening the scope of recovery services to include co-occurring substance use disorder or mental health conditions;

(D) providing comprehensive wraparound services to individuals in recovery, including housing, transportation, job placement, training, and child care; and

(E) hiring additional workers to facilitate the expansions listed in this subdivision (5);

(6) treating incarcerated populations, specifically;

(A) providing evidence-based or evidence-informed treatment and recovery support, including medication-assisted treatment for individuals with

opioid use disorder or co-occurring substance use or mental health disorders while transitioning out of the criminal justice system; and

(B) increasing funding for correctional facilities to provide treatment and recovery support to inmates with opioid use disorder;

(7) supporting prevention programs, specifically;

(A) funding for media campaigns to prevent opioid misuse;

(B) funding for evidence-based or evidence-informed prevention in schools;

(C) funding for health care provider education and outreach regarding best prescribing practices for opioids consistent with current Department of Health and U.S. Centers for Disease Control and Prevention guidelines, including providers at hospitals;

(D) funding for community drug disposal programs; and

(E) funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to mental health services and supports;

(8) expanding syringe service programs, specifically providing comprehensive syringe services programs with more wraparound services, including linkages to opioid use disorder treatment, access to sterile syringes, and linkages to care and treatment of infectious diseases; and

(9) facilitating evidence-based or evidence-informed data collection and research analyzing and evaluating the effectiveness of the abatement strategies within Vermont.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

Rep. Fagan of Rutland City, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Human Services and when further amended as follows:

First: In Sec. 1, 18 V.S.A. chapter 93, in section 4772, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Membership.

(1) The Advisory Committee shall be composed of the following members and shall reflect the diversity of Vermont in terms of gender, race,

age, ethnicity, sexual orientation, gender identity, disability status, and socioeconomic status and ensure inclusion of individuals with lived experience of opioid use disorder and their family members whenever possible:

(A) the Commissioner of Health or designee, who shall serve as a nonvoting chair;

(B) the Chief Prevention Officer established pursuant to 3 V.S.A. § 2321;

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

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

(E) a primary care prescriber with experience providing medication-assisted treatment within the Blueprint for Health hub and spoke model, appointed by the Executive Director of the Blueprint for Health, to provide a statewide perspective on the provision of medication-assisted treatment services;

(F) a provider with academic research credentials, appointed by the University of Vermont, to provide a statewide perspective on academic research relating to opioid use disorder;

(G) two individuals with lived experience of opioid use disorder, including at least one of whom is in recovery, one member appointed by the Howard Center's Safe Recovery program and one member appointed by the Vermont Association of Mental Health and Addiction Recovery, to provide a statewide perspective on the experience of living with opioid use disorder;

(H) an assistant judge, appointed by the Vermont Association of County Judges; and

(I) seven individuals, each employed by or an agent of a different city or town that collectively reflect Vermont's diverse population and geography, appointed by the Vermont League of Cities and Towns.

(2)(A) The term of office of each appointed member shall be four years. Of the members first appointed, eight shall be appointed for a term of three years and eight shall be appointed for a term of four years. Members shall hold office for the term of their appointments and until their successors have been appointed. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. Members are eligible for reappointment.

(B) A member may be removed from the Advisory Committee by the member's appointing entity for cause, which includes only neglect of duty, gross misconduct, conviction of a crime, or inability to perform the responsibilities of the office. The Chair of the Advisory Committee shall simultaneously notify the Governor, the Speaker of the House, and the President Pro Tempore that the member has been removed from the Advisory Committee.

Second: In Sec. 1, 18 V.S.A. chapter 93, in section 4772, in subsection (f), in subdivision (3), by inserting "and organization" after "proceedings"

Third: By adding a new Sec. 2 to read as follows:

Sec. 2. FY23 ADVISORY COMMITTEE EXPENSES; ANTICIPATION OF RECEIPTS

In fiscal year 2023, the Department of Health shall pay the administrative costs and any other expenses related to the activities of the Opioid Settlement Advisory Committee established pursuant to 18 V.S.A. § 4772 in anticipation of receipts.

and by renumbering the remaining section to be numerically correct.

(Committee Vote:10-0-1)

H. 716

An act relating to making miscellaneous changes in education law.

(Rep. Webb of Shelburne will speak for the Committee on Education.)

Rep. Beck of St. Johnsbury, for the Committee on Ways and Means, recommends the bill ought to pass when amended as follows:

In Sec. 1, 16 V.S.A. § 2961 in subdivision (d)(1)(A), by striking out subdivision (i) in its entirety and inserting in lieu thereof a new subdivision (i) to read as follows:

(i) the average amount it received for fiscal years 2018, 2019, and 2020, or the average amount it received for fiscal years 2019, 2020, and 2021, whichever amount is greater, from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(Committee Vote 11-0-0)

Rep. Scheu of Middlebury, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Ways and Means.

(Committee Vote:10-0-1)

Favorable

S. 4

An act relating to procedures involving firearms

Rep. Notte of Rutland City, for the Committee on Judiciary, recommends that the bill ought to pass in concurrence.

(Committee Vote:6-4-1)

(For text see Senate Journal of March 11, 2022)

Governor's Veto

S. 30

An act relating to prohibiting possession of firearms within hospital buildings.

Text of Veto Message

The text of the communication from His Excellency, the Governor, whereby he vetoed and returned unsigned **Senate Bill S. 30** to the Senate is as follows:

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I'm returning S. 30, *An act relating to prohibiting possession of firearms within hospital buildings* without my signature.

In 2018, I called for and signed the most comprehensive gun safety measures in our state's history. We established universal background check requirements; authorized extreme risk protection orders (i.e., "red flag" laws), providing tools to prevent someone from having a gun if there is credible evidence they may harm themselves or others; strengthened the ability of law enforcement to seize firearms from those accused of domestic violence; enhanced age requirements; and prohibited the sale and possession of bump stocks and large capacity magazines. This was a comprehensive, and historic, set of policies that take reasonable steps to help keep firearms out of the hands of people who should not have them. It's my belief that we need to give these new provisions more time to be fully understood and utilized, and that the Legislature should focus on educating Vermonters on these changes – and on

addressing Vermont's mental health crisis – before additional gun laws are passed.

However, as I've also said, I'm open to a discussion about improving existing law to address the so-called "Charleston Loophole" and I'm offering a path forward below. This refers to a provision in federal law that provides automatic approval to someone who is buying a gun if a federal background check through the National Instant Criminal Background Check System (also known as NICS) doesn't produce a "red light" (i.e., reporting they are ineligible) within three business days.

S. 30 increases that timeframe from three days to an unlimited amount of time without acknowledging that an application expires in 30 days. So instead of holding the federal government accountable to complete the background check in a timely manner, it shifts all the burden away from government – where responsibility was intentionally placed in federal law – entirely onto the citizen. Law abiding citizens who become the victims of a government administrative error must themselves gather all applicable law enforcement and court records and try to understand and navigate a complex maze of federal bureaucratic process to try to rectify their "yellow" status.

For these reasons, I believe going from three to effectively 30 days is excessive and unreasonable for law-abiding citizens who wish to purchase a firearm for their own personal safety or for other lawful and constitutionally protected purposes.

However, I'm willing to work with the Legislature to find a path forward that gives the federal government more time to fulfill its obligations to complete background checks, without denying law-abiding citizens of their right to a fair and reasonable process.

A more reasonable standard would be to increase the current three-day waiting period to seven business days to allow the federal government additional time to resolve issues and make a final determination.

Given this bill's effective date of July 1, 2022, the Legislature has ample time to address my concerns and send me a bill I can sign.

Based on the objections outlined above I'm returning this legislation without my signature pursuant to Chapter II, Section 11 of the Vermont Constitution.

Sincerely,

Philip B. Scott

Governor

Action Postponed Until March 17, 2022

Favorable with Amendment

H. 629

An act relating to access to adoption records

Rep. Goslant of Northfield, for the Committee on Judiciary, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

The purpose of this act is to permit an adopted person who is 18 years of age or older to obtain a certified copy of the person's original birth certificate regardless of whether the adoptee's former parent has consented to such disclosure.

Sec. 2. 15A V.S.A. § 3-802 is amended to read:

§ 3-802. ISSUANCE OF NEW, AMENDED BIRTH CERTIFICATE

* * *

(c) In the case of birth certificates registered prior to July 1, 2019 that are to be replaced or amended pursuant to subdivision (a)(1) or (5) of this section, the State Registrar shall notify the town clerk or clerks with custody of the certificate, who shall substitute the new or amended birth certificate for the original birth certificate. The Except as otherwise provided in this title, the original certificate and all copies of the certificate in the files shall be sealed and shall not be subject to inspection or copying until 99 years after the adoptee's date of birth, except as provided by this title.

* * *

Sec. 3. 15A V.S.A. § 6-105 is amended to read:

§ 6-105. DISCLOSURE OF IDENTIFYING INFORMATION

(a) ~~Identifying~~ Unless a former parent has filed a request for nondisclosure, identifying information about an adoptee's former parent shall be disclosed by the registry to any of the following persons upon request:

(1) ~~An an~~ an adoptee who is 18 ~~or more years old.~~ of age or older;

(2) ~~An an~~ an adoptee who is emancipated; ~~and~~

(3) ~~A a~~ a deceased adoptee's direct descendant who is 18 ~~or more years old of age or older~~ or the parent or guardian of a direct descendant who is less than 18 years old of age.

~~(b) From July 1, 1996 to December 31, 1997, the registry shall disclose identifying information under subsection (a) of this section only if the former parent consents to such disclosure. After December 31, 1997, the registry shall disclose information under subsection (a) of this section as follows:~~

~~(1) For adoptions that were finalized prior to July 1, 1986, the registry shall disclose identifying information if the former parent has filed in any Probate Division of the Superior Court or agency any kind of document that clearly indicates that he or she consents to such disclosure.~~

~~(2) For adoptions that were finalized on or after July 1, 1986, the registry shall disclose identifying information without requiring the consent of the former parent except the registry shall not disclose such information if the former parent has filed a request for nondisclosure in accordance with the provisions of section 6-106 of this title and has not withdrawn the request or, prior to July 1, 1996, has filed in any court or agency any kind of document that clearly indicates that his or her identity not be disclosed and has not withdrawn the document. [Repealed]~~

(c) An adult descendant of a deceased former parent or the guardian of a former parent who has been declared incompetent may consent to the disclosure of information as provided for in subsection (a) of this section.

(d) If an adoptee, who is 18 ~~or more~~ years ~~old~~, of age or older consents, identifying information about the adoptee shall be disclosed by the registry to any of the following persons upon request:

(1) ~~The~~ the adoptee's former parent; and

(2) ~~The~~ the adoptee's sibling who is 18 ~~or more~~ years ~~old~~ of age or older.

(e) Identifying information about the adoptee shall be disclosed to the adoptee's former parent if the parent of an adoptee who is less than 18 years ~~old~~ of age consents to the disclosure.

(f) Identifying information about a deceased adoptee shall be disclosed by the registry to the adoptee's former parent or sibling upon request if:

(1) the deceased adoptee's direct descendant is 18 ~~or more~~ years ~~old~~ of age or older and consents to the disclosure; or

(2) the parent or guardian of a direct descendant who is less than 18 years ~~old~~ of age consents to the disclosure.

(g) Identifying information about a sibling of an adoptee shall be disclosed by the registry to the adoptee upon request if both the sibling and the adoptee are 18 ~~or more~~ years ~~old~~ of age or older and the sibling consents to disclosure.

Sec. 4. 15A V.S.A. § 6-106 is amended to read:

§ 6-106. REQUEST FOR NONDISCLOSURE

~~A former parent of an adoptee may prevent disclosure of identifying information about himself or herself by filing a request for nondisclosure with the registry as provided in section 6-105 of this title. A request for nondisclosure may be withdrawn by a former parent at any time. If a former parent of an adoptee filed a request for nondisclosure of identifying information prior to July 1, 2024, the request shall be honored and a request for disclosure of identifying information made pursuant to section 6-105 of this title shall be denied. This section shall not be interpreted to interfere with a person's right to obtain a copy of an original birth certificate pursuant to section 6-107 of this title.~~

Sec. 5. 15A V.S.A. § 6-107 is amended to read:

§ 6-107. RELEASE OF ORIGINAL BIRTH CERTIFICATE

~~(a) A copy of the adoptee's original birth certificate may be released to the adoptee upon the request of an adoptee who has attained the age of 18 and who has access to identifying information under this article. certified copy of an adoptee's original birth certificate and any evidence of the adoption previously filed with the State Registrar shall be released to persons identified in subsection 6-105(a) of this title upon request. The copy of the original birth certificate shall clearly indicate that it may not be used for identification purposes. The State Registrar shall develop a notice to accompany an original birth certificate requested pursuant to this section that advises the requestor of the potential availability of former parent contact preference information that may be obtained through the Registry.~~

(b) When 99 years have elapsed after the date of birth of an adoptee whose original birth certificate is sealed under this title, the Department of Health shall unseal the original certificate and file it with any new or amended certificate that has been issued. The unsealed certificate becomes a public record in accordance with any statute or regulation applicable to the retention and disclosure of birth certificates.

~~(c)(1) A person who is listed as a parent on an adoptee's original birth certificate may file a contact preference form with the Registry. The contact preference form shall be developed by the Registry and shall indicate whether the parent would:~~

~~(A) like to be contacted by the adoptee;~~

~~(B) prefer to be contacted by the adoptee only through an intermediary; or~~

(C) prefer not to be contacted by the adoptee at this time.

(2) A contact preference form may be withdrawn or revised at any time.

(d) Upon filing with the Registry, the contact preference form shall be confidential and exempt from public inspection and copying under the Public Records Act pursuant to section 6-102 of this title.

(e) Upon request, persons identified in subsection 6-105(a) of this title may receive from the Registry the indicated contact preference choice from the filed contact preference form or nondisclosure form provided by the adoptee's former parent.

Sec. 6. 15A V.S.A. § 6-111 is amended to read:

§ 6-111. PUBLIC NOTICE OF STATUTORY CHANGE

The Department, with the cooperation of other departments of State government, shall make reasonable efforts to notify members of the public who may be affected by changes in statute governing the release of identifying and nonidentifying information and access to original birth certificates, including:

(1) informing the general public by submitting press releases to the news media in Vermont and other states;

(2) informing adoptee, birth parent, and genealogy groups in Vermont and other states;

(3) including information in motor vehicle registration and license renewals;

(4) including information in appropriate locations on the Internet; and

(5) contacting the adoption coordinators in each state and determining what agencies or groups in that state should be notified.

Sec. 7. 15A V.S.A. § 6-112 is amended to read:

§ 6-112. ACTION FOR DISCLOSURE OF INFORMATION

(a) A person denied disclosure of information under section 6-104, ~~subdivision 6-105(b)(1) or (2), or section 6-107~~ of this title may file a petition in the court to obtain the information being sought.

(b) In determining whether to grant a petition under this section, the court shall review the records of the relevant proceeding for adoption and shall make specific findings concerning:

(1) the reasons the information is sought;

~~(2) whether the individual about whom information is sought has filed a request for nondisclosure under section 6-106 of this title or any other kind of document requesting that his or her identity not be disclosed, has not filed any document, or has otherwise indicated a preference regarding the disclosure of his or her identity; [Repealed.]~~

~~(3) if known, whether the individual about whom information is sought is alive;~~

~~(4) whether it is possible to satisfy the petitioner's request without disclosing the identity of another individual; and~~

~~(5) the expressed needs of the adoptee, including the emotional and mental health needs of the adoptee.~~

~~(c) Before making a determination under this section, the court shall make a reasonable effort to confidentially contact the person whose identity is being sought in order to determine that person's response to the petition and shall consider any response in reaching its decision.~~

~~(d) If the reason the petitioner was denied disclosure was due to the fact that there was no consent on file and there is no request for nondisclosure filed under section 6-106 or any other kind of document in the court or agency that clearly indicates that the identity of the person being sought not be disclosed, the court shall order disclosure of the requested information if the court finds by a preponderance of the evidence that disclosure is in the best interests of the petitioner and that disclosure is unlikely to cause harm to the person whose identity is being sought. [Repealed.]~~

~~(e) If the reason the petitioner was denied disclosure was due to the fact that there was no consent on file and a request for nondisclosure was filed under section 6-106 or any kind of document was filed in the court or agency that clearly indicates that the identity of the person being sought not be disclosed, the court shall not make a search under subsection (c) of this section and shall not order the disclosure of the requested information except for compelling reasons. [Repealed.]~~

Sec. 8. IMPLEMENTATION

Not later than September 1, 2022, the Department for Children and Families shall:

(1) develop contact preference forms and make such forms readily available to the public; and

(2) initiate plans to notify members of the public about this act.

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 1 and 8 shall take effect on passage.

(b) Secs. 2–7 shall take effect July 1, 2024.

(Committee Vote: 10-1-0)

Action Postponed Until April 20, 2022

Governors Veto

H. 157

An act relating to registration of construction contractors.

For Text of Veto Message, please see House Journal of February 10, 2022

For Informational Purposes

Crossover Deadline

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and on Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 11, 2022**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by **Friday, March 11, 2022**.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and on Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 18, 2022**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

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

Information Notice

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

JFO #3089 - \$6,589,481 to the VT Agency of Human Services, Dept of Disabilities, Aging and Independent Living from U.S. Dept of Education. Funds to establish a system and to provide support for 500 Vermonters with disabilities to achieve credentials leading to high-wage employment. Includes eight (8) limited-service positions: one (1) Project Director; six (6) VR

Counselor/Career Navigator; one (1) Assistive Technology Specialist funded through 9/30/2026.

[Received 2/17/2022, expedited review requested 2/17/2022]

JFO #3090 –Three (3) limited-service positions: Military Project Manager. Positions needed to replace Federal personnel reductions in project management and program management staffing levels. VT Military confirms the positions are fully funded through the Master Cooperative Agreement through 9/30/24. *[Received February 17, 2022]*

JFO #3091 - \$60,528 to the VT Department of Public Safety from the National Governor’s Association to fund the Agency of Digital Services staff to assist the Department of Public Safety with IT concerns specific to improving multi-agency information sharing and governance. *[Received February 17, 2022]*