

# House Calendar

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Thursday, March 17, 2022

73rd DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 P.M.

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**ACTION CALENDAR**

**Action Postponed Until March 17, 2022**

**Favorable with Amendment**

**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. 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~~ 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 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. 266**

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

**H. 399**

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

**H. 475**

An act relating to the classification system for criminal offenses

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An act relating to the Petroleum Cleanup Fund

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An act relating to miscellaneous cannabis establishment procedures

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

**H. 715**

An act relating to the Clean Heat Standard

**H. 722**

An act relating to final reapportionment of the House of Representatives

**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.~~

~~(c) [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.~~

~~(e) 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 entirety 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)**

**Amendment to be offered by Reps. Higley of Lowell, Anthony of Barre City, Colston of Winooski, Copeland Hanzas of Bradford, Gannon of Wilmington, Hooper of Burlington, LaClair of Barre Town, Lefebvre of Orange, McCarthy of St. Albans City, Mrowicki of Putney and Vyhovsky of Essex to the recommendation of amendment of the Committee on Government Operations to H. 465**

By striking out Sec. 9, 3 V.S.A. § 269, and its reader assistance heading, and Sec. 10, board and commission applications; criminal records; personal financial history; report, in their entirety and by renumbering the remaining section to be numerically correct.

### **H. 518**

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

**Rep. Sibilia 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.

(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.

(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~~ 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.~~

~~(c)(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

**NOTICE CALENDAR**  
**Favorable with Amendment**  
**H. 492**

An act relating to the structure of the Natural Resources Board

**Rep. Bongartz of Manchester**, for the Committee on Natural Resources, Fish, and Wildlife, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Natural Resources Board \* \* \*

Sec. 1. PURPOSE

The purpose of this act is to strengthen the administration of the Act 250 program by changing the structure, function, and name of the Natural Resources Board. This act requires that appeals of Act 250 permit decisions be heard by a five-member board called the Environmental Review Board. The Environmental Division of the Superior Court would continue to hear the other types of cases within its jurisdiction. The Environmental Review Board would keep the current duties of the Natural Resources Board in addition to hearing appeals. This change would allow the Act 250 program to return to how it was originally envisioned when enacted by being a citizen-friendly process. The Board would provide oversight, management, and training to the Act 250 program staff and District Commissions and develop Act 250 program policy through permit decisions and rulemaking.

Sec. 2. 10 V.S.A. § 6021 is amended to read:

§ 6021. BOARD; VACANCY;<sup>2</sup> REMOVAL

(a) ~~A Natural Resources Board~~ established. The Environmental Review Board is created to administer the Act 250 program and hear appeals.

(1) The Board shall consist of five members appointed by the Governor, after review and approval by the Environmental Review Board Nominating Committee in accordance with subdivision (2) of this section and confirmed with the advice and consent of the Senate, so that one appointment expires in each year. The Chair shall be a full-time position, and the other four members shall be half-time positions. In making these appointments, the Governor and the Senate shall give consideration to candidates who have experience, expertise, or skills relating to the environment or land use one or more of the following areas: environmental science, natural resources law and policy, land use planning, community planning, or environmental justice.

(A) The Governor shall appoint a chair of the Board, a position that shall be a full-time position. The Governor shall ensure Board membership shall reflect, to the extent possible, the racial, ethnic, gender, and geographic diversity of the State. The Board shall not contain two members who reside in the same county.

(B) Following initial appointments, the members, ~~except for the Chair,~~ shall be appointed for terms of ~~four~~ five years. All terms shall begin on July 1 and expire on June 30. A member may continue serving until a successor is appointed. The initial appointments shall be for staggered terms.

(2) ~~The Governor shall appoint up to five persons, with preference given to former Environmental Board, Natural Resources Board, or District Commission members, with the advice and consent of the Senate, to serve as alternates for Board members.~~

(A) ~~Alternates shall be appointed for terms of four years, with initial appointments being staggered~~ The Environmental Review Board Nominating Committee shall advertise the position when a vacancy will occur on the Environmental Review Board.

(B) ~~The Chair of the Board may assign alternates to sit on specific matters before the Board in situations where fewer than five members are available to serve~~ The Nominating Committee shall review the applicants to determine which are well-qualified for appointment to the Board and shall recommend those candidates to the Governor. The names of candidates shall be confidential.

(C) The Governor shall appoint, with the advice and consent of the Senate, a chair and four members of the Board from the list of well-qualified candidates sent to the Governor by the Committee.

(b) ~~Any vacancy occurring in the membership of the Board shall be filled by the Governor for the unexpired portion of the term~~ Terms; vacancy; succession. The term of each appointment subsequent to the initial appointments described in subsection (a) of this section shall be five years. Any appointment to fill a vacancy shall be for the unexpired portion of the term vacated. A member may seek reappointment by informing the Governor. If the Governor decides not to reappoint the member, the Nominating Committee shall advertise the vacancy.

(c) Removal. Notwithstanding the provisions of 3 V.S.A. § 2004, members shall only be removable for cause ~~only, except the Chair, who shall serve at the pleasure of the Governor~~ by the remaining members of the Board in accordance with the Vermont Administrative Procedures Act. The Board shall

adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

(d) Disqualified members. The Chair of the Board, upon request of the Chair of a District Commission, may appoint and assign former Commission members to sit on specific Commission cases when some or all of the regular members and alternates of the District Commission are disqualified or otherwise unable to serve.

(e) Retirement from office. When a Board member who hears all or a substantial part of a case retires from office before the case is completed, the member may remain a member of the Board, at the member's discretion, for the purpose of concluding and deciding that case and signing the findings and judgments involved. A retiring Chair shall also remain a member for the purpose of certifying questions of law if a party appeals to the Supreme Court. For the service, the member shall receive a reasonable compensation to be fixed by the remaining members of the Board and necessary expenses while on official business.

Sec. 3. 10 V.S.A. § 6032 is added to read:

§ 6032. ENVIRONMENTAL REVIEW BOARD NOMINATING

COMMITTEE

(a) Creation. The Environmental Review Board Nominating Committee is created for the purpose of assessing the qualifications of applicants for appointment to the Environmental Review Board in accordance with section 6021 of this title.

(b) Members. The Committee shall consist of seven members who shall be appointed as follows:

(1) The Governor shall appoint three members from the Executive Branch, with at least one being an employee of the Department of Human Resources.

(2) The Speaker of the House of Representatives shall appoint two members from the House of Representatives.

(3) The Senate Committee on Committees shall appoint two members from the Senate.

(c) Terms. The members of the Committee shall serve for terms of two years. Members shall serve until their successors are appointed. Members shall serve not more than three consecutive terms in any capacity. A legislative member who is appointed as a member of the Committee shall retain the position for the term appointed to the Committee even if the member

is subsequently not reelected to the General Assembly during the member's term on the Committee.

(d) Chair. The members shall elect their own chair.

(e) Quorum. A quorum of the Committee shall consist of four members.

(f) Staff and services. The Committee is authorized to use the staff and services of appropriate State agencies and departments as necessary to conduct investigations of applicants.

(g) Confidentiality. Except as provided in subsection (h) of this section, proceedings of the Committee, including the names of candidates considered by the Committee and information about any candidate submitted to the Governor, shall be confidential. The provisions of 1 V.S.A. § 317(e) (expiration of Public Records Act exemptions) shall not apply to the exemptions or confidentiality provisions in this subsection.

(h) Public information. The following shall be public:

(1) operating procedures of the Committee;

(2) standard application forms and any other forms used by the Committee, provided they do not contain personal information about a candidate or confidential proceedings;

(3) all proceedings of the Committee prior to the receipt of the first candidate's completed application; and

(4) at the time the Committee sends the names of the candidates to the Governor, the total number of applicants for the vacancies and the total number of candidates sent to the Governor.

(i) Reimbursement. Legislative members of the Committee shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 23. Compensation and reimbursement shall be paid from the legislative appropriation.

(j) Duties.

(1) When a vacancy occurs, the Committee shall review applicants to determine which are well-qualified for the Board and submit those names to the Governor. The Committee shall submit to the Governor a summary of the qualifications and experience of each candidate whose name is submitted to the Governor, together with any further information relevant to the matter.

(2) An applicant for the position of member of the Environmental Review Board shall not be required to be an attorney. If the candidate is admitted to practice law in Vermont or practices a profession requiring

licensure, certification, or other professional regulation by the State, the Committee shall submit the candidate's name to the Court Administrator or the applicable State professional regulatory entity, and that entity shall disclose to the Committee any professional disciplinary action taken or pending concerning the candidate.

(3) Candidates shall be sought who have experience, expertise, or skills relating to one or more of the following areas: environmental science, natural resources law and policy, land use planning, community planning, or environmental justice.

(4) The Committee shall ensure a candidate possesses the following attributes:

(A) Integrity. A candidate shall possess a record and reputation for excellent character and integrity.

(B) Impartiality. A candidate shall exhibit an ability to make judicial determinations in a manner free of bias.

(C) Work ethic. A candidate shall demonstrate diligence.

(D) Availability. A candidate shall have adequate time to dedicate to the position.

Sec. 4. 10 V.S.A. § 6025 is amended to read:

§ 6025. RULES

(a) The Board may adopt rules of procedure for itself and the District Commissions. The Board shall adopt rules of procedure that govern appeals and other contested cases before it that are consistent with this chapter.

\* \* \*

Sec. 5. 10 V.S.A. § 6027 is amended to read:

§ 6027. POWERS

(a) The Board and District Commissions each shall have supervisory authority in environmental matters respecting projects within their jurisdiction and shall apply their independent judgment in determining facts and interpreting law. Each shall have the power, with respect to any matter within its jurisdiction, to:

(1) administer oaths, take depositions, subpoena and compel the attendance of witnesses, and require the production of evidence;

(2) allow parties to enter upon lands of other parties for the purposes of inspecting and investigating conditions related to the matter before the Board or Commission;

(3) enter upon lands for the purpose of conducting inspections, investigations, examinations, tests, and site evaluations as it deems necessary to verify information presented in any matter within its jurisdiction; and

(4) apply for and receive grants from the federal government and from other sources.

(b) The powers granted under this chapter are additional to any other powers ~~which~~ that may be granted by other legislation.

(c) ~~The Natural Resources Board~~ may designate or establish ~~such~~ regional offices as it deems necessary to implement the provisions of this chapter and the rules adopted ~~hereunder~~. ~~The Natural Resources Board~~ may designate or require a regional planning commission to receive applications, provide administrative assistance, perform investigations, and make recommendations.

(d) At the request of a District Commission, if the Board Chair determines that the workload in the requesting district is likely to result in unreasonable delays or that the requesting District Commission is disqualified to hear a case, the Chair may authorize the District Commission of another district to sit in the requesting district to consider one or more applications.

(e) ~~The Natural Resources Board~~ may by rule allow joint hearings to be conducted with specified State agencies or specified municipalities.

(f) ~~The Board shall publish its decisions online.~~ The Board may publish online or contract to publish annotations and indices of its decisions, the decisions of the Environmental Division of the Superior Court and the Supreme Court, and the text of those decisions. The published product shall be available at a reasonable rate to the general public and at a reduced rate to libraries and governmental bodies within the State.

(g) ~~The Natural Resources Board~~ shall manage the process by which land use permits are issued under section 6086 of this title, may initiate enforcement on related matters under the provisions of chapters 201 and 211 of this title, and may ~~petition the Environmental Division~~ initiate and hear petitions for revocation of land use permits issued under this chapter. Grounds for revocation are:

(1) noncompliance with this chapter, rules adopted under this chapter, or an order that is issued that relates to this chapter;

(2) noncompliance with any permit or permit condition;



(3) failure to disclose all relevant and material facts in the application or during the permitting process;

(4) misrepresentation of any relevant and material fact at any time;

(5) failure to pay a penalty or other sums owed pursuant to, or other failure to comply with, court order, stipulation agreement, schedule of compliance, or other order issued under Vermont statutes and related to the permit; or

(6) failure to provide certification of construction costs, as required under subsection 6083a(a) of this title, or failure to pay supplemental fees as required under that section.

(h) ~~The Natural Resources Board may hear appeals of fee refund requests under section 6083a of this title. The Board shall hear appeals of decisions made by District Commissions and district coordinators.~~

(i) The Chair, subject to the direction of the Board, shall have general charge of the offices and employees of the Board and the offices and employees of the District Commissions.

(j) ~~The Natural Resources Board may participate as a party in all matters before the Environmental Division that relate to land use permits issued under this chapter. [Repealed.]~~

\* \* \*

Sec. 6. 10 V.S.A. § 6028 is amended to read:

§ 6028. COMPENSATION

Members of the ~~Board and~~ District Commissions shall receive per diem pay of \$100.00 and all necessary and actual expenses ~~in accordance with 32 V.S.A. § 1010.~~ Per diem pay shall be available for time spent reviewing permit applications and for time spent making decisions on permit applications. Per diem requests shall be approved or denied by the Executive Director.

Sec. 7. 10 V.S.A. § 6022 is amended to read:

§ 6022. PERSONNEL

(a) Regular personnel. The Board may appoint legal counsel, scientists, engineers, experts, investigators, temporary employees, and administrative personnel as it finds necessary in carrying out its duties, ~~unless the Governor shall otherwise provide in providing personnel to assist the District Commissions and in investigating matters within its jurisdiction.~~

(b) Personnel for particular proceedings.

(1) Retention.

(A) The Board may authorize or retain legal counsel, official stenographers, expert witnesses, advisors, temporary employees, and other research services:

(i) to assist the Board in any proceeding before it under this chapter; and

(ii) to monitor compliance with any formal opinion of the Board or a District Commission.

(B) The personnel authorized by this section shall be in addition to the regular personnel of the Board. The Board shall fix the amount of compensation and expenses to be paid to such additional personnel.

(2) Assessment of costs.

(A) The Board may allocate to an applicant the portion of its expenses incurred by retaining additional personnel for a proceeding. On petition of an applicant to which costs are proposed to be allocated, the Board shall review and determine, after opportunity for hearing, the necessity and reasonableness of those costs, having due regard for the size and complexity of the project, and may amend or revise an allocation.

(B) Prior to allocating costs, the Board shall make a determination of the purpose and use of the funds to be raised under this section, identify the recipient of the funds, provide for allocation of costs among applicants to be assessed, indicate an estimated duration of the proceedings, and estimate the total costs to be imposed. With the approval of the Board, estimates may be revised as necessary. From time to time during the progress of the work, the Board shall render to the applicant detailed statements showing the amount of money expended or contracted for in the work of additional personnel, which statements shall be paid into the State Treasury at the time and in the manner as the Board may reasonably direct.

(C) All payments for costs allocated pursuant to this section shall be deposited into the fund created under section 6029 of this title.

(c) Executive Director. The Board shall appoint an Executive Director. The Director shall be a full-time State employee, shall be exempt from the State classified system, and shall serve at the pleasure of the Board. The Director shall be responsible for:

(1) supervising and administering the operation and implementation of this chapter and the rules adopted by the Board as directed by the Board;

(2) assisting the Board in its duties and administering the requirements of this chapter;

(3) employing such staff as may be required to carry out the functions of the Board; and

(4) preparing an annual budget for submission to the Board.

Sec. 8. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS; COMMENCEMENT OF REVIEW

(a) ~~On or before the date of~~ Upon the filing of an application with the District Commission, the ~~applicant~~ District Commission shall send, by electronic means, notice ~~and a copy~~ of the ~~initial~~ application to the owner of the land if the applicant is not the owner; the municipality in which the land is located; the municipal and regional planning commissions for the municipality in which the land is located; the Vermont Agency of Natural Resources; and any adjacent Vermont municipality and municipal and regional planning commission if the land is located on a municipal or regional boundary. The ~~applicant shall furnish to the~~ District Commission ~~the names of those furnished notice by affidavit, and shall post~~ send by electronic means a copy of the notice ~~in~~ to the town clerk's office of the town or towns in which the project lies. The town clerk shall post the notice in the town office. The applicant shall also provide a list of adjoining landowners to the District Commission. Upon request and for good cause, the District Commission may authorize the applicant to provide a partial list of adjoining landowners in accordance with Board rules.

\* \* \*

(e) Any notice for a major or minor application, as required by this section, shall also be published by the District Commission in a local newspaper generally circulating in the area where the development or subdivision is located and on the Board's website not more than ten days after receipt of a complete application.

\* \* \*

Sec. 9. 10 V.S.A. § 6089 is amended to read:

§ 6089. APPEALS

~~Appeals of any act or decision of a District Commission under this chapter or a district coordinator under subsection 6007(e) of this title shall be made to the Environmental Division in accordance with chapter 220 of this title. For~~

~~the purpose of this section, a decision of the Chair of a District Commission under section 6001e of this title on whether action has been taken to circumvent the requirements of this chapter shall be considered an act or decision of the District Commission.~~

(a)(1) An appeal of any act or decision of a District Commission shall be to the Board and shall be accompanied by a fee prescribed by section 6083a of this title.

(2) Participation before District Commission. A person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, a person may appeal an act or decision of the District Commission if the Board determines that:

(A) there was a procedural defect that prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status;  
or

(C) some other condition exists that would result in manifest injustice if the person's right to appeal was disallowed.

(3) An appellant to the Board, under this section, shall file with the notice of appeal a statement of the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant.

(4) The Board shall hold a de novo hearing on all findings requested by any party that files an appeal or cross appeal, according to the rules of the Board. The hearing shall be held in the municipality where the project subject to the appeal is located, if possible, or as close as possible.

(5) Notice of appeal shall be filed with the Board within 30 days following the act or decision by the District Commission. The Board shall notify the parties who had party status before the District Commission of the filing of any appeal.

(6) Prehearing discovery.

(A) A party may obtain discovery of expert witnesses who may provide testimony relevant to the appeal. Expert witness prefiled testimony

shall be in accordance with the Vermont Rules of Evidence. The use of discovery for experts shall comply with the requirements in the Vermont Rules of Civil Procedure 26–37.

(B) Interrogatories served on nonexpert witnesses shall be limited to discovery of the identity of witnesses and a summary of each witness' testimony, except by order of the Board for cause shown. Interrogatories served on expert witnesses shall be in accordance with the Vermont Rules of Civil Procedure.

(C) Parties may submit requests to produce and requests to enter upon land pursuant to the Vermont Rule of Civil Procedure 34.

(D) Parties may not take depositions of witnesses, except by order of the Board for cause shown.

(E) The Board may require a party to supplement, as necessary, any prehearing testimony that is provided.

(b) Prior decisions of the former Environmental Board, Water Resources Board, Waste Facilities Panel, and Environmental Division of the Superior Court shall be given the same weight and consideration as prior decisions of the Environmental Review Board.

(c) An appeal from a decision of the Board under subsection (a) of this section shall be to the Supreme Court by a party as set forth in subsection 6085(c) of this title.

(d) No objection that has not been raised before the Board may be considered by the Supreme Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(e) An appeal of a decision by the Board shall be allowed pursuant to 3 V.S.A. § 815, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the District Commission shall be allowed for any reason, except no appeal shall be allowed when an application has been granted and no hearing was requested.

(f) Precedent from the former Environmental Board and of the Environmental Review Board that interpret Act 250 shall be provided the same deference by the Supreme Court as precedents accorded to other Executive Branch agencies charged with administering their enabling act. On appeal to the Supreme Court from the Environmental Review Board, decisions of the Environmental Review Board interpreting this act also shall be accorded that deference.

(g) Upon appeal to the Supreme Court, the Board's findings of fact shall be accepted unless clearly erroneous.

(h) Completion of case. A case shall be deemed completed when the Board enters a final decision even though that decision is appealed to the Supreme Court and remanded by that Court.

(i) Court of record; jurisdiction. The Board shall have the powers of a court of record in the determination and adjudication of all matters within its jurisdiction. It may initiate proceedings on any matter within its jurisdiction. It may render judgments and enforce the same by any suitable process issuable by courts in this State. An order issued by the Board on any matter within its jurisdiction shall have the effect of a judicial order. The Board's jurisdiction shall include:

(1) the issuance of declaratory rulings on the applicability of this chapter and rules or orders issued under this chapter, pursuant to 3 V.S.A. § 808; and

(2) the issuance of decisions on appeals pursuant to sections 6007 and 6089 of this title.

Sec. 10. 10 V.S.A. § 6007 is amended to read:

§ 6007. ACT 250 DISCLOSURE STATEMENT; JURISDICTIONAL  
DETERMINATION

\* \* \*

(c) With respect to the partition or division of land, or with respect to an activity that might or might not constitute development, any person may submit to the district coordinator an "Act 250 Disclosure Statement" and other information required by the rules of the Board and may request a jurisdictional opinion from the district coordinator concerning the applicability of this chapter. If a requestor wishes a final determination to be rendered on the question, the district coordinator, at the expense of the requestor and in accordance with rules of the Board, shall publish notice of the issuance of the opinion in a local newspaper generally circulating in the area where the land that is the subject of the opinion is located and shall serve the opinion on all persons listed in subdivisions 6085(c)(1)(A) through (D) of this title. In addition, the requestor who is seeking a final determination shall consult with the district coordinator and obtain approval of a subdivision 6085(c)(1)(E) list of persons who shall be notified by the district coordinator because they are adjoining property owners or other persons who would be likely to be able to demonstrate a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission.

(d) A person who seeks review of a jurisdictional opinion issued by a district coordinator may bring to the Board an appeal of issues addressed in the opinion.

(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this title and to each person on an approved subdivision 6085(c)(1)(E) list.

(2) Failure to appeal within 30 days following the issuance of the jurisdictional opinion shall render the decision of the district coordinator under subsection (c) of this section the final determination regarding jurisdiction unless the underlying jurisdictional opinion was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection (c) of this section.

Sec. 11. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

\* \* \*

(i) All persons filing an appeal, cross appeal, or petition from a District Commission decision or jurisdictional determination shall pay a fee of \$295.00, plus publication costs.

\* \* \* Appeals \* \* \*

Sec. 12. 10 V.S.A. chapter 220 is amended to read:

CHAPTER 220. CONSOLIDATED ENVIRONMENTAL APPEALS

§ 8501. PURPOSE

It is the purpose of this chapter to:

(1) consolidate existing appeal routes for municipal zoning and subdivision decisions and acts or decisions of the Secretary of Natural Resources, ~~district environmental coordinators, and District Commissions,~~ excluding enforcement actions brought pursuant to chapters 201 and 211 of this title and the adoption of rules under 3 V.S.A. chapter 25;

(2) standardize the appeal periods, the parties who may appeal these acts or decisions, and the ability to stay any act or decision upon appeal, taking into account the nature of the different programs affected;

(3) ~~encourage people to get involved in the Act 250 permitting process at the initial stages of review by a District Commission by requiring~~

~~participation as a prerequisite for an appeal of a District Commission decision to the Environmental Division;~~

(4) ~~assure~~ ensure that clear appeal routes exist for acts and decisions of the Secretary of Natural Resources; and

~~(5)~~(4) consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review under, respectively, 30 V.S.A. §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

#### § 8502. DEFINITIONS

As used in this chapter:

(1) ~~“District Commission” means a District Environmental Commission established under chapter 151 of this title. [Repealed.]~~

(2) ~~“District coordinator” means a district environmental coordinator attached to a District Commission established under chapter 151 of this title. [Repealed.]~~

(3) “Environmental Court” or “Environmental Division” means the Environmental Division of the Superior Court established by 4 V.S.A. § 30.

(4) ~~“Natural Resources~~ Environmental Review Board” or “Board” means the Board established under chapter 151 of this title.

(5) “Party by right” means the following:

(A) the applicant;

(B) the landowner, if the applicant is not the landowner;

(C) the municipality in which the project site is located and the municipal and regional planning commissions for that municipality;

(D) if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality;

(E) the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to subdivision 6602(10) of this title;

(F) any State agency affected by the proposed project.

(6) “Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any



agency, department, or subdivision of the State; any federal agency; or any other legal or commercial entity.

(7) “Person aggrieved” means a person who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by ~~a district coordinator, District Commission,~~ the Secretary, or the Environmental Division that can be redressed by the Environmental Division or the Supreme Court.

(8) “Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative. As used in this chapter, “Secretary” shall also mean the Commissioner of Environmental Conservation, the Commissioner of Forests, Parks and Recreation, and the Commissioner of Fish and Wildlife, with respect to those statutes that refer to the authority of that commissioner or department.

#### § 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

\* \* \*

(b) ~~This chapter shall govern:~~

~~(1) all appeals from an act or decision of a District Commission under chapter 151 of this title, excluding appeals of application fee refund requests;~~

~~(2) appeals from an act or decision of a district coordinator under subsection 6007(c) of this title;~~

~~(3) appeals from findings of fact and conclusions of law issued by the Natural Resources Board in its review of a designated growth center for conformance with the criteria of subsection 6086(a) of this title, pursuant to authority granted at 24 V.S.A. § 2793e(f). [Repealed.]~~

(c) This chapter shall govern all appeals arising under 24 V.S.A. chapter 117, the planning and zoning chapter.

(d) This chapter shall govern all appeals from an act or decision of the Environmental Division under this chapter.

(e) This chapter shall not govern appeals from rulemaking decisions by the ~~Natural Resources~~ Environmental Review Board under chapter 151 of this title or enforcement actions under chapters 201 and 211 of this title.

(f) This chapter shall govern all appeals of acts or decisions of the legislative body of a municipality arising under 24 V.S.A. chapter 61, subchapter 10, relating to the municipal certificate of approved location for salvage yards.

(g) This chapter shall govern all appeals of an act or decision of the Secretary of Natural Resources that a solid waste implementation plan for a municipality proposed under 24 V.S.A. § 2202a conforms with the State Solid Waste Implementation Plan adopted pursuant to section 6604 of this title.

#### § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) ~~Act 250 and Agency appeals.~~ Within 30 days of the date of following the act or decision, any person aggrieved by an act or decision of the Secretary, ~~a District Commission, or a district coordinator~~ under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

\* \* \*

(c) Notice of the filing of an appeal.

~~(1) Upon filing an appeal from an act or decision of the District Commission, the appellant shall notify all parties who had party status as of the end of the District Commission proceeding, all friends of the Commission, and the Natural Resources Board that an appeal is being filed. In addition, the appellant shall publish notice not more than 10 days after providing notice as required under this subsection, at the appellant's expense, in a newspaper of general circulation in the area of the project that is the subject of the decision. [Repealed.]~~

\* \* \*

(d) Requirement to participate before ~~the District Commission or the Secretary.~~

~~(1) Participation before District Commission. An aggrieved person shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(e)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status. However, notwithstanding these limitations, an aggrieved person may appeal~~

~~an act or decision of the District Commission if the Environmental judge determines that:~~

~~(A) there was a procedural defect that prevented the person from obtaining party status or participating in the proceeding;~~

~~(B) the decision being appealed is the grant or denial of party status;~~  
or

~~(C) some other condition exists that would result in manifest injustice if the person's right to appeal was disallowed. [Repealed.]~~

(2) Participation before the Secretary.

\* \* \*

(e) ~~Act 250 jurisdictional determinations by a district coordinator.~~

~~(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this title, to each person on an approved subdivision 6085(c)(1)(E) list, and to the Natural Resources Board.~~

~~(2) Failure to appeal within the time required under subsection (a) of this section shall render the decision of the district coordinator under subsection 6007(c) of this title the final determination regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(c) of this title. [Repealed.]~~

\* \* \*

(g) Consolidated appeals. The Environmental Division may consolidate or coordinate different appeals where those appeals all relate to the same project.

\* \* \*

~~(i) Deference to Agency technical determinations. In the adjudication of appeals relating to land use permits under chapter 151 of this title, technical determinations of the Secretary shall be accorded the same deference as they are accorded by a District Commission under subsection 6086(d) of this title. [Repealed.]~~

\* \* \*

(k) Limitations on appeals. Notwithstanding any other provision of this section,

~~(1) there shall be no appeal from a District Commission decision when the Commission has issued a permit and no hearing was requested or held, or no motion to alter was filed following the issuance of an administrative amendment;~~

(2) a municipal decision regarding whether a particular application qualifies for a recorded hearing under 24 V.S.A. § 4471(b) shall not be subject to appeal;

~~(3) if a District Commission issues a partial decision under subsection 6086(b) of this title, any appeal of that decision must be taken within 30 days of the date of that decision.~~

(l) Representation. The Secretary may represent the Agency of Natural Resources in all appeals under this section. ~~The Chair of the Natural Resources Board may represent the Board in any appeal under this section, unless the Board directs otherwise.~~ If more than one State agency, other than the Board, either appeals or seeks to intervene in an appeal under this section, only the Attorney General may represent the interests of those agencies of the State in the appeal.

(m) Precedent. Prior decisions of the Environmental Board, Water Resources Board, and Waste Facilities Panel shall be given the same weight and consideration as prior decisions of the Environmental Division.

(n) Intervention. Any person may intervene in a pending appeal if that person:

(1) appeared as a party in the action appealed from and retained party status;

(2) is a party by right;

(3) ~~is the Natural Resources Board;~~ [Repealed.]

(4) is a person aggrieved, as defined in this chapter;

(5) qualifies as an “interested person,” as established in 24 V.S.A. § 4465, with respect to appeals under 24 V.S.A. chapter 117; or

(6) meets the standard for intervention established in the Vermont Rules of Civil Procedure.

(o) With respect to review of an act or decision of the Secretary pursuant to 3 V.S.A. § 2809, the Division may reverse the act or decision or amend an allocation of costs to an applicant only if the Division determines that the act, decision, or allocation was arbitrary, capricious, or an abuse of discretion. In

the absence of such a determination, the Division shall require the applicant to pay the Secretary all costs assessed pursuant to 3 V.S.A. § 2809.

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

(1) there is an appeal of an act or decision of the Secretary that is based on that record; or

~~(2) there is an appeal of a decision of a District Commission, and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.~~

#### § 8505. APPEALS TO THE SUPREME COURT

(a) Any person aggrieved by a decision of the Environmental Division pursuant to this subchapter, any party by right, or any person aggrieved by a decision of the Environmental Review Board may appeal to the Supreme Court within 30 days of following the date of the entry of the order or judgment appealed from, provided that:

(1) the person was a party to the proceeding before the Environmental Division; or

(2) the decision being appealed is the denial of party status; or

(3) the Supreme Court determines that:

(A) there was a procedural defect that prevented the person from participating in the proceeding; or

(B) some other condition exists that would result in manifest injustice if the person's right to appeal were disallowed.

\* \* \*

\* \* \* Environmental Division \* \* \*

Sec. 13. 4 V.S.A. § 34 is amended to read:

#### § 34. JURISDICTION; ENVIRONMENTAL DIVISION

The Environmental Division shall have:

(1) jurisdiction of matters arising under 10 V.S.A. chapters 201 and 220; and

(2) jurisdiction of matters arising under 24 V.S.A. chapter 61, subchapter 12 and 24 V.S.A. chapter 117; and

~~(3) original jurisdiction to revoke permits under 10 V.S.A. chapter 151.~~

~~\*\*\* Report; Transition; Revision Authority; Effective Dates \*\*\*~~

Sec. 14. ENVIRONMENTAL REVIEW BOARD POSITIONS;

APPROPRIATION

(a) The following new positions are created at the Environmental Review Board for the purposes of carrying out this act:

(1) one Staff Attorney 1; and

(2) four half-time Environmental Review Board members.

(b) The sum of \$300,000.00 is appropriated to the Environmental Review Board from the General Fund in fiscal year 2023 for the positions established in subsection (a) of this section and for additional operating costs required to implement the appeals process established in this act.

Sec. 15. NATURAL RESOURCES BOARD TRANSITION

(a) The Governor shall appoint the members of Environmental Review Board on or before July 1, 2023, and the terms of any Natural Resources Board member not appointed consistent with the requirements of 10 V.S.A. § 6021(a)(1)(A) or (B) shall expire on that day.

(b) As of July 1, 2023, all appropriations and employee positions of the Natural Resources Board are transferred to the Environmental Review Board.

(c) The Environmental Review Board shall adopt rules of procedure for its hearing process pursuant to 10 V.S.A. § 6025(a) on or before July 1, 2024.

Sec. 16. ENVIRONMENTAL DIVISION; CONTINUED JURISDICTION

Notwithstanding the repeal of its jurisdictional authority to hear appeals relative to land use permits under Sec. 12 of this act, the Environmental Division of the Superior Court shall continue to have jurisdiction to complete its consideration of any appeal that is pending before it as of July 1, 2024 if the act or appeal has been filed. The Environmental Review Board shall have authority to be a party in any appeals pending under this section until July 1, 2024.

Sec. 17. REPORT; ENVIRONMENTAL REVIEW BOARD

(a) On or before December 31, 2023, the Chair of the Environmental Review Board shall report to the House Committee on Natural Resources, Fish, and Wildlife and the Senate Committee on Natural Resources and Energy on necessary updates to the Act 250 program.

(b) The report shall include:

(1) how to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in appropriate locations and protect natural resources of statewide significance including biodiversity;

(2) how to use the Capability and Development Plan to meet the statewide planning goals;

(3) the effectiveness of the current permit fee structure; and

(4) an assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district.

#### Sec. 18. REVISION AUTHORITY

In preparing the Vermont Statutes Annotated for publication in 2022, the Office of Legislative Counsel shall replace all references to the “Natural Resources Board” with the “Environmental Review Board” in Title 3, Title 10, Title 24, Title 29, Title 30, and Title 32.

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

#### Sec. 19. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 12 and 13 (10 V.S.A. chapter 220; 4 V.S.A. § 34) shall take effect on July 1, 2024.

#### **( Committee Vote: 8-3-0)**

**Rep. Ancel of Calais**, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Ways and Means and when further amended as follows:

That the report of the Committee on Natural Resources, Fish, and Wildlife be amended as follows:

First: In Sec. 7, 10 V.S.A. § 6022, by striking out subsection (b) in its entirety and relettering the remaining subsection to be alphabetically correct.

Second: In Sec. 14, environmental review board positions; appropriation, in subsection (b), by striking out “\$300,000.00” and inserting “\$384,000.00”

Third: By striking out Sec. 17, report; environmental review board, in its entirety and inserting in lieu thereof the following:

#### Sec. 17. REPORT; ENVIRONMENTAL REVIEW BOARD

(a) On or before December 31, 2023, the Chair of the Environmental Review Board shall report to the House Committees on Natural Resources,

Fish, and Wildlife and on Ways and Means and the Senate Committees on Finance and on Natural Resources and Energy on necessary updates to the Act 250 program.

(b) The report shall include:

(1) how to transition to a system in which Act 250 jurisdiction is based on location, which shall encourage development in appropriate locations and protect natural resources of statewide significance, including biodiversity;

(2) how to use the Capability and Development Plan to meet the statewide planning goals;

(3) an assessment of the current level of staffing of the Board and District Commissions, including whether there should be a district coordinator located in every district;

(4) whether the permit fees are sufficient to cover the costs of the program and, if not, a recommendation for a source of revenue to supplement the fees;

(5) whether the permit fees are effective in providing appropriate incentives; and

(6) whether the Board should be able to assess their costs on applicants.

**( Committee Vote:8-3-0)**

**Rep. Squirrell of Underhill**, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Natural Resources, Fish, and Wildlife and Ways and Means, and when further amended as follows:

By striking out Sec. 6, 10 V.S.A. § 6028, in its entirety and by renumbering the remaining sections to be numerically correct.

**( Committee Vote:8-3-0)**

### **H. 505**

An act relating to reclassification of penalties for unlawfully possessing, dispensing, and selling a regulated drug

**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. 18 V.S.A. § 4215a is amended to read:

§ 4215a. SALE OF SCHEDULE V DRUGS

(a) A duly licensed pharmacist may sell and dispense schedule V drugs only upon written prescription or oral prescription ~~which~~ that is promptly reduced to writing by a pharmacist, of a licensed physician, dentist, or veterinarian, dated and signed by the person prescribing or, if an oral prescription, by the pharmacist on the date when written.

\* \* \*

~~(d) For a first offense, a A person knowingly and unlawfully violating the provisions of this section may be imprisoned for not more than six months or fined not more than \$500.00, or both. For a second or subsequent offense, a person knowingly and unlawfully violating the provisions of this section may be imprisoned for not more than two years or fined not more than \$2,000.00, or both commits a Class C misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$500.00.~~

Sec. 2. 18 V.S.A. § 4223 is amended to read:

§ 4223. FRAUD OR DECEIT

\* \* \*

~~(i) A person who violates this section shall be imprisoned not more than two years and one day or fined not more than \$5,000.00, or both commits a Class A misdemeanor.~~

Sec. 3. 18 V.S.A. § 4228 is amended to read:

§ 4228. UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSING,  
OR SALE OF A NONCONTROLLED DRUG OR SUBSTANCE

(a) It is unlawful for any person to knowingly dispense, manufacture, process, package, distribute, or sell or attempt to dispense, manufacture, process, package, distribute, or sell a noncontrolled drug or substance upon either:

(1) the express or implied representation that the drug or substance is a controlled drug; or

(2) the express or implied representation that the drug or substance is of such nature or appearance that the dispensee or purchaser will be able to dispense or sell the drug or substance as a controlled drug.

(b) For the purposes of this section, a “controlled” drug or substance shall mean those drugs or substances listed under schedules I through V in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq. as amended.

\* \* \*

(f) A person convicted of violating this section ~~shall be subject to imprisonment for a term of up to one year or a fine of up to \$5,000.00, or both commits a Class B misdemeanor.~~ If the violation of this section involves dispensing, distributing, or selling to a person under the age of 21 years of age, the person ~~shall be subject to a term of imprisonment of not more than two years or fined up to \$10,000.00, or both~~ commits a Class A misdemeanor.

Sec. 4. 18 V.S.A. § 4230 is amended to read:

§ 4230. CANNABIS

(a) Possession and cultivation.

(1) No person shall knowingly and unlawfully possess more than one ounce of cannabis or more than five grams of hashish or cultivate more than two mature cannabis plants or four immature cannabis plants. A person who violates this subdivision shall be assessed a civil penalty as follows:

- (A) not more than \$100.00 for a first offense;
- (B) not more than \$200.00 for a second offense; and
- (C) not more than \$500.00 for a third or subsequent offense.

(2)(A) No person shall knowingly and unlawfully possess two ounces or more of cannabis or ten grams or more of hashish or more than three mature cannabis plants or six immature cannabis plants. For a first offense under this subdivision (2), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision ~~shall be imprisoned not more than six months or fined not more than \$500.00, or both~~ commits a Class C misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$500.00.

~~(B) A person convicted of a second or subsequent offense of violating subdivision (A) of this subdivision (2) shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. [Repealed.]~~

(C) Upon an adjudication of guilt for a ~~first or second~~ an offense under this subdivision ~~(2)~~, the court may defer sentencing as provided in 13 V.S.A. § 7041, except that the court may in its discretion defer sentence

without the filing of a presentence investigation report and except that sentence may be imposed at any time within ~~two years~~ six months from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening, which may be considered at sentencing in the same manner as a presentence report.

(3) A person knowingly and unlawfully possessing eight ounces of cannabis or 1.4 ounces of hashish or knowingly and unlawfully cultivating more than four mature cannabis plants or eight immature cannabis plants ~~shall be imprisoned not more than three years or fined not more than \$10,000.00, or both~~ commits a Class A misdemeanor.

(4) A person knowingly and unlawfully possessing more than one pound of cannabis or more than 2.8 ounces of hashish or knowingly and unlawfully cultivating more than six mature cannabis plants or 12 immature cannabis plants ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both~~ commits a Class E felony.

(5) A person knowingly and unlawfully possessing more than 10 pounds of cannabis or more than one pound of hashish or knowingly and unlawfully cultivating more than 12 mature cannabis plants or 24 immature cannabis plants ~~shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both~~ commits a Class D felony.

(6) If a court fails to provide the defendant with notice of collateral consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(7) The amounts of cannabis in this subsection shall not include cannabis cultivated, harvested, and stored in accordance with section 4230e of this title.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling cannabis or hashish ~~shall be imprisoned not more than two years or fined not more than \$10,000.00, or both~~ commits a Class B misdemeanor.

(2) A person knowingly and unlawfully selling or dispensing more than one ounce of cannabis or five grams or more of hashish ~~shall be imprisoned~~

~~not more than five years or fined not more than \$100,000.00, or both commits a Class A misdemeanor.~~

(3) A person knowingly and unlawfully selling or dispensing one pound or more of cannabis or 2.8 ounces or more of hashish ~~shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both commits a Class D felony.~~

(4) A person 21 years of age or older may dispense one ounce or less of cannabis or five grams or less of hashish to another person who is 21 years of age or older, provided that the dispensing is not advertised or promoted to the public.

(c) Trafficking. A person knowingly and unlawfully possessing 50 pounds or more of cannabis or five pounds or more of hashish with the intent to sell or dispense the cannabis or hashish ~~shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both commits a Class C felony.~~ There shall be a permissive inference that a person who possesses 50 pounds or more of cannabis or five pounds or more of hashish intends to sell or dispense the cannabis or hashish.

~~(d) Cannabis-infused Cannabis-infused products. Only the portion of a cannabis-infused product that is attributable to cannabis shall count toward the possession limits of this section. The weight of cannabis that is attributable to cannabis-infused products shall be determined according to methods set forth in rule by the Department of Public Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).~~

Sec. 5. 18 V.S.A. § 4230f is amended to read:

§ 4230f. DISPENSING CANNABIS TO A PERSON UNDER 21 YEARS  
OF AGE; CRIMINAL OFFENSE

(a) No person shall:

(1) dispense cannabis to a person under 21 years of age; or

(2) knowingly enable the consumption of cannabis by a person under 21 years of age.

(b) As used in this section, “enable the consumption of cannabis” means creating a direct and immediate opportunity for a person to consume cannabis.

(c) Except as provided in subsection (d) of this section, a person who violates subsection (a) of this section ~~shall be imprisoned not more than two years or fined not more than \$2,000.00, or both commits a Class A~~

misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(d) A person who violates subsection (a) of this section, where the person under 21 years of age while operating a motor vehicle on a public highway causes death or serious bodily injury to ~~himself or herself~~ themselves or to another person as a result of the violation, ~~shall be imprisoned not more than five years or fined not more than \$10,000.00, or both~~ commits a Class D felony.

(e)(1) Subsections (a)–(d) of this section shall not apply to a person under 21 years of age who dispenses cannabis to a person under 21 years of age or who knowingly enables the consumption of cannabis by a person under 21 years of age.

(2) A person who is 18, 19, or 20 years of age who knowingly dispenses cannabis to a person who is 18, 19, or 20 years of age commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Awareness Safety Program in accordance with the provisions of section 4230b of this title and shall be subject to the penalties in that section for failure to complete the program successfully.

(3) A person 18, 19, or 20 years of age who knowingly dispenses to a person under 18 years of age who is at least three years that person’s junior ~~shall be sentenced to a term of imprisonment of not more than five years in accordance with section 4237 of this title~~ commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined.

(4) A person who is 19 years of age who knowingly dispenses to a person 17 years of age or a person who is 18 years of age who knowingly dispenses cannabis to a person who is 16 or 17 years of age commits a ~~misdemeanor crime and shall be fined not more than \$500.00~~ Class E misdemeanor.

(5) A person who is under 18 years of age who knowingly dispenses cannabis to another person who is under 18 years of age commits a delinquent act and shall be subject to 33 V.S.A. chapter 52.

\* \* \*

Sec. 6. 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.~~

(b) A person who violates subsection (a) of this section ~~shall be imprisoned not more than two years or fined not more than \$2,000.00, or both commits a Class A misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.~~ A person who violates subsection (a) of this section and causes serious bodily injury to another person ~~shall be imprisoned not more than five years or fined not more than \$5,000.00, or both commits a Class E felony. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$5,000.00.~~

Sec. 7 . 18 V.S.A. § 4231 is amended to read:

§ 4231. COCAINE

(a) Possession.

(1) A person knowingly and unlawfully possessing cocaine ~~shall be imprisoned not more than one year or fined not more than \$2,000.00, or both commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.~~

(2) A person knowingly and unlawfully possessing cocaine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both commits a Class E felony.~~

(3) A person knowingly and unlawfully possessing cocaine in an amount consisting of one ounce or more of one or more preparations, compounds, mixtures, or substances containing cocaine ~~shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both commits a Class D felony.~~

(4) [Repealed.]

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing cocaine ~~shall be imprisoned not more than three years or fined not more than \$75,000.00, or both commits a Class E felony.~~ A person knowingly and unlawfully selling cocaine ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both commits a Class D felony.~~

~~(2) A person knowingly and unlawfully selling or dispensing cocaine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both. [Repealed.]~~

~~(3) A person knowingly and unlawfully selling or dispensing cocaine in an amount consisting of one ounce or more of one or more preparations, compounds, mixtures, or substances containing cocaine shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both commits a Class C felony.~~

(c) Trafficking.

(1) A person knowingly and unlawfully possessing cocaine in an amount consisting of 150 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine with the intent to sell or dispense the cocaine shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both commits a Class B felony. There shall be a permissive inference that a person who possesses cocaine in an amount consisting of 150 grams or more of one or more preparations, compounds, mixtures, or substances containing cocaine intends to sell or dispense the cocaine. The amount of possessed cocaine under this subdivision to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 400 grams in the aggregate.

~~(2) A person knowingly and unlawfully possessing crack cocaine in an amount consisting of 60 grams or more of one or more preparations, compounds, mixtures, or substances containing crack cocaine with the intent to sell or dispense the crack cocaine shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses crack cocaine in an amount consisting of 60 grams or more of one or more preparations, compounds, mixtures, or substances containing crack cocaine intends to sell or dispense the crack cocaine. [Repealed.]~~

Sec. 8. 18 V.S.A. § 4232 is amended to read:

§ 4232. LSD

(a) Possession.

(1) A person knowingly and unlawfully possessing lysergic acid diethylamide shall be imprisoned not more than one year or fined not more than \$2,000.00, or both commits a Class B misdemeanor. Notwithstanding

13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(2) A person knowingly and unlawfully possessing lysergic acid diethylamide in an amount consisting of 100 milligrams or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide ~~shall be imprisoned not more than five years or fined not more than \$25,000.00, or both~~ commits a Class E felony.

(3) A person knowingly and unlawfully possessing lysergic acid diethylamide in an amount consisting of one gram or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide ~~shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(4) ~~A person knowingly and unlawfully possessing lysergic acid diethylamide in an amount consisting of 10 grams or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing lysergic acid diethylamide ~~shall be imprisoned not more than three years or fined not more than \$25,000.00, or both~~ commits a Class E felony. A person knowingly and unlawfully selling lysergic acid diethylamide ~~shall be imprisoned not more than five years or fined not more than \$25,000.00, or both~~ commits a Class D felony.

(2) A person knowingly and unlawfully selling or dispensing lysergic acid diethylamide in an amount consisting of 100 milligrams or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide ~~shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both~~ commits a Class C felony.

(3) ~~A person knowingly and unlawfully selling or dispensing lysergic acid diethylamide in an amount consisting of one gram or more of one or more preparations, compounds, mixtures, or substances containing lysergic acid diethylamide shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

Sec. 9. 18 V.S.A. § 4233 is amended to read:

§ 4233. HEROIN

(a) Possession.



(1) A person knowingly and unlawfully possessing heroin ~~shall be imprisoned not more than one year or fined not more than \$2,000.00, or both~~ commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(2) A person knowingly and unlawfully possessing heroin in an amount consisting of 200 milligrams or more of one or more preparations, compounds, mixtures, or substances containing heroin ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class A misdemeanor.

(3) A person knowingly and unlawfully possessing heroin in an amount consisting of one gram or more of one or more preparations, compounds, mixtures, or substances containing heroin ~~shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both~~ commits a Class D felony.

(4) A person knowingly and unlawfully possessing heroin in an amount consisting of two grams or more of one or more preparations, compounds, mixtures, or substances containing heroin ~~shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both~~ commits a Class C felony.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing heroin ~~shall be imprisoned not more than three years or fined not more than \$75,000.00, or both~~ commits a Class E felony. A person knowingly and unlawfully selling heroin ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(2) ~~A person knowingly and unlawfully selling or dispensing heroin in an amount consisting of 200 milligrams or more of one or more preparations, compounds, mixtures, or substances containing heroin shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.~~ [Repealed]

(3) A person knowingly and unlawfully selling or dispensing heroin in an amount consisting of one gram or more of one or more preparations, compounds, mixtures, or substances containing heroin ~~shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both~~ commits a Class C felony.

(c) Trafficking. A person knowingly and unlawfully possessing heroin in an amount consisting of 3.5 grams or more of one or more preparations, compounds, mixtures, or substances containing heroin with the intent to sell or dispense the heroin ~~shall be imprisoned not more than 30 years or fined not~~

~~more than \$1,000,000.00, or both~~ commits a Class B felony. There shall be a permissive inference that a person who possesses heroin in an amount of 3.5 grams or more of one or more preparations, compounds, mixtures, or substances containing heroin intends to sell or dispense the heroin. The amount of possessed heroin under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be no less than 10 grams in the aggregate.

~~(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting one gram or more of heroin into Vermont with the intent to sell or dispense the heroin shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.~~ [Repealed]

Sec. 10. 18 V.S.A. § 4233a is amended to read:

§ 4233a. FENTANYL

(a) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl ~~shall be imprisoned not more than three years or fined not more than \$75,000.00, or both~~ commits a Class E felony. A person knowingly and unlawfully selling fentanyl ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl ~~shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both~~ commits a Class C felony.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl ~~shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both~~ commits a Class B felony.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl ~~shall be imprisoned not more than five years or fined not more than \$250,000.00, or both~~ commits a Class D felony.

(b) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell

or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both commits a Class B felony. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(c) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both commits a Class C Felony.

Sec. 11. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

~~(1)(A) Except as provided by subdivision (B) of this subdivision (1), a~~ A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than one year or fined not more than \$2,000.00, or both commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

~~(B) A person knowingly and unlawfully possessing 224 milligrams or less of buprenorphine shall not be punished in accordance with subdivision (A) of this subdivision (1).~~

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, ~~other than heroin or cocaine,~~ consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the Board of Health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both commits a Class E felony.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, ~~other than heroin or cocaine,~~ consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both commits a Class D felony.

(4) ~~A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of 10,000 times a benchmark unlawful dosage or its equivalent as determined by the~~

~~Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

(b) Selling or dispensing.

~~(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both commits a Class E felony. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both commits a Class D felony.~~

~~(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both. [Repealed.]~~

~~(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both. [Repealed.]~~

(c) Possession of buprenorphine by a person under 21 years of age.

~~(1) Except as provided in subdivision (2) of this subsection, a person under 21 years of age who knowingly and unlawfully possesses 224 milligrams or less of buprenorphine commits a civil violation and shall be subject to the provisions of section 4230b of this title.~~

~~(2) A person under 16 years of age who knowingly and unlawfully possesses 224 milligrams or less of buprenorphine commits a delinquent act and shall be subject to the provisions of section 4230j of this title. [Repealed.]~~

Sec. 12. 18 V.S.A. § 4234a is amended to read:

§ 4234a. METHAMPHETAMINE

(a) Possession.

(1) A person knowingly and unlawfully possessing methamphetamine shall be imprisoned not more than one year or fined not more than \$2,000.00, or both commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(2) A person knowingly and unlawfully possessing methamphetamine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(3) A person knowingly and unlawfully possessing methamphetamine in an amount consisting of 25 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine ~~shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both~~ commits a Class C felony.

(b) Selling and dispensing.

(1) A person knowingly and unlawfully dispensing methamphetamine ~~shall be imprisoned not more than three years or fined not more than \$75,000.00, or both~~ commits a Class E felony. A person knowingly and unlawfully selling methamphetamine ~~shall be imprisoned not more than five years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(2) ~~A person knowingly and unlawfully selling or dispensing methamphetamine in an amount consisting of 2.5 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both. [Repealed.]~~

(3) A person knowingly and unlawfully selling or dispensing methamphetamine in an amount consisting of 25 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine ~~shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both~~ commits a Class C felony.

(c) Trafficking. A person knowingly and unlawfully possessing methamphetamine in an amount consisting of 300 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine with the intent to sell or dispense the methamphetamine ~~shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both~~ commits a Class B felony. There shall be a permissive inference that a person who possesses methamphetamine in an amount consisting of 300 grams or more of one or more preparations, compounds, mixtures, or substances containing methamphetamine intends to sell or dispense the methamphetamine. The amount of possessed methamphetamine under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be ~~no~~ not less than 800 grams in the aggregate

Sec. 13. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

(a) Possession.

(1) No person shall knowingly and unlawfully possess a drug product containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base with the intent to use the product as a precursor to manufacture methamphetamine or another controlled substance.

(2) A person who violates this subsection shall:

(A) commits a Class B misdemeanor if the offense involves possession of less than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base, ~~be imprisoned not more than one year or fined not more than \$2,000.00, or both; however, notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00;~~

(B) commits a Class E felony if the offense involves possession of nine or more grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base, ~~be imprisoned not more than five years or fined not more than \$100,000.00, or both.~~

\* \* \*

Sec. 14. 18 V.S.A. § 4235 is amended to read:

§ 4235. HALLUCINOGENIC DRUGS

(a) “Dose” of a hallucinogenic drug means that minimum amount of a hallucinogenic drug, not commonly used for therapeutic purposes, ~~which that~~ causes a substantial hallucinogenic effect. The Board of Health shall adopt rules ~~which that~~ establish doses for hallucinogenic drugs. The Board may incorporate, where applicable, dosage calculations or schedules, whether described as “dosage equivalencies” or otherwise, established by the federal government.

(b) Possession.

(1) A person knowingly and unlawfully possessing a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than one year or fined not more than \$2,000.00, or both~~ commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(2) A person knowingly and unlawfully possessing 10 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be~~

~~imprisoned not more than five years or fined not more than \$25,000.00, or both commits a Class A misdemeanor.~~

(3) A person knowingly and unlawfully possessing 100 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both commits a Class D felony.~~

(4) A person knowingly and unlawfully possessing 1,000 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both commits a Class C felony.~~

(c) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than three years or fined not more than \$25,000.00, or both commits a Class E felony.~~ A person knowingly and unlawfully selling a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than five years or fined not more than \$25,000.00, or both commits a Class D felony.~~

(2) ~~A person knowingly and unlawfully selling or dispensing 10 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both. [Repealed.]~~

(3) A person knowingly and unlawfully selling or dispensing 100 or more doses of a hallucinogenic drug, other than lysergic acid diethylamide, ~~shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both commits a Class C felony.~~

Sec. 15. 18 V.S.A. § 4235a is amended to read:

§ 4235a. ECSTASY

(a) Possession.

(1) A person knowingly and unlawfully possessing Ecstasy ~~shall be imprisoned not more than one year or fined not more than \$2,000.00, or both commits a Class B misdemeanor.~~ Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$2,000.00.

(2) A person knowingly and unlawfully possessing Ecstasy in an amount consisting of two grams or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned not more than five years or fined not more than \$25,000.00, or both commits a Class E felony.~~

(3) A person knowingly and unlawfully possessing Ecstasy in an amount consisting of 20 grams or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both~~ commits a Class D felony.

(4) A person knowingly and unlawfully possessing Ecstasy in an amount consisting of seven ounces or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.~~ [Repealed.]

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing Ecstasy ~~shall be imprisoned not more than three years or fined not more than \$25,000.00, or both~~ commits a Class E felony. A person knowingly and unlawfully selling Ecstasy ~~shall be imprisoned not more than five years or fined not more than \$25,000.00, or both~~ commits a Class D felony.

(2) A person knowingly and unlawfully selling or dispensing Ecstasy in an amount consisting of two grams or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.~~ [Repealed.]

(3) A person knowingly and unlawfully selling or dispensing Ecstasy in an amount consisting of 20 grams or more of one or more preparations, compounds, mixtures, or substances containing Ecstasy ~~shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both~~ commits a Class C felony.

Sec. 16. 18 V.S.A. § 4236 is amended to read:

§ 4236. MANUFACTURE OR CULTIVATION

(a) A person knowingly and unlawfully manufacturing or cultivating a regulated drug ~~shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both~~ commits a Class B felony.

(b) This section shall not apply to the cultivation of cannabis.

Sec. 17. 18 V.S.A. § 4237 is amended to read:

§ 4237. SELLING OR DISPENSING TO MINORS; SELLING ON SCHOOL GROUNDS



(a) Dispensing regulated drugs to minors. A person knowingly and unlawfully dispensing any regulated drug to a minor who is at least three years that person's junior ~~shall be sentenced to a term of imprisonment of not more than five years~~ commits a Class E felony. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined.

(b) Sale of regulated drugs. A person knowingly and unlawfully selling any regulated drug to a minor shall, in addition to any other penalty, be sentenced to a term of imprisonment of not more than ~~10~~ 5 years.

(c) Selling on school grounds. No person shall knowingly and unlawfully:

(1) dispense or sell a regulated drug to any person on a school bus or on real property owned by a public or private elementary, secondary, or vocational school;

(2) sell a regulated drug to any person on real property abutting real property owned by a public or private elementary, secondary, or vocational school; or

(3) dispense a regulated drug to any person in public view on real property abutting real property owned by a school.

(d) Abutting school property. The selling or dispensing of a regulated drug to a person on property abutting school property is a violation under this section only if it occurs within 500 feet of the school property. Property shall be considered abutting school property if:

(1) it shares a boundary with school property; or

(2) it is adjacent to school property and is separated only by a river, stream, or public highway.

(e) Penalty. A person who violates subsection (c) of this section shall, in addition to any other penalty, be sentenced to a term of imprisonment of not more than ~~10~~ 5 years.

(f) Definitions. As used in this section:

(1) "Minor" means a person under ~~the age of 18~~ years of age.

(2) "Owned by a school" means owned, leased, controlled, or subcontracted by a school and used frequently by students for educational or recreational activities.

Sec. 18. 18 V.S.A. § 4249 is amended to read:

§ 4249. TRANSPORTATION OF ALCOHOL, TOBACCO, OR  
REGULATED DRUGS INTO PLACES OF DETENTION

(a) No person shall knowingly carry or introduce or cause to be carried or introduced into a lockup, jail, prison, or correctional facility:

(1) alcohol or alcoholic beverages;

(2) cannabis;

(3) a regulated drug, other than cannabis, as defined in section 4201 of this title, except upon the prescription or direction of a practitioner as that term is defined in 26 V.S.A. chapter 36; or

(4) tobacco or tobacco products, except that an employee may possess or store tobacco or tobacco products in a locked automobile parked on the correctional facility grounds, store tobacco or tobacco products in a secure place within the correctional facility ~~which~~ that is designated for storage of employee tobacco, and possess tobacco or tobacco products in a designated smoking area.

~~(b) A person who violates subdivision (a)(1) of this section shall be imprisoned not more than three months or fined not more than \$300.00, or both commits a Class D misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$300.00.~~

~~(c) A person who violates subdivision (a)(2) of this section shall be imprisoned not more than six months or fined not more than \$500.00, or both commits a Class D misdemeanor.~~

~~(d) A person who violates subdivision (a)(3) of this section shall be imprisoned not more than one year or fined not more than \$1,000.00, or both commits a Class B misdemeanor. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$1,000.00.~~

\* \* \*

Sec. 19. 18 V.S.A. § 4250 is amended to read:

§ 4250. SELLING OR DISPENSING A REGULATED DRUG WITH  
DEATH RESULTING

(a) If the death of a person results from the selling or dispensing of a regulated drug to the person in violation of this chapter, the person convicted of the violation ~~shall be imprisoned not less than two years nor more than 20 years~~ commits a Class B felony. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined.

(b) This section shall apply only if the person's use of the regulated drug is the proximate cause of ~~his or her~~ the person's death.

Sec. 20. 18 V.S.A. § 4252 is amended to read:

§ 4252. PENALTIES FOR DISPENSING OR SELLING REGULATED  
DRUGS IN A DWELLING

(a) No person shall knowingly permit a dwelling, building, or structure owned by or under the control of the person to be used for the purpose of illegally dispensing or selling a regulated drug.

(b) A landlord shall be in violation of subsection (a) of this section only if the landlord knew at the time ~~he or she~~ the landlord signed the lease agreement that the tenant intended to use the dwelling, building, or structure for the purpose of illegally dispensing or selling a regulated drug.

(c) A person who violates 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. Notwithstanding 13 V.S.A. § 53, a person who violates this section shall not be fined more than \$1,000.00.

Sec. 21. 18 V.S.A. § 4256 is added to read:

§ 4256. DRUG USE STANDARDS ADVISORY BOARD

(a) There is hereby created the Drug Use Standards Advisory Board established within the Vermont Sentencing Commission composed of experts in the fields of general and behavioral health care, substance use disorder treatment, and drug user communities.

(b) The primary objective of the Board shall be to determine, for each regulated and unregulated drug, the benchmark personal use dosage and the benchmark personal use supply. The benchmarks determined pursuant to this subsection shall be determined with a goal of preventing and reducing the criminalization of personal drug use. The Board may provide additional recommendations to the Commission and the General Assembly regarding how to transition from a criminal justice approach to a public health approach to addressing drug possession.

(c) The Board shall be convened and chaired by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs. After receiving nominations from harm reduction service providers, the Deputy Commissioner shall appoint three consumer representatives to the Board who have lived experience in drug use and consumption practices. The Deputy Commissioner and the three consumer representatives shall appoint the remaining Board members as follows:

- (1) two representatives from harm reduction service providers;

- (2) an expert on medication-assisted treatment programs;
- (3) an expert on human behavior and addiction;
- (4) an expert on substance use disorder treatment;
- (5) an expert on legal reform from the University of Vermont Law School Center for Justice Reform; and

(6) an academic researcher specializing in drug use or drug policy.

(d) The Board shall have the administrative assistance of the Division of Alcohol and Drug Abuse Programs.

(e) Members of the Board shall be entitled to per diems pursuant to 32 V.S.A. § 1010 for not more than three meetings to develop initial recommendations required by subsection (f) of this section and once annually thereafter.

(f) On or before September 1, 2022, the Board shall provide to the Commission and the General Assembly:

(1) the recommended quantities for both the benchmark personal use dosage and benchmark personal use supply for each category of regulated drug listed in subdivision 4201(29) of this title; and

(2) a recommendation as to whether 18 V.S.A. § 4233 (heroin) and 18 V.S.A. § 4234a (fentanyl) should be combined into one statute.

(g) On or before December 1, 2022, based on the benchmark personal use dosage and benchmark personal use supply recommendations of the Board, the Commission shall make recommendations to the General Assembly regarding adjustments in the amounts for possession, dispensing, and sale of regulated drugs under this chapter and a proposal for combining the heroin and fentanyl statutes if recommended by the Board.

(h) Starting in 2023, the Board shall convene at least one time per year to review benchmarks established pursuant to this section and recommend any necessary amendments to the Commission and the General Assembly.

(i) As used in this section:

(1) “Benchmark personal use dosage” means the quantity of a drug commonly consumed over a 24-hour period for any therapeutic, medicinal, or recreational purpose.

(2) “Benchmark personal use supply” means the quantity of a drug commonly possessed for consumption by an individual for any therapeutic, medicinal, or recreational purpose.

Sec. 22. 18 V.S.A. § 4476 is amended to read:

§ 4476. OFFENSES AND PENALTIES

(a) A person who sells drug paraphernalia to a person under 18 years of age ~~shall be imprisoned for not more than two years or fined not more than \$2,000.00, or both~~ commits a Class C misdemeanor.

(b) The distribution and possession of needles and syringes as part of an organized community-based needle exchange program shall not be a violation of this section or of chapter 84 of this title.

Sec. 24. EFFECTIVE DATES

(a) This section and Sec. 21 shall take effect on July 1, 2022.

(b) All remaining sections shall take effect on July 1, 2023.

**( Committee Vote: 8-3-0)**

**Rep. Squirrell of Underhill**, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Judiciary.

**(Committee Vote:7-4-0)**

**H. 512**

An act relating to modernizing land records and notarial acts law

**Rep. Kimbell of Woodstock**, for the Committee on Commerce and Economic Development, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND INTENT

(a) The General Assembly finds:

(1) Uniform laws, standards, and best practices provide desirable and practicable uniformity that:

(A) benefits core aspects of government operations and commerce;

(B) facilitates intrastate and interstate business transactions, commerce, and economic development; and

(C) provides consistency for individuals and businesses.

(2) Notarial acts and the recording of deeds and other property records are:

(A) core aspects of government operations and commerce that benefit from uniformity; and

(B) common intrastate and interstate business transactions that should be consistent and facilitated through the enactment of uniform laws and adoption of uniform standards and best practices.

(3) The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, has adopted uniform laws related to notarial acts and the recording of deeds and other property records that have been accepted and enacted into law by a substantial number of states, including:

(A) the Revised Uniform Law on Notarial Acts or “RULONA” of 2010, which was enacted by the General Assembly pursuant to 2018 Acts and Resolves No. 160 to govern actions by a notary public;

(B) the Uniform Electronic Transaction Act or “UETA” of 1999, which was enacted by the General Assembly pursuant to 2003 Acts and Resolves No. 46 to establish the legal equivalence of electronic records and signatures with paper records and manually signed signatures and remove barriers to electronic commerce; and

(C) the Uniform Real Property Electronic Recording Act or “URPERA” of 2004, which has not been enacted by the General Assembly to allow local recording offices to accept deeds and other property records in electronic form and to provide electronic access to recordings.

(4) The COVID-19 pandemic exacerbated the need to modernize:

(A) notarial acts to include those performed on electronic records and for remotely located individuals; and

(B) the acceptance, recording, and availability of deeds and other property records in electronic form.

(5) The COVID-19 pandemic underscored the need for approaches to modernization that are carefully planned; coordinated and comprehensive; multi-jurisdictional; and include fiscal, governance, and operational sustainability.

(b) Therefore, it is the intent of the General Assembly to provide a practical step forward to modernizing notarial acts and the recording of deeds and other property records in the State of Vermont through legislation that promotes uniformity within Vermont and with other states, specifically:

(1) uniform laws that have been accepted and enacted into law by a substantial number of states;

(2) uniform standards and best practices that have been accepted and adopted by a substantial number of states; and

(3) uniform approaches to modernization that are carefully planned; coordinated; comprehensive; multi-jurisdictional; and have fiscal, governance, and operational sustainability.

Sec. 2. 27 V.S.A. chapter 5, subchapter 8 is added to read:

Subchapter 8. Uniform Real Property Electronic Recording Act

§ 621. SHORT TITLE

This subchapter may be cited as the Uniform Real Property Electronic Recording Act.

§ 622. DEFINITIONS

For the purposes of this subchapter:

(1) “Document” means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the land records maintained by the recorder.

(2) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) “Electronic document” means a document that is received by the recorder in an electronic form.

(4) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(6) “Recorder” means a town clerk, pursuant to 24 V.S.A. § 1154, or a county clerk, pursuant to subchapter 3 of this chapter, responsible for recording deeds and other instruments or evidences respecting real estate.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§ 623. VALIDITY OF ELECTRONIC DOCUMENTS

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this subchapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

#### § 624. RECORDING OF DOCUMENTS

(a) In this section, “paper document” means a document that is received by the recorder in a form that is not electronic.

(b) A recorder:

(1) who implements any of the functions listed in this section shall do so in compliance with the most recent standards and best practices;

(2) may receive, index, store, transmit, and preserve electronic documents;

(3) may provide for access to, and for search and retrieval of, documents and information by electronic means;

(4) who accepts electronic documents for recording shall continue to accept paper documents as authorized by State law and shall place entries for both types of documents in the same index;

(5) may convert paper documents accepted for recording into electronic form;

(6) may convert into electronic form information recorded before the recorder began to record electronic documents;

(7) may accept electronically any fee the recorder is authorized to collect; and

(8) may agree with other officials of this State or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.



§ 625. STANDARDS AND BEST PRACTICES

To ensure consistency in the standards and best practices of, and the technologies used by, recorders in this State, recorders shall, so far as is consistent with the purposes, policies, and provisions of this subchapter, seek services from the Vermont State Archives and Records Administration pursuant to 3 V.S.A. § 117.

§ 626. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This subchapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. § 7003(b)).

Sec. 3. VERMONT STATE ARCHIVES AND RECORDS ADMINISTRATION; REPORT

(a) On or before January 15, 2024, the Vermont State Archives and Records Administration, in consultation with the Joint Fiscal Office, the Vermont League of Cities and Towns, the Vermont Municipal Clerks' and Treasurers' Association, and other interested parties, shall submit a report to the House Committees on Commerce and Economic Development and Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and Government Operations concerning the fiscal, governance, and operational sustainability of uniform approaches to the modernization of the acceptance, recording, and availability of deeds and other property records in electronic form.

(b) The report shall be based on analyses of the following:

(1) services requested by recorders pursuant to 27 V.S.A. § 625 to achieve consistency and uniformity in standards and best practices;

(2) systems currently deployed by recorders and associated costs; and

(3) anticipated recorder costs to transition to electronic recording pursuant to 27 V.S.A. chapter 5, subchapter 8.

(c) On or before January 15, 2023, the Vermont State Archives and Records Administration shall prepare an interim report concerning the information and analyses required by this section and submit the interim report to the House Committees on Commerce and Economic Development and

Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and Government Operations

Sec. 4. VERMONT STATE ARCHIVES AND RECORDS

ADMINISTRATION; POSITION

There is created within Vermont State Archives and Records Administration one new permanent classified position to facilitate and provide the services described in 27 V.S.A. § 625. Any funding necessary to support the position created in this section shall be derived from the Secretary of State Services Fund, with no General Fund dollars.

Sec. 5. 26 V.S.A. chapter 103 is amended to read:

CHAPTER 103. NOTARIES PUBLIC

\* \* \*

§ 5304. DEFINITIONS

As used in this chapter:

\* \* \*

(4) “Communication technology” means an electronic device or process operating in accordance with section 5380 of this chapter and any standards adopted by the Office pursuant to section 5323 of this chapter that:

(A) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) when necessary and consistent with other applicable laws, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(5) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~(5)~~(6) “Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(7) “Foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(8) “Identity proofing” means a process or service operating in accordance with section 5380 of this chapter and any standards adopted by the Office pursuant to section 5323 of this chapter by which a third person provides a notary public with a means to verify the identity of a remotely

located individual by a review of personal information from public or private data sources.

(6)(9) “In a representative capacity” means acting as:

\* \* \*

(7)(10)(A) “Notarial act” means an act, whether performed with respect to a tangible or an electronic record, that a notary public may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

\* \* \*

(8)(11) “Notarial officer” means ~~an individual authorized to perform a notarial act under authority and within the jurisdiction of another state, under authority and within the jurisdiction of a federally recognized Indian tribe, under authority of federal law, under authority and within the jurisdiction of a foreign state or constituent unit of the foreign state, or under authority of a multinational or international governmental organization~~ a notary public or other individual authorized to perform a notarial act.

(9)(12) “Notary public” means an individual commissioned to perform a notarial act by the Office.

(10)(13) “Office” means the Office of Professional Regulation within the Office of the Secretary of State.

(11)(14) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic process, seal, or image or ~~electronic information~~ attached to or logically associated with an electronic record.

(15) “Outside the United States” means a location outside the geographic boundaries of the United States; Puerto Rico; the U.S. Virgin Islands; and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(12)(16) “Person” means an individual, corporation, business trust, statutory trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13)(17) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under section 5379 of this chapter.

(14)(19) “Sign” means, with present intent to authenticate or adopt a record:

\* \* \*

(15)(20) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(16)(21) “Stamping device” means:

\* \* \*

(17)(22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18)(23) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notary public, that a statement in a record is true.

\* \* \*

## § 5323. RULES

(a) The Office, with the advice of the advisor appointees, may adopt rules to implement this chapter. The rules may:

\* \* \*

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking the commission or special commission endorsement of or otherwise disciplining a notary public and assuring the trustworthiness of an individual holding a commission or special commission endorsement as notary public;

(5) include provisions to prevent fraud or mistake in the performance of notarial acts; ~~and~~

(6) ~~prescribe standards for remote online notarization, including standards for credential analysis, the process through which a third person affirms the identity of an individual, the methods for communicating through a secure communication link, the means by which the remote notarization is certified, and the form of notice to be appended disclosing the fact that the notarization was completed remotely on any document acknowledged through~~

~~remote online notarization~~ the means of performing a notarial act involving a remotely located individual using communication technology;

(7) establish standards for communication technology and identity proofing;

(8) establish standards and a period for the retention of an audiovisual recording created under section 5379 of this chapter; and

(9) prescribe methods for a notary public to confirm, under subsections 5379(c) and (d) of this chapter, the identity of a tangible record.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records and remote online notarization may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records and remote online notarization, the Office shall consider, as far as is consistent with this chapter:

(1) the most recent standards regarding electronic records ~~and remote online notarization~~ promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that have laws substantially enact similar to this chapter; and

\* \* \*

~~(c) Neither electronic notarization nor remote online notarization shall be allowed until the Secretary of State has adopted rules and prescribed standards in these areas. [Repealed.]~~

#### § 5324. FEES

(a) For the issuance of a commission as a notary public, the Office shall collect a fee of ~~\$15.00~~ \$30.00.

(b) For issuance of a special endorsement authorizing the performance of electronic and remote notarial acts in accordance with subsection 5341(d) of this chapter, the Office shall collect a fee of \$30.00.

\* \* \*

#### § 5341. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO IMMUNITY OR BENEFIT

\* \* \*

~~(d) Upon compliance with this section, the Office shall issue a commission as a notary public to an applicant, which shall be valid through the then current commission term end date~~ A notary public shall not perform a notarial act on an electronic record or for a remotely located individual without obtaining a special endorsement from the Office. A notary public shall hold a notary public commission to be eligible for a special endorsement to perform notarial acts on electronic records and for remotely located individuals. The Office shall adopt rules for obtaining and regulating a special commission endorsement authorizing a notary public to perform notarial acts on electronic records and for remotely located individuals. These rules shall require notaries public performing notarial acts on electronic records and for remotely located individuals to ensure the communication technology and identity proofing used for the performance of the notarial act on electronic records or for remotely located individuals comply with the requirements of section 5380 of this chapter and any rules adopted by the Office in accordance with section 5323 of this chapter. A notary public shall apply for the special commission endorsement for the performance of notarial acts on electronic records and for remotely located individuals by filing with the Office an application provided by the Office accompanied by the required fees and evidence of eligibility, as required in rules adopted by the Office in accordance with section 5323 of this chapter.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts except for notarial acts on electronic records or for remotely located individuals. A commission with a special endorsement issued under subsection (d) of this section authorizes a notary public to perform notarial acts on electronic records and for remotely located individuals. The commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

\* \* \*

#### § 5362. AUTHORIZED NOTARIAL ACTS

(a) A notary public may perform a notarial act as authorized by and in accordance with the requirements of this chapter or otherwise by law of this State.

\* \* \*

(c) A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

#### § 5363. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS

\* \* \*

(e) Copies. A notary public who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

§ 5364. PERSONAL APPEARANCE REQUIRED

(a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notary public.

(b) ~~The requirement for a personal appearance is satisfied if:~~

~~(1) the notary public and the person executing the signature are in the same physical place; or~~

~~(2) the notary public and the person are communicating through a secure communication link using protocols and standards prescribed in rules adopted by the Secretary of State pursuant to the rulemaking authority set forth in this chapter. [Repealed.]~~

\* \* \*

§ 5368. SHORT-FORM CERTIFICATES

The following short-form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by subsections 5367(a) and (b) of this chapter:

\* \* \*

(5) For certifying a copy of a record:

State of \_\_\_\_\_

County of \_\_\_\_\_

I certify that this is a true and correct copy of a record in the possession of \_\_\_\_\_

Dated \_\_\_\_\_

Signature of notarial officer \_\_\_\_\_

Stamp \_\_\_\_\_

Title of office \_\_\_\_\_ [My commission expires: \_\_\_\_\_]

\* \* \*

§ 5371. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC RECORD; SELECTION OF

## TECHNOLOGY

(a) A notary public holding a special commission endorsement pursuant to subsection 5341(d) of this title and who is thus authorized to perform notarial acts on electronic records may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records from the tamper-evident technologies approved by the Office by rule. A person shall not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, the notary public shall notify the Office that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use from the list of technologies approved by the Office by rule. If the Office has established standards by rule for approval of technology pursuant to section 5323 of this chapter, the technology shall conform to the standards. If the technology conforms to the standards, the Office shall approve the use of the technology. A recorder, as defined in 27 V.S.A. § 622, may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

\* \* \*

### § 5379. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED

#### INDIVIDUAL

(a) A remotely located individual may comply with section 5364 of this chapter by using communication technology to appear before a notary public with a special commission endorsement.

(b) A notary public located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notary public holds a special commission endorsement pursuant to subsection 5341(d) of this title;

(2) the notary public:

(A) has personal knowledge under subsection 5365(a) of this chapter of the identity of the individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 5365(b) of this chapter; or



(C) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(3) the notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(4) the notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and

(5) for a remotely located individual located outside the United States:

(A) the record:

(i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(c) A notary public in this State may use communication technology under subsection (b) of this section to take an acknowledgement of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision (b)(4) of this section.

(d) The requirement under subdivision (b)(3) of this section for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:

(1) the remotely located individual:

(A) during the audiovisual recording under subdivision (b)(4) of this section, signs:

(i) the record; and

(ii) a declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I

appeared by means of communication technology on \_\_\_\_\_  
(date).

Signature \_\_\_\_\_ of \_\_\_\_\_ remotely \_\_\_\_\_ located \_\_\_\_\_ individual  
\_\_\_\_\_  
Printed \_\_\_\_\_ name \_\_\_\_\_ of \_\_\_\_\_ remotely \_\_\_\_\_ located  
individual \_\_\_\_\_; and

(B) sends the record and declaration to the notary public not later  
than three days after the notarial act was performed; and

(2) the notary public:

(A) in the audiovisual recording under subdivision (b)(4) of this  
section, records the individual signing the record and declaration; and

(B) after receipt of the record and declaration from the individual,  
executes a certificate of notarial act under section 5367 of this chapter, which  
must include a statement in substantially the following form:

I, (name of notary public), witnessed, by means of communication  
technology, (name of remotely located individual) sign the attached record and  
declaration on (date).

(e) A notarial act performed in compliance with subsection (d) of this  
section complies with subdivision 5367(a)(1) of this chapter and is effective on  
the date the remotely located individual signed the declaration under  
subdivision (d)(1)(A)(ii) of this section.

(f) Subsection (d) of this section does not preclude use of another  
procedure to satisfy subdivision (b)(3) of this section for a notarial act  
performed with respect to a tangible record.

(g) A notary public located in this State may use communication  
technology under subsection (b) of this section to administer an oath or  
affirmation to a remotely located individual if, except as otherwise provided by  
other law of this State, the notary public:

(1) identifies the individual under subdivision (b)(2) of this section;

(2) creates or causes the creation under subdivision (b)(4) of this section  
of an audiovisual recording of the individual taking the oath or affirmation;  
and

(3) retains or causes the retention under subsection (k) of this section of  
the recording.

(h) The notary public shall ensure that the communication technology and identity proofing used to perform a notarial act for a remotely located individual complies with section 5380 of this chapter and any standards adopted by the Office in accordance with section 5323 of this chapter.

(i) If a notarial act is performed under this section, the certificate of notarial act required by section 5367 of this chapter and the short-form certificate provided in section 5368 of this chapter must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate provided in section 5368 of this chapter for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under section 5323 of this chapter; or

(2) is in the form provided in section 5367 of this chapter and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(k) A notary public, guardian, conservator, or agent of a notary public or a personal representative of a deceased notary public shall retain the audiovisual recording created under subdivision (b)(4) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rules adopted under section 5323 of this chapter, the recording must be retained for a period of at least 10 years after the recording is made.

(l) Providers of the communication technologies, identity proofing, or storage must be registered with the Secretary of State to do business in Vermont and, by allowing communication technology or identity proofing to facilitate a notarial act of an electronic record or for a remotely located individual or by providing storage of the audiovisual recording under subdivision (b)(3) of this section, providers of the communication technology, identity proofing, or storage consent and agree that the service or process being provided is in compliance with the requirements set forth in this chapter and with any rules adopted by the Office.

## § 5380. COMPUTER TECHNOLOGY AND IDENTITY PROOFING

### PROVIDERS; MINIMUM STANDARDS

(a) Communication technology and identity proofing providers shall develop, maintain, and implement processes and services that are consistent with the requirements of this chapter and industry standards and best practices for the process or service provided. Providers must also comply with all applicable federal and State regulations, rules, and standards, including:

(1) with respect to communication technology, regulations, rules, and standards specific to simultaneous communication by sight and sound and information and communication technology for individuals with physical, sensory, and cognitive disabilities; and

(2) with respect to identity proofing, regulations, rules, and standards specific to the enrollment and verification of an identity used in digital authentication.

(b) A provider of communication technology or identity proofing shall provide evidence to the notary public's satisfaction of the provider's ability to satisfy the requirements of this chapter for the service or process being provided.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

**( Committee Vote: 10-0-1)**

**Rep. Canfield of Fair Haven**, for the Committee on Ways and Means, recommends the bill ought to pass when amended as recommended by the Committee on Commerce and Economic Development.

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

**H. 546**

An act relating to racial justice statistics

**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. 3 V.S.A. chapter 68 is amended to read:

CHAPTER 68. ~~EXECUTIVE DIRECTOR OFFICE OF RACIAL EQUITY~~

Subchapter 1. Executive Director of Racial Equity

\* \* \*

§ 5003. DUTIES OF EXECUTIVE DIRECTOR OF RACIAL EQUITY

\* \* \*

(e) The Director shall oversee the Division of Racial Justice Statistics (Division) established in subchapter 2 of this chapter.

(1) The Director shall have general charge of the Division and may appoint employees as necessary to carry out the purposes of this chapter.

(2) The Director may apply for grant funding, if available, to advance or support any responsibility within the Division's jurisdiction.

(e)(f) The Director shall periodically report to the Racial Equity Advisory Panel on the progress toward carrying out the duties as established by this section.

(f)(g) On or before January 15, 2020, and annually thereafter, the Director shall report to the House and Senate Committees on Government Operations demonstrating the State's progress in identifying and remediating systemic racial bias within State government.

\* \* \*

### Subchapter 2. Division of Racial Justice Statistics

#### § 5011. DIVISION OF RACIAL JUSTICE STATISTICS; CREATION;

##### PURPOSE

(a) Creation. There is created within the Office of Racial Equity the Division of Racial Justice Statistics to collect and analyze data related to systemic racial bias and disparities within the criminal and juvenile justice systems.

(b) Purpose. The mission of the Division is to collect and analyze data relating to racial disparities with the intent to center racial equity throughout these efforts. The purpose of the Division is to create, promote, and advance a system and structure that provides access to appropriate data and information, ensuring that privacy interests are protected and principles of transparency and accountability are clearly expressed. The data are to be used to inform policy decisions that work toward the amelioration of racial disparities across various systems of State government.

#### § 5012. DUTIES

(a) The Division shall have the following duties:

(1) Work collaboratively with, and have the assistance of, all State and local agencies and departments for purposes of collecting all data related to systemic racial bias and disparities within the criminal and juvenile justice systems.

(2) Collect and analyze the data related to systemic racial bias and disparities within the criminal and juvenile justice systems.

(3) Conduct justice information sharing gap analyses.

(4) Maintain an inventory of justice technology assets and a data dictionary to identify elements and structure of databases and relationships, if any, to other databases.

(5) Develop a justice technology strategic plan, which shall be updated annually. The justice technology strategic plan shall include identification and prioritization of data needs and requirements to fulfill new or emerging data research proposals or operational enhancements.

(6) Develop interagency agreements and memorandums of understanding for data sharing and publish public use files.

(7) Report its data, analyses, and recommendations to the Racial Justice Statistics Advisory Council on a monthly basis.

(b) On or before January 15, 2023, and annually thereafter, the Division shall report its data, analyses, and recommendations to the House and Senate Committees on Judiciary and on Government Operations. The report may include an operational assessment of the Division's structure and staffing levels, and any recommendations for necessary adjustments.

(c) To carry out its duties under this subchapter, the Division may adopt procedural and substantive rules in accordance with the provisions of chapter 25 of this title.

#### § 5013. DATA GOVERNANCE

(a) Data collection. In consultation with the Racial Disparities in the Criminal and Juvenile Justice Systems Advisory Panel and the Racial Justice Statistics Advisory Council, the Division shall establish the data to be collected to carry out the duties of this subchapter.

(1) Any data or records transmitted to or obtained by the Division that are exempt from public inspection and copying under the Public Records Act shall remain exempt and shall be kept confidential to the extent required by law. A State or local agency or department that transmits data or records to the Division shall be the sole records custodian for purposes of responding to requests for the data or records. The Division may direct any request for these data or records to the transmitting agency or department for response, provided that the Division shall respond to a Public Records Act request for nonidentifying data used by the Division for preparation of the reports required by subdivision 5012(a)(7) and subsection 5012(b) of this title.

(2) The Division shall identify which State agencies or departments possess the data necessary for the Division to perform the requirements and objectives of this subchapter. An agency or department identified pursuant to this subdivision shall, upon request, provide the Division with any data that the

Division determines is relevant to its purpose under subsection 5011(b) of this title, provided that the Office of the Defender General shall not be required to make any disclosures that would violate 1 V.S.A. § 317(c)(3). The Division may access the data of a non-State entity pursuant to a data sharing agreement or memorandum of understanding with the entity.

(3) The Division shall, pursuant to section 218 of this title, establish, maintain, and implement an active and continuing management program for its records and information, including data, with support and services provided by the Vermont State Archives and Records Administration pursuant to section 117 of this title and the Agency of Digital Services pursuant to section 3301 of this title.

(b) Data analysis. The Division shall analyze the data collected pursuant to this subchapter in order to:

(1) identify the stages of the criminal and juvenile justice systems at which racial bias and disparities are most likely to occur;

(2) organize and synthesize the data in a cohesive and logical manner so that it can be best presented and understood; and

(3) present the data to the Racial Justice Statistics Advisory Council as required under this subchapter.

(c) Data governance policy. The Division shall develop and adopt a data governance policy and shall establish:

(1) a system or systems to standardize the collection and retention of the data collected pursuant to this subchapter; and

(2) methods to permit sharing and communication of the data between the State agencies, local agencies, and external researchers, including the use of data sharing agreements.

(d) Data collection. The Division shall recommend to State and local agencies evidence-based practices and standards for the collection of racial justice data.

(e) Publicly available data.

(1) The Division shall maintain a public-facing website and dashboard that maximizes the transparency of the Division's work and ensures the ability of the public and historically impacted communities to review and understand the data collected by the Division and its analyses.

(2) The Division shall develop public use data files.

§ 5014. RACIAL JUSTICE STATISTICS ADVISORY COUNCIL

(a) Creation. The Racial Justice Statistics Advisory Council is established. The Council shall be organized and have the duties and responsibilities as provided in this section. The Council shall have the administrative, legal, and technical support of the Agency of Administration.

(b) Membership.

(1) Appointments. The Council shall consist of seven members, as follows:

(A) an individual with substantive expertise in community-based research on racial equity, to be appointed by the Governor; and

(B)(i) six individuals who have experience with or knowledge about one or more of the following situations:

(I) facing eviction;

(II) violence, discrimination, or criminal conduct, including law enforcement misconduct;

(III) moving to Vermont as an immigrant or refugee;

(IV) effects of racial disparities and discipline policies within the educational system; or

(V) participation in treatment programs addressing mental health, substance use disorder, and reentry programs; and

(ii) appointments made pursuant to this subdivision (B) shall be made by the following entities, each of which shall appoint one member: NAACP, Vermont Racial Justice Alliance, Migrant Justice, AALV Inc., Vermont Commission on Native American Affairs, and Outright Vermont.

(2) Qualifications. Members shall be drawn from diverse backgrounds to represent the interests of communities of color and other historically disadvantaged communities throughout the State and, to the extent possible, have experience working to implement racial justice reform and represent geographically diverse areas of the State.

(3) Terms. The term of each member shall be four years. As terms of currently serving members expire, appointments of successors shall be in accord with the provisions of this section. Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term. Members shall serve until their successors are appointed. Members shall serve not more than two consecutive terms in any capacity.



(4) Chair and terms. Members of the Council shall elect by majority vote the Chair of the Council. Members of the Council shall be appointed on or before November 1, 2022 in order to prepare as they deem necessary for the establishment of the Council, including the election of the Chair of the Council. Terms of members shall officially begin on January 1, 2023.

(c) Liaisons. The following entities shall each make available a person to serve as a liaison with the Council for purposes of providing consultation as needed:

- (1) the Supreme Court;
- (2) the Office of the Attorney General;
- (3) the Office of the Defender General;
- (4) the Department of State's Attorneys and Sheriffs;
- (5) the Department of Public Safety;
- (6) the Department for Children and Families;
- (7) the Department of Corrections;
- (8) the Agency of Education;
- (9) the Human Rights Commission; and
- (10) the Center for Crime Victims Services.

(d) Duties. The Council shall have the following duties and responsibilities:

(1) work with and assist the Director or designee to implement the requirements of this subchapter;

(2) advise the Director to ensure ongoing compliance with the purpose of this subchapter;

(3) evaluate the data and analyses received from the Division and make recommendations to the Division as a result of the evaluations; and

(4) on or before January 15, 2023 and annually thereafter, report to the House and Senate Committees on Judiciary and on Government Operations on:

(A) its findings regarding systemic racial bias and disparities within the criminal and juvenile justice systems based upon the data and analyses the Council receives from the Division pursuant to subdivision 5012(a)(7) of this subchapter; and

(B) a status report on progress made and recommendations for further action, including legislative proposals, to address systemic racial bias and disparities within the criminal and juvenile justice systems.

(e) Meetings. The Council shall meet monthly.

(f) Compensation. Each member of the Council shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

(g) This section shall be repealed on June 30, 2027.

Sec. 2. RACIAL JUSTICE STATISTICS ADVISORY COUNCIL;  
IMPLEMENTATION

(a) First meeting. The first meeting of the Racial Justice Statistics Advisory Council shall be called by the Director of Racial Equity or designee. All subsequent meetings shall be called by the Chair.

(b) Staggered terms. Notwithstanding Sec. 1 of this act, the initial terms of the Council members beginning on January 1, 2023 shall be as follows:

(1) Members appointed pursuant to 3 V.S.A. § 5014(b)(1)(A) and (b)(1)(B)(i)(I) shall be appointed to a two-year term.

(2) Members appointed pursuant to 3 V.S.A. § 5014(b)(1)(B)(i)(II) and (III) shall be appointed to a three-year term.

(3) Members appointed pursuant to 3 V.S.A. § 5014(b)(1)(B)(i)(IV) and (V) shall be appointed to a four-year term.

Sec. 3. DIVISION OF RACIAL JUSTICE STATISTICS; POSITIONS

The following new positions are created in the Division of Racial Justice Statistics:

(1) one full-time, exempt Division lead, who shall be an Information Technology Data Analyst; and

(2) two full-time, exempt Information Technology Data Analysts, at a level to be determined by the Division.

Sec. 4. APPROPRIATION

The following appropriations shall be made in fiscal year 2023:

(1) \$363,000.00 from the General Fund to the Office of Racial Equity for the Division of Racial Justice Statistics.

(2) \$3,360.00 from the General Fund to the Office of Racial Equity for per diem compensation and reimbursement of expenses under 32 V.S.A.

§ 1010 for members of the Racial Justice Statistics Advisory Council established by 13 V.S.A. § 5014.

(3) \$520,300.00 from the General Fund to the Agency of Digital Services to assist and support the Division of Racial Justice Statistics in the Office of Racial Equity.

Sec. 5. 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.

**(Committee Vote:10-1-0)**

**H. 626**

An act relating to the sale, use, or application of neonicotinoid pesticides

**Rep. Surprenant of Barnard**, for the Committee on Agriculture and Forestry, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. § 1105a is amended to read:

§ 1105a. TREATED ARTICLES; POWERS OF SECRETARY; BEST  
MANAGEMENT PRACTICES

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Agricultural Innovation Board, may adopt by rule:

(1) best management practices (**BMPs**), standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(2) requirements for the response to or corrective actions for exigent circumstances or contamination from a treated article that presents a threat to human health or the environment;

(3) requirements for the examination or inspection of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(4) requirements for persons selling treated articles to keep or make available to the Secretary records of sale of treated articles, and what treatments were received, the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous; or

(5) requirements for reporting of incidents resulting from accidental contamination from or misuse of treated articles the use of which the Agricultural Innovation Board has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous.

(b) At least 30 days prior to prefilng a rule authorized under subsection (a) or subsection (c) of this section with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837, the Secretary shall submit a copy of the draft rule to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry for review.

(c)(1) Under subsection (a) of this section, the Secretary of Agriculture, Food and Markets, after consultation with the Agricultural Innovation Board, shall adopt by rule BMPs for the use of treated article seeds in the State. In developing the rules with the Agricultural Innovation Board, the Secretary shall address:

(A) establishment of threshold levels of pest pressure required prior to use of treated article seeds;

(B) availability of nontreated article seeds;

(C) economic impact from crop loss as compared to crop yield when treated article seeds are used;

(D) relative toxicities of different treated article seeds and effects of treated article seeds on human health and the environment;

(E) surveillance and monitoring techniques for in-field pest pressure;

(F) ways to reduce pest harborage from conservation tillage practices; and

(G) criteria for a system of approval of treated article seeds.

(2) In implementing the rules required under this subsection, the Secretary of Agriculture, Food and Markets shall work with farmers, seed companies, and other relevant parties to ensure that farmers have access to appropriate varieties and amounts of untreated seed or treated seed that has not been treated with a neonicotinoid pesticide.

Sec. 2. 6 V.S.A. § 3036 is added to read:

§ 3036. MONITORING OF POLLINATOR HEALTH

The Secretary of Agriculture, Food and Markets shall monitor managed pollinator health to establish pollinator health benchmarks for Vermont, including:

- (1) presence of pesticides in hives;
- (2) mite pressure;
- (3) disease pressure;
- (4) mite control methods;
- (5) genetic influence on survival;
- (6) winter survival rate; and
- (7) forage availability.

Sec. 3. IMPLEMENTATION; RULEMAKING

The Secretary of Agriculture, Food and Markets shall adopt the rules required under 6 V.S.A. § 1105a for the use of treated article seeds on or before July 1, 2024.

Sec. 4. AGENCY OF AGRICULTURE, FOOD AND MARKETS;

RESIDUALS MANAGEMENT POSITIONS

Two new permanent classified positions at the Agency of Agriculture, Food and Markets are authorized in fiscal year 2023 for the purpose of staffing the Agency's Residuals Management Program, supporting the Agricultural Innovation Board, and enforcing and reviewing the use of treated article pesticides in the State. The two positions shall be transferred and converted from existing vacant positions in the Executive Branch. The two positions shall be funded from the revenue raised from the registration of soil amendments under 6 V.S.A. chapter 28 and the registration of dosage form animal health products and feed supplements under 6 V.S.A. chapter 26.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

**( Committee Vote: 8-0-0)**

**Rep. Toleno of Brattleboro**, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Agriculture and Forestry and when further amended as follows:

In Sec. 4, Agency of Agriculture, Food and Markets; residuals management positions, by striking out the last sentence in its entirety and inserting in lieu thereof the following two new sentences to read as follows:

In fiscal year 2023, \$181,190.00 is appropriated to the Agency of Agriculture, Food and Markets for the purpose of hiring the two new positions in the Agency's Residuals Management Program. The two positions shall be funded from the revenue raised from the registration of soil amendments under 6 V.S.A. chapter 28 and the registration of dosage form animal health products and feed supplements under 6 V.S.A. chapter 26.

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

### **H. 720**

An act relating to the system of care for individuals with developmental disabilities.

**(Rep. Wood of Waterbury** will speak for the Committee on Human Services.)

**Rep. Yacovone of Morristown**, for the Committee on Appropriations, recommends the bill ought to pass when amended as follows:

In Sec. 4, Department of Disabilities, Aging, and Independent Living; Residential Program Developer, by inserting a subsection (a) designation before the first sentence of the section and by adding a subsection (b) to read as follows:

(b) In fiscal year 2023, \$102,000.00 is appropriated to the Department of Disabilities, Aging, and Independent Living from the Global Commitment Federal Medical Assistance Percentage (FMAP) home- and community-based services monies to fund the Residential Program Developer position established in subsection (a) of this section.

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

**Amendment to be offered by Reps. Wood of Waterbury, Brumsted of Shelburne, Garofano of Essex, Gregoire of Fairfield, McFaun of Barre Town, Noyes of Wolcott, Pajala of Londonderry, Pugh of South Burlington, Rosenquist of Georgia, Small of Winooski and Whitman of Bennington to H. 720**

In Sec. 5, Department of Disabilities, Aging, and Independent Living; Development of Housing and Residential Services Pilot Planning Grants, in subsection (c), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3)(A) The steering committee shall have the technical, legal, and administrative assistance of the Department.

(B) The steering committee shall cease to exist on January 1, 2024.

**Action Postponed Until March 22, 2022**

**Favorable with Amendment**

**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 of 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)**

**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

**Consent Calendar**

**Concurrent Resolutions**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Senate Secretary's office or the House Clerk's office. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

**H.C.R. 120**

House concurrent resolution congratulating the 2022 Mt. Anthony Union High School boys' Division I Nordic skiing championship team

**H.C.R. 121**

House concurrent resolution congratulating the 2022 Mt. Anthony Union High School Patriots State championship wrestling team



## **S.C.R. 17**

Senate concurrent resolution honoring John Shannahan for his extraordinary contributions to the economic and cultural life of the Town of Bennington

### **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).**