

Journal of the Senate

WEDNESDAY, MAY 10, 2023

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 60

A message was received from the House of Representatives by Ms. Alona Tate, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 21. An act relating to landlord notice of utility disconnections.

In the passage of which the concurrence of the Senate is requested.

The House has considered bills originating in the Senate of the following titles:

S. 4. An act relating to reducing crimes of violence associated with juveniles and dangerous weapons.

S. 6. An act relating to law enforcement interrogation policies.

S. 33. An act relating to miscellaneous judiciary procedures.

S. 47. An act relating to the transport of individuals requiring psychiatric care.

S. 89. An act relating to establishing a forensic facility.

S. 95. An act relating to banking and insurance.

S. 112. An act relating to miscellaneous subjects related to the Public Utility Commission.

S. 115. An act relating to miscellaneous agricultural subjects.

S. 138. An act relating to school safety.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 17. Joint resolution urging U.S. Citizenship and Immigration Services to comply with the expedited asylum hearing provisions of the Afghan Supplemental Appropriations Act of 2022.

And has adopted the same in concurrence.

The House has considered Senate proposal of amendment to House proposal of amendment to Senate bill of the following title:

S. 48. An act relating to regulating the sale of catalytic converters.

And has concurred therein.

The House has considered Senate proposals of amendment to the following House bills:

H. 94. An act relating to removing the Reach Up ratable reduction.

H. 206. An act relating to miscellaneous changes affecting the duties of the Department of Vermont Health Access.

H. 481. An act relating to public health initiatives to address death by suicide.

H. 482. An act relating to Vermont Criminal Justice Council recommendations for law enforcement officer training.

And has severally concurred therein.

The House has considered Senate proposal of amendment to House proposal of amendment to Senate proposal of amendment to the following House bill:

H. 53. An act relating to driver's license suspensions.

And has concurred therein.

The Governor has informed the House that on May 8, 2023, he approved and signed bills originating in the House of the following titles:

H. 41. An act relating to referral of domestic and sexual violence cases to community justice centers.

H. 76. An act relating to captive insurance.

H. 146. An act relating to amendments to the charter of the Northeast Kingdom Waste Management District.

Bill Referred

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

H. 21. An act relating to landlord notice of utility disconnections.

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

Bill Referred to Committee on Appropriations**H. 429.**

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule, was referred to the Committee on Appropriations:

An act relating to miscellaneous changes to election laws.

Rules Suspended; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence

H. 452.

Pending entry on the Calendar for notice, on motion of Senator Clarkson, the rules were suspended and Senate bill entitled:

An act relating to expanding apprenticeship and other workforce opportunities.

Was taken up for immediate consideration.

Thereupon, Senator Clarkson, for the Committee on Economic Development, Housing and General Affairs, to which was referred the bill, reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Thereupon, on motion of Senator Clarkson, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence forthwith.

Thereupon, the bill was read the third time and passed in concurrence.

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 217.

Appearing on the Calendar for notice, on motion of Senator Baruth, the rules were suspended and Senate bill entitled:

An act relating to miscellaneous workers' compensation amendments.

Was taken up for immediate consideration.

Senator Harrison, for the Committee on Economic Development, Housing and General Affairs, to which the bill was referred reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Workers' Compensation * * *

Sec. 1. WORKERS' COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2024, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly determines that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall be 1.5 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

Sec. 2. 21 V.S.A. § 711 is amended to read:

§ 711. WORKERS' COMPENSATION ADMINISTRATION FUND

* * *

(b)(1) Annually, the General Assembly shall establish the rate of contribution for the direct calendar year premium for workers' compensation insurance. The rate shall equal the amount approved in the appropriations process for the program and the Department's projection of salary and benefit increases for that fiscal year, less the amount collected in the prior calendar year under subsection (a) of this section from self-insured workers' compensation losses and from corporations approved under this chapter, adjusted by any balance in the fund from the prior fiscal year, divided by the total direct calendar year premium for workers' compensation insurance for the prior year.

(2) In the event that the General Assembly does not establish the rate of contribution for the direct calendar year premium for workers' compensation insurance for a given fiscal year, the rate shall remain unchanged from the prior fiscal year.

Sec. 3. 2014 Acts and Resolves No. 199, Sec. 54b is amended to read:

Sec. 54b. 21 V.S.A. § 643a is added to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to

discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner. ~~These~~ The payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 4. 21 V.S.A. § 640b is amended to read:

§ 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
PROPOSED TREATMENT IS BENEFITS ARE NECESSARY

(a) As used in this section, "benefits" means medical treatment and surgical, medical, and nursing services and supplies, including prescription drugs and durable medical equipment.

(b) Within 14 days of after receiving a written request for preauthorization for a proposed medical treatment benefits and medical evidence supporting the requested treatment benefits, a workers' compensation insurer shall do one of the following, in writing:

(1) ~~authorize~~ Authorize the ~~treatment~~ benefits and notify the health care provider, the injured worker, and the Department; ~~or~~.

(2)(A) ~~deny~~ Deny the ~~treatment~~ benefits because the entire claim is disputed and the Commissioner has not issued an interim order to pay benefits; ~~or~~. The insurer shall notify the health care provider, the injured worker, and the Department of the decision to deny benefits.

(B)(3) ~~deny~~ Deny the ~~treatment~~ benefits if, based on a preponderance of credible medical evidence specifically addressing the proposed ~~treatment~~ benefits, ~~it is~~ the benefits are ~~unreasonable or unnecessary, or unrelated to the work injury.~~ unreasonable or unnecessary, or unrelated to the work injury. The insurer shall notify the health care provider, the injured worker, and the Department of the decision to deny ~~treatment; or~~ benefits.

(3)(4) ~~notify~~ Notify the health care provider, the injured worker, and the Department that the insurer has scheduled an examination of the employee pursuant to section 655 of this title or ordered a medical record review pursuant to section ~~655~~ 655a of this title. Based on the examination or review, the insurer shall authorize or deny the ~~treatment~~ benefits and notify the Department and the injured worker of the decision within 45 days ~~of~~ after a request for preauthorization. The Commissioner may, ~~in his or her~~ the Commissioner's sole discretion, grant a 10-day extension to the insurer to authorize or deny ~~treatment~~ benefits, and such an extension shall not be subject to appeal.

(b)(c) If the insurer fails to authorize or deny the ~~treatment~~ benefits pursuant to subsection (a) (b) of this section within 14 days ~~of~~ after receiving a request, the claimant or health care provider may request that the Department issue an order authorizing ~~treatment~~ benefits. After receipt of the request, the Department shall issue an interim order within five days after notice to the insurer, and five days in which to respond, absent evidence that the entire claim is disputed. Upon request of a party, the Commissioner shall notify the parties that the ~~treatment~~ has ~~benefits~~ have been authorized by operation of law.

(e)(d) If the insurer denies the preauthorization of the ~~treatment~~ benefits pursuant to subdivision (a)(2) ~~or~~, (3), ~~or~~ (4) of this section, the Commissioner may, ~~on his or her~~ the Commissioner's own initiative or upon a request by the claimant, issue an order authorizing the ~~treatment~~ benefits if ~~he or she~~ the Commissioner finds that the evidence shows that the ~~treatment~~ is ~~benefits~~ are reasonable, necessary, and related to the work injury.

Sec. 5. 21 V.S.A. § 643d is added to read:

§ 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

(a) An employer may require an employee who is receiving temporary disability benefits pursuant to section 646 of this chapter to engage in a good faith search for suitable work if:

(1) the injured employee is medically released to return to work, either with or without limitations;

(2) the employer has provided the injured employee with written notification that the employee is medically released to return to work and the notification describes any applicable limitations; and

(3) the employer cannot offer the injured employee work that the employee is medically released to do.

(b) An injured employee shall not be required to engage in a good faith search for suitable work if the employee:

(1) is already employed; or

(2) has been referred for or is scheduled to undergo one or more surgical procedures.

(c) An employer shall not require an injured employee to contact more than three employers per week as part of a good faith work search performed pursuant to this section.

Sec. 6. 21 V.S.A. § 646 is amended to read:

§ 646. TEMPORARY PARTIAL DISABILITY BENEFITS

(a)(1) Where the disability for work resulting from an injury is partial, during the disability and beginning on the eighth day thereof of the period of disability, the employer shall pay the injured employee a weekly compensation equal to the greater of:

(A) the difference between the amount the injured employee would be eligible to receive pursuant to section 642 of this chapter, including any applicable cost of living adjustment or dependency benefits that would be due, and the wage the injured employee earns during the period of disability; and

(B) two-thirds of the difference between his or her the injured employee's average weekly wage before the injury and the average weekly wage which he or she is able to earn thereafter amount the employee earns during the period of disability.

(2) Compensation paid pursuant to this subsection shall be adjusted following the receipt of 26 weeks of benefits and annually on each subsequent

July 1, so that the compensation continues to bear the same percentage relationship to the average weekly wage in the State as it did at the time of injury.

(b)(1) In addition to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability \$20.00 per week for each dependent child under 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.

(2) The amount allowed for dependent children shall be adjusted weekly to reflect the number of dependent children during each week of payment.

Sec. 7. 21 V.S.A. § 646 is amended to read:

§ 646. TEMPORARY PARTIAL DISABILITY BENEFITS

* * *

~~(b)(1) In addition to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability \$20.00 per week for each dependent child under 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.~~

~~(2) The amount allowed for dependent children shall be adjusted weekly to reflect the number of dependent children during each week of payment. [Repealed.]~~

Sec. 8. 21 V.S.A. § 642 is amended to read:

§ 642. TEMPORARY TOTAL DISABILITY BENEFITS

(a)(1) Where the injury causes total disability for work, during such the disability, but not including the first three days, with the day of the accident to be counted as the first day, unless the employee received full wages for that day, the employer shall pay the injured employee a weekly compensation equal to two-thirds of the employee's average weekly wages, but.

(2) The weekly compensation shall be in an amount that is not more than the maximum nor less than the minimum weekly compensation.

(3) Compensation paid pursuant to this subsection shall be adjusted on the first July 1 following the receipt of 26 weeks of benefits and annually on each subsequent July 1, so that the compensation continues to bear the same percentage relationship to the average weekly wage in the State as it did at the time of injury.

~~(b)(1) In addition, the injured employee, during the disability period shall~~

~~receive \$10.00~~ to the amount paid pursuant to subsection (a) of this section,
the employer shall pay the injured employee during the disability \$20.00 per
week for each dependent child who is unmarried and under the age of 21 years
of age, provided that no other injured worker is receiving the same benefits on
behalf of the dependent child or children. However, in no event shall an

(2) The amount allowed for the dependent children shall be adjusted
weekly to reflect the number of dependent children during each week of
payment.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to
the contrary:

(1) An employee's total weekly wage replacement benefits, including
any payments for a dependent child, shall not exceed 90 percent of the
employee's average weekly wage prior to applying any applicable cost of
living adjustment. The amount allowed for dependent children shall be
increased or decreased weekly to reflect the number of dependent children
extant during the week of payment.

(2) If the total disability continues after the third day for a period of
seven consecutive calendar days or more, compensation shall be paid for the
whole period of the total disability.

Sec. 9. 21 V.S.A. § 642 is amended to read:

§ 642. TEMPORARY TOTAL DISABILITY BENEFITS

* * *

(b)(1) In addition to the amount paid pursuant to subsection (a) of this
 section, the employer shall pay the injured employee during the disability
~~\$20.00~~ \$10.00 per week for each dependent child who is under 21 years of
 age, provided that no other injured worker is receiving the same benefits on
 behalf of the dependent child or children.

* * *

Sec. 10. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(d)(1) Compensation computed pursuant to this section shall be adjusted
 annually on July 1, so that ~~such~~ the compensation continues to bear the same
 percentage relationship to the average weekly wage in the State ~~as computed~~
~~under this chapter~~ as it did at the time of injury.

(2) Temporary total or temporary partial compensation shall first be adjusted on the first July 1 following the receipt of 26 weeks of benefits.

(3) Permanent total and permanent partial compensation shall be adjusted for each July 1 following the date of injury regardless of whether indemnity benefits were paid on each intervening July 1.

(e)(1) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the Commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to any amounts due pursuant to subsection (f) of this section and interest and any other penalties.

(2) In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the Commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed.

(3) Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of after the benefit being due and payable and the evidence reasonably supports the denial.

(4) Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment.

(5) The Commissioner shall promptly review requests for payment under this section and, consistent with subsection 678(d) of this title, shall allow for the recovery of reasonable attorney's fees associated with an employee's successful request for payment under this subsection.

(f)(1)(A) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established.

(B) Payment shall be made by direct deposit to a claimant who elects that payment method. The employer shall notify the claimant of ~~his or her~~ the claimant's right to payment by direct deposit.

(2) If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day.

(3) As used in this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

Sec. 11. 21 V.S.A. § 678 is amended to read:

§ 678. COSTS; ATTORNEY'S FEES

~~(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The Commissioner may allow the claimant to recover reasonable attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.~~

(b)(1) When a claimant prevails in either a formal or informal proceeding under this chapter, the Commissioner shall award the claimant necessary costs incurred in relation to the proceeding, including deposition expenses, subpoena fees, and expert witness fees.

(2) The Commissioner may allow a claimant to recover reasonable attorney's fees when the claimant prevails.

(3) In cases for which a formal hearing is requested and the case is resolved prior to a formal hearing:

(A) the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the attorney's efforts; and

(B) the Commissioner shall award necessary costs if the claimant incurred the costs in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the costs incurred.

(c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails, he or she the claimant shall be entitled to reasonable attorney's fees as approved by the court; necessary costs, including deposition expenses, subpoena fees, and expert witness fees; and interest at the rate of 12 percent per annum on that portion of any award the payment of which is contested.

(2) Interest shall be computed from the date of the award of the Commissioner.

~~(e)~~(d) By January 1, 1999, and at least every five years thereafter, the Commissioner shall amend existing rules regarding reasonable attorney's fees awarded under subsection (a) of this section. In amending these rules, the

Commissioner shall consider accessibility to legal services, appropriate inflation factors, and any other related factors consistent with the purposes of this chapter. In the event the Commissioner proposes no change in the rules in any five-year period, the Commissioner shall provide a written report to the Legislative Committee on Administrative Rules of the General Assembly explaining the reasons for not changing the rules.

~~(d) In cases for which a formal hearing is requested and the case is resolved prior to formal hearing, the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and thereafter payments were made to the claimant as a result of the attorney's efforts.~~

* * *

Sec. 12. ADOPTION OF RULES

The Commissioner of Labor shall, on or before July 1, 2024, adopt rules as necessary to implement the provisions of Secs. 4 through 11 of this act.

* * * Unemployment Insurance * * *

Sec. 13. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

~~The following words and phrases, as As used in this chapter, shall have the following meanings unless the context clearly requires otherwise:~~

* * *

(25) "Son," "daughter," and "child" include an individual's biological child, foster child, adoptive child, stepchild, a child for whom the individual is listed as a parent on the child's birth certificate, a legal ward of the individual, a child of the individual's spouse, or a child that the individual has day-to-day responsibilities to care for and financially support.

(26) "Spouse" includes an individual's domestic partner or civil union partner. As used in this subdivision, "domestic partner" means another individual with whom an individual has an enduring domestic relationship of a spousal nature, provided that the individual and the individual's domestic partner:

(A) have shared a residence for at least six months;

(B) are at least 18 years of age;

(C) are not married to, in a civil union with, or considered the domestic partner of another individual;

(D) are not related by blood closer than would bar marriage under State law; and

(E) have agreed between themselves to be responsible for each other's welfare.

Sec. 14. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

As used in this chapter:

* * *

(5) "Employer" includes:

(A) Any employing unit ~~which, after December 31, 1971~~ that in any calendar quarter in either the current or preceding calendar year paid for service in employment, as hereinafter defined pursuant to subdivision (6) of this section, wages of \$1,500.00 or more, or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment, ~~as hereinafter defined,~~ at least one individual (irrespective of whether the same individual was in employment in each such day). When an employing unit described in either this subdivision or subdivision (5)(B) of ~~this section~~ subdivision (5), becomes an employer within any calendar year, it shall be subject to this chapter for the whole of ~~such~~ the calendar year.

(B)(i) Any employing unit for which service in employment for a religious, charitable, educational, or other organization as defined in subdivision (6)(A)(ix) of this section is performed after December 31, 1971; ~~2~~ except as provided in subdivision (5)(C) of ~~this section~~ subdivision (5).

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this State, ~~performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision,~~ service performed after December 31, 1977, performed by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly ~~without~~ outside this State may by election as ~~hereinbefore~~ provided in subdivision (5)(E)(i) of this section be treated as if wholly within the jurisdiction of this State. ~~And whenever~~ If an employing unit shall have has elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the Commissioner, upon ~~his or her~~

~~approval of said approving the~~ election as to ~~any such~~ the employee, may treat the services covered by ~~said approved the~~ election as having been performed wholly ~~without~~ outside the jurisdiction of this State.

* * *

(ix) The term “employment” shall also include service for any employing unit ~~which is performed after December 31, 1971~~ by an individual in the employ of a religious, charitable, educational, or other organization ~~but only if:~~

~~(I) the service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of section subdivision 3306(c)(8) of that act; and~~

~~(II) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.~~

* * *

Sec. 15. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

* * *

(c)(1) Financing benefits paid to employees of nonprofit organizations.

~~(A) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection (c).~~

~~(B) For the purposes of As used in this subsection (c), a “nonprofit organization” is means an organization (, or group of organizations), described in Section 501(c)(3) of the U.S. Internal Revenue Code which that is exempt from income tax under Section 501(a) of such the Internal Revenue Code.~~

(2) Liability for contributions and election of reimbursement. Any nonprofit organization ~~which that~~, pursuant to subdivision 1301(5)(B)(i) of this title chapter, is, or becomes, subject to this chapter ~~on or after January 1, 1972~~ shall pay contributions under the provisions of this section, unless it elects, in accordance with this subsection, to pay to the Commissioner, for the Unemployment Insurance Trust Fund, an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of ~~such the~~ nonprofit organization, to individuals for weeks of unemployment ~~which that~~ begin during the effective period of ~~such the~~ election.

~~(A) Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year beginning with January 1, 1972 provided it files with the Commissioner a written notice of its election within the 30-day period immediately following such date or within a like period immediately following April 16, 1971, whichever occurs later. [Repealed.]~~

(B) Any nonprofit organization ~~which~~ that becomes subject to this chapter ~~after January 1, 1972~~ may elect to become liable for payments in lieu of contributions for a period of not less than 12 months ~~beginning with the date on which such subjectivity begins~~ by filing a written notice of its election with the Commissioner not later than 30 days immediately following the date of the determination ~~of such subjectivity~~ that the organization is subject to this chapter.

(C) Any nonprofit organization ~~which~~ that makes an election in accordance with ~~subdivisions (c)(2)(A) and subdivision (B) of this section will subdivision (c)(2) shall~~ continue to be liable for payments in lieu of contributions until it files with the Commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which ~~such~~ the termination shall first be effective.

(D) Any nonprofit organization ~~which~~ that has been paying contributions under this chapter ~~for a period subsequent to January 1, 1972 may change to a reimbursable basis~~ elect to become liable for payments in lieu of contributions by filing with the Commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. ~~Such~~ An election under this subdivision (c)(2)(D) shall not be terminable by the organization for that year and the next year.

(E) The Commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive ~~but not any earlier than with respect to benefits paid after December 31, 1969.~~

(F) The Commissioner, in accordance with ~~such~~ any applicable rules as adopted by the Board ~~may prescribe,~~ shall notify each nonprofit organization of any determination ~~which he or she may make of that the Commissioner makes with regard to~~ its status as an employer and of the effective date of any election ~~which it~~ that the organization makes and of any termination of ~~such~~ an election. ~~Such~~ The determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

(3) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this subdivision, including either subdivision (A) or ~~subdivision (B)~~.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the Commissioner, the Commissioner shall bill each nonprofit organization, or group of ~~such nonprofit organizations, which that~~ has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during ~~such the~~ quarter or other prescribed period that is attributable to service in the employ of ~~such the~~ organization.

(B)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make ~~such~~ payments as provided in this subdivision (c)(3)(B). ~~Such method of payment~~ Payment pursuant to the provisions of this subdivision (c)(3)(B) shall become effective upon approval of the Commissioner.

(ii) At the end of each calendar quarter, the Commissioner shall bill each nonprofit organization approved to make payments pursuant to the provisions of this subdivision (c)(3)(B) for an amount representing ~~one of the following:~~

~~(I) For 1972, two-tenths of one percent of its total payroll for 1971.~~

~~(II) For years after 1972, such a percentage of its total payroll for the immediately preceding calendar year as that the Commissioner shall determine. The determination shall be determines to be appropriate based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.~~

~~(III) For The Commissioner may determine a different rate for any organization which that did not pay wages throughout the four calendar quarters of the preceding calendar year, ~~such percentage of its payroll during that year as the Commissioner shall determine.~~~~

(iii) At the end of each calendar year, the Commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each calendar year, the Commissioner shall determine whether the total of payments for ~~such the~~ year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during ~~such the~~ taxable year based on wages attributable to service in the employ of ~~such the~~ organization. Each nonprofit organization whose total payments for

~~such~~ the year are less than the amount so determined shall be liable for payment of the unpaid balance to the Trust Fund in accordance with subdivision ~~(3)~~(C) of this ~~subsection~~ subdivision (c)(3). If the total payments exceed the amount so determined for the taxable year, all or a part of the excess shall, at the election of the nonprofit organization, be refunded from the Trust Fund or retained in the Trust Fund as part of the payments ~~which~~ that may be required for the next calendar year.

(C) Payment of any bill rendered under subdivision (2) ~~or subdivision (3)~~ of this subsection (c) or this subdivision (c)(3) shall be made not later than 30 days after the bill is mailed to the last known address of the nonprofit organization or is otherwise delivered to it, unless there has been an application for redetermination by the Commissioner or a petition for hearing before a referee in accordance with subdivision ~~(3)~~(E) of this ~~subsection~~ subdivision (c)(3).

(D) Payments made by any nonprofit ~~corporation~~ organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(E)(i) The amount due specified in any bill from the Commissioner shall be conclusive on the organization unless, not later than 30 days after the date of the bill, the organization files an application for reconsideration by the Commissioner, or a petition for a hearing before a referee, setting forth the grounds for ~~such~~ the application or petition.

(ii) The Commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which ~~such~~ an application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than 30 days after the date of the redetermination, the organization files a petition for a hearing before a referee, setting forth the grounds for the petition.

(iii) Proceedings on the petition for a hearing before a referee on the amount of a bill rendered under this section or a redetermination of ~~such~~ the amount shall be in accordance with the provisions of section 1331 of this title, and the decision of the referee shall be subject to the provisions of that section. Review of the decision of the referee by the Employment Security Board shall be in accordance with, and its decision shall be subject to, the provisions of section 1332 of this title.

(F) Any employer, including the State of Vermont ~~which, that~~ makes payments in lieu of contributions under this section shall be subject to the provisions of sections 1314, 1322, 1328, 1329, 1334, and 1336 of this title as follows:

(i) ~~that~~ The employer shall be liable for any reports as required by the Commissioner ~~may require~~ pursuant to sections 1314 and 1322 of this title;

(ii) ~~that~~ The employer shall be liable for any penalty imposed pursuant to sections 1314 and 1328 of this title;

(iii) ~~that~~ The employer shall be liable for the same interest on past due payments pursuant to subsection 1329(a) of this title;

(iv) ~~that~~ The employer shall be subject to a civil action for the collection of past due payments as if those payments were contributions pursuant to subsections 1329(b) and 1334(a) of this title; ~~and.~~

(v) ~~that~~ The employer shall be subject to ~~those~~ actions for the collection of past due payments as if those payments were contributions pursuant to subsections 1329(c) and (d), and 1334(b) and (c), and section 1336 of this title; however, those provisions shall not apply to the State of Vermont.

(4) Authority to terminate elections. If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subsection, the Commissioner may terminate ~~such~~ the organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination shall be effective for that and the next taxable year.

(5) Allocation of benefit costs.

(A) Each employer that is liable for payments in lieu of contributions shall pay to the Commissioner for the Trust Fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of ~~such~~ the employer.

(B) If benefits paid to an individual are based on wages paid by more than one employer and one or more of ~~such~~ the employers are liable for payments in lieu of contributions, the amount payable to the Trust Fund by each employer that is liable for ~~such~~ payments in lieu of contributions shall be ~~determined in accordance with subdivisions (5)(A) and (B) of this subsection~~ (e):

(A) ~~Proportionate allocation when fewer than all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in~~

~~lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by ~~sueh~~ the employer bear to the total base-period wages paid to the individual by all of ~~his or her~~ the individual's base-period employers.~~

~~(B) Proportionate allocation when all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of his or her base-period employers.~~

(6) Group accounts. Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of this section and section 1380 of this title, may file a joint application to the Commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of ~~sueh~~ the employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this section. Upon ~~his or her~~ approval of the application, the Commissioner shall establish a group account for ~~sueh~~ the employers effective as of the beginning of the calendar quarter in which ~~he or she~~ the Commissioner receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the Commissioner or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in ~~sueh~~ the quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by ~~sueh~~ the member in ~~sueh~~ the quarter bear to the total wages paid during ~~sueh~~ the quarter for service performed in the employ of all members of the group. The Board shall ~~prescribe regulations~~ adopt rules as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this ~~section~~ subsection by members of the group and the time and manner of ~~sueh~~ the payments.

~~(7) Notwithstanding any of the foregoing provisions of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by this section, and, pursuant to subsection (c) of this section, elects within 30 days after January 1, 1972, to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on and after the effective date of the election until the total amount of benefits equals the amount (1) by which the contributions paid by the organization with respect to the two-year period before the effective date of the election under subsection (b) of this section exceed (2) the total amount of unemployment benefits paid for the same period that were attributable to service performed in the employ of the organization and were charged to the experience rating record of the organization. [Repealed.]~~

* * *

(f) Any employer who makes payments in lieu of contributions under the provisions of this section is considered to be self-insuring and shall pay to the Commissioner for the Unemployment Compensation Trust Fund ~~such~~ any amounts as the Commissioner finds to be due under this chapter, including benefits paid but denied on appeal or benefits paid in error ~~which~~ that cannot be properly charged either against another employer who makes payments in lieu of contributions or against the experience-rating record of another employer who pays contributions. Benefits improperly paid where repayment by the claimant is ordered pursuant to subsection 1347(a) or (b) of this title will be credited to the employer's account when repayment from the claimant is actually received by the Commissioner.

Sec. 16. NONPROFIT AND MUNICIPAL REIMBURSABLE EMPLOYERS; EDUCATION; OUTREACH

(a) On or before October 1, 2023, the Commissioner of Labor, in consultation with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, shall develop information and education materials for nonprofit and municipal employers regarding the unemployment insurance system. At a minimum, the materials shall:

(1) explain the options available to nonprofit and municipal employers, including paying regular unemployment insurance contributions, reimbursing the Unemployment Insurance Trust Fund for attributable unemployment insurance costs, and, with respect to nonprofit employers, quarterly payments of estimated unemployment insurance costs;

(2) identify the potential benefits and drawbacks of each of the options identified in subdivision (1) of this subsection;

(3) provide information on how a nonprofit or municipal employer can evaluate its potential liability under each of the options identified in subdivision (1) of this subsection;

(4) provide information developed by the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders regarding how a nonprofit or municipal employer can plan and budget for the potential expenses associated with each of the options identified in subdivision (1) of this subsection; and

(5) provide additional information regarding the Unemployment Insurance program and related laws that the Commissioner determines, in consultation with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, to be helpful or necessary for nonprofit and municipal employers.

(b)(1) The informational and educational materials developed pursuant to subsection (a) of this section shall be made available on the Department's website and shall, in coordination with the Secretary of State, Common Good Vermont, United Way of Northwest Vermont, the Vermont League of Cities and Towns, and other interested stakeholders, be shared directly with Vermont nonprofit and municipal employers to the extent practicable.

(2) The Secretary of State shall assist the Commissioner of Labor in identifying and contacting all active Vermont nonprofit employers. The Office of the Secretary of State shall also make available on its website a link to the information and educational materials provided on the Department of Labor's website pursuant to this section.

(c) The Department of Labor, in collaboration with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, shall hold one or more informational sessions to present the materials and information developed pursuant to subsection (a) of this section to nonprofit employers and municipal employers. At least one session shall be held on or before November 1, 2023. Each session shall allow for both in-person and remote participation and shall be recorded. Recordings shall be made available to the public and to stakeholder organizations for distribution to their members.

Sec. 17. 2021 Acts and Resolves No. 183, Sec. 59(b)(6) is amended to read:

(6) Sec. 52g (prospective repeal of unemployment insurance benefit increase) shall take effect ~~upon the payment of a~~ when the cumulative total amount of additional benefits paid pursuant to 21 V.S.A. § 1338(e) ~~when,~~ compared to the rate at which benefits would have been paid under the formula set forth in 21 V.S.A. § 1338(e) on June 30, 2025 ~~equal to \$92,000,000.00,~~ plus the ~~difference between \$8,000,000.00 and the amount of additional benefits paid out pursuant to section 52b, if any,~~ compared to the amount that would have been paid pursuant to the provisions of 21 V.S.A. § 1338(f)(1) on June 30, 2022, equals \$100,000,000.00 and shall apply to benefit weeks beginning after that date.

Sec. 18. UNEMPLOYMENT DUE TO URGENT, COMPELLING, OR NECESSITOUS CIRCUMSTANCES; COVERAGE; IMPACT; REPORT

(a) On or before January 15, 2024, the Commissioner of Labor shall submit a written report prepared in consultation with the Joint Fiscal Office to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential impact of extending eligibility for unemployment insurance benefits to individuals who separate from employment due to urgent, compelling, or necessitous circumstances, including the individual's injury or illness, to obtain or recover from medical treatment, to escape domestic or sexual violence, to care for a child following an unexpected loss of child care, or to care for an ill or injured family member.

(b) The report shall include:

(1) a list of states in which individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section are eligible for unemployment insurance and shall identify the specific circumstances for separation from employment in each identified state for which there is no waiting period or period of disqualification related to the circumstance;

(2) information, to the extent it is available, regarding the number of approved claims in the states identified pursuant to subdivision (1) of this subsection where the individual separated from employment due to circumstances similar to those described in subsection (a) of this section;

(3) an estimate of the projected range of additional approved claims per year in Vermont if individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section are made eligible for unemployment insurance;

(4) an estimate of the range of potential impacts on the Unemployment Insurance Trust Fund of making individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section eligible for unemployment insurance; and

(5) any recommendations for legislative action.

Sec. 19. DOMESTIC AND SEXUAL VIOLENCE SURVIVORS'
TRANSITIONAL EMPLOYMENT PROGRAM; UTILIZATION;
REPORT

On or before January 15, 2024, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding the utilization of the Domestic and Sexual Violence Survivors' Transitional Employment Program. The report shall include information regarding the utilization of the Program during the past 10 years, a summary of the Department's efforts to make members of the public aware of the Program and improve access to it, how the identified changes have impacted utilization of the Program in comparison to prior years, any potential ways to further increase awareness and utilization of the Program, and any suggestions for legislative action to improve awareness or utilization of the Program.

Sec. 20. 21 V.S.A. § 1256 is added to read:

§ 1256. NOTIFICATION TO THE PUBLIC

The Department shall take reasonable measures to provide information to the public about the Program, including publishing information on the Department's website and providing timely materials related to the Program to public agencies of the State and organizations that work with domestic and sexual violence survivors, including law enforcement, State's Attorneys, community justice centers, the Center for Crime Victim Services, the Vermont Network Against Domestic and Sexual Violence (the Network), and any others deemed appropriate by the Commissioner in consultation with the Network.

* * * Effective Dates * * *

Sec. 21. EFFECTIVE DATES

- (a) This section and Secs. 1 and 3 shall take effect on passage.
- (b) Sec. 14 shall take effect on July 1, 2024.
- (c) Secs. 7 and 9 shall take effect on July 1, 2028.
- (d) The remaining sections shall take effect on July 1, 2023.

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

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Economic Development, Housing and General Affairs.

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

By striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Legislative Intent * * *

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that investments in and policy changes to Vermont's child care and early learning system shall:

(1) increase access to and the quality of child care services and afterschool and summer care programs throughout the State;

(2) increase equitable access to and quality of prekindergarten education for children four years of age;

(3) provide financial stability to child care programs;

(4) stabilize Vermont's talented child care workforce;

(5) address the workforce needs of the State's employers;

(6) maintain a mixed-delivery system for prekindergarten, child care, and afterschool and summer care; and

(7) assign school districts with the responsibility of ensuring equitable prekindergarten access for children who are four years of age on the date by which the child's school district requires kindergarten students to have attained five years of age or who are five years of age and not yet enrolled in kindergarten.

* * * Prekindergarten * * *

Sec. 2. PREKINDERGARTEN EDUCATION STUDY COMMITTEE; REPORT

(a) Creation. There is created the Prekindergarten Education Study

Committee to make recommendations on how to improve and expand accessible, affordable, and high-quality prekindergarten education.

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

(1) the Secretary of Education or designee, who shall serve as chair;

(2) the Secretary of Human Services or designee;

(3) the Executive Director of the Vermont Principals' Association or designee;

(4) the Executive Director of the Vermont Superintendents Association or designee;

(5) the Executive Director of the Vermont School Board Association or designee;

(6) the Executive Director of the Vermont National Education Association or designee;

(7) the Chair of the Vermont Council of Special Education Administrators or designee;

(8) the Executive Director of the Vermont Curriculum Leaders Association or designee;

(9) the Executive Director of Building Bright Futures or designee;

(10) a representative of a prequalified private provider as defined in 16 V.S.A. § 829, operating a licensed center-based child care and preschool program, appointed by the Speaker of the House;

(11) a representative of a prequalified private provider as defined in 16 V.S.A. § 829, operating a regulated family child care home, appointed by the Committee on Committees;

(12) the Head Start Collaboration Office Director or designee;

(13) the Executive Officer of Let's Grow Kids or designee; and

(14) a family representative with a prekindergarten-age child, appointed by the Building Bright Futures Council.

(c) Powers and duties. The Committee shall examine the delivery of prekindergarten education in Vermont and make recommendations for expanding equitable access for all children three and four years of age in a manner that achieves the best outcomes for children, whether through the current mixed-delivery system, the public school system, the private prekindergarten system, or a system that allows school districts to contract

with private providers. The Committee shall also examine and make recommendations on the changes necessary to provide prekindergarten education to all children three and four years of age through the public school system, including a timeline and transition plan for such changes. In conducting its analysis, the Committee shall address the following topics and questions, which may yield distinct recommendations for children three and four years of age:

(1) Outcomes and quality.

(A) What are the benchmarks for “high quality” in prekindergarten education?

(B) How should best practices be implemented and measured across various prekindergarten education settings?

(2) Capacity and demand.

(A) How many children, by age, does the current mixed-delivery system have the capacity to serve? In studying this issue, the Committee shall consider the number of children on waitlists and the number of vacancies in programs.

(B) What are the workforce requirements to expand prekindergarten education? In studying this question, the Committee may consider:

(i) whether there is a gap between the total number of licensed teachers currently working and the number needed for expansion;

(ii) whether there is a gap between the total prekindergarten education workforce, including paraeducators, and the number needed for expansion; and

(iii) the educational and training costs associated with training and retaining the workforce necessary for expansion?

(C) If prekindergarten education in the public school system is provided solely to children four years of age, what is the impact on the capacity and workforce of private prekindergarten providers?

(D) If prekindergarten education for children who are four years of age is provided exclusively through the public school system, how will infant capacity in private child care providers be impacted?

(E) Are there areas of the State where prekindergarten education can be more effectively and conveniently furnished in an adjacent state due to geographic considerations?

(3) Special education.

(A) How many children three and four years of age are currently on individual education programs receiving services in public and private settings?

(B) Are children three and four years of age on individual education plans receiving the full range of services that they are entitled to?

(C) Does the availability or cost of special education services vary between private and public prequalified providers?

(4) Public school expansion.

(A) What infrastructure changes are necessary to expand prekindergarten education?

(B) How would the current prekindergarten education mixed-delivery system transition to a program within the public school system?

(C) What capacity needs to be built for developmentally appropriate afterschool and out-of-school-time care?

(D) Are changes needed to existing health and safety standards for public schools to accommodate children three and four years of age?

(5) Funding and costs.

(A) What are fiscally strategic options to sustain and expand universal prekindergarten education?

(B) What is the financial and business impact on regulated private child care providers if the prekindergarten system transitions to public schools or is expanded beyond the current 10-hour program?

(C) What, if any, changes need to be made to pupil weights for prekindergarten students?

(D) What, if any, changes need to be made to tuition rates for private prekindergarten programs?

(6) Oversight.

(A) What additional Agency of Education personnel or resources would be needed to oversee an expansion of the current prekindergarten education system under either a mixed-delivery model, a public school system model, or a system that allows school districts to contract with private providers?

(B) What additional Agency of Human Services personnel or resources would be needed to oversee an expansion of the current mixed-delivery model or a private prekindergarten system?

(C) Whether additional leadership capacity is needed at the Agency of Education to address early childhood education, and if so, how should the leadership capacity be expanded?

(d) Assistance. The Committee shall have the administrative, technical, fiscal, and legal assistance of the Agencies of Education and of Human Services. If the Agencies are unable to provide the Committee with adequate support to assist with its technical, fiscal, or legal needs, then the Agency of Education shall retain a contractor with the necessary expertise to assist the Committee.

(e) Report. On or before December 1, 2023, the Committee shall submit a written report to the House Committees on Education and on Human Services and the Senate Committees on Education and on Health and Welfare with its findings and recommendations based on the analysis conducted pursuant to subsection (c) of this section. The report shall include draft legislative language to support the Committee's recommendations.

(f) Meetings.

(1) The Secretary of Education or designee shall call the first meeting of the Committee to occur on or before July 15, 2023.

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

(3) The Committee shall cease to exist on February 1, 2024.

(g) Compensation and 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 10 meetings per year. These payments shall be made from monies appropriated to the Agency of Education.

(h) Appropriations.

(1) The sum of \$5,000.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2024 for per diem compensation and reimbursement of expenses for members of the Committee.

(2) The sum of \$100,000.000 is appropriated to the Agency of Education from the General Fund in fiscal year 2024 for the cost of retaining a contractor as provided under subsection (d) of this section.

(3) Any unused portion of these appropriations shall, as of July 1, 2024, revert to the General Fund.

Sec. 2a. PREKINDERGARTEN EDUCATION MODEL CONTRACT

On or before December 1, 2024, the Agency of Education, in consultation with the members of the Prekindergarten Education Implementation Committee and other relevant stakeholders, shall develop a model contract for school districts to use for contracting with private providers for prekindergarten education services. The model contract shall include:

(1) an antidiscrimination provision that requires compliance with the Vermont Public Accommodations Act, 9 V.S.A. chapter 139, and the Vermont Fair Employment Practices Act, 21 V.S.A. chapter 5, subchapter 6; and

(2) requirements for the provision of special education services.

Sec. 2b. PREKINDERGARTEN PUPIL WEIGHT; REPORT

On or before December 1, 2023, the Agency of Education, in consultation with the Prekindergarten Education Implementation Committee, shall analyze and issue a written report to the General Assembly regarding whether the cost of educating a prekindergarten student is the same as educating a kindergarten student in the context of a full school day. The report shall include a detailed analysis, recommendation, and implementation plan for the sufficient weight to apply to prekindergarten students, in alignment with the weights under current law, for the purposes of determining weighted long-term membership of a school district under 16 V.S.A. § 4010. The report shall include draft legislative language to support the recommended prekindergarten pupil weight and implementation plan.

Sec. 2c. AGENCY OF EDUCATION DATA COLLECTION AND SHARING

On or before August 1, 2023, the Agency of Education shall collect and share the following data with the Joint Fiscal Office:

(1) The number of weighted pupils, which shall not be adjusted by the equalization ratio, for fiscal year 2024:

(A) using weights in effect on July 1, 2023 at both the statewide and district levels; and

(B) using weights in effect on July 1, 2024 at both the statewide and district levels.

(2) The following data, by school district:

(A) the total resources needed to operate a public prekindergarten education program that would serve each prekindergarten child in the district;

(B) the number of prekindergarten children by year of age;

(C) the total education spending and other funds spent in fiscal year 2023 for children attending public prekindergarten education programs;

(D) the total education spending and other funds spent in fiscal year 2023 for prekindergarten children receiving prekindergarten education through a prequalified private provider to whom the district pays tuition;

(E) if the school district operates a public prekindergarten education program:

(i) the number of hours and slots offered in the public prekindergarten education program;

(ii) the number of students residing in the district enrolled in the public prekindergarten education program;

(iii) the number and cost of students residing in the district enrolled in a prequalified private provider for whom the district pays tuition for prekindergarten education; and

(iv) the number of students enrolled in the public prekindergarten education program who reside outside the district and the corresponding revenues associated with the nonresident student tuition; and

(F) if the school district does not operate a prekindergarten education program:

(i) the number of hours of prekindergarten education provided to each prekindergarten child; and

(ii) the tuition costs for prekindergarten children.

Sec. 3. [Deleted.]

* * * Agency of Education * * *

Sec. 4. PLAN; AGENCY OF EDUCATION LEADERSHIP

On or before November 1, 2025, the Agency of Education shall submit a plan to the House Committees on Education and on Human Services and to the Senate Committees on Education and on Health and Welfare for the purpose of elevating the status of early education within the Agency in accordance with the report produced pursuant to 2021 Acts and Resolves No, 45, Sec. 13. The plan shall achieve greater parity in decision-making authority, roles and responsibilities, and reporting structure related to early care and learning across the Agency and Department for Children and Families.

* * * Child Care and Child Care Subsidies * * *

Sec. 5. 33 V.S.A. § 3512 is amended to read:

§ 3512. CHILD CARE FINANCIAL ASSISTANCE PROGRAM;
ELIGIBILITY

(a)(1) The Child Care Financial Assistance Program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment, or to obtain training leading to employment. Families seeking employment shall be entitled to participate in the Program for up to three months and the Commissioner may further extend that period.

* * *

~~(4) After September 30, 2021, a regulated center-based child care program or family child care home as defined by the Department in rule shall not receive funds pursuant to this subsection that are in excess of the usual and customary rate for services at the center-based child care program or family child care home~~ Nothing in this subsection shall preclude a child care provider from establishing tuition rates that are lower than the provider reimbursement rate in the Child Care Financial Assistance Program.

* * *

Sec. 5a. 33 V.S.A. § 3512 is amended to read:

§ 3512. CHILD CARE FINANCIAL ASSISTANCE PROGRAM;
ELIGIBILITY

(a)(1) The Child Care Financial Assistance Program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment, or to obtain training leading to employment. Families seeking employment shall be entitled to participate in the Program for up to three months and the Commissioner may further extend that period.

(2) The subsidy authorized by this subsection and the corresponding family contribution shall be established by the Commissioner, by rule, and shall bear a reasonable relationship to income and family size. The Commissioner may adjust the subsidy and family contribution by rule to account for increasing child care costs not to exceed 1.5 times the most recent annual increase in the NAICS code 611, Educational Services. Families shall be found eligible using an income eligibility scale based on the current federal poverty level and adjusted for the size of the family. Co-payments shall be assigned to the whole family and shall not increase if more than one eligible child is enrolled in child care. Families with an annual gross income of less

than or equal to ~~150~~ 175 percent of the current federal poverty guidelines shall not have a family co-payment. Families with an annual gross income up to and including ~~350~~ 400 percent of current federal poverty guidelines, adjusted for family size, shall be eligible for a subsidy authorized by the subsection. The scale shall be structured so that it encourages employment. If the federal poverty guidelines decrease in a given year, the Division shall maintain the previous year's federal poverty guidelines for the purpose of determining eligibility and benefit amount under this subsection.

* * *

Sec. 5b. 33 V.S.A. § 3512 is amended to read:

§ 3512. CHILD CARE FINANCIAL ASSISTANCE PROGRAM;
ELIGIBILITY

(a)(1) The Child Care Financial Assistance Program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment, or to obtain training leading to employment. Families seeking employment shall be entitled to participate in the Program for up to three months and the Commissioner may further extend that period.

* * *

(5) The Department shall ensure that applications for the Child Care Financial Assistance Program use a simple, plain-language format. Applications shall be available in both electronic and paper formats and shall comply with the Office of Racial Equity's most recent Language Access Report.

(6) A Vermont resident who has a citizenship status that would otherwise exclude the resident from participating in the Child Care Financial Assistance Program shall be served under this Program, provided that the benefit for these residents is solely State-funded. The Department shall not retain data on the citizenship status of any applicant or participant once a child is no longer participating in the program, and it shall not request the citizenship status of any members of the applicant's or participant's family. Any records created pursuant to this subsection shall be exempt from public inspection and copying under the Public Records Act.

* * *

Sec. 5c. 33 V.S.A. § 3512 is amended to read:

§ 3512. CHILD CARE FINANCIAL ASSISTANCE PROGRAM;
ELIGIBILITY

(a)(1) The Child Care Financial Assistance Program is established to subsidize, to the extent that funds permit, the costs of child care for families that need child care services in order to obtain employment, to retain employment, or to obtain training leading to employment. Families seeking employment shall be entitled to participate in the Program for up to three months and the Commissioner may further extend that period.

(2) The subsidy authorized by this subsection and the corresponding family contribution shall be established by the Commissioner, by rule, and shall bear a reasonable relationship to income and family size. The Commissioner may adjust the subsidy and family contribution by rule to account for increasing child care costs not to exceed 1.5 times the most recent annual increase in the NAICS code 611, Educational Services. Families shall be found eligible using an income eligibility scale based on the current federal poverty level and adjusted for the size of the family. Co-payments shall be assigned to the whole family and shall not increase if more than one eligible child is enrolled in child care. Families with an annual gross income of less than or equal to 175 percent of the current federal poverty guidelines shall not have a family co-payment. Families with an annual gross income up to and including ~~400~~ 575 percent of current federal poverty guidelines, adjusted for family size, shall be eligible for a subsidy authorized by the subsection. The scale shall be structured so that it encourages employment. If the federal poverty guidelines decrease in a given year, the Division shall maintain the previous year's federal poverty guidelines for the purpose of determining eligibility and benefit amount under this subsection.

* * *

Sec. 5d. FISCAL YEAR 2024; FAMILY CONTRIBUTION

In fiscal year 2024, a weekly family contribution for participants in the Child Care Financial Assistance Program established in 33 V.S.A. §§ 3512 and 3513 shall begin at \$50.00 for families at 176 percent of the federal poverty level and increase for families at a higher percentage of the federal poverty level as determined by the Department.

Sec. 6. PROVIDER RATE ADJUSTMENT; CHILD CARE FINANCIAL ASSISTANCE PROGRAM

(a) It is the intent of the General Assembly that:

(1) the provider rate adjustment recommended in this section shall be an initial step toward implementing a professional pay scale; and

(2) programs use funds to elevate quality through higher compensation for staff, curriculum implementation, staff professional development, and improvements to learning environments.

(b)(1) On January 1, 2024, the Department for Children and Families shall provide an adjustment to the base child care provider reimbursement rates in the Child Care Financial Assistance Program for child care services provided by center-based child care and preschool programs, family child care homes, and afterschool and summer care programs. The adjusted reimbursement rate shall account for the age of the children served and be 35 percent higher than the fiscal year 2023 five-STAR reimbursement rate in the Vermont STARS system. All providers in the same child care setting category shall receive a reimbursement rate payment, which shall be dependent upon whether the provider operates a regulated child care center and preschool program, regulated family child care home, or afterschool or summer care program.

(2) The provider rate adjustment established in this section shall become part of the base budget in future fiscal years.

Sec. 7. APPROPRIATION; CHILD CARE FINANCIAL ASSISTANCE PROGRAM

(a) In addition to fiscal year 2024 funds appropriated for the Child Care Financial Assistance Program in other acts, in fiscal year 2024, \$47,800,000.00 is appropriated from the General Fund to the Department for Children and Families' Child Development Division for:

- (1) the program eligibility expansion in Sec. 5a of this act; and
- (2) the fiscal year 2024 provider rate adjustment in Sec. 6 of this act.

(b)(1) In addition to fiscal year 2024 funds appropriated for the administration of the Department for Children and Families' Child Development Division in other acts, in fiscal year 2024, \$4,000,000.00 is appropriated from the General Fund to the Division to administer adjustments to the Child Care Financial Assistance Program required by this act through the authorization of the following 11 new permanent classified positions within the Division:

- (A) one Business Applications Support Manager;
- (B) one Licensing Field Specialist I;
- (C) two Child Care Business Techs;
- (D) one Administrative Services Coordinator II;
- (E) one Program Integrity Investigator;
- (F) one Grants and Contracts Manager – Compliance;
- (G) one Business Application Support Specialist;
- (H) one Communications and Outreach Coordinator;

(I) one Financial Manager II; and

(J) one Grants and Contracts Manger.

(2) The Department may seek permission from the Joint Fiscal Committee to replace a position authorized in this subsection with an alternative position.

(3) The Division shall allocate at least \$2,000,000.00 of the amount appropriated in this subsection to the Community Child Care Support Agencies.

Sec. 8. READINESS PAYMENTS; CHILD CARE FINANCIAL ASSISTANCE PROGRAM

(a)(1) In fiscal year 2024, \$20,000,000.00 is appropriated one time from the General Fund to the Department for Children and Families' Child Development Division for the purpose of providing payments to child care providers, as defined in 33 V.S.A. § 3511, delivering child care services to children, in preparation of the Child Care Financial Assistance Program eligibility expansion in Sec. 5a of this act and for the fiscal year 2024 provider rate adjustment in Sec. 6 of this act. Readiness payments may be used for the following:

(A) increasing capacity for infants and toddlers;

(B) expanding the number of family child care homes;

(C) improving child care facilities;

(D) preparing private prequalified providers for future changes in the prekindergarten system;

(E) expanding hours of operation to provide full-day, full-week child care services;

(F) addressing gaps in services and expanding capacity;

(G) increasing workforce capacity, including signing and retention bonuses; and

(H) any other uses approved by the Commissioner.

(2) Of the funds appropriated in subdivision (1) of this subsection, up to five percent may be used to contract with a third party to provide technical assistance to child care providers to build or maintain capacity and to provide information on the opportunities and requirements of this act.

(b) In administering the readiness payment program established by this section, the Division shall utilize the Agency of Administration bulletin pertaining to beneficiaries in effect on May 1, 2023. The Division may either use the same distribution framework used to distribute Child Care

Development Block Grant funds in accordance with the American Rescue Plan Act of 2021 or it may utilize an alternative distribution framework.

(c) The Commissioner shall provide a status report on the distribution of readiness payments to the Joint Fiscal Committee at its November 2023 meeting.

Sec. 9. 33 V.S.A. § 3514 is amended to read:

§ 3514. PAYMENT TO PROVIDERS

~~(a)(1) The Commissioner shall establish a payment schedule for purposes of reimbursing providers for full- or part-time child care services rendered to families who participate in the programs established under section 3512 or 3513 of this title. Payments established under this section shall reflect the following considerations: whether the provider operates a licensed child care facility or a registered family child care home, type of service provided, cost of providing the service, and the prevailing market rate for comparable service.~~

The payment schedule shall account for the age of the children served, and all providers in the same child care setting category shall receive a reimbursement rate payment, which shall be dependent upon whether the provider operates a child care center and preschool program, family child care home, or afterschool or summer care program.

~~(2) Payments shall be based on enrollment status or any other basis agreed to by the provider and the Division. The Department, in consultation with the Office of Racial Equity and stakeholders, shall adopt rules pursuant to 3 V.S.A. chapter 25 that define “enrollment” and the total number of allowable absences to continue participating in the Child Care Financial Assistance Program. The Department shall minimize itemization of absence categories.~~

(b) The Commissioner may establish a separate payment schedule for child care providers who have received specialized training, approved by the Commissioner, relating to protective or family support services.

~~(c)(1) The payment schedule established by the Commissioner may reimburse providers in accordance with the results of the most recent Vermont Child Care Market Rate Survey.~~

~~(2) The payment schedule shall include reimbursement rate caps tiered in relation to provider ratings in the Vermont STARS program. The lower limit of the reimbursement rate caps shall be not less than the 50th percentile of all reported rates for the same provider setting in each rate category. [Repealed.]~~

Sec. 9a. 33 V.S.A. § 3514 is amended to read:

§ 3514. PAYMENT TO PROVIDERS

(a)(1) The Commissioner shall establish a payment schedule for purposes of reimbursing providers for full- or part-time child care services rendered to families who participate in the programs established under section 3512 or 3513 of this title. The payment schedule shall account for the age of the children served, and all providers in the same child care setting category shall receive a reimbursement rate payment, which shall be dependent upon whether the provider operates a child care center and preschool program, family child care home, or afterschool or summer care program. The adjusted reimbursement rate shall then be adjusted to account for the differential between family child care homes and center-based child care and preschool programs by 50 percent. The rate used to reimburse providers shall be increased over the previous year's rate annually in alignment with the most recent annual average wage growth for NAICS code 611, Educational Services, not to exceed five percent.

* * *

Sec. 9b. REPORT; ADJUSTMENT OF CHILD CARE FINANCIAL ASSISTANCE PROGRAM RATES

On or before January 15, 2024, the Department for Children and Families' Child Development Division, in collaboration with the Joint Fiscal Office, shall submit a report to the House Committees on Appropriations and on Human Services and the Senate Committees on Appropriations and on Health and Welfare providing recommendations on:

(1) the appropriate mechanism for adjusting future reimbursement rates for child care providers participating in the Child Care Financial Assistance Program pursuant to 33 V.S.A. §§ 3512 and 3513;

(2) the appropriate reimbursement rate in fiscal years 2025 and 2026 for child care providers participating in the Child Care Financial Assistance Program pursuant to 33 V.S.A. §§ 3512 and 3513; and

(3) the appropriate family contribution in fiscal years 2025 and 2026 for families participating in the Child Care Financial Assistance Program pursuant to 33 V.S.A. §§ 3512 and 3513.

Sec. 10. 33 V.S.A. § 3515 is added to read:

§ 3515. CHILD CARE QUALITY AND CAPACITY INCENTIVE PROGRAM

(a) The Commissioner shall establish a child care quality and capacity

incentive program for child care providers participating in the Child Care Financial Assistance Program pursuant to sections 3512 and 3513 of this title. Annually, consistent with funds appropriated for this purpose, the Commissioner may provide a child care provider with an incentive payment for the following achievements:

(1) achieving a higher level in the quality rating and improvement system, including increasing access to and provision of culturally competent care and multilingual programming and providing other family support services similar to those provided in approved Head Start programs;

(2) increasing infant and toddler capacity;

(3) maintaining existing infant and toddler capacity;

(4) establishing capacity in regions of the State that are identified by the Commissioner as underserved;

(5) providing nonstandard hours of child care services;

(6) completing a Commissioner-approved training on protective or family support services; and

(7) other quality- or capacity-specific criteria identified by the Commissioner.

(b) The Commissioner shall maintain a current incentive payment schedule on the Department's website.

Sec. 10a. LEGISLATIVE INTENT; CHILD CARE QUALITY AND CAPACITY INCENTIVE PROGRAM

It is the intent of the General Assembly that in fiscal year 2025 and in future fiscal years, at least \$10,000,000.00 is appropriated for the child care quality and capacity incentive program established in 33 V.S.A. § 3515.

Sec. 11. 33 V.S.A. § 3516 is added to read:

§ 3516. CHILD CARE WAITLIST AND APPLICATION FEES

A child care provider shall not charge an application or waitlist fee for child care services where the applying child qualifies for the Child Care Financial Assistance Program pursuant to section 3512 or 3513 of this title. A child care provider shall reimburse an individual who is charged an application or waitlist fee for child care services if it is later determined that the applying child qualified for the Child Care Financial Assistance Program at the time the fee or fees were paid.

Sec. 12. 33 V.S.A. § 3517 is added to read:

§ 3517. CHILD CARE TUITION RATES

A child care provider shall ensure that its tuition rates are available to the public. A regulated child care provider shall not impose an increase on annual child care tuition that exceeds 1.5 times the most recent annual increase in the NAICS code 611, Educational Services. This amount shall be posted on the Department's website annually.

Sec. 12a. 33 V.S.A. § 3518 is added to read:

§ 3518. CHILD CARE PROVIDER OWNERSHIP DISCLOSURE

(a) As used in this section:

(1) "Affiliate" means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2) "Applicant" means a person that applies to be eligible to receive State funding for child care services pursuant to a provider rate agreement.

(3) "Controls," "is controlled by," and "under common control" mean the power to direct, or cause the direction or management and policies of a person, whether through the direct or beneficial ownership of voting securities, by contract, or otherwise. A person who directly or beneficially owns 10 percent or more equity interest, or the equivalent thereof, of another person shall be deemed to control the person.

(4) "Owner" means a person who controls an applicant.

(5) "Principal" means one of the following:

(A) the president, vice president, secretary, treasurer, manager, or similar officer of a corporation as provided for by 11A V.S.A. § 8.40, nonprofit corporation as provided for by 11B V.S.A. § 8.40, mutual benefit enterprise as provided for by 11C V.S.A. § 822, cooperative as provided for by 11 V.S.A. § 1013, or worker cooperative corporation as provided for by 11 V.S.A. § 1089;

(B) a director of a corporation as provided for by 11A V.S.A. § 8.01, nonprofit corporation as provided for by 11B V.S.A. § 8.01, mutual benefit enterprise as provided for by 11C V.S.A. § 801, cooperative as provided for by 11 V.S.A. § 1006, or worker cooperative corporation as provided for by 11 V.S.A. § 1089;

(C) a member of a member-managed limited liability company as provided for by 11 V.S.A. § 4054;

(D) a manager of a manager-managed limited liability company as provided for by 11 V.S.A. § 4054; or

(E) a partner of a partnership as provided for by 11 V.S.A. § 3212 or a general partner of a limited partnership as provided for by 11 V.S.A. chapter 23.

(b) Disclosure. The Department shall adopt procedures to require each applicant to disclose, prior to entering a provider rate agreement:

(1) the type of business organization of the applicant;

(2) the identity of the applicant's owners and principals; and

(3) the identity of the owners and principals of the applicant's affiliates.

Sec. 12b. 33 V.S.A. § 3519 is added to read:

§ 3519. DIVERSITY, EQUITY, AND INCLUSION

The Department shall consult with the Office of Racial Equity in preparing all public materials and trainings related to the Child Care Financial Assistance Program.

Sec. 13. RULEMAKING; PROGRAM DIRECTORS

(a) The Department for Children and Families shall amend the following rules pursuant to 3 V.S.A. chapter 25 to require that a program director is present at the child care facility that the program director operates at least 40 percent of the time that children are present:

(1) Department for Children and Families, Licensing Regulations for Afterschool and Child Care Programs (CVR 13-171-003); and

(2) Department for Children and Families, Licensing Regulations for Center-Based Child Care and Preschool Programs (CVR 13-171-004).

(b) The Department shall review and consider amending its:

(1) rule prohibiting a person or entity registered or licensed to operate a family child care home from concurrently operating a center-based child care and preschool program or afterschool and summer care program; and

(2) eligibility policies addressing self-employment and other areas of specialized need on a regular basis and revise them consistent with research on best practices in the field to maximize participation in the program and minimize undue burden on families applying for the Child Care Financial Assistance Program.

* * * Report * * *

Sec. 14. REPORT; BACKGROUND CHECKS

On or before January 15, 2024, the Vermont Crime Information Center, in collaboration with the Agency of Education and the Department for Children and Families, shall submit a report to the House Committee on Human Services and to the Senate Committee on Health and Welfare providing a recommendation to streamline and improve the timeliness of the background check process for child care and early education providers who are required to complete two separate background checks.

Sec. 15. [Deleted.]

* * * Special Accommodations Grant * * *

Sec. 16. PLAN; SPECIAL ACCOMMODATIONS GRANT

On or before July 1, 2024, the Department for Children and Families' Child Development Division, in consultation with stakeholders, shall develop and submit an implementation plan to the House Committee on Human Services and to the Senate Committee on Health and Welfare to streamline and improve the responsiveness and effectiveness of the application process for special accommodation grants, including:

(1) implementing a 12-month or longer grant cycle option for eligible populations;

(2) improving support and training for providing inclusive care for children with special needs;

(3) determining how to better meet the early learning needs of children with disabilities within a child care setting; and

(4) any other considerations the Department deems essential to the goal of streamlining the application process for special accommodation grants.

* * * Workforce Supports * * *

Sec. 17. 2021 Acts and Resolves No. 45, Sec. 8 is amended to read:

Sec. 8. REPEALS

(a) ~~33 V.S.A. § 3541(d) (reference to student loan repayment assistance program) is repealed on July 1, 2026. [Repealed.]~~

(b) ~~33 V.S.A. § 3542 (scholarships for prospective early childhood providers) is repealed on July 1, 2026.~~

(c) ~~33 V.S.A. § 3543 (student loan repayment assistance program) is repealed on July 1, 2026. [Repealed.]~~

* * * Transitional Assistance and Governance * * *

Sec. 18. CHILD CARE; ADMINISTRATIVE SERVICE ORGANIZATIONS

On or before February 15, 2024, the Department for Children and Families shall provide a presentation to the House Committee on Human Services and to the Senate Committee on Health and Welfare regarding the feasibility of and any progress towards establishing administrative service organizations for child care providers.

Sec. 19. 33 V.S.A. § 4605 is added to read:

§ 4605. TECHNICAL ASSISTANCE; ACCOUNTABILITY

In order to ensure the successful implementation of expanded child care, prekindergarten, and afterschool and summer care, Building Bright Futures shall be responsible for monitoring accountability, supporting stakeholders in collectively defining and measuring success, maximizing stakeholder engagement, and providing technical assistance to build capacity for the Department for Children and Families' Child Development Division and the Agency of Education. Specifically, Building Bright Futures shall:

(1) ensure accountability through monitoring transitions over time and submitting a report with the results of this work on January 15 of each year to the House Committee on Human Services and to the Senate Committee on Health and Welfare; and

(2) define and measure success of expanded child care, prekindergarten, and afterschool and summer care related to process, implementation, and outcomes using a continuous quality improvement framework and engage public, private, legislative, and family partners to develop benchmarks pertaining to:

(A) equitable access to high-quality child care;

(B) equitable access to high-quality prekindergarten;

(C) equitable access to high-quality afterschool and summer care;

(D) stability of the early child care education workforce;

(E) workforce capacity and needs of the child care, prekindergarten, afterschool and summer care systems; and

(F) the impact of this act on a mixed-delivery system for prekindergarten, child care, and afterschool and summer care.

Sec. 20. APPROPRIATION; BUILDING BRIGHT FUTURES

Of the funds appropriated in Sec. 7(b) (appropriation; child care financial assistance program) of this act, the Department for Children and Families shall

allocate \$266,707.00 to Building Bright Futures for the purpose of implementing its duties under 33 V.S.A. § 4605. This amount shall become part of the Department's base for the purpose of supporting Building Bright Future's work pursuant to 33 V.S.A. § 4605.

Sec. 21. PLAN; DEPARTMENT FOR CHILDREN AND FAMILIES;
GOVERNANCE

(a) On or before November 1, 2025, the Secretary of Human Services shall submit an implementation plan to the House Committees on Appropriations, on Government Operations and Military Affairs, and on Human Services and to the Senate Committees on Appropriations, on Government Operations, and on Health and Welfare regarding the reorganization of the Department for Children and Families to increase responsiveness to Vermonters and elevate the status of child care and early education within the Agency of Human Services. The implementation plan shall be consistent with the goals of the report produced pursuant to 2021 Acts and Resolves No. 45, Sec. 13. It shall achieve greater parity in decision-making authority, roles and responsibilities, and reporting structure related to early care and learning across the Agency of Education and Agency of Human Services.

(b) The implementation plan required pursuant to this section shall contain any legislative language required for the division of the Department.

Sec. 22. [Deleted.]

* * * Child Care Provider Wages * * *

Sec. 23. PROVIDER COMPENSATION AND TOTAL COST OF CARE;
RECOMMENDATIONS

(a) On or before November 1, 2023, the Department for Children and Families, in consultation with the Department of Labor, the Agency of Education, Building Bright Futures, and the Vermont Association for the Education of Young Children, shall submit a report to the House Committee on Human Services and to the Senate Committee on Health and Welfare addressing the following:

(1) whether and how to integrate a tiered professional pay scale for professionals who provide child care services as part of the Child Care Financial Assistance Program;

(2) the structure of tiered professional pay scales for professionals who provide child care services that have been implemented in other jurisdictions, including in New Mexico and the District of Columbia; and

(3) the appropriate legal mechanism to implement any approved tiered professional pay scale for professionals who provide child care services,

including consideration of statute, rule, departmental guidance, or some other appropriate mechanism.

(b) On or before November 1, 2024, the Department for Children and Families, in consultation with the Department of Labor, the Agency of Education, Building Bright Futures, and the Vermont Association for the Education of Young Children, shall submit to the House Committee on Human Services and to the Senate Committee on Health and Welfare:

(1) A tiered professional pay scale for professionals who provide child care services as defined in 33 V.S.A. § 3511 that is designed to provide professionals who provide child care services with compensation comparable to that received by early childhood educators in Vermont’s public school system who serve children from prekindergarten through grade three. The tiered professional pay scale shall account for professionals’ credentialing and professional child care experience and shall include the addition of an appropriate fringe benefit rate. In developing the tiered professional pay scale, the Department for Children and Families shall refer to the child care and early childhood education financing study required pursuant to 2021 Acts and Resolves No. 45, Sec. 14.

(2) A formula to calculate the total cost of care to serve children in a regulated child care facility as defined in 33 V.S.A. § 3511.

Sec. 24. [Deleted.]

* * * Child Care Contribution * * *

Sec. 25. 32 V.S.A. chapter 246 is added to read:

CHAPTER 246. CHILD CARE CONTRIBUTION

§ 10551. PURPOSE

The Child Care Contribution is established to provide funding for the Child Care Financial Assistance Program established in 33 V.S.A. §§ 3512 and 3513, including the provision of incentive payments pursuant to 33 V.S.A. § 3517.

§ 10552. DEFINITIONS

As used in this chapter:

(1) “Covered wages” means wages paid to an employee by an employer up to two times the amount of the Social Security Contribution and Benefit Base.

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

4 of this title.

(3) “Employer” means a person who employs one or more employees who is required to withhold income tax from wages paid to the employees pursuant to chapter 151, subchapter 4 of this title.

(4) “Self-employed individual” means a sole proprietor or partner owner of an unincorporated business, the sole member of a limited liability company, or the sole shareholder of a corporation.

(5) “Self-employment income” has the same meaning as in 26 U.S.C. § 1402.

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

§ 10553. CONTRIBUTION; RATE; COLLECTION

(a)(1) Each employer shall pay the Child Care Contribution on all covered wages paid to each of the employer’s employees and shall remit those amounts to the Department of Taxes pursuant to the provisions of this section. An employer may deduct and withhold from an employee’s covered wages an amount equal to not more than one quarter of the contribution required pursuant to subsection (b) of this section. An employer shall pay the contributions required pursuant to this section as if the contributions were Vermont income tax subject to the withholding requirements of chapter 151, subchapter 4 of this title, including the requirements relating to the time and manner of payment.

(2) Each self-employed individual shall pay the Child Care Contribution on self-employment income earned by the individual up to two times the amount of the Social Security Contribution and Benefit Base and shall remit those amounts to the Department of Taxes pursuant to the provisions of this section. A self-employed individual shall make installment payments of estimated contributions pursuant to this subdivision from the enrolled self-employed individual’s self-employment income as if the contributions were Vermont income tax subject to the estimated payment requirements of 32 V.S.A. chapter 151, subchapter 5, including the time and manner of payment.

(b) The contribution rate shall be 0.43 percent of each employee’s covered wages and each self-employed individual’s self-employment income.

(c)(1) The Department shall collect the contributions required pursuant to this section. The administrative and enforcement provisions of chapter 151 of this title shall apply to the contribution requirements under this section as if the contributions required pursuant to this section were Vermont income tax, except penalty and interest shall apply according to chapter 103 of this title.

(2) Employers shall be responsible for the full amount of any unpaid contributions due pursuant to subdivision (a)(1) of this section. Self-employed individuals shall be responsible for the full amount of any unpaid contributions due pursuant to subdivision (a)(2) of this section.

§ 10554. CHILD CARE CONTRIBUTION SPECIAL FUND

(a) The Child Care Contribution Special Fund is created pursuant to chapter 7, subchapter 5 of this title and shall be administered by the Department for Children and Families and the Department of Taxes. Monies in the Fund may be expended by the Department of Taxes for the administration of the Child Care Contribution created under this chapter, by the Department for Children and Families for benefits provided by the Child Care Financial Assistance Program established in 33 V.S.A. §§ 3512 and 3513, including the provision of incentive payments pursuant to 33 V.S.A. § 3517, and by the Departments for necessary costs incurred in administering the Fund. All interest earned on Fund balances shall be credited to the Fund.

(b) The Fund shall consist of:

(1) contributions collected or recovered pursuant to section 10553 of this title;

(2) any amounts transferred or appropriated to the Fund by the General Assembly; and

(3) any interest earned by the Fund.

(c) The Departments may seek and accept grants from any source, public or private, to be dedicated for deposit into the Fund.

Sec. 26. CHILD CARE CONTRIBUTION POSITIONS AND APPROPRIATION

(a) The establishment of the following 15 new permanent classified positions is authorized in the Department of Taxes in fiscal year 2024:

(1) eight full-time, classified tax examiners within the Taxpayer Services Division;

(2) two full-time, classified tax examiners within the Compliance Division;

(3) three full-time, classified tax compliance officers within the Compliance Division;

(4) one full-time, classified financial specialist III within the Revenue Accounting and Returns Processing Division; and

(5) one business analyst–tax within the VTax Division.

(b) In fiscal year 2024, the amount of \$4,200,00.00 is appropriated from the General Fund to the Department of Taxes to be used for the implementation of the Child Care Contribution pursuant to 32 V.S.A. chapter 246 created by this act.

* * * Workers' Compensation * * *

Sec. 27. WORKERS' COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2024, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly determines that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall be 1.5 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

Sec. 28. 21 V.S.A. § 711 is amended to read:

§ 711. WORKERS' COMPENSATION ADMINISTRATION FUND

* * *

(b)(1) Annually, the General Assembly shall establish the rate of contribution for the direct calendar year premium for workers' compensation insurance. The rate shall equal the amount approved in the appropriations process for the program and the Department's projection of salary and benefit increases for that fiscal year, less the amount collected in the prior calendar year under subsection (a) of this section from self-insured workers' compensation losses and from corporations approved under this chapter, adjusted by any balance in the fund from the prior fiscal year, divided by the total direct calendar year premium for workers' compensation insurance for the prior year.

(2) In the event that the General Assembly does not establish the rate of contribution for the direct calendar year premium for workers' compensation insurance for a given fiscal year, the rate shall remain unchanged from the prior fiscal year.

Sec. 29. 2014 Acts and Resolves No. 199, Sec. 54b is amended to read:

Sec. 54b. 21 V.S.A. § 643a is added to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it,

and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner. ~~Those~~ The payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 30. 21 V.S.A. § 640b is amended to read:

§ 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
PROPOSED TREATMENT IS BENEFITS ARE NECESSARY

(a) As used in this section, "benefits" means medical treatment and surgical, medical, and nursing services and supplies, including prescription drugs and durable medical equipment.

(b) ~~Within 14 days of~~ after receiving a written request for preauthorization for a proposed ~~medical treatment~~ benefits and medical evidence supporting the requested ~~treatment~~ benefits, a workers' compensation insurer shall do one of the following, in writing:

(1) ~~authorize~~ Authorize the ~~treatment~~ benefits and notify the health care provider, the injured worker, and the Department; ~~or,~~

~~(2)(A) deny~~ Deny the treatment benefits because the entire claim is disputed and the Commissioner has not issued an interim order to pay benefits; ~~or. The insurer shall notify the health care provider, the injured worker, and the Department of the decision to deny benefits.~~

~~(B)(3) deny~~ Deny the treatment benefits if, based on a preponderance of credible medical evidence specifically addressing the proposed treatment benefits, ~~it is the benefits are~~ unreasonable or, unnecessary, or unrelated to the work injury. The insurer shall notify the health care provider, the injured worker, and the Department of the decision to deny ~~treatment; or~~ benefits.

~~(3)(4) notify~~ Notify the health care provider, the injured worker, and the Department that the insurer has scheduled an examination of the employee pursuant to section 655 of this title or ordered a medical record review pursuant to section ~~655~~ 655a of this title. Based on the examination or review, the insurer shall authorize or deny the treatment benefits and notify the Department and the injured worker of the decision within 45 days ~~of~~ after a request for preauthorization. The Commissioner may, in ~~his or her~~ the Commissioner's sole discretion, grant a 10-day extension to the insurer to authorize or deny treatment benefits, and such an extension shall not be subject to appeal.

~~(b)(c)~~ If the insurer fails to authorize or deny the treatment benefits pursuant to subsection ~~(a)~~ (b) of this section within 14 days ~~of~~ after receiving a request, the claimant or health care provider may request that the Department issue an order authorizing treatment benefits. After receipt of the request, the Department shall issue an interim order within five days after notice to the insurer, and five days in which to respond, absent evidence that the entire claim is disputed. Upon request of a party, the Commissioner shall notify the parties that the ~~treatment has~~ benefits have been authorized by operation of law.

~~(e)(d)~~ If the insurer denies the preauthorization of the treatment benefits pursuant to subdivision ~~(a)(2) or, (3), or (4)~~ of this section, the Commissioner may, on ~~his or her~~ the Commissioner's own initiative or upon a request by the claimant, issue an order authorizing the treatment benefits if ~~he or she~~ the Commissioner finds that the evidence shows that the ~~treatment is~~ benefits are reasonable, necessary, and related to the work injury.

Sec. 31. 21 V.S.A. § 643d is added to read:

§ 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

(a) An employer may require an employee who is receiving temporary disability benefits pursuant to section 646 of this chapter to engage in a good faith search for suitable work if:

(1) the injured employee is medically released to return to work, either with or without limitations;

(2) the employer has provided the injured employee with written notification that the employee is medically released to return to work and the notification describes any applicable limitations; and

(3) the employer cannot offer the injured employee work that the employee is medically released to do.

(b) An injured employee shall not be required to engage in a good faith search for suitable work if the employee:

(1) is already employed; or

(2) has been referred for or is scheduled to undergo one or more surgical procedures.

(c) An employer shall not require an injured employee to contact more than three employers per week as part of a good faith work search performed pursuant to this section.

Sec. 32. 21 V.S.A. § 646 is amended to read:

§ 646. TEMPORARY PARTIAL DISABILITY BENEFITS

(a)(1) Where the disability for work resulting from an injury is partial, during the disability and beginning on the eighth day thereof of the period of disability, the employer shall pay the injured employee a weekly compensation equal to the greater of:

(A) the difference between the amount the injured employee would be eligible to receive pursuant to section 642 of this chapter, including any applicable cost of living adjustment or dependency benefits that would be due, and the wage the injured employee earns during the period of disability; and

(B) two-thirds of the difference between his or her the injured employee's average weekly wage before the injury and the average weekly wage which he or she is able to earn thereafter amount the employee earns during the period of disability.

(2) Compensation paid pursuant to this subsection shall be adjusted on the first July 1 following the receipt of 26 weeks of benefits and annually on each subsequent July 1, so that the compensation continues to bear the same percentage relationship to the average weekly wage in the State as it did at the time of injury.

(b)(1) In addition to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability

\$20.00 per week for each dependent child under 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.

(2) The amount allowed for dependent children shall be adjusted weekly to reflect the number of dependent children during each week of payment.

Sec. 33. 21 V.S.A. § 646 is amended to read:

§ 646. TEMPORARY PARTIAL DISABILITY BENEFITS

* * *

~~(b)(1) In addition to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability \$20.00 per week for each dependent child under 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.~~

~~(2) The amount allowed for dependent children shall be adjusted weekly to reflect the number of dependent children during each week of payment. [Repealed.]~~

Sec. 34. 21 V.S.A. § 642 is amended to read:

§ 642. TEMPORARY TOTAL DISABILITY BENEFITS

~~(a)(1) Where the injury causes total disability for work, during such the disability, but not including the first three days, with the day of the accident to be counted as the first day, unless the employee received full wages for that day, the employer shall pay the injured employee a weekly compensation equal to two-thirds of the employee's average weekly wages, but~~

~~(2) The weekly compensation shall be in an amount that is not more than the maximum nor less than the minimum weekly compensation.~~

~~(3) Compensation paid pursuant to this subsection shall be adjusted on the first July 1 following the receipt of 26 weeks of benefits and annually on each subsequent July 1, so that the compensation continues to bear the same percentage relationship to the average weekly wage in the State as it did at the time of injury.~~

~~(b)(1) In addition, the injured employee, during the disability period shall receive \$10.00 a to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability \$20.00 per week for each dependent child who is unmarried and under the age of 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children. However, in no event shall an~~

(2) The amount allowed for the dependent children shall be adjusted weekly to reflect the number of dependent children during each week of payment.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary:

(1) An employee's total weekly wage replacement benefits, including any payments for a dependent child, shall not exceed 90 percent of the employee's average weekly wage prior to applying any applicable cost of living adjustment. The amount allowed for dependent children shall be increased or decreased weekly to reflect the number of dependent children extant during the week of payment.

(2) If the total disability continues after the third day for a period of seven consecutive calendar days or more, compensation shall be paid for the whole period of the total disability.

Sec. 35. 21 V.S.A. § 642 is amended to read:

§ 642. TEMPORARY TOTAL DISABILITY BENEFITS

* * *

(b)(1) In addition to the amount paid pursuant to subsection (a) of this section, the employer shall pay the injured employee during the disability \$20.00 ~~\$10.00~~ per week for each dependent child who is under 21 years of age, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.

* * *

Sec. 36. DEPENDENT BENEFIT INCREASE; IMPACT; REPORT

On or before January 15, 2027, the Commissioner of Labor, in consultation with the Commissioner of Financial Regulation, shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development regarding the impact of the increase in the dependent benefit enacted pursuant to Secs. 32 and 34 of this act on the workers' compensation system. The report shall include an estimate of the number of claims that have received additional benefits as a result of the increase and the additional cost to the workers' compensation system of the additional dependent benefits.

Sec. 37. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(d)(1) Compensation computed pursuant to this section shall be adjusted annually on July 1, so that ~~such~~ the compensation continues to bear the same percentage relationship to the average weekly wage in the State ~~as computed under this chapter~~ as it did at the time of injury.

(2) Temporary total or temporary partial compensation shall first be adjusted on the first July 1 following the receipt of 26 weeks of benefits.

(3) Permanent total and permanent partial compensation shall be adjusted for each July 1 following the date of injury regardless of whether indemnity benefits were paid on each intervening July 1.

(e)(1) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the Commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to any amounts due pursuant to subsection (f) of this section and interest and any other penalties.

(2) In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the Commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed.

(3) Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days ~~of~~ after the benefit being due and payable and the evidence reasonably supports the denial.

(4) Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment.

(5) The Commissioner shall promptly review requests for payment under this section and, consistent with subsection 678(d) of this title, shall allow for the recovery of reasonable attorney's fees associated with an employee's successful request for payment under this subsection.

(f)(1)(A) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established.

(B) Payment shall be made by direct deposit to a claimant who elects that payment method. The employer shall notify the claimant of ~~his or her~~ the claimant's right to payment by direct deposit.

(2) If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day.

(3) As used in this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

Sec. 38. 21 V.S.A. § 678 is amended to read:

§ 678. COSTS; ATTORNEY'S FEES

~~(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The Commissioner may allow the claimant to recover reasonable attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.~~

(b)(1) When a claimant prevails in either a formal or informal proceeding under this chapter, the Commissioner shall award the claimant necessary costs incurred in relation to the proceeding, including deposition expenses, subpoena fees, and expert witness fees.

(2) The Commissioner may allow a claimant to recover reasonable attorney's fees when the claimant prevails.

(3) In cases for which a formal hearing is requested and the case is resolved prior to a formal hearing:

(A) the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the attorney's efforts; and

(B) the Commissioner shall award necessary costs if the claimant incurred the costs in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the costs incurred.

(c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails, he or she the claimant shall be entitled to reasonable attorney's fees as approved by the court; necessary costs, including deposition expenses,

subpoena fees, and expert witness fees, and interest at the rate of 12 percent per annum on that portion of any award the payment of which is contested.

(2) Interest shall be computed from the date of the award of the Commissioner.

~~(e)~~(d) By January 1, 1999, and at least every five years thereafter, the Commissioner shall amend existing rules regarding reasonable attorney's fees awarded under subsection (a) of this section. In amending these rules, the Commissioner shall consider accessibility to legal services, appropriate inflation factors, and any other related factors consistent with the purposes of this chapter. In the event the Commissioner proposes no change in the rules in any five-year period, the Commissioner shall provide a written report to the Legislative Committee on Administrative Rules of the General Assembly explaining the reasons for not changing the rules.

~~(d)~~ In cases for which a formal hearing is requested and the case is resolved prior to formal hearing, the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and thereafter payments were made to the claimant as a result of the attorney's efforts.

* * *

Sec. 39. ADOPTION OF RULES

The Commissioner of Labor shall, on or before July 1, 2024, adopt rules as necessary to implement the provisions of Secs. 30, 31, 32, 33, 34, 35, 37, and 38 of this act.

* * * Unemployment Insurance * * *

Sec. 40. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

~~The following words and phrases, as As used in this chapter, shall have the following meanings unless the context clearly requires otherwise:~~

* * *

(25) "Son," "daughter," and "child" include an individual's biological child, foster child, adoptive child, stepchild, a child for whom the individual is listed as a parent on the child's birth certificate, a legal ward of the individual, a child of the individual's spouse, or a child that the individual has day-to-day responsibilities to care for and financially support.

(26) "Spouse" includes an individual's domestic partner or civil union partner. As used in this subdivision, "domestic partner" means another

individual with whom an individual has an enduring domestic relationship of a spousal nature, provided that the individual and the individual's domestic partner:

(A) have shared a residence for at least six months;

(B) are at least 18 years of age;

(C) are not married to, in a civil union with, or considered the domestic partner of another individual;

(D) are not related by blood closer than would bar marriage under State law; and

(E) have agreed between themselves to be responsible for each other's welfare.

Sec. 41. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

As used in this chapter:

* * *

(5) "Employer" includes:

(A) Any employing unit ~~which, after December 31, 1971~~ that in any calendar quarter in either the current or preceding calendar year paid for service in employment, as ~~hereinafter~~ defined pursuant to subdivision (6) of ~~this section~~, wages of \$1,500.00 or more, or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment, ~~as hereinafter defined,~~ at least one individual (irrespective of whether the same individual was in employment in each such day). When an employing unit described in either this subdivision or subdivision (5)(B) of this ~~section~~ subdivision (5), becomes an employer within any calendar year, it shall be subject to this chapter for the whole of ~~such~~ the calendar year.

(B)(i) Any employing unit for which service in employment for a religious, charitable, educational, or other organization as defined in subdivision (6)(A)(ix) of this section is performed after December 31, 1971^½, except as provided in subdivision (5)(C) of this ~~section~~ subdivision (5).

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this State, ~~performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision,~~

~~service performed after December 31, 1977,~~ performed by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly ~~without~~ outside this State may by election as ~~hereinbefore~~ provided in subdivision (5)(E)(i) of this section be treated as if wholly within the jurisdiction of this State. ~~And whenever~~ If an employing unit ~~shall have~~ has elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the Commissioner, upon ~~his or her~~ approval of said ~~approving the~~ election as to ~~any such~~ the employee, may treat the services covered by ~~said approved~~ the election as having been performed wholly ~~without~~ outside the jurisdiction of this State.

* * *

(ix) The term “employment” shall also include service for any employing unit ~~which is performed after December 31, 1971~~ by an individual in the employ of a religious, charitable, educational, or other organization ~~but only if:~~

(I) ~~the service is excluded from “employment” as defined in the Federal Unemployment Tax Act solely by reason of section~~ subdivision 3306(c)(8) of that act; ~~and~~

~~(II) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.~~

* * *

Sec. 42. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

* * *

(c)(1) Financing benefits paid to employees of nonprofit organizations.

(A) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection (c).

(B) ~~For the purposes of~~ As used in this subsection (c), a “nonprofit organization” ~~is means~~ means an organization (, or group of organizations), described in Section 501(c)(3) of the U.S. Internal Revenue Code ~~which that~~ that is exempt from income tax under Section 501(a) of ~~such~~ the Internal Revenue Code.

(2) Liability for contributions and election of reimbursement. Any nonprofit organization ~~which that~~, pursuant to subdivision 1301(5)(B)(i) of this ~~title chapter~~, is, or becomes, subject to this chapter ~~on or after January 1, 1972~~ shall pay contributions under the provisions of this section, unless it elects, in accordance with this subsection, to pay to the Commissioner, for the Unemployment Insurance Trust Fund, an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of ~~sueh the~~ nonprofit organization, to individuals for weeks of unemployment ~~which that~~ begin during the effective period of ~~sueh the~~ election.

(A) ~~Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year beginning with January 1, 1972 provided it files with the Commissioner a written notice of its election within the 30-day period immediately following such date or within a like period immediately following April 16, 1971, whichever occurs later. [Repealed.]~~

(B) Any nonprofit organization ~~which that~~ becomes subject to this chapter ~~after January 1, 1972~~ may elect to become liable for payments in lieu of contributions for a period of not less than 12 months ~~beginning with the date on which such subjectivity begins~~ by filing a written notice of its election with the Commissioner not later than 30 days immediately following the date of the determination ~~of such subjectivity that the organization is subject to this chapter.~~

(C) Any nonprofit organization ~~which that~~ makes an election in accordance with ~~subdivisions (c)(2)(A) and subdivision (B) of this section will subdivision (c)(2) shall~~ continue to be liable for payments in lieu of contributions until it files with the Commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which ~~sueh the~~ termination shall first be effective.

(D) Any nonprofit organization ~~which that~~ has been paying contributions under this chapter ~~for a period subsequent to January 1, 1972 may change to a reimbursable basis~~ elect to become liable for payments in lieu of contributions by filing with the Commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. ~~Sueh An election under this subdivision (c)(2)(D) shall not be terminable by the organization for that year and the next year.~~

(E) The Commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive ~~but not any earlier than with respect to benefits paid after December 31, 1969.~~

(F) The Commissioner, in accordance with ~~such any applicable rules as adopted by the Board may prescribe,~~ shall notify each nonprofit organization of any determination ~~which he or she may make of that the Commissioner makes with regard to~~ its status as an employer and of the effective date of any election ~~which it that the organization makes and of any termination of such an election.~~ ~~Such~~ The determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

(3) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this subdivision, including either subdivision (A) or ~~subdivision (B).~~

(A) At the end of each calendar quarter, or at the end of any other period as determined by the Commissioner, the Commissioner shall bill each nonprofit organization, or group of ~~such nonprofit organizations, which that~~ has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during ~~such the~~ quarter or other prescribed period that is attributable to service in the employ of ~~such the~~ organization.

(B)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make ~~such payments as provided in this subdivision (c)(3)(B).~~ Payment pursuant to the provisions of this subdivision (c)(3)(B) shall become effective upon approval of the Commissioner.

(ii) At the end of each calendar quarter, the Commissioner shall bill each nonprofit organization approved to make payments pursuant to the provisions of this subdivision (c)(3)(B) for an amount representing ~~one of the following:~~

~~(I) For 1972, two-tenths of one percent of its total payroll for 1971.~~

~~(II) For years after 1972, such a percentage of its total payroll for the immediately preceding calendar year as that the Commissioner shall determine. The determination shall be determines to be appropriate based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.~~

~~(H)~~ For The Commissioner may determine a different rate for any organization ~~which~~ that did not pay wages throughout the four calendar quarters of the preceding calendar year, ~~such percentage of its payroll during that year as the Commissioner shall determine.~~

(iii) At the end of each calendar year, the Commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each calendar year, the Commissioner shall determine whether the total of payments for ~~such~~ the year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during ~~such~~ the taxable year based on wages attributable to service in the employ of ~~such~~ the organization. Each nonprofit organization whose total payments for ~~such~~ the year are less than the amount so determined shall be liable for payment of the unpaid balance to the Trust Fund in accordance with subdivision ~~(3)(C)~~ of this subsection subdivision (c)(3). If the total payments exceed the amount so determined for the taxable year, all or a part of the excess shall, at the election of the nonprofit organization, be refunded from the Trust Fund or retained in the Trust Fund as part of the payments ~~which~~ that may be required for the next calendar year.

(C) Payment of any bill rendered under subdivision (2) ~~or subdivision (3)~~ of this subsection (c) or this subdivision (c)(3) shall be made not later than 30 days after the bill is mailed to the last known address of the nonprofit organization or is otherwise delivered to it, unless there has been an application for redetermination by the Commissioner or a petition for hearing before a referee in accordance with subdivision ~~(3)(E)~~ of this subsection subdivision (c)(3).

(D) Payments made by any nonprofit ~~corporation~~ organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(E)(i) The amount due specified in any bill from the Commissioner shall be conclusive on the organization unless, not later than 30 days after the date of the bill, the organization files an application for reconsideration by the Commissioner, or a petition for a hearing before a referee, setting forth the grounds for ~~such~~ the application or petition.

(ii) The Commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which ~~such~~ an application for redetermination has been filed. Any

such redetermination shall be conclusive on the organization unless, not later than 30 days after the date of the redetermination, the organization files a petition for a hearing before a referee, setting forth the grounds for the petition.

(iii) Proceedings on the petition for a hearing before a referee on the amount of a bill rendered under this section or a redetermination of ~~such~~ the amount shall be in accordance with the provisions of section 1331 of this title, and the decision of the referee shall be subject to the provisions of that section. Review of the decision of the referee by the Employment Security Board shall be in accordance with, and its decision shall be subject to, the provisions of section 1332 of this title.

(F) Any employer, including the State of Vermont ~~which, that~~ makes payments in lieu of contributions under this section shall be subject to the provisions of sections 1314, 1322, 1328, 1329, 1334, and 1336 of this title as follows:

(i) ~~that~~ The employer shall be liable for any reports as required by the Commissioner ~~may require~~ pursuant to sections 1314 and 1322 of this title;

(ii) ~~that~~ The employer shall be liable for any penalty imposed pursuant to sections 1314 and 1328 of this title;

(iii) ~~that~~ The employer shall be liable for the same interest on past due payments pursuant to subsection 1329(a) of this title;

(iv) ~~that~~ The employer shall be subject to a civil action for the collection of past due payments as if those payments were contributions pursuant to subsections 1329(b) and 1334(a) of this title; ~~and~~.

(v) ~~that~~ The employer shall be subject to ~~those~~ actions for the collection of past due payments as if those payments were contributions pursuant to subsections 1329(c) and (d), and 1334(b) and (c), and section 1336 of this title; however, those provisions shall not apply to the State of Vermont.

(4) Authority to terminate elections. If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subsection, the Commissioner may terminate ~~such~~ the organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination shall be effective for that and the next taxable year.

(5) Allocation of benefit costs.

(A) Each employer that is liable for payments in lieu of contributions shall pay to the Commissioner for the Trust Fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of ~~such~~ the employer.

(B) If benefits paid to an individual are based on wages paid by more than one employer and one or more of ~~such~~ the employers are liable for payments in lieu of contributions, the amount payable to the Trust Fund by each employer that is liable for ~~such~~ payments in lieu of contributions shall be ~~determined in accordance with subdivisions (5)(A) and (B) of this subsection (e):~~

~~(A) — Proportionate allocation when fewer than all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by ~~such~~ the employer bear to the total base-period wages paid to the individual by all of his or her the individual's base-period employers.~~

~~(B) — Proportionate allocation when all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of his or her base-period employers.~~

(6) Group accounts. Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of this section and section 1380 of this title, may file a joint application to the Commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of ~~such~~ the employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this section. Upon ~~his or her~~ approval of the application, the Commissioner shall establish a group account for ~~such~~ the employers effective as of the beginning of the calendar quarter in which ~~he or she~~ the Commissioner receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter

until terminated at the discretion of the Commissioner or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in ~~such~~ the quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by ~~such~~ the member in ~~such~~ the quarter bear to the total wages paid during ~~such~~ the quarter for service performed in the employ of all members of the group. The Board shall ~~prescribe regulations~~ adopt rules as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this ~~section~~ subsection by members of the group and the time and manner of ~~such~~ the payments.

(7) ~~Notwithstanding any of the foregoing provisions of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by this section, and, pursuant to subsection (c) of this section, elects within 30 days after January 1, 1972, to make payments in lieu of contributions, shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on and after the effective date of the election until the total amount of benefits equals the amount (1) by which the contributions paid by the organization with respect to the two-year period before the effective date of the election under subsection (b) of this section exceed (2) the total amount of unemployment benefits paid for the same period that were attributable to service performed in the employ of the organization and were charged to the experience rating record of the organization. [Repealed.]~~

* * *

(f) Any employer who makes payments in lieu of contributions under the provisions of this section is considered to be self-insuring and shall pay to the Commissioner for the Unemployment Compensation Trust Fund ~~such~~ any amounts as the Commissioner finds to be due under this chapter, including benefits paid but denied on appeal or benefits paid in error ~~which~~ that cannot be properly charged either against another employer who makes payments in lieu of contributions or against the experience-rating record of another employer who pays contributions. Benefits improperly paid where repayment by the claimant is ordered pursuant to subsection 1347(a) or (b) of this title will be credited to the employer's account when repayment from the claimant is actually received by the Commissioner.

Sec. 43. NONPROFIT AND MUNICIPAL REIMBURSABLE
EMPLOYERS; EDUCATION; OUTREACH

(a) On or before October 1, 2023, the Commissioner of Labor, in consultation with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, shall develop information and education materials for nonprofit and municipal employers regarding the unemployment insurance system. At a minimum, the materials shall:

(1) explain the options available to nonprofit and municipal employers, including paying regular unemployment insurance contributions, reimbursing the Unemployment Insurance Trust Fund for attributable unemployment insurance costs, and, with respect to nonprofit employers, quarterly payments of estimated unemployment insurance costs;

(2) identify the potential benefits and drawbacks of each of the options identified in subdivision (1) of this subsection;

(3) provide information on how a nonprofit or municipal employer can evaluate its potential liability under each of the options identified in subdivision (1) of this subsection;

(4) provide information developed by the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders regarding how a nonprofit or municipal employer can plan and budget for the potential expenses associated with each of the options identified in subdivision (1) of this subsection; and

(5) provide additional information regarding the Unemployment Insurance program and related laws that the Commissioner determines, in consultation with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, to be helpful or necessary for nonprofit and municipal employers.

(b)(1) The informational and educational materials developed pursuant to subsection (a) of this section shall be made available on the Department's website and shall, in coordination with the Secretary of State, Common Good Vermont, United Way of Northwest Vermont, the Vermont League of Cities and Towns, and other interested stakeholders, be shared directly with Vermont nonprofit and municipal employers to the extent practicable.

(2) The Secretary of State shall assist the Commissioner of Labor in identifying and contacting all active Vermont nonprofit employers. The Office of the Secretary of State shall also make available on its website a link to the information and educational materials provided on the Department of Labor's

website pursuant to this section.

(c) The Department of Labor, in collaboration with the Vermont League of Cities and Towns, Common Good Vermont, United Way of Northwest Vermont, and other interested stakeholders, shall hold one or more informational sessions to present the materials and information developed pursuant to subsection (a) of this section to nonprofit employers and municipal employers. At least one session shall be held on or before November 1, 2023. Each session shall allow for both in-person and remote participation and shall be recorded. Recordings shall be made available to the public and to stakeholder organizations for distribution to their members.

Sec. 44. 2021 Acts and Resolves No. 183, Sec. 59(b)(6) is amended to read:

(6) Sec. 52g (prospective repeal of unemployment insurance benefit increase) shall take effect upon the payment of a when the cumulative total amount of additional benefits paid pursuant to 21 V.S.A. § 1338(e) when, compared to the rate at which benefits would have been paid under the formula set forth in 21 V.S.A. § 1338(e) on June 30, 2025 equal to \$92,000,000.00, plus the difference between \$8,000,000.00 and the amount of additional benefits paid out pursuant to section 52b, if any, compared to the amount that would have been paid pursuant to the provisions of 21 V.S.A. § 1338(f)(1) on June 30, 2022, equals \$100,000,000.00 and shall apply to benefit weeks beginning after that date.

Sec. 45. UNEMPLOYMENT DUE TO URGENT, COMPELLING, OR
NECESSITOUS CIRCUMSTANCES; COVERAGE; IMPACT;
REPORT

(a) On or before January 15, 2024, the Commissioner of Labor shall submit a written report prepared in consultation with the Joint Fiscal Office to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding the potential impact of extending eligibility for unemployment insurance benefits to individuals who separate from employment due to urgent, compelling, or necessitous circumstances, including the individual's injury or illness, to obtain or recover from medical treatment, to escape domestic or sexual violence, to care for a child following an unexpected loss of child care, or to care for an ill or injured family member.

(b) The report shall include:

(1) a list of states in which individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section are eligible for unemployment insurance and shall identify the specific circumstances for separation from employment in each identified state for

which there is no waiting period or period of disqualification related to the circumstance;

(2) information, to the extent it is available, regarding the number of approved claims in the states identified pursuant to subdivision (1) of this subsection where the individual separated from employment due to circumstances similar to those described in subsection (a) of this section;

(3) an estimate of the projected range of additional approved claims per year in Vermont if individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section are made eligible for unemployment insurance;

(4) an estimate of the range of potential impacts on the Unemployment Insurance Trust Fund of making individuals who separate from employment due to circumstances similar to those described in subsection (a) of this section eligible for unemployment insurance; and

(5) any recommendations for legislative action.

Sec. 46. DOMESTIC AND SEXUAL VIOLENCE SURVIVORS'
TRANSITIONAL EMPLOYMENT PROGRAM; UTILIZATION;
REPORT

On or before January 15, 2024, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding the utilization of the Domestic and Sexual Violence Survivors' Transitional Employment Program. The report shall include information regarding the utilization of the Program during the past 10 years, a summary of the Department's efforts to make members of the public aware of the Program and improve access to it, how the identified changes have impacted utilization of the Program in comparison to prior years, any potential ways to further increase awareness and utilization of the Program, and any suggestions for legislative action to improve awareness or utilization of the Program.

Sec. 47. 21 V.S.A. § 1256 is added to read:

§ 1256. NOTIFICATION TO THE PUBLIC

The Department shall take reasonable measures to provide information to the public about the Program, including publishing information on the Department's website and providing timely materials related to the Program to public agencies of the State and organizations that work with domestic and sexual violence survivors, including law enforcement, State's Attorneys, community justice centers, the Center for Crime Victim Services, the Vermont

Network Against Domestic and Sexual Violence (the Network), and any others deemed appropriate by the Commissioner in consultation with the Network.

* * * Effective Dates * * *

Sec. 48. EFFECTIVE DATES

(a) Except as provided in subsection (b) of this section, this act shall take effect on July 1, 2023.

(b)(1) Sec. 5 (Child Care Financial Assistance Program; eligibility), Sec. 6 (provider rate adjustment; Child Care Financial Assistance Program), Sec. 9 (payment to providers), and Sec. 12 (child care tuition rates) shall take effect on January 1, 2024, except that the Commissioner for Children and Families shall initiate any rulemaking necessary prior to that date in order to perform the Commissioner's duties under this act.

(2) Sec. 5a (Child Care Financial Assistance Program; eligibility) and Sec. 5d (fiscal year 2024; family contribution) shall take effect on April 1, 2024, except that the Commissioner for Children and Families shall initiate any rulemaking necessary prior to that date in order to perform the Commissioner's duties under this act.

(3) Sec. 5b (Child Care Financial Assistance Program; eligibility), Sec. 9a (payment to providers), and Sec. 10 (child care quality and capacity incentive program) shall take effect on July 1, 2024, except that the Commissioner for Children and Families shall initiate any rulemaking necessary prior to that date in order to perform the Commissioner's duties under this act.

(4) Sec. 5c (Child Care Financial Assistance Program; eligibility) shall take effect on October 1, 2024.

(5) Sec. 25 (Child Care Contribution) shall take effect on July 1, 2024.

(6) Secs. 27 (Workers' Compensation Administrative Fund rate of contribution) and 29 (extension prior to proposed discontinuance of workers' compensation benefits) shall take effect on passage.

(7) Sec. 41 (extension of unemployment insurance to small nonprofit employers) shall take effect on July 1, 2024.

(8) Secs. 33 and 35 (sunset of workers' compensation dependent benefit increases) shall take effect on July 1, 2028.

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

An act relating to child care, early education, workers' compensation, and unemployment insurance.

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

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

Thereupon, the proposal of amendment recommended by the Committee on Economic Development, Housing and General Affairs, as amended, was agreed to and third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 227.

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

An act relating to the Vermont Uniform Power of Attorney Act.

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

Sec. 1. 14 V.S.A. chapter 127 is added to read:

CHAPTER 127. VERMONT UNIFORM POWER OF ATTORNEY ACT

Subchapter 1. General Provisions

§ 4001. SHORT TITLE

This chapter may be cited as the Vermont Uniform Power of Attorney Act.

§ 4002. DEFINITIONS

As used in this chapter:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent’s authority is delegated.

(2) “Durable,” with respect to a power of attorney, means not terminated by the principal’s incapacity or unavailability.

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

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

(5) “General power of attorney” means a power of attorney that is not limited by its terms to a specified transaction or series of transactions, to a specific purpose, or to a specific asset or set of assets, or a power of attorney that grants an agent the authority to do any one or more of the acts described in subsection 4031(e) of this title.

(6) “Good faith” means honesty in fact.

(7)(A) “Incapacity” means the inability of an individual to manage property or business affairs because the individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.

(B) “Unavailability” means the inability of an individual to manage property or business affairs because the individual is:

(i) missing;

(ii) detained, including incarcerated in a penal system; or

(iii) outside the United States and unable to return.

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

(9) “Power of attorney” means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(10) “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(11) “Principal” means an individual who grants authority to an agent in a power of attorney.

(12) “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(13) “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.

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

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(15) “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.

(16) “Stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

§ 4003. APPLICABILITY

This chapter applies to all powers of attorney except:

(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) a power to make health-care decisions;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity;

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; and

(5) a power of reciprocal insurers under 8 V.S.A. § 4838.

§ 4004. POWER OF ATTORNEY IS DURABLE

A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity or unavailability of the principal.

§ 4005. EXECUTION OF POWER OF ATTORNEY

A power of attorney shall be signed by the principal or in the principal’s conscious presence by another individual directed by the principal to sign the

principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

§ 4006. VALIDITY OF POWER OF ATTORNEY

(a) A power of attorney executed in this State on or after July 1, 2023 is valid if its execution complies with section 4005 of this title.

(b) A power of attorney executed in this State before July 1, 2023 is valid if its execution complied with the law of this State as it existed at the time of execution.

(c) A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 4007 of this title; or

(2) the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(d) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

(e) Except as otherwise provided by statute other than this chapter, a power of attorney that complies with this chapter is valid.

§ 4007. MEANING AND EFFECT OF POWER OF ATTORNEY

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

§ 4008. NOMINATION OF GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY

(a) In a power of attorney, a principal may nominate a guardian of the principal's estate or a guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(b) If, after a principal executes a power of attorney, a court appoints a guardian of the principal's estate or other fiduciary charged with the

management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated, and the agent's authority continues unless limited, suspended, or terminated by the court.

§ 4009. WHEN POWER OF ATTORNEY EFFECTIVE

(a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a power of attorney becomes effective upon the principal's incapacity or unavailability and the principal has not authorized a person to determine whether the principal is incapacitated or unavailable, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(1) a licensed health care professional working within the professional's scope of practice, including a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 and a psychologist licensed pursuant to 26 V.S.A. chapter 55, that the principal is incapacitated within the meaning of subdivision 4002(7)(A) of this chapter; or

(2) an attorney at law, a judge, or an appropriate governmental official that the principal is unavailable within the meaning of 4002(7)(B) of this chapter.

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated or unavailable may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act; Sections 1171 through 1179 of the Social Security Act; 42 U.S.C. § 1320d, as amended; and applicable regulations to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

§ 4010. TERMINATION OF POWER OF ATTORNEY OR AGENT'S AUTHORITY

(a) A power of attorney terminates when:

(1) the principal dies;

(2) the principal becomes incapacitated or unavailable, if the power of attorney is not durable;

(3) the principal revokes the power of attorney;

(4) the power of attorney provides that it terminates;

(5) the purpose of the power of attorney is accomplished; or

(6) the principal revokes the agent's authority or the agent dies, becomes incapacitated or unavailable, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(b) An agent's authority terminates when:

(1) the principal revokes the authority;

(2) the agent dies, becomes incapacitated or unavailable, or resigns;

(3) a petition for divorce, annulment, separation, or a decree of nullity is filed with respect to the agent's marriage to the principal, unless the power of attorney otherwise provides; or

(4) the power of attorney terminates.

(c) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) Incapacity or unavailability of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity or unavailability, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

(g) The principal of a power of attorney may not revoke the power of attorney if the principal has been determined to be incapacitated.

§ 4011. CO-AGENTS AND SUCCESSOR AGENTS

(a) A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

(b) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated or unavailable, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(1) has the same authority as that granted to the original agent; and

(2) may not act until all predecessor agents have resigned, died, become incapacitated or unavailable, are no longer qualified to serve, or have declined to serve.

(c) Except as otherwise provided in the power of attorney and subsection (d) of this section, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(d) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated or unavailable, take any action reasonably appropriate in the circumstances to safeguard the principal's best interests. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§ 4012. REIMBURSEMENT AND COMPENSATION OF AGENT

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

§ 4013. AGENT'S ACCEPTANCE

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§ 4014. AGENT'S DUTIES

(a) Notwithstanding provisions in the power of attorney, an agent who has accepted appointment shall:

(1) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise in the principal's best interests;

(2) act in good faith; and

(3) act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney or other provision of this chapter, an agent that has accepted appointment shall have no further obligation to act under the power of attorney. However, with respect to any action taken by the agent under the power of attorney, the agent shall:

(1) act loyally for the principal's benefit;

(2) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interests;

(3) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with a person who has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and otherwise act in the principal's best interests; and

(6) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interests based on all relevant factors, including:

(A) the value and nature of the principal's property;

(B) the principal's foreseeable obligations and need for maintenance;

(C) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(D) eligibility for a benefit, a program, or assistance under a statute or regulation.

(c) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent who acts with care, competence, and diligence for the best interests of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

§ 4015. EXONERATION OF AGENT

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed:

(A) dishonestly;

(B) in bad faith;

(C) with reckless indifference to the purposes of the power of attorney;

(D) through willful misconduct;

(E) through gross negligence; or

(F) with actual fraud; or

(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

§ 4016. JUDICIAL RELIEF

(a) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

- (1) the principal or the agent;
- (2) a guardian or other fiduciary acting for the principal, including an executor or administrator of the estate of a deceased principal;
- (3) a person authorized to make health-care decisions for the principal;
- (4) the principal's spouse, parent, or descendant;
- (5) an individual who would qualify as an heir of the principal under the laws of intestacy;
- (6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal who has a financial interest in the principal's estate;
- (7) a governmental agency having regulatory authority to protect the welfare of the principal;
- (8) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare; and
- (9) a person asked to accept the power of attorney.

(b) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

§ 4017. AGENT'S LIABILITY

An agent who violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

- (1) restore the value of the principal's property to what it would have been had the violation not occurred;
- (2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf;
- (3) reimburse the reasonable attorney's fees and costs incurred by the principal or the principal's successor in interest in pursuing rectification of the violation by the agent; and
- (4) pay such other amounts, damages, costs, or expenses that the court may award.

§ 4018. AGENT'S RESIGNATION; NOTICE

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated or unavailable:

(1) to the guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) if there is no person described in subdivision (1) of this section, to:

(A) the principal's caregiver;

(B) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the welfare of the principal.

§ 4019. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY

(a) As used in this section and section 4020 of this title, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(b) A person who in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 4005 of this title that the signature is genuine.

(c) A person who effects a transaction in reliance upon an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated; that the purported agent's authority is void, invalid, or terminated; or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect; the agent's authority were genuine, valid, and still in effect; and the agent had not exceeded and has properly exercised the authority.

(d) A person who is asked to accept an acknowledged power of attorney may request and rely upon, without further investigation:

(1) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney; or

(2) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(3) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other

record the reason for the request.

(e) A certification presented pursuant to subsection (d) of this section shall state that:

(1) the person presenting themselves as the agent and signing the affidavit or declaration is the person so named in the power of attorney;

(2) if the agent is named in the power of attorney as a successor agent, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting agent have occurred;

(3) to the best of the agent's knowledge, the principal is still alive;

(4) to the best of the agent's knowledge, at the time the power of attorney was signed, the principal was competent to execute the document and was not under undue influence to sign the document;

(5) all events necessary to making the power of attorney effective have occurred;

(6) the agent does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the agent's authority;

(7) if the agent was married to or in a state-registered domestic partnership with the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage or state-registered domestic partnership of the principal and the agent has not been dissolved or declared invalid, and no action is pending for the dissolution of the marriage or domestic partnership for legal separation; and

(8) the agent is acting in good faith pursuant to the authority given under the power of attorney.

(f) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

(g) For purposes of this section and section 4020 of this title, a person who conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

§ 4020. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED
STATUTORY FORM POWER OF ATTORNEY

(a) As used in this section, “statutory form power of attorney” means a power of attorney substantially in the form provided in section 4051 or 4052 of this title or that meets the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(b) Except as otherwise provided in subsection (c) of this section:

(1) a person shall either accept an acknowledged statutory form power of attorney or request a certification, a translation, or an opinion of counsel under subsection 4019(d) of this title not later than seven business days after presentation of the power of attorney for acceptance;

(2) if a person requests a certification, a translation, or an opinion of counsel under subsection 4019(d) of this title, the person shall accept the statutory form power of attorney not later than five business days after receipt of the certification, translation, or opinion of counsel; and

(3) a person may not require an additional or different form of power of attorney for authority granted in the statutory form power of attorney presented.

(c) A person is not required to accept an acknowledged statutory form power of attorney if:

(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal or state law;

(3) the person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;

(4) a request for a certification, a translation, or an opinion of counsel under subsection 4019(d) of this title is refused;

(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection 4019(d) of this title has been requested or provided; or

(6) the person makes, or has actual knowledge that another person has made, a report to the Adult Protective Services program or other appropriate entity within the Department of Disabilities, Aging, and Independent Living or to a law enforcement agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment

by the agent or a person acting for or with the agent.

(d) A person who refuses in violation of this section to accept an acknowledged statutory form power of attorney is subject to:

(1) a court order mandating acceptance of the power of attorney; and

(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

§ 4021. PRINCIPLES OF LAW AND EQUITY

Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

§ 4022. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND ENTITIES

This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter.

§ 4023. REMEDIES UNDER OTHER LAW

The remedies under this chapter are not exclusive and do not abrogate any right or remedy under the law of this State other than this chapter.

Subchapter 2. Authority

§ 4031. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) create, amend, revoke, or terminate an inter vivos trust;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation;

(5) delegate authority granted under the power of attorney;

(6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) authorize another person to exercise the authority granted under the

power of attorney;

(8) exercise authority over the content of an electronic communication of the principal in accordance with chapter 125 of this title (Vermont Revised Uniform Fiduciary Access to Digital Assets Act);

(9) disclaim property, including a power of appointment;

(10) exercise a written waiver of spousal rights under section 323 of this title;

(11) exercise authority with respect to intellectual property, including copyrights, contracts for payment of royalties, and trademarks; or

(12) convey, or revoke or revise a grantee designation, by enhanced life estate deed pursuant to chapter 6 of Title 27 or under common law.

(b) Notwithstanding a grant of authority to do an act described in subsection (a) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(c) Subject to subsections (a), (b), (d), and (e) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 4034–4046 of this title.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 4047 of this title.

(e) Subject to subsections (a), (b), and (d) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

§ 4032. INCORPORATION OF AUTHORITY

(a) An agent has authority described in this chapter if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 4034–4047 of this title or cites the section in which the authority is described.

(b) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 4034–4047 of this title or a citation to a section of sections 4034–4047 of this title incorporates the entire section as if it were set out in full in the power of attorney.

(c) A principal may modify authority or a writing or other record incorporated by reference.

§ 4033. CONSTRUCTION OF AUTHORITY GENERALLY

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 4034–4047 of this title or that grants to an agent authority to do all acts that a principal could do pursuant to subsection 4031(c) of this title, a principal authorizes the agent, with respect to that subject, to:

(1) demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

(7) prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;

(9) access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) do any lawful act with respect to the subject and all property related to the subject.

§ 4034. REAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) sell; exchange; convey, with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) insuring against liability or casualty or other loss;

(B) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(D) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) selling or otherwise disposing of them;

(B) exercising or selling an option, right of conversion, or similar right with respect to them; and

(C) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property;

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest; and

(10) relinquish any and all of the principal's rights of homestead under 27 V.S.A. § 105 and elective share under section 323 of this title.

§ 4035. TANGIBLE PERSONAL PROPERTY

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, or convey, with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise a security interest, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

(5) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring against liability or casualty or other loss;

(B) obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(C) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property from place to place;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using and making repairs, alterations, or improvements to the property; and

(6) change the form of title of an interest in tangible personal property.

§ 4036. STOCKS AND BONDS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(1) buy, sell, and exchange stocks and bonds;

(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

§ 4037. COMMODITIES AND OPTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts.

§ 4038. BANKS AND OTHER FINANCIAL INSTITUTIONS

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) enter a safe deposit box or vault and withdraw or add to the contents;

(7) borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;

(9) receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§ 4039. OPERATION OF ENTITY OR BUSINESS

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) enforce the terms of an ownership agreement;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

(6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(7) with respect to an entity or business owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(B) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; and

(v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

(C) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) put additional capital into an entity or business in which the principal has an interest;

(9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) sell or liquidate all or part of an entity or business;

(11) establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§ 4040. INSURANCE AND ANNUITIES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other

dependents and select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) apply for and receive a loan secured by a contract of insurance or annuity;

(5) surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) exercise an election;

(7) exercise investment powers available under a contract of insurance or annuity;

(8) change the manner of paying premiums on a contract of insurance or annuity;

(9) change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(12) select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

§ 4041. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS

(a) As used in this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(1) accept, receive, receipt for, sell, assign, pledge, or exchange a share

in or payment from an estate, trust, or other beneficial interest;

(2) demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

(3) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(5) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(6) conserve, invest, disburse, or use anything received for an authorized purpose; and

(7) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

§ 4042. CLAIMS AND LITIGATION

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) make or accept a tender, offer of judgment, or admission of facts; submit a controversy on an agreed statement of facts; consent to examination; and bind the principal in litigation;

(5) submit to alternative dispute resolution, settle, and propose or accept a compromise;

(6) waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon which process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

(8) pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(9) receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

§ 4043. PERSONAL AND FAMILY MAINTENANCE

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

(A) other individuals legally entitled to be supported by the principal;
and

(B) the individuals whom the principal has customarily supported or indicated the intent to support;

(2) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(3) provide living quarters for the individuals described in subdivision (1) of this subsection by:

(A) purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(4) provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subdivision (1) of this subsection;

(5) pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision (1) of this subsection;

(6) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act; Sections 1171–1179 of the Social Security Act; 42 U.S.C. § 1320d, as amended; and applicable regulations in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

(7) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subdivision (1) of this subsection;

(8) maintain credit and debit accounts for the convenience of the individuals described in subdivision (1) of this subsection and open new accounts; and

(9) continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

(b) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

§ 4044. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE

(a) As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including Social Security, Medicare, Medicaid, and the Department of Veterans Affairs.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision 4043(a)(1) of this title and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(4) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(5) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(6) receive the financial proceeds of a claim described in subdivision (4) of this subsection and conserve, invest, disburse, or use for a lawful purpose anything so received.

§ 4045. RETIREMENT PLANS

(a) As used in this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) an individual retirement account under Internal Revenue Code § 408, 26 U.S.C. § 408, as amended;

(2) a Roth individual retirement account under Internal Revenue Code § 408A, 26 U.S.C. § 408A, as amended;

(3) a deemed individual retirement account under Internal Revenue Code § 408(q), 26 U.S.C. § 408(q), as amended;

(4) an annuity or mutual fund custodial account under Internal Revenue Code § 403(b), 26 U.S.C. § 403(b), as amended;

(5) a pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code § 401(a), 26 U.S.C. § 401(a), as amended;

(6) a plan under Internal Revenue Code § 457(b), 26 U.S.C. § 457(b), as amended; and

(7) a nonqualified deferred compensation plan under Internal Revenue Code § 409A, 26 U.S.C. § 409A, as amended.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) establish a retirement plan in the principal's name;

(4) make contributions to a retirement plan;

(5) exercise investment powers available under a retirement plan; and

(6) borrow from, sell assets to, or purchase assets from a retirement plan.

§ 4046. TAXES

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts; offers; waivers; consents, including consents and agreements under Internal Revenue Code § 2032A, 26 U.S.C. § 2032A, as amended; closing agreements; and any power of attorney required by the Internal Revenue Service or other taxing authority, including an internal revenue service form 2848 in favor of any third party with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

§ 4047. GIFTS

(a) For purposes of this section, “gift” includes a gift for the benefit of a person, including a gift to a trust, an account under chapter 115 of this title (Vermont Uniform Transfers to Minors Act), and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code § 529, 26 U.S.C. § 529, as amended.

(b) An agent may make a gift of the principal’s property only as the agent determines is consistent with the principal’s objectives if actually known by the agent or, if unknown, as the agent determines is consistent with the principal’s best interests based on all relevant factors, including:

(1) evidence of the principal’s intent;

(2) the principal’s personal history of making or joining in the making of lifetime gifts;

(3) the principal’s estate plan;

(4) the principal’s foreseeable obligations and maintenance needs and the impact of the proposed gift on the principal’s housing options, access to care and services, and general welfare;

(5) the income, gift, estate, or inheritance tax consequences of the transaction; and

(6) whether the proposed gift creates a foreseeable risk that the principal will be deprived of sufficient assets to cover the principal’s needs during any period of Medicaid ineligibility that would result from the proposed gift.

(c) An agent may make a gift of the principal’s property only as the agent determines is consistent with the principal’s objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal’s best interests based on all relevant factors, including:

(1) the value and nature of the principal’s property;

(2) the principal’s foreseeable obligations and need for maintenance;

(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(4) eligibility for a benefit, a program, or assistance under a statute or regulation; and

(5) the principal's personal history of making or joining in making gifts.

Subchapter 3. Statutory Forms

§ 4051. STATUTORY FORM POWER OF ATTORNEY

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.

VERMONT STATUTORY FORM POWER OF ATTORNEY IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form does not revoke powers of attorney previously executed by you unless you initial the introductory paragraph under DESIGNATION OF AGENT that all previous powers of attorney are revoked.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ (Name of Principal) () revoke all previous powers of attorney and name the following person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: _____

Successor Agent's Address: _____

Successor Agent's Telephone Number: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Second Successor Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects, you may initial "All Preceding Subjects" instead of initialing each subject.)

() Real Property

() Tangible Personal Property

() Stocks and Bonds

() Commodities and Options

() Banks and Other Financial Institutions

- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- An agent who is not an ancestor, spouse, or descendant may exercise authority under this power of attorney to create in the agent or in an individual to whom the agent owes a legal obligation of support an interest in my property whether by gift, rights of survivorship, beneficiary designation, disclaimer, or otherwise
- Create, amend, revoke, or terminate an inter vivos, family, living, irrevocable, or revocable trust
- Consent to the modification or termination of a noncharitable irrevocable trust under 14A V.S.A. § 411
- Make a gift, subject to the limitations of 14 V.S.A. § 4047 (gifts) and any special instructions in this power of attorney
- Create, amend, or change rights of survivorship
- Create, amend, or change a beneficiary designation
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Authorize another person to exercise the authority granted under this

power of attorney

() Disclaim or refuse an interest in property, including a power of appointment

() Exercise authority with respect to elective share under 14 V.S.A. § 319

() Exercise waiver rights under 14 V.S.A. § 323

() Exercise authority over the content and catalogue of electronic communications and digital assets under 14 V.S.A. chapter 125 (Vermont Revised Uniform Fiduciary Access to Digital Assets Act)

() Exercise authority with respect to intellectual property, including, without limitation, copyrights, contracts for payment of royalties, and trademarks

() Convey, or revoke or revise a grantee designation, by enhanced life estate deed pursuant to chapter 6 of Title 27 or under common law.

LIMITATION ON AGENT’S AUTHORITY

An agent who is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

WHEN POWER OF ATTORNEY EFFECTIVE

This power of attorney becomes effective when executed unless the principal has initialed one of the following:

() This power of attorney is effective only upon my later incapacity.

OR

() This power of attorney is effective only upon my later incapacity or unavailability.

OR

() I direct that this power of attorney shall become effective when one or more of the following occurs:

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or a guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate:

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid. Unless expressly stated otherwise, this power of attorney is durable and shall remain valid if I become incapacitated or unavailable.

SIGNATURE AND ACKNOWLEDGMENT

Your Name Printed

Your Address

Your Telephone Number

State of

County of

This document was acknowledged before me on _____ (Date)

by _____.

(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interests;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney;
and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent.

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interests; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interests.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

(2) the principal's revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127. If you violate the Vermont Uniform Power of Attorney Act, or act outside the authority granted, you may be liable for any damages caused by your violation. In addition to civil liability, failure to comply with your duties and authority granted under this document could subject you to criminal prosecution.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

§ 4052. STATUTORY SHORT FORM POWER OF ATTORNEY FOR REAL ESTATE TRANSACTIONS

(a) A document substantially in the following form may be used to create a statutory form power of attorney for a real estate transaction that has the meaning and effect prescribed by this chapter.

VERMONT SHORT FORM POWER OF ATTORNEY FOR REAL ESTATE
TRANSACTIONS

This power of attorney authorizes another person (your agent) to take actions for you (the principal) in connection with a real estate transaction (sale, purchase, mortgage, or gift). Your agent will be able to make decisions and act with respect to a specific parcel of land whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

DESIGNATION OF AGENT

I/we _____ and _____
(Name(s) of Principal) appoint the following person as my (our) agent:

Name of Agent: _____

Name of Alternate Agent: _____

Address of Property that is the subject of this power of attorney

(Street): _____, _____ (Municipality)
_____, Vermont.

Transaction for which the power of attorney is given:

- Sale
 Purchase or Acquisition
 Mortgage
 Finance and/or Mortgage
 Gift

GRANT OF AUTHORITY

I/we grant my (our) agent and any alternate agent authority named in this power of attorney to act for me/us with respect to a real estate transaction involving the property with the address stated above, including, but not limited to, the powers described in 14 V.S.A. § 4034(2), (3), and (4) as provided in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

POWER TO DELEGATE

[] If this box is checked, each agent appointed in this power of attorney may delegate the authority to act to another person. Any delegation shall be in writing and executed in the same manner as this power of attorney.

TERM

This power of attorney commences when fully executed and continues until the real estate transaction for which it was given is complete.

SELF DEALING

[] If this box is checked, the agent named in this power of attorney may convey the subject real estate with or without consideration to the agent, individually, in trust, or to one or more persons with the agent.

CHOICE OF LAW

This power of attorney and the effect hereof shall be determined by the application of Vermont law and the Vermont Uniform Power of Attorney Act.

SIGNATURE AND ACKNOWLEDGMENT

Your Name Printed

Your Address

Your Telephone Number

State of

County of

This document was acknowledged before me on _____ (Date)

by _____.

(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

(b) A power of attorney in the form above confers on the agent the powers provided in subdivisions 4034 (2), (3) and (4) of this chapter.

§ 4053. AGENT’S CERTIFICATION

The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT’S AUTHORITY

State of _____

[County] of _____]

I, _____ (Name of Agent), certify under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) _____ (Insert other relevant statements below)

SIGNATURE AND ACKNOWLEDGMENT

Agent’s Name Printed

Agent’s Address

Agent's Telephone Number

This document was acknowledged before me on _____,

____ (Date)

by _____

(Name of Agent)

(Seal, if any)

Signature of Notary

My commission expires: _____

Subchapter 4. Miscellaneous Provisions

§ 4061. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§ 4062. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter 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 subsection 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in subsection 103(b) of that act, 15 U.S.C. § 7003(b).

§ 4063. EFFECT ON EXISTING POWERS OF ATTORNEY

Except as otherwise provided in this chapter, on July 1, 2023:

(1) this chapter applies to a power of attorney created before, on, or after July 1, 2023;

(2) this chapter applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2023;

(3) this chapter applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2023 unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before July 1, 2023 is not affected by this chapter.

Sec. 2. REPEAL

14 V.S.A. chapter 123 (powers of attorney) is repealed.

Sec. 3. 14A V.S.A. § 401 is amended to read:

§ 401. METHODS OF CREATING TRUST

A trust may be created:

(1) by transfer of property to another person as trustee or to the trust in the trust's name during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) by declaration by the owner of property that the owner holds identifiable property as trustee;

(3) by exercise of a power of appointment in favor of a trustee;

(4) pursuant to a statute or judgment or decree that requires property to be administered in the manner of an express trust; or

(5)~~(A)~~ by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; ~~or~~

~~(B) by an agent or attorney-in-fact under a power of attorney that grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust, provided that any trust so created does not include any authority or powers that are otherwise prohibited by 14 V.S.A. § 3504. An agent or attorney-in-fact may petition the Probate Division of the Superior Court to determine whether a power of attorney described in this subdivision grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.~~

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 31. An act relating to aquatic nuisance control.

H. 62. An act relating to the interstate Counseling Compact.

H. 67. An act relating to household products containing hazardous substances.

Proposal of Amendment; Bill Passed in Concurrence with Further Proposal of Amendment**H. 77.**

House bill entitled:

An act relating to Vermont's adoption of the Physical Therapy Licensure Compact

Thereupon, pending third reading of the bill, moved that the Senate propose to the House to amend the bill in Sec. 2, 3 V.S.A. § 123(j)(1), in subdivision (E), following the words "physical therapists", by inserting the words and physical therapist assistants

Which was agreed to.

Thereupon, the bill was read a third time and passed.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 86. An act relating to Vermont's adoption of the Audiology and Speech-Language Pathology Interstate Compact.

H. 126. An act relating to community resilience and biodiversity protection.

H. 171. An act relating to adult protective services.

Bill Passed in Concurrence**H. 282. .**

House bill of the following title was read the third time and passed in concurrence:

An act relating to the Psychology Interjurisdictional Compact.

**Proposal of Amendment; Bill Passed in Concurrence with Further
Proposal of Amendment**

H. 461.

House bill entitled:

An act relating to making miscellaneous changes in education laws.

Was taken up.

Thereupon, pending third reading of the bill, Senators Hardy, Clarkson, Vyhovsky, Watson and White moved to amend the proposal of amendment as follows:

First: By striking out Sec. 9, 16 V.S.A. § 711, in its entirety and inserting in lieu thereof the following:

Sec. 9. 16 V.S.A. § 711 is amended to read:

§ 711. VOTE TO ELECT INITIAL MEMBERS OF THE UNION SCHOOL DISTRICT BOARD

* * *

(d) Proposed unified union school district. Subject to the provisions of subsections 706(c) (existing union school districts) and 708(b) (necessary and advisable school districts) of this chapter, the voters of each school district identified as “necessary” or “advisable” shall vote whether to elect initial board members of a proposed unified union school district, as follows:

* * *

(3) At-large representation. When representation on the board of a proposed unified union school district is not apportioned or allocated to the potential towns within the proposed district pursuant to subdivision (1) (proportional to town population) or (2) (modified at-large) of this subsection and the board member is elected at-large:

(A) The voters of one or more school districts identified as “necessary” to formation of the proposed unified union school district shall file a petition nominating a candidate for the office of unified union school district board member at-large. A petition shall be valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in one or more school districts identified as “necessary” to the formation of the proposed unified union school district or one percent of the legal voters residing in the combined “necessary” school districts that would form the proposed unified union school district, whichever is less;

* * *

(e) Proposed union elementary or union high school district. Subject to the provisions of subsections 706(c) (existing union school districts) and 708(b) (necessary and advisable school districts) of this chapter, the voters of each school district identified as “necessary” or “advisable” shall vote whether to elect initial board members of the proposed union school district, as follows:

* * *

(3) At-large representation. When representation on the board of a proposed union elementary or union high school district board is not apportioned or allocated to the potential member districts pursuant to subdivision (1) (proportional to town population) or (2) (modified at large) of this subsection and the board member is elected at-large:

(A) The voters of one or more school districts identified as “necessary” to the formation of the proposed union school district shall file a petition nominating a candidate for the office of union school district board member at-large. A petition shall be valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in one or more school districts identified as “necessary” to the formation of the proposed union school district or one percent of the legal voters residing in the combined “necessary” school districts that would form the proposed union school district, whichever is less;

* * *

Second: By striking out Sec. 10, 16 V.S.A. § 730, in its entirety and inserting in lieu thereof the following:

Sec. 10. 16 V.S.A. § 730 is amended to read:

§ 730. UNIFIED UNION SCHOOL DISTRICT BOARD MEMBERS;
NOMINATION AND ELECTION; BOND

(a) If by Australian ballot. The provisions of this subsection ~~(a)~~ shall apply to a unified union school district that conducts elections for board membership by Australian ballot.

* * *

(2) Modified at-large model: allocation to town; at-large representation.

(A) When membership on the board of a unified union school district is allocated to each town within the district, but the allocation is not closely proportional to the town’s relative population and the board member is elected

at-large, the voters residing in any one or more of the towns within the district may file a petition nominating a candidate for board membership under the “modified at-large” model. A petition is valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in the unified union school district or one percent of the legal voters in the district, whichever is less;

* * *

(3) At-large representation.

(A) When membership on a unified union school district board is not apportioned or allocated pursuant to subdivision (1) (proportional to town population) or (2) (modified at-large) of this subsection (a) and the board member is elected at large, the voters residing in any one or more of the towns within the district may file a petition nominating a candidate for at-large board membership. A petition is valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in the unified union school district or one percent of the legal voters in the district, whichever is less;

* * *

Third: By striking out Sec. 11, 16 V.S.A. § 748, in its entirety and inserting in lieu thereof the following:

Sec. 11. 16 V.S.A. § 748 is amended to read:

§ 748. UNION ELEMENTARY AND UNION HIGH SCHOOL DISTRICT
BOARD MEMBERS; NOMINATION AND ELECTION; BOND

(a) If by Australian ballot. The provisions of this subsection ~~(a)~~ shall apply to a union elementary or union high school district that conducts elections for board membership by Australian ballot.

* * *

(2) Modified at-large model: allocation to town; at-large representation.

(A) When membership on the board of a union elementary or union high school district is allocated to each member district, but the allocation is not closely proportional to the member district’s population and the board member is elected at-large, the voters residing in any one or more of the member districts may file a petition nominating a candidate for board membership under the “modified at-large” model. A petition is valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in the union elementary or union high school district or one percent of the legal voters in the district, whichever is less;

* * *

(3) At-large representation.

(A) When membership on the board of a union elementary or union high school district is not apportioned or allocated pursuant to subdivision (1) (proportional to town population) or (2) (modified at-large) of this subsection (a) (Australian ballot) and the board member is elected at large, the voters residing in any one or more of the member districts may file a petition nominating a candidate for at-large board membership. A petition is valid only if:

* * *

(iii) the petition is signed by at least 60 voters residing in the union elementary or union high school district or one percent of the legal voters in the district, whichever is less;

* * *

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Bills Passed in Concurrence with Proposals of Amendment

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

H. 476. An act relating to miscellaneous changes to law enforcement officer training laws.

H. 488. An act relating to approval of the adoption of the charter of the Town of Ludlow.

Third Readings Ordered

H. 175.

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

An act relating to modernizing the Children and Family Council for Prevention Programs.

Reported that the bill ought to pass in concurrence.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 489.

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of an amendment to the charter of the Town of Shelburne.

Reported that the bill ought to pass in concurrence.

Senator Chittenden, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

President *pro tempore* Assumes the Chair

H. 504.

Senator Watson, for the Committee on Government Operations, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

President Resumes the Chair

H. 505.

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 506.

Senator Vyhovsky, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of amendments to the election boundary provisions of the charter of the City of Burlington.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 507.

Senator Vyhovsky, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of amendments to the polling place provisions of the charter of the City of Burlington.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

H. 508.

Senator Vyhovsky, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of an amendment to the ranked choice voting provisions of the charter of the City of Burlington.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered, on a roll call, Yeas 21, Nays 6.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Champion, Chittenden, Clarkson, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, Mazza, McCormack, Norris, Ram Hinsdale, Sears, Vyhovsky, Watson, White, Wrenner.

Those Senators who voted in the negative were: Brock, Collamore, Ingalls, Starr, Weeks, Williams.

Those Senators absent and not voting were: Cummings, Perchlik, Westman.

H. 509.

Senator Vyhovsky, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of amendments to the voter qualification provisions of the charter of the City of Burlington.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered, on a roll call, Yeas 21, Nays 8.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Champion, Chittenden, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, McCormack, Perchlik, Ram Hinsdale, Sears, Vyhovsky, Watson, White, Wrenner.

Those Senators who voted in the negative were: Brock, Collamore, Ingalls, Mazza, Norris, Starr, Weeks, Williams.

The Senator absent and not voting was: Westman.

Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal Of Amendment; Rules Suspended; Bill Messaged

H. 490.

Senator Hardy, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approving the merger of the Village of Lyndonville with the Town of Lyndon.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 24 App. V.S.A. chapter 126 (Town of Lyndon), in section 12 (adoption of ordinances by initiative), in subsection (a), by renumbering subdivisions (2), (3), and (4) to be subdivisions (3), (4), and (5), and by adding a new subdivision (2) to read as follows:

(2) The proposed ordinance shall be examined by the Town attorney before being submitted to the special Town meeting. The Town attorney is authorized, subject to the approval of the Selectboard, to amend the petitioned ordinance to:

(A) correct repetitive, unlawful, or unconstitutional provisions; and

(B) ensure accuracy, clarity, and precision in its text, legal references, and phrasing, provided that these technical corrections shall not change the meaning or effect of the proposed ordinance.

Second: In Sec. 2, 24 App. V.S.A. chapter 126 (Town of Lyndon), in section 42 (Town meetings), in subsection (b), following the word “The” by striking out the words “ballot boxes” and inserting in lieu thereof the words polling places

Third: In Sec. 2, 24 App. V.S.A. chapter 126 (Town of Lyndon), in section 82 (Board of Electric Commissioners), in subsection (f), by striking out the word “and” following the semicolon at the end of subdivision (1); by striking out the period at the end of subdivision (2) and inserting in lieu thereof ; and; and in subdivision (3), by striking out the word “Consistent” and inserting in lieu thereof the word consistent

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the proposal of amendment was agreed to, and third reading of the bill was ordered.

Thereupon, on motion of Senator Baruth, the rules were suspended, and the bill was placed in all remaining stages of passage.

Thereupon, the bill was read the third time, and passed in concurrence with proposal of amendment.

Proposal of Amendment; Third Reading Ordered**H. 158.**

Senator White, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the beverage container redemption system.

Reported recommending that the Senate propose to the House to amend the bill as follows::

First: In Sec. 1, 10 V.S.A. chapter 53, in section 1523, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) A retailer, with the prior approval of the Secretary, may refuse to redeem beverage containers if a redemption center or centers are established that serve the public need stewardship plan that meets the requirements of section 1532 of this title has been implemented by the producer responsibility organization in the State and the retailer's building is less than 5,000 square feet.

(2) A manufacturer or distributor that sells directly to a consumer from a retail location may refuse to redeem beverage containers if the retail location where the manufacturer or distributor sells beverage containers is less than 5,000 square feet.

Second: In Sec. 1, 10 V.S.A. chapter 53, in section 1532, by inserting a subsection (d) to read as follows:

(d) Revision of stewardship goals. If the producer responsibility organization fails to meet the beverage container redemption rate in section 1534 of this title for vinous beverage containers or for all other beverage containers, the Secretary may require the producer responsibility organization to implement activities to enhance the rate of redemption, including additional public education and outreach, additional redemption sites, or additional redemption opportunities.

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

Senator Bray, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: In Sec. 1, 10 V.S.A. chapter 53, in section 1534, by striking out subsections (b) and (c) in their entireties and inserting in lieu thereof a new subsection (b) to read as follows:

(b)(1) Beginning on July 1, 2025 and annually thereafter, the Secretary of Natural Resources shall submit to the Senate Committees on Natural Resources and Energy and on Finance and the House Committees on Environment and Energy and on Ways and Means a written report containing the current beverage container redemption rate in the State for the following three categories of beverage containers:

- (A) liquor bottles;
- (B) vinous beverage containers; and
- (C) all other beverage containers.

(2) Each annual report submitted under subdivision (1) of this subsection shall include a recommendation of whether the beverage container deposit for any of the three beverage categories should be increased to improve redemption of that category of beverage container.

Second: By striking out Sec. 7, systems analysis of beverage container system, in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. SYSTEMS ANALYSIS OF BEVERAGE CONTAINER SYSTEM

(a) The Agency of Natural Resources shall contract with an independent third-party consultant to conduct a systems analysis of the efficacy and cost of Vermont's beverage container redemption system. The analysis shall estimate:

(1) the total system costs and savings associated with the implementation of the expanded beverage container redemption system under 10 V.S.A. chapter 53, including climate impacts;

(2) the cost to consumers of complying with an expanded beverage container redemption system, including transportation costs, compliance costs, carbon impact, and externalities, such as lost time;

(3) the impacts of an expanded beverage container redemption system on the recycling system, including how much additional beverage container material will be collected by the expansion of the beverage container redemption system; the cost to solid waste entities of an expanded beverage container redemption system, including lost revenues from the sale of recyclable materials; the operational savings, if any, on material recovery facilities; the loss to material recovery facilities from the removal of material collected under the beverage container redemption system material from the

recycling system; and an estimate of the impacts on tipping fees or solid waste fees at each material recovery facility or solid waste transfer station;

(4) the costs of operating a redemption center and other alternate points of redemption under a stewardship plan and a recommendation on whether the handling fee for redeemed containers should be altered or replaced with an alternative means of compensating points of redemption;

(5) the impact on overall recycling in the State and the redemption rates of beverage containers under 10 V.S.A. chapter 53 if the producer responsibility organization (PRO) implementing the stewardship plan under that chapter were authorized to retain 100 percent, 50 percent, or none of the abandoned beverage container deposits, including:

(A) the estimated number of beverage container redemption sites in the State under the PRO's stewardship plan under each option for the PRO's retention of the abandoned beverage container deposits; and

(B) the geographic distribution of beverage container redemption sites across the State under the PRO's stewardship plan under each option for the PRO's retention of the abandoned beverage container deposits; and

(6) the impact on the Clean Water Fund and State implementation of the State's water quality programs and regulatory requirements if the abandoned beverage container deposits were not deposited into the Clean Water Fund under 10 V.S.A. § 1388.

(b) On or before January 15, 2025, the Agency of Natural Resources shall submit to the House Committee on Environment and Energy and the Senate Committee on Natural Resources and Energy a written report containing the results of the systems analysis required under subsection (a) of this section.

Third: By adding a Sec. 7a to read as follows:

Sec. 7a. ANR REPORT ON STATUS REPORT OF RECYCLING SYSTEM

On or before January 15, 2026, the Secretary of Natural Resources shall submit to the Senate Committees on Natural Resources and Energy and on Finance and the House Committees on Environment and Energy and on Ways and Means a report on the status of the State's recycling system prior to the expansion of the beverage container redemption system required under this act. The report shall include:

(1) a summary of the operation of the Agency of Natural Resources' approved stewardship plan since March 1, 2025 by the producer responsibility organization registered with the Agency;

(2) identification of the points of redemption under the existing stewardship plan, including:

(A) an assessment of whether the existing points of redemption allow for convenient and reasonable access of all Vermonters to redemption opportunities;

(B) an assessment of whether the existing points of redemption are suitable for redemption by all Vermonters under the planned expansion of the beverage container system; and

(C) any recommendations to improve the convenience of redemption prior to the expansion of the beverage container redemption system; and

(3) a summary of the infrastructure in the State, other than points of redemption, available for the management and processing of beverage containers and an assessment of whether additional infrastructure is needed prior to the expansion of the beverage container redemption system.

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

Senator Lyons, for the Committee on Appropriations, to which was referred the bill, recommended the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Natural Resources and Energy was amended as recommended by the Committee on Finance.

Thereupon, the proposal of amendment recommended by the Committee on Natural Resources and Energy, as amended, was agreed, on a roll call, Yeas 19, Nays 11.

And third reading of the bill was ordered.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Campion, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Lyons, MacDonald, McCormack, Perchlik, Ram Hinsdale, Vyhovsky, Watson, Westman, White, Wrenner.

Those Senators who voted in the negative were: Brock, Chittenden, Collamore, Ingalls, Kitchel, Mazza, Norris, Sears, Starr, Weeks, Williams.

President *pro tempore* Assumes the Chair**President Resumes the Chair****Rules Suspended; Bills Messaged**

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

H. 31, H. 62, H. 67, H. 77, H. 86, H. 126, H. 171, H. 282, H. 452, H. 461, H. 476, H. 488, H. 490.

Recess

On motion of Senator Baruth the Senate adjourned until four o'clock in the afternoon.

Called to Order

The Senate was called to order by the President.

Rules Suspended; Immediate Consideration

On motion of Senator Baruth, the rules were suspended, and the following bills were ordered to be brought up for immediate consideration:

H. 489, H. 504, H. 505, H. 506, H. 507, S. 4, S. 6, S. 33, S.47, S. 89, H.479.

Bills Passed in Concurrence

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

H. 489. An act relating to approval of an amendment to the charter of the Town of Shelburne.

H. 504. An act relating to approval of amendments to the charter of the Town of Berlin.

H. 505. An act relating to approval of an amendment to the charter of the City of Rutland.

H. 506. An act relating to approval of amendments to the election boundary provisions of the charter of the City of Burlington.

H. 507. An act relating to approval of amendments to the polling place provisions of the charter of the City of Burlington.

House Proposal of Amendment Concurred In**S. 4.**

House proposal of amendment to Senate bill entitled:

An act relating to reducing crimes of violence associated with juveniles and dangerous weapons.

Was taken up.

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

Sec. 1. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court if the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition is a felony not specified in subdivisions (1)-(12) of this subsection or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

(1) arson causing death as defined in 13 V.S.A. § 501 or an attempt to commit that offense;

(2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b) or an attempt to commit that offense;

(3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c) or an attempt to commit that offense;

(4) aggravated assault as defined in 13 V.S.A. § 1024 or an attempt to commit that offense;

(5) murder as defined in 13 V.S.A. § 2301 and aggravated murder as defined in 13 V.S.A. § 2311 or an attempt to commit either of those offenses;

(6) manslaughter as defined in 13 V.S.A. § 2304 or an attempt to commit that offense;

(7) kidnapping as defined in 13 V.S.A. § 2405 or an attempt to commit that offense;

(8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407 or an attempt to commit that offense;

(9) maiming as defined in 13 V.S.A. § 2701 or an attempt to commit that offense;

(10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2) or an attempt to commit that offense;

(11) aggravated sexual assault as defined in 13 V.S.A. § 3253 and aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a or an attempt to commit either of those offenses; or

(12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c) or an attempt to commit that offense.

(b)(1) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(2)(A)(i) The Family Division of the Superior Court shall hold a hearing under subsection (c) of this section to determine whether jurisdiction should be transferred to the Criminal Division under subsection (a) of this section if the delinquent act set forth in the petition is:

(I) a felony violation of 18 V.S.A. chapter 84 for selling or trafficking a regulated drug;

(II) human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653;

(III) defacing a firearm's serial number in violation of 13 V.S.A. § 4024; or

(IV) straw purchasing of firearm in violation of 13 V.S.A. § 4025; and

(ii) the child had attained 16 years of age but not 19 years of age at the time the act was alleged to have occurred.

(B) A transfer hearing required by this subdivision (2) shall occur without delay and as soon as practicable, and the State shall have the burden of proof. The court decision to hold the transfer hearing shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay

shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under ~~subsection (b)~~ subdivision (b)(1) of this section, or in cases where a hearing is required under subdivision (b)(2) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) the maturity of the child as determined by consideration of the child's age, home, and environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(2) the extent and nature of the child's prior record of delinquency;

(3) the nature of past treatment efforts and the nature of the child's response to them, including the child's mental health treatment and substance abuse treatment and needs;

(4) the nature and circumstances of the alleged offense, including whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(5) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(6) the prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings;

(7) whether the protection of the community would be better served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court;

(8) the youth's residential housing status;

(9) the youth's employment and educational situation;

(10) whether the youth has complied with conditions of release;

(11) the youth's criminal record and whether the youth has engaged in subsequent criminal or delinquent behavior since the original charge;

(12) whether the youth has connections to the community; and

(13) the youth's history of violence and history of illegal or violent conduct involving firearms.

(e) A transfer under this section shall terminate the jurisdiction of the Family Division of the Superior Court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The Family Division, following completion of the transfer hearing, shall make findings and, if the court orders transfer of jurisdiction from the Family Division, shall state the reasons for that order. If the Family Division orders transfer of jurisdiction, the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the Family Division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the Criminal Division and the child shall be treated as an adult. The State's Attorney shall commence criminal proceedings as in cases commenced against adults.

(3) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to convert the juvenile proceeding to a youthful offender proceeding under chapter 52A of this title. If the parties stipulate to convert the proceeding pursuant to this subdivision, the court may proceed immediately to a youthful offender consideration hearing under section 5283 of this title. The Court shall request that the Department complete a youthful offender consideration report under section 5282 of this title before accepting a case for youthful offender treatment pursuant to this subdivision.

* * *

Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

(c)(1) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's

Attorney files the charge directly as a youthful offender petition in the Family Division.

(2)(A) Any proceeding concerning a child who is alleged to have committed one of the following acts after attaining 14 years of age, but not 22 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter and chapter 52A of this title, unless the State's Attorney files the charge directly as a youthful offender petition in the Family Division:

(i) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for any of the offenses listed in subsection 5204(a) of this title; or

(ii) a violation of a condition of release as defined in 13 V.S.A. § 7559 imposed by the Criminal Division for an offense that was transferred from the Family Division pursuant to section 5204 of this title.

(B) This subdivision (2) shall not apply to a proceeding that is the subject of a final order accepting the case for youthful offender treatment pursuant to subsection 5281(d) of this title.

* * *

Sec. 3. 18 V.S.A. § 4252 is amended to read:

§ 4252. ~~PENALTIES FOR DISPENSING OR SELLING KNOWINGLY PERMITTING SALE OF 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 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. [Repealed.]~~

(c) A person who violates this section shall be imprisoned not more than two years or fined not more than ~~\$1,000.00~~ \$15,000.00, or both.

(d) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity.

Sec. 4. 13 V.S.A. chapter 60, subchapter 1, is amended to read:

Subchapter 1. Criminal Acts

* * *

§ 2659. KNOWINGLY PERMITTING HUMAN TRAFFICKING 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 human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$15,000.00, or both.

(c) It shall not be a violation of this section if the person who owns or controls the dwelling, building, or structure takes action to address the unlawful activity.

Sec. 5. 13 V.S.A. § 4024 is added to read:

§ 4024. DEFACING OF FIREARM'S SERIAL NUMBER

(a) A person shall not knowingly possess a firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(c) As used in this section:

(1) "Firearm" has the same meaning as in section 4017 of this title.

(2) "Importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

(3) "Manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution.

Sec. 6. 13 V.S.A. § 4025 is added to read:

§ 4025. STRAW PURCHASING OF FIREARMS

(a) A person shall not purchase a firearm for, on behalf of, or at the request of another person if the purchaser knows or reasonably should know that the other person:

(1) is prohibited by state or federal law from possessing a firearm;

(2) intends to carry the firearm while committing a felony; or

(3) intends to transfer the firearm to another person who:

(A) is prohibited by state or federal law from possessing a firearm; or

(B) intends to carry the firearm while committing a felony.

(b) It shall not be a violation of this section if the person purchased the firearm as a result of threats or coercion by another person.

(c) A person who violates this section shall be imprisoned not more than five years or fined not more than \$50,000.00, or both.

(d) As used in this section, "firearm" has the same meaning as in section 4017 of this title.

Sec. 7. 13 V.S.A. § 4017a is added to read:

§ 4017a. FUGITIVES FROM JUSTICE; PERSONS SUBJECT TO FINAL RELIEF FROM ABUSE OR STALKING ORDER; PERSONS CHARGED WITH CERTAIN OFFENSES; PROHIBITION ON POSSESSION OF FIREARMS

(a) A person shall not possess a firearm if the person:

(1) is a fugitive from justice;

(2) is the subject of a final relief from abuse order issued pursuant to 15 V.S.A. § 1104;

(3) is the subject of a final order against stalking issued pursuant to 12 V.S.A. § 5133 if the order prohibits the person from possessing a firearm; or

(4) against whom charges are pending for:

(A) carrying a dangerous weapon while committing a felony in violation of section 4005 of this title;

(B) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1; or

(C) human trafficking or aggravated human trafficking in violation of section 2652 or 2653 of this title.

(b) A person who violates this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(c) As used in this section:

(1) "Firearm" has the same meaning as in section 4017 of this title.

(2) "Fugitive from justice" means a person who has fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.

Sec. 8. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME FELONY

(a) Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony shall be imprisoned not more than five years or fined not more than \$500.00, or both.

(b)(1) Carrying a firearm while committing a felony in violation of this section may be considered a violent act for the purposes of determining whether a person is eligible for bail under section 7553a of this title.

(2) An offense that is a felony rather than a misdemeanor solely because of the monetary value of the property involved shall not be considered a violent act under this subsection.

Sec. 9. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

* * *

(d) Such records and files shall be available to:

(1) State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes; and

(2) the National Instant Criminal Background Check System in connection with a background check conducted on a person under 22 years of age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

* * *

Sec. 10. 18 V.S.A. § 13 is added to read:

§ 13. COMMUNITY VIOLENCE PREVENTION PROGRAM

(a)(1) There is established the Community Violence Prevention Program to be administered by the Department of Health in consultation and collaboration with the Chief Prevention Officer, the Department of Public Safety, the Director of Violence Prevention, the Executive Director of Racial Equity, and the Council for Equitable Youth Justice. The Program shall work with communities to implement innovative, evidence-based, and evidence-informed programs addressing causes of youth and community violence.

(2) Grants awarded pursuant to this section shall be at the discretion of the Commissioner of Health. Preference shall be given to communities where there has been an increase in violence associated with illegal drug sales and trafficking, gang activity, or human trafficking. Grants shall:

(A) build on and complement existing programs addressing the causes of youth and community violence; and

(B) be for the purpose of funding efforts that address violence and associated community harm using approaches that may include the following:

(i) best available research evidence;

(ii) experiential evidence;

(iii) contextual evidence;

(iv) lived experience of impacted communities;

(v) trauma-responsive programming; and

(vi) other qualitative or quantitative factors that may inform the decision-making of the Commissioner.

(b)(1) A Vermont municipality or nonprofit organization may submit an application for a Community Violence Prevention Program grant to the Commissioner of Health. Grants awarded under this section shall be for the purpose of funding innovative, evidence-based, or evidence-informed approaches to reducing violence and associated community harm.

(2) The Commissioner of Health, in consultation with the Department of Public Safety and the Executive Director of Racial Equity, shall develop and publish guidelines for the award of Community Violence Prevention Program grants. The guidelines shall include a focus on increasing community capacity to implement approaches for human services, public health, and public safety collaboration to address root causes of community violence and substance use through data-driven projects.

(c) The Community Violence Prevention Program shall collect data to monitor youth and community violence and its related risk and protective factors and to evaluate the impact of prevention efforts and shall use the data to plan and implement programs. The Program shall use monitoring and evaluation data to track the impact of interventions.

(d)(1) The Commissioner of Health, in consultation and collaboration with the Chief Prevention Officer, the Department of Public Safety, the Director of Violence Prevention, the Executive Director of Racial Equity, and the Council for Equitable Youth Justice, shall report on the Community Violence Prevention Program:

(A) on or before September 1, 2023 and December 1, 2023 to the Joint Legislative Justice Oversight Committee; and

(B) on or before January 15, 2024, and annually on that date thereafter, to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Human Services, and the House Committee on Health Care.

(2) The report required by this subsection shall include:

(A) a complete description of the Community Violence Prevention Program grant application and award process;

(B) guidelines for the award of grants developed under subdivision (b)(2) of this section;

(C) the number of applications submitted and grants awarded, and the amount of each grant awarded;

(D) detailed descriptions of the programs and purposes for which all grants were awarded;

(E) the impacts and outcomes of funded projects; and

(F) descriptions of any grants applied for or awarded.

Sec. 11. APPROPRIATION

(a) Grants awarded from State funds to the Community Violence Prevention Program established by 18 V.S.A. § 13 shall be dependent upon the amount of the appropriation.

(b) The Department of Health is authorized to seek and accept grant funding for the purpose of supporting the Community Violence Prevention Program to supplement State appropriations.

(c) If funding is available for the Community Violence Prevention Program from federal grants or legal settlements related to drug use or criminal activity:

(1) such federal or settlement funds shall be utilized first for the Program; and

(2) an amount of the General Fund appropriation made under subsection (a) of this section equal to the total amount of federal grants or legal settlements received by the Program shall be reverted to the General Fund.

Sec. 12. 2018 Acts and Resolves No. 201, Sec. 21, as amended by 2022 Acts and Resolves No. 160, Sec. 1, is further amended to read:

Sec. 21. EFFECTIVE DATES

* * *

(d) Secs. 17–19 shall take effect on July 1, ~~2023~~ 2024.

Sec. 13. 2020 Acts and Resolves No. 124, Sec. 12, as amended by 2022 Acts and Resolves No. 160, Sec. 2, is further amended to read:

Sec. 12. EFFECTIVE DATES

(a) Secs. 3 (33 V.S.A. § 5103(c)) and 7 (33 V.S.A. § 5206) shall take effect on July 1, ~~2023~~ 2024.

* * *

Sec. 14. PLAN FOR SECURE PLACEMENTS

On or before September 1, 2023 and December 1, 2023, the Department for Children and Families shall file a status report to the Joint Legislative Justice Oversight Committee, the Senate and House Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Human Services, and the Senate Committee on Health and Welfare describing the progress made toward implementing the requirement of Secs. 12 and 13 of this act that the Raise the Age initiative take effect on July 1, 2024.

Sec. 15. SENTENCING COMMISSION REPORT

(a) On or before December 15, 2023, the Vermont Sentencing Commission shall report to the Joint Legislative Justice Oversight Committee and the Senate and House Committees on Judiciary on whether the offenses for which transfer from the Family Division to the Criminal Division is permitted under 33 V.S.A. § 5204(a) should be expanded to include:

(1) first degree arson as defined in 13 V.S.A. § 502 or second degree arson as defined in 13 V.S.A. § 503;

(2) stalking as defined in 13 V.S.A. § 1062;

(3) domestic assault as defined in 13 V.S.A. § 1042, first degree aggravated domestic assault as defined in 13 V.S.A. § 1043, and second degree aggravated domestic assault as defined in 13 V.S.A. § 1044;

(4) selling or dispensing a regulated drug with death resulting as defined in 18 V.S.A. § 4250;

(5) using a firearm while selling or dispensing a drug as defined in 18 V.S.A. § 4253;

(6) carrying a dangerous or deadly weapon while committing a felony as defined in 13 V.S.A. § 4005;

(7) lewd or lascivious conduct as defined in 13 V.S.A. § 2601 or lewd or lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(8) eluding a police officer with serious bodily injury or death resulting as defined in 23 V.S.A. § 1133(b);

(9) willful and malicious injuries caused by explosives as defined in 13 V.S.A. § 1601, injuries caused by destructive devices as defined in 13 V.S.A. § 1605, or injuries caused by explosives as defined in 13 V.S.A. § 1608;

(10) grand larceny as defined in 13 V.S.A. § 2501 or larceny from the person as defined in 13 V.S.A. § 2503;

(11) operating vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(12) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(13) leaving the scene of an accident with serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c);

(14) a hate-motivated crime as defined in 13 V.S.A. § 1455;

(15) conspiracy as defined in 13 V.S.A. § 1404;

(16) a violation of an abuse prevention order as defined in 13 V.S.A. § 1030 or violation of an order against stalking or sexual assault as defined in 12 V.S.A. § 5138;

(17) trafficking a regulated drug in violation of 18 V.S.A. chapter 84, subchapter 1;

(18) human trafficking or aggravated human trafficking in violation of 13 V.S.A. § 2652 or 2653; or

(19) aggravated stalking as defined in 13 V.S.A. § 1063(a)(3).

(b) The report required by this section shall also consider whether burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c) should continue to be included in the offenses for which transfer from the Family Division to the Criminal Division is permitted under 33 V.S.A. § 5204(a) or whether an alternate or redefined version of the offense should be included.

Sec. 16. SEVERABILITY

As set forth in 1 V.S.A. § 215, the provisions of this act are severable, and if a court finds any provision of this act to be invalid, or if any application of this act to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 17. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided on a roll all, Yeas 28, Nays 1.

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

Roll Call

Those Senators who voted in the affirmative were: Baruth, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Gulick, Hardy, Harrison, Hashim, Ingalls, Kitchel, Lyons, MacDonald, Mazza, McCormack, Norris, Perchlik, Ram Hinsdale, Sears, Starr, Vyhovsky, Watson, Weeks, Westman, White, Wrenner.

The Senator who voted in the negative was: Williams.

The Senator absent and not voting was: Bray.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

S. 6.

House proposal of amendment to Senate bill entitled:

An act relating to law enforcement interrogation policies.

Was taken up.

An act relating to law enforcement interrogation policies

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

Sec. 1. LEGISLATIVE INTENT; JUVENILE INTERROGATION; LAW ENFORCEMENT INTERROGATION POLICIES

It is the intent of the General Assembly to prevent false confessions and wrongful convictions of individuals subject to law enforcement interrogation and to improve trust between Vermont's communities and law enforcement. To achieve these objectives, it is the further intent of the General Assembly to create a minimum set of law enforcement interrogation standards that incorporate evidence-based best practices by:

(1) immediately prohibiting law enforcement's use of threats and physical harm during all custodial interrogations;

(2) immediately restricting law enforcement's use of deception during the custodial interrogation of juveniles; and

(3) mandating that the Vermont Criminal Justice Council develop, adopt, and enforce a statewide model interrogation policy that applies to all Vermont law enforcement agencies and constables exercising law enforcement authority pursuant to 24 V.S.A. § 1936.

Sec. 2. 13 V.S.A. § 5585 is amended to read:

§ 5585. ~~ELECTRONIC RECORDING OF A CUSTODIAL~~
INTERROGATION DEFINITIONS

~~(a)~~ As used in this ~~section~~ subchapter:

(1) "Custodial interrogation" means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and

(B) in which a reasonable person in the subject's position would consider the person to be in custody, starting from the moment a person should have been advised of the person's Miranda rights and ending when the questioning has concluded.

(2) "Deception" includes the knowing communication of false facts about evidence, the knowing misrepresentation of the accuracy of the facts, the knowing misrepresentation of the law, or the knowing communication of unauthorized statements regarding leniency.

~~(2)~~(3) "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of a

custodial interrogation, or if law enforcement does not have the current capacity to create a visual recording, an audio recording of the interrogation.

(4) “Law enforcement officer” has the same meaning as in 20 V.S.A. § 2351a.

(5) “Government agent” means:

(A) a school resource or safety officer; or

(B) an individual acting at the request or direction of a school resource or safety officer or a law enforcement officer.

~~(3)~~(6) “Place of detention” means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

~~(4)~~(7) “Statement” means an oral, written, sign language, or nonverbal communication.

~~(b)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony or misdemeanor violation of this title shall be electronically recorded in its entirety. Unless impracticable, a custodial interrogation occurring outside a place of detention concerning the investigation of a felony or misdemeanor violation of this title shall be electronically recorded in its entirety.~~

~~(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.~~

~~(e)(1) The following are exceptions to the recording requirement in subsection (b) of this section:~~

~~(A) exigent circumstances;~~

~~(B) a person’s refusal to be electronically recorded;~~

~~(C) interrogations conducted by other jurisdictions;~~

~~(D) a reasonable belief that the person being interrogated did not commit a felony or misdemeanor violation of this title and, therefore, an electronic recording of the interrogation was not required;~~

~~(E) the safety of a person or protection of the person’s identity; and~~

~~(F) equipment malfunction.~~

~~(2) If law enforcement does not make an electronic recording of a custodial interrogation as required by this section, the prosecution shall prove by a preponderance of the evidence that one of the exceptions identified in subdivision (1) of this subsection applies. If the prosecution does not meet the burden of proof, the evidence is still admissible, but the court shall provide cautionary instructions to the jury regarding the failure to record the interrogation.~~

Sec. 3. 13 V.S.A. § 5586 is added to read:

§ 5586. ELECTRONIC RECORDING OF A CUSTODIAL INTERROGATION

(a)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony or misdemeanor violation of this title shall be electronically recorded in its entirety. Unless impracticable, a custodial interrogation occurring outside a place of detention concerning the investigation of a felony or misdemeanor violation of this title shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

(b)(1) The following are exceptions to the recording requirement in subsection (a) of this section:

(A) exigent circumstances;

(B) a person's refusal to be electronically recorded;

(C) interrogations conducted by other jurisdictions;

(D) a reasonable belief that the person being interrogated did not commit a felony or misdemeanor violation of this title and, therefore, an electronic recording of the interrogation was not required;

(E) the safety of a person or protection of the person's identity; and

(F) equipment malfunction.

(2) If law enforcement does not make an electronic recording of a custodial interrogation as required by this section, the prosecution shall prove by a preponderance of the evidence that one of the exceptions identified in subdivision (1) of this subsection applies. If the prosecution does not meet the burden of proof, the evidence is still admissible, but the court shall provide cautionary instructions to the jury regarding the failure to record the interrogation.

Sec. 4. 13 V.S.A. § 5587 is added to read:

§ 5587. RESTRICTIONS ON CUSTODIAL INTERROGATION

(a)(1) During a custodial interrogation of a person relating to the commission of a criminal offense or delinquent act, a law enforcement officer or government agent shall not employ threats or physical harm.

(2) Any admission, confession, or statement, whether written or oral, obtained in violation of subdivision (1) of this subsection shall be involuntary and inadmissible in any proceeding.

(b)(1) During a custodial interrogation of a person under 18 years of age relating to the commission of a criminal offense or delinquent act, a law enforcement officer or government agent shall not employ deception.

(2) Any admission, confession, or statement, whether written or oral, obtained in violation of subdivision (1) of this subsection shall be involuntary and inadmissible in any proceeding.

(c)(1) Any admission, confession, or statement, whether written or oral, made by a person 18 through 21 years of age during a custodial interrogation relating to the commission of a criminal offense or delinquent act in which a law enforcement officer or government agent employed deception shall be presumed to be involuntary and inadmissible in any proceeding.

(2) The presumption that any such admission, confession, or statement is involuntary and inadmissible may be overcome if the State proves by clear and convincing evidence that the admission, confession, or statement was:

(A) voluntary and not induced by a law enforcement officer's or government agent's use of deception prohibited by subdivision (c)(1) of this section; and

(B) any actions of a law enforcement officer or government agent in violation of subsection (c)(1) of this section did not undermine the reliability of the person's admission, confession, or statement and did not create a substantial risk that the person might falsely incriminate themselves.

(d) Notwithstanding 20 V.S.A. chapter 151, subchapter 2, a noncriminal violation of this section by a law enforcement officer or government agent that is neither malicious nor willful shall not provide a basis for any sanctions related to a law enforcement officer's certification.

Sec. 5. VERMONT CRIMINAL JUSTICE COUNCIL; MODEL INTERROGATION POLICY

(a) Intent. It is the intent of the General Assembly that the Vermont Criminal Justice Council create a model interrogation policy that is grounded

in evidence-based best practices to limit and eventually eliminate the use of deception in law enforcement interrogations.

(b) Policy development. On or before January 1, 2024, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General and stakeholders, including the Agency of Human Services, the Vermont League of Cities and Towns, the Vermont Human Rights Commission, and the Innocence Project, shall establish one cohesive evidence-based model interrogation policy for law enforcement agencies and constables to adopt, follow, and enforce as part of the agency's or constable's own interrogation policy.

(c) Policy contents. The evidence-based model interrogation policy created pursuant to this section shall apply to all persons subject to various forms of interrogation, including the following:

(1) custodial interrogations occurring in a place of detention;

(2) custodial interrogations occurring outside a place of detention;

(3) interrogations that are not considered custodial, regardless of location; and

(4) the interrogation of individuals with developmental, intellectual, and psychiatric disabilities; substance use disorders; and low literacy levels.

Sec. 6. 20 V.S.A. § 2359 is amended to read:

§ 2359. COUNCIL SERVICES CONTINGENT ON AGENCY
COMPLIANCE; GRANT ELIGIBILITY

(a) On and after January 1, 2022, a law enforcement agency shall be prohibited from having its law enforcement applicants or officers trained by the Police Academy or from otherwise using the services of the Council if the agency is not in compliance with the requirements for collecting roadside stop data under section 2366 of this chapter, the requirement to report to the Office of Attorney General death or serious bodily injuries under 18 V.S.A. § 7257a(b), or the requirement to adopt, follow, ~~or~~ and enforce any policy required under this chapter.

(b) On and after April 1, 2024, a law enforcement agency shall be prohibited from receiving grants, or other forms of financial assistance, if the agency is not in compliance with the requirement to adopt, follow, and enforce the model interrogation policy established by the Council pursuant to section 2371 of this title.

(c) The Council shall adopt procedures to enforce the requirements of this section, which may allow for waivers for agencies under a plan to obtain compliance with this section.

Sec. 7. 20 V.S.A. § 2371 is added to read:

§ 2371. STATEWIDE POLICY; INTERROGATION METHODS

(a) As used in this section:

(1) “Custodial interrogation” has the same meaning as in 13 V.S.A. § 5585.

(2) “Place of detention” has the same meaning as in 13 V.S.A. § 5585.

(b) The Council shall establish a model interrogation policy that applies to all persons subject to various forms of interrogation, including the following:

(1) custodial interrogations occurring in a place of detention;

(2) custodial interrogations occurring outside a place of detention;

(3) interrogations that are not considered custodial, regardless of location; and

(4) the interrogation of individuals with developmental, intellectual, and psychiatric disabilities; substance use disorders; and low literacy levels.

(c)(1) On or before April 1, 2024, each law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall adopt, follow, and enforce an interrogation policy that includes each component of the model interrogation policy established by the Council, and each law enforcement officer or constable who exercises law enforcement authority shall comply with the provisions of the agency’s or constable’s policy.

(2) On or before October 1, 2024, and every even-numbered year thereafter, the Vermont Criminal Justice Council, in consultation with others, including the Office of the Attorney General, the Agency of Human Services, and the Human Rights Commission, shall review and, if necessary, update the model interrogation policy.

(d) To encourage fair and consistent interrogation methods statewide, the Vermont Criminal Justice Council, in consultation with the Office of the Attorney General, shall review the policies of law enforcement agencies and constables required to adopt a policy pursuant to subsection (c) of this section, to ensure that those policies establish each component of the model policy on or before April 15, 2024. If the Council finds that a policy does not meet each

component of the model policy, it shall work with the law enforcement agency or constable to bring the policy into compliance. If, after consultation with its attorney or with the Council, or with both, the law enforcement agency or constable fails to adopt a policy that meets each component of the model policy, that agency or constable shall be deemed to have adopted, and shall follow and enforce, the model policy established by the Council.

(e) The Council shall incorporate the provisions of this section into the training it provides.

(f) Annually, as part of their annual training report to the Council, every law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with section 2358 of this title shall report to the Council whether the agency or constable has adopted an interrogation policy in accordance with subsections (c) and (d) of this section. The Vermont Criminal Justice Council shall determine, as part of the Council's annual certification of training requirements, whether current officers have received training on interrogation methods as required by subsection (e) of this section.

(g) Annually, on or before July 1, the Vermont Criminal Justice Council shall report to the House and Senate Committees on Judiciary regarding which law enforcement agencies and officers have received training on interrogation methods.

Sec. 8. VERMONT CRIMINAL JUSTICE COUNCIL; POSITION; APPROPRIATION

(a) On July 1, 2023, a new, permanent, classified Director of Policy position is created in the Vermont Criminal Justice Council. In addition to any other duties deemed appropriate by the Council, the Director of Policy shall supervise the development, oversight, and compliance work related to the Council's internal, external, and State-mandated policies.

(b) The position of Director of Policy established in subsection (a) of this section shall be subject to a general fund appropriation in FY 2024.

Sec. 9. REPEAL

13 V.S.A. § 5587(d) (prohibiting sanctions related to a law enforcement officer's certification) is repealed on July 1, 2024.

Sec. 10. EFFECTIVE DATES

This act shall take effect on July 1, 2023, except that Secs. 6 (council services contingent on agency compliance; grant eligibility) and 7 (statewide policy; interrogation methods) shall take effect on April 1, 2024.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Concurred In

S. 47.

House proposal of amendment to Senate bill entitled:

An act relating to the transport of individuals requiring psychiatric care.

Was taken up.

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

Sec. 1. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT AND CERTIFICATE FOR EMERGENCY EXAMINATION

(a) In emergency circumstances where certification by a licensed physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and ~~he or she~~ the person presents an immediate risk of serious injury to ~~himself or herself~~ self or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination. The application shall be based on facts personally observed by the mental health professional or the law enforcement officer or shall be supported by a statement of facts under penalty of perjury by a person who personally observed the facts that form the basis of the application.

(b)(1) ~~The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the court without delay for the warrant if the law enforcement officer has probable cause to believe that the person poses a risk of harm to self or others. The law enforcement officer or a mental health professional shall apply to the court for the warrant without delay while the person is in temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may then transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others.~~

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, ~~he or she~~ the judge may order the person to submit to an evaluation by a licensed physician for that purpose.

(d)(1) If necessary, the court may order the law enforcement officer ~~or mental health professional~~ to transport the person to a hospital for an evaluation by a licensed physician to determine if the person should be certified for an emergency examination.

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(e) Authority to transport a person pursuant to this section shall expire if the person is not taken into custody and transported within 72 hours after a warrant is issued by a Superior judge.

(f) A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. Once the licensed physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the licensed physician does not certify that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall immediately discharge the person and cause ~~him or her~~ the person to be returned to the place from which ~~he or she~~ the person was taken, or to such place as the person reasonably directs.

Sec. 2. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, ~~including escorts within a designated hospital or the Vermont State Hospital or its successor in interest or otherwise being transported~~ under the jurisdiction of the Commissioner in any manner ~~which~~ that:

- (1) prevents physical and psychological trauma;
- (2) respects the privacy of the individual; and
- (3) represents the least restrictive means necessary for the safety of the patient.

(b) The Commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the Commissioner's care and custody.

(c) When a professional or law enforcement officer designated pursuant to subsection (b) of this section decides an individual is in need of secure transport with mechanical restraints, the reasons for such determination shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to this chapter unless circumstances dictate that such methods are necessary. A law enforcement vehicle shall have soft restraints available for use as a first option, and mechanical restraints shall not be used as a substitute for soft restraints if the soft restraints are otherwise deemed adequate for safety.

Sec. 3. REPORT; MENTAL HEALTH; WARRANT PROCESS

On or before January 15, 2024, the Department of Mental Health, in consultation with Vermont Care Partners; Vermont Legal Aid; MadFreedom, Inc.; Vermont Psychiatric Survivors; and persons with lived experience of a mental health condition, shall submit a report to the House Committees on Health Care and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary containing any proposed changes to the warrant process in 18 V.S.A. § 7505, including mechanisms to reduce safety risks and reduce delays in accessing care.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

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

House Proposal of Amendment Concurred In with Amendment

S. 89.

House proposal of amendment to Senate bill entitled:

An act relating to establishing a forensic facility.

Was taken up.

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

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning on July 1, 2024 in the nine-bed wing of the current Vermont Psychiatric Care Hospital. This wing shall be relicensed as a therapeutic community residence and shall provide a safe environment for both clients and staff. Any comingling of staff between the psychiatric hospital wings and the forensic facility shall be consistent with the requirements of any applicable collective bargaining agreements.

Sec. 2. CERTIFICATE OF NEED; EXCLUSION

Notwithstanding any law to the contrary, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living's joint establishment of a nine-bed forensic facility within a wing of the existing Vermont Psychiatric Care Hospital is excluded from the certificate of need process prescribed in 18 V.S.A. chapter 221, subchapter 5.

Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

(a) On or before August 1, 2023, the Commissioner of Mental Health shall file an initial proposed rule amendment with the Secretary of State pursuant to 3 V.S.A. 836(a)(2) to amend the Department of Mental Health, Rules for the Administration of Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the purpose of allowing the administration of involuntary medication at a forensic facility.

(b) On or before September 1, 2023, the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living shall begin to draft proposed amendments to Department of Disabilities, Aging, and Independent Living, Licensing and Operating Regulations for Therapeutic Community Residences (CVR 13-110-12) for the purposes of creating a forensic facility section of the rule that includes allowing the use of emergency involuntary procedures and the administration of involuntary medication.

Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

On or before February 1, 2024, the Agency of Human Services shall present the following information to the House Committees on Corrections and Institutions, on Health Care, on Human Services, and on Judiciary and to the Senate Committees on Health and Welfare, on Institutions, and on Judiciary:

(1) a plan for staffing and programming at the forensic facility, including whether any specialized training will be required for staff members

and whether any services provided at the forensic facility will be contracted to third parties;

(2) whether any additional resources are needed for the operation of the forensic facility; and

(3) an assessment of laws, regulations, rules, and policies governing psychiatric hospitals and therapeutic community residences to determine whether there are any conflicts with serving two populations in the same facility.

Sec. 5. REPORT; FORENSIC FACILITY

Annually, on or before January 15 between 2025 and 2030, the Departments of Mental Health and of Disabilities, Aging, and Independent Living shall submit a report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary containing:

(1) the average daily census at the forensic facility, including trends over time;

(2) the number of individuals waitlisted for the forensic facility and where these individuals receive treatment or programming while waiting for a bed at the forensic facility;

(3) aggregated demographic data about the individuals served at the forensic facility; and

(4) an account of the number and types of emergency involuntary procedures used at the forensic facility.

Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE CRIMINAL-JUSTICE INVOLVED

(a) Creation. There is created the Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved. The Working Group shall assess whether a forensic level of care is needed for individuals with intellectual disabilities who are charged with a crime of violence against another person, have been determined incompetent to stand trial or adjudicated not guilty by reason of insanity, and are committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living. If it is determined that forensic-level care is needed for such individuals, the Working Group shall propose legislation establishing the process and criteria for committing such individuals to a forensic facility. In developing legislation, the Working Group shall refer to earlier drafts of this act discussed by the General Assembly in 2023.

(b) Membership.

(1) The Working Group shall be composed of the following members:

(A) a representative, appointed by the Disability Law Project of Vermont Legal Aid;

(B) a representative, appointed by the Developmental Disabilities Council;

(C) a representative, appointed by the Green Mountain Self-Advocates;

(D) a representative, appointed by Vermont Care Partners;

(E) a representative, appointed by the Vermont Crisis Intervention Network;

(F) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(G) the Commissioner of Mental Health or designee;

(H) two members of the House of Representatives, one of whom is from the House Committee on Human Services and one of whom is from the House Committee on Judiciary, appointed by the Speaker; and

(I) two members of the Senate, one of whom is from the Senate Committee on Health and Welfare and one of whom is from the Senate Committee on Judiciary, appointed by the Committee on Committees.

(2) In completing its duties pursuant to this section, the Working Group, to the extent feasible, shall consult with the following individuals:

(A) a psychiatrist or psychologist with experience conducting competency evaluations under 1987 Acts and Resolves No. 248;

(B) individuals with lived experience of a intellectual disability who have previous experience in the criminal justice system or civil commitment system, or both;

(C) family members of individuals with an intellectual disability who have experience in the criminal justice system or 1987 Acts and Resolves No. 248;

(D) the Executive Director of the Department of State's Attorneys and Sheriffs;

(E) the Defender General;

(F) a representative of the Center for Crime Victim Services;

(G) the Commissioner of Corrections;

(H) the State Program Standing Committee for Developmental Services; and

(I) the President of the Vermont State Employees' Association.

(c) Powers and duties. The Working Group shall assess the need for a forensic level of care for individuals with an intellectual disability, including:

(1) the extent to which a forensic facility addresses any unmet needs or gaps in resources for individuals with intellectual disabilities;

(2) if the Working Group determines there is a need for individuals with an intellectual disability to receive programming in a forensic facility, the specific circumstances under which an individual committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living could be placed in a forensic facility;

(3) any amendments to 18 V.S.A. chapter 206, including amendments needed to ensure due process prior to and during the commitment process, regardless of whether the Working Group determines that a need for forensic-level care exists;

(4) the roles of Vermont Legal Aid, an ombudsman, or Disability Rights Vermont in serving individuals with intellectual disabilities placed in a forensic facility;

(5) necessary changes to 13 V.S.A. chapter 157; and

(6) investments, policies, and programmatic options for high-quality community-based supports for at-risk individuals committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before December 1, 2023, the Working Group shall submit a written report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health Welfare and on Judiciary with its findings and any recommendations for legislative action, including proposed legislative language.

(f) Meetings.

(1) The representative of the Department of Disabilities, Aging, and Independent Living shall call the first meeting of the Working Group to occur on or before July 10, 2023.

(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 Working Group shall cease to exist on July 1, 2024.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Working Group 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 14 meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Members of the Working Group not otherwise compensated for their participation in the Working Group shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 14 meetings. These payments shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living.

(h) Definitions.

(1) As used in this section, "forensic facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual:

(A) with a mental health condition or intellectual disability, if the General Assembly determines that commitment to a forensic facility is appropriate for an individual with an intellectual disability;

(B) who is charged with a crime of violence against another person and the individual is assessed not competent to stand trial or was adjudicated not guilty by reason of insanity; and

(C) who requires treatment or programming within a secure setting for an extended period of time.

(2) As used in this subsection, "secure" has the same meaning as in 18 V.S.A. § 7620.

* * * Effective Date * * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senators Sears and Lyons moved that Senate concur

in the House proposal of amendment with a proposal of amendment in Sec. 6, Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to call as follows:

(b) Membership.

(1) The Working Group shall be composed of the following members:

(A) a representative, appointed by the Disability Law Project of Vermont Legal Aid;

(B) a representative, appointed by the Developmental Disabilities Council;

(C) a representative, appointed by the Green Mountain Self-Advocates;

(D) a representative, appointed by Vermont Care Partners;

(E) a representative, appointed by the Vermont Crisis Intervention Network;

(F) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(G) the Commissioner of Mental Health or designee;

(H) a representative, appointed by the Center for Crime Victim Services;

(I) the President of the Vermont State Employees' Association or designee;

(J) the Executive Director of the Office of Racial Equity or designee;

(K) the Chief Superior Judge or designee;

(L) two members of the House of Representatives, one of whom is from the House Committee on Human Services and one of whom is from the House Committee on Judiciary, appointed by the Speaker; and

(M) two members of the Senate, one of whom is from the Senate Committee on Health and Welfare and one of whom is from the Senate Committee on Judiciary, appointed by the Committee on Committees.

(2) In completing its duties pursuant to this section, the Working Group, to the extent feasible, shall consult with the following individuals:

(A) a psychiatrist or psychologist with experience conducting competency evaluations under 1987 Acts and Resolves No. 248;

(B) individuals with lived experience of an intellectual disability who have previous experience in the criminal justice system or civil commitment system, or both;

(C) family members of individuals with an intellectual disability who have experience in the criminal justice system or with competency evaluations under 1987 Acts and Resolves No. 248;

(D) the Executive Director of the Department of State's Attorneys and Sheriffs;

(E) the Defender General;

(F) the Commissioner of Corrections; and

(G) the State Program Standing Committee for Developmental Services.

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 479.

Senator Chittenden, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

An act relating to the Transportation Program and miscellaneous changes to laws related to transportation.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Transportation Program Adopted as Amended; Definitions;
Technical Corrections * * *

**Sec. 1. TRANSPORTATION PROGRAM ADOPTED; DEFINITIONS;
TECHNICAL CORRECTIONS**

(a) Adoption. The Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program appended to the Agency of Transportation's proposed

fiscal year 2024 budget (Revised January 27, 2023), as amended by this act, is adopted to the extent federal, State, and local funds are available.

(b) Definitions. As used in this act, unless otherwise indicated:

(1) “Agency” means the Agency of Transportation.

(2) “Candidate project” means a project approved by the General Assembly that is not anticipated to have significant expenditures for preliminary engineering or right-of-way expenditures, or both, during the budget year and funding for construction is not anticipated within a predictable time frame.

(3) “Development and evaluation (D&E) project” means a project approved by the General Assembly that is anticipated to have preliminary engineering expenditures or right-of-way expenditures, or both, during the budget year and that the Agency is committed to delivering to construction on a timeline driven by priority and available funding.

(4) “Front-of-book project” means a project approved by the General Assembly that is anticipated to have construction expenditures during the budget year or the following three years, or both, with expected expenditures shown over four years.

(5) “Secretary” means the Secretary of Transportation.

(6) “TIB funds” means monies deposited in the Transportation Infrastructure Bond Fund in accordance with 19 V.S.A. § 11f.

(7) The table heading “As Proposed” means the Proposed Transportation Program referenced in subsection (a) of this section; the table heading “As Amended” means the amendments as made by this act; the table heading “Change” means the difference obtained by subtracting the “As Proposed” figure from the “As Amended” figure; the terms “change” or “changes” in the text refer to the project- and program-specific amendments, the aggregate sum of which equals the net “Change” in the applicable table heading; and “State” in any tables amending authorizations indicates that the source of funds is State monies in the Transportation Fund, unless otherwise specified.

(c) Technical corrections.

(1) In the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Municipal Mitigation, the value “\$7,685,523” is struck and the value “\$10,113,523” is inserted in lieu thereof to correct a typographic error; the value “\$3,355,523” is struck and the value “\$4,783,523” is inserted in lieu thereof to correct a typographic error; the value “\$4,000,000” is struck and the value “\$5,000,000” is inserted in lieu thereof to

correct a typographic error; and the value “\$8,060,523” is struck twice and the value “\$10,488,523” is inserted in lieu thereof twice to correct two typographic errors.

(2) In the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Aviation, in the summary chart, the value “\$11,335,874” is struck and the value “\$10,885,874” is inserted in lieu thereof to correct a typographic error; the value “\$4,759,078” is struck and the value “\$4,719,078” is inserted in lieu thereof to correct a typographic error; and the value “\$17,764,405” struck and the value “\$17,274,405” is inserted in lieu thereof to correct a typographic error.

(3) In the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Rail, in the project details, the following projects are deleted:

(A) Rail Statewide – Railroad Bridges; and

(B) Rail Statewide STRBMATN – Various-Railroads.

* * * Summary of Transportation Investments * * *

**Sec. 2. FISCAL YEAR 2024 TRANSPORTATION INVESTMENTS
INTENDED TO REDUCE TRANSPORTATION-RELATED
GREENHOUSE GAS EMISSIONS, REDUCE FOSSIL FUEL
USE, AND SAVE VERMONT HOUSEHOLDS MONEY**

This act includes the State’s fiscal year 2024 transportation investments intended to reduce transportation-related greenhouse gas emissions, reduce fossil fuel use, and save Vermont households money in furtherance of the policies articulated in 19 V.S.A. § 10b and the goals of the Comprehensive Energy Plan and the Vermont Climate Action Plan and to satisfy the Executive and Legislative Branches’ commitments to the Paris Agreement climate goals. In fiscal year 2024, these efforts will include the following:

(1) Park and Ride Program. This act provides for a fiscal year expenditure of \$2,266,045.00, which will fund one construction project to create a new park-and-ride facility; the design and construction of improvements to one existing park-and-ride facility; the design of improvements to one existing park-and-ride facility scheduled for construction in future fiscal years; and paving projects for existing park-and-ride facilities. This year’s Park and Ride Program will create 202 new State-owned spaces. Specific additions and improvements include:

(A) Manchester—construction of 50 new spaces;

(B) Sharon—design for 10 new spaces; and

(C) Williston—construction of 142 new spaces.

(2) Bike and Pedestrian Facilities Program.

(A) This act provides for a fiscal year expenditure, including local match, of \$13,039,521.00, which will fund 33 bike and pedestrian construction projects; 18 bike and pedestrian design, right-of-way, or design and right-of-way projects for construction in future fiscal years; 15 scoping studies; and three projects to improve signage. The construction projects include the creation, improvement, or rehabilitation of walkways, sidewalks, shared-use paths, bike paths, and cycling lanes. Projects are funded in Arlington, Bennington, Berlin, Bethel, Brattleboro, Bristol, Burke, Burlington, Castleton, Chester, Coventry, Dorset, Dover, Enosburg Falls, Fair Haven, Fairfax, Franklin, Hartford, Hartland, Hinesburg, Jericho, Lyndonville, Middlebury, Middlesex, Montpelier, Moretown, New Haven, Newfane, Newport City, Northfield, Pawlet, Proctor, Richford, Royalton, Rutland City, Rutland Town, Shaftsbury, Shelburne, South Burlington, South Hero, Springfield, St. Albans City, St. Albans Town, Sunderland, Swanton, Tunbridge, Vergennes, Wallingford, Waterbury, West Rutland, and Wilmington. This act also provides funding for:

(i) some of Local Motion’s operation costs to run the Bike Ferry on the Colchester Causeway, which is part of the Island Line Trail;

(ii) the small-scale municipal bicycle and pedestrian grant program for projects to be selected during the fiscal year;

(iii) projects funded through the Safe Routes to School program;

(iv) education and outreach to K–8 schools to encourage higher levels of walking and bicycling to school; and

(v) community grants along the Lamoille Valley Rail Trail (LVRT).

(B) Sec. 7 of this act also creates the Rail Trail Community Connectivity Grants, with the purpose to continue the build out and enhancement of LVRT amenities and improve visitor experience.

(3) Transportation Alternatives Program. This act provides for a fiscal year expenditure of \$5,195,346.00, including local funds, which will fund 22 transportation alternatives construction projects; 19 transportation alternatives design, right-of-way, or design and right-of-way projects; and seven studies, including scoping, historic preservation, and connectivity. Of these 48 projects, 16 involve environmental mitigation related to clean water or stormwater concerns, or both clean water and stormwater concerns, and 29 involve bicycle and pedestrian facilities. Projects are funded in Bennington,

Brandon, Bridgewater, Bristol, Burke, Burlington, Colchester, Derby, Duxbury, Enosburg, Fair Haven, Fairfax, Franklin, Hartford, Hinesburg, Hyde Park, Jericho, Johnson, Killington, Mendon, Milton, Montgomery, Moretown, Newfane, Norwich, Proctor, Putney, Rockingham, Rutland City, South Burlington, Stowe, Swanton, Tinmouth, Vergennes, Wardsboro, Warren, West Rutland, Williston, Wilmington, and Winooski.

(4) Public Transit Program. This act provides for a fiscal year expenditure of \$49,645,330.00 for public transit uses throughout the State. Included in the authorization are:

(A) Go! Vermont, with an authorization of \$405,000.00. This authorization supports transportation demand management (TDM) strategies, including the State's Trip Planner and commuter services, to promote the use of carpools and vanpools.

(B) Mobility and Transportation Innovations (MTI) Grant Program, with an authorization of \$500,000.00. This authorization continues to support projects that improve both mobility and access to services for transit-dependent Vermonters, reduce the use of single-occupancy vehicles, and reduce greenhouse gas emissions.

(5) Rail Program. This act provides for a fiscal year expenditure of \$43,008,320.00, including local funds, for intercity passenger rail service and rail infrastructure throughout the State, including the recent addition of New York City–Burlington passenger rail service.

(6) Transformation of the State Vehicle Fleet. The Department of Buildings and General Services, which manages the State Vehicle Fleet, currently has 21 plug-in hybrid electric vehicles and 13 battery electric vehicles in the State Vehicle Fleet. In fiscal year 2024, the Commissioner of Buildings and General Services will continue to purchase and lease vehicles for State use in accordance with 29 V.S.A. § 903(g), which requires, to the maximum extent practicable, that the Commissioner purchase or lease hybrid or plug-in electric vehicles (PEVs), as defined in 23 V.S.A. § 4(85), with not less than 75 percent of the vehicles purchased or leased being hybrid or PEVs.

(7) Electric vehicle supply equipment (EVSE). This act provides for a fiscal year expenditure of \$7,625,000.00 to increase the presence of EVSE in Vermont in accordance with the State's federally approved National Electric Vehicle Infrastructure (NEVI) Plan, which will lead to the installation of Direct Current Fast Charging (DC/FC) along designated alternative fuel corridors. This is in addition to monies that were previously appropriated, but not yet expended, for EVSE at multiunit dwellings, workplaces, and public venues and attractions.

(8) Vehicle incentive programs and expansion of the PEV market.

(A) Incentive Program for New PEVs, MileageSmart, and Replace Your Ride Program. No additional monies are authorized for the State's vehicle incentive programs in this act, but it is estimated that approximately the following prior appropriations will be available in fiscal year 2024:

(i) \$8,200,000.00 for the Incentive Program for New PEVs;

(ii) \$2,250,000.00 for MileageSmart; and

(iii) \$3,200,000.00 for the Replace Your Ride Program.

(B) Electrify Your Fleet Program. Sec. 21 of this act creates the Electrify Your Fleet Program, which will provide incentives to Vermont municipalities and business entities in Vermont that maintain a fleet of motor vehicles to incentivize a transition to PEVs and reduce greenhouse gas emissions, including a limited number of increased incentives to nonprofit mobility services organizations, and authorizes \$500,000.00 in incentives under the Electrify Your Fleet Program.

(C) eBike Incentive Program. Sec. 22 of this act authorizes an additional \$50,000.00 in incentives under the eBike Incentive Program.

(9) Carbon Reduction Formula Program and Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program. This act provides for a fiscal year expenditure of \$12,771,029.00 in State and federal monies under the Carbon Reduction Formula Program and the PROTECT Formula Program.

* * * Highway Maintenance * * *

Sec. 3. HIGHWAY MAINTENANCE

(a) Within the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Maintenance, authorized spending is amended as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Person. Svcs.	42,637,277	42,637,277	0
Operat. Exp.	65,893,488	65,043,488	-850,000
Total	108,530,765	107,680,765	-850,000
<u>Sources of funds</u>			
State	107,784,950	106,934,950	-850,000
Federal	645,815	645,815	0
Inter Unit	100,000	100,000	0
Total	108,530,765	107,680,765	-850,000

(b) Restoring the fiscal year 2024 Maintenance Program appropriation and authorization to the level included in the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program shall be the Agency's top fiscal priority.

(1) If there are unexpended State fiscal year 2023 appropriations of Transportation Fund monies then, at the close of State fiscal year 2023, an amount up to \$850,000.00 of any unencumbered Transportation Fund monies appropriated in 2022 Acts and Resolves No. 185, Secs. B.900–B.922, as amended by 2023 Acts and Resolves No. 3, Secs. 43–44a, that would otherwise be authorized to carry forward is reappropriated for the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Maintenance 30 days after the Agency sends written notification of the request for the unencumbered Transportation Fund monies to be reappropriated to the Joint Transportation Oversight Committee, provided that the Joint Transportation Oversight Committee does not send written objection to the Agency.

(2) If the Agency utilizes available federal monies in lieu of one-time Transportation Fund monies for Green Mountain Transit pursuant to Sec. 14(c) of this act, then the one-time Transportation Fund monies authorized for expenditure pursuant to Sec. 14(b) of this act that are not required for public transit may instead go towards restoring the Highway Maintenance budget.

(3) If any unencumbered Transportation Fund monies are reappropriated pursuant to subdivision (1) of this subsection or made available pursuant to subdivision (2) of this subsection, then, within the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Maintenance, authorized spending is further amended to increase operating expenses by not more than \$850,000.00 in Transportation Fund monies.

(4) Notwithstanding subdivisions (1)–(3) of this subsection, the Agency may request further amendments to the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Maintenance through the State fiscal year budget adjustment act.

* * * Paving * * *

Sec. 4. PAVING; STATEWIDE DISTRICT LEVELING

(a) Within the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Paving, authorized spending for STATEWIDE District Leveling TBD is amended as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Const.	3,150,000	3,150,000	0
Total	3,150,000	3,150,000	0
<u>Sources of funds</u>			
State	3,150,000	150,000	-3,000,000
Other	0	3,000,000	3,000,000
Total	3,150,000	3,150,000	0

(b) Within the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Paving, the following footnote is added: “Other funds of \$3,000,000 are Cash Fund for Capital and Essential Investments (21952) funds, drawn from the Other Infrastructure, Essential Investments, and Reserves subaccount.”

* * * One-Time Appropriations * * *

Sec. 5. ONE-TIME APPROPRIATIONS

(a) Within the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for One-Time Appropriations, authorized spending is amended as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Operating	3,500,000	3,500,000	0
Grants	3,000,000	1,000,000	-2,000,000
Total	6,500,000	4,500,000	-2,000,000
<u>Sources of funds</u>			
General	3,000,000	0	-3,000,000
Capital	3,500,000	0	-3,500,000
Other	0	4,500,000	4,500,000
Total	6,500,000	4,500,000	-2,000,000

(b) Within the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for One-Time Appropriations, “St. Albans District Maintenance Facility - \$3.5M Capital Fund Operating” is struck and “St. Albans District Maintenance Facility - \$3.5M Cash Fund for Capital and Essential Investments funds (21952, Other Infrastructure, Essential Investments, and Reserves subaccount)” is inserted in lieu thereof.

(c) Within the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for One-Time Appropriations, “Rail Trail Community Connectivity Grants - \$3M General Fund Grants” is struck and “Rail Trail Community Connectivity Grants - \$1M Cash Fund for Capital and Essential Investments funds (21952, Other Infrastructure, Essential Investments, and Reserves subaccount)” is inserted in lieu thereof.

* * * St. Albans District Maintenance Facility * * *

Sec. 6. ST. ALBANS DISTRICT MAINTENANCE FACILITY

The following project is added to the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Transportation Buildings: St. Albans District Maintenance Facility.

* * * Rail Trail Community Connectivity Grants * * *

Sec. 7. RAIL TRAIL COMMUNITY CONNECTIVITY GRANTS

(a) Project addition. The following project is added to the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Rail Program: Rail Trail Community Connectivity Grants.

(b) Purpose. The purpose of the Rail Trail Community Connectivity Grants is to continue the build-out and enhancement of Lamoille Valley Rail Trail (LVRT) amenities and improve visitor experience, which shall be consistent with the priorities outlined in the recently completed LVRT Management Plan.

(c) Eligible projects. Projects may include trail infrastructure improvements, such as trailheads, picnic areas, kiosks, and connections to towns; signage; and interpretive panel installations.

(d) Match. Grant recipients shall be required to provide a 20 percent match toward any projects that are awarded a grant.

* * * State Airports * * *

Sec. 8. SALE OR LEASE OF CALEDONIA COUNTY STATE AIRPORT

(a)(1) The Agency of Transportation is authorized to issue a request for proposals for the purchase or lease of the Caledonia County State Airport, located in the Town of Lyndon, and the Agency shall consult with the Town of Lyndon on any requests for proposals related to the purchase or lease of the Airport prior to the issuance of any requests for proposals related to the purchase or lease of the Airport.

(2) The request for proposal shall include a request for a business plan, which shall, at a minimum, include the prospective purchaser's or lessor's plans for investments in the Airport and the surrounding communities and may include plans for partnerships with secondary and post-secondary institutions in the surrounding communities.

(b) Subject to obtaining any necessary approvals from the U.S. Federal Aviation Administration, the Vermont Secretary of Transportation, as agent for the State, is authorized to convey the Airport property by warranty deed

according to the terms of a purchase and sale agreement or through a long-term lease.

(c) Any such conveyance shall:

(1) include assignment of the State's interest in easements, leases, licenses, and other agreements pertaining to the Airport and the acceptance of the State's obligations under such easements, leases, licenses, and other agreements that requires, at a minimum, that any leases and terms of leases that are in effect at the time of the conveyance of the Airport are fully honored for the balance of the lease term;

(2) ensure that there are investments in the Airport to address current deficiencies and necessary repairs;

(3) ensure that the Airport continues to be a public-use airport and that the public continues to have access to the Airport for general aviation uses in perpetuity;

(4) ensure that the Airport continues to be identified as a public-use airport within the National Plan of Integrated Airport Systems until at least 2050, subject to federal determination;

(5) include, if the Airport is conveyed through a purchase and sale agreement, a six-month right of first refusal, running from the date that the owner of the Airport provides notice to the State of an intent to sell the Airport, for the State to repurchase the Airport at fair market value before the Airport is resold or transferred to a new owner; and

(6) include, if the Airport is leased, that the lease cannot be either assigned or the lessor cannot sub-lease all or substantially all of the Airport without the written approval of the Vermont Secretary of Transportation.

(d) The Agency shall not proceed with a sale or lease of the Airport unless:

(1) there is a fair market value offer, as required under 19 V.S.A. § 10k(b) or 26a(a), that meets the requirements of subsection (c) of this section; and

(2) the Town of Lyndon is given the opportunity to review and comment on the final purchase and sale agreement or lease as applicable.

(e) This section shall constitute specific prior approval, including of any sale or lease terms, by the General Assembly for purposes of 5 V.S.A. § 204.

Sec. 9. REPEAL OF AUTHORITY FOR SALE OR LEASE OF
CALEDONIA COUNTY STATE AIRPORT

Sec. 8 of this act shall be repealed on May 1, 2026.

* * * Project Cancellations; Project Addition * * *

Sec. 10. PROJECT CANCELLATIONS; PROJECT ADDITION

(a) Town of Bennington.

(1) Pursuant to 19 V.S.A. § 10g(h) (legislative approval for cancellation of projects), the General Assembly approves cancellation of the following project within the Roadway Program: Bennington Bypass South NH F 019-1(4) – Southern Segment of the Bennington Bypass.

(2) The Agency shall engage with the Town of Bennington to understand the planned municipal transportation projects or potential municipal transportation projects, or both, within the right-of-way purchased for the Bennington Bypass South NH F 019-1(4) – Southern Segment of the Bennington Bypass project.

(b) Town of Sheldon.

(1) Pursuant to 19 V.S.A. § 10g(h) (legislative approval for cancellation of projects), the General Assembly approves cancellation of the following project within the Town Highway Bridge Program: Sheldon BO 1448(47) – Scoping for Bridge #20 on TH #22.

(2) The following project is added to the Town Highway Bridge Program: Sheldon BO 1448(48) – Scoping for Bridge #11 on Bridge Street, which will replace the existing Sheldon BO TRUS(11) as a Development and Evaluation project.

* * * Transportation Alternatives Grant Program * * *

Sec. 11. TRANSPORTATION ALTERNATIVES GRANT PROGRAM
AWARDS IN STATE FISCAL YEARS 2024 TO 2027

Notwithstanding 19 V.S.A. § 38(c), Transportation Alternatives Grant Program awards in State fiscal years 2024 to 2027 shall not exceed \$600,000.00 per grant allocation.

* * * Central Garage Fund * * *

* * * Amendments Effective July 1, 2023 * * *

Sec. 12. 19 V.S.A. § 13 is amended to read:

§ 13. CENTRAL GARAGE FUND

(a) There is created the Central Garage Fund, which shall be used to:

(1) ~~to~~ furnish equipment on a rental basis to the districts and other sections of the Agency for construction, maintenance, and operation of highways or other transportation activities; and

(2) ~~to provide a general equipment repair and major overhaul service, inclusive of any assets, supplies, labor, or use of contractors necessary to provide that service,~~ as well as to furnish necessary supplies for the operation of the equipment.

(b) ~~To In order to maintain a safe, and reliable equipment fleet, the Agency shall use Central Garage Fund monies to acquire new or replacement highway maintenance equipment shall be acquired using Central Garage Fund monies.~~ The Agency is authorized to acquire replacement pieces for existing highway equipment or new, additional equipment equivalent to equipment already owned; ~~however, the Agency shall not increase the total number of permanently assigned or authorized motorized or self-propelled vehicles without approval by the General Assembly.~~

(c)(1) For the purpose specified in subsection (b) of this section, the following amount shall be transferred from the Transportation Fund to the Central Garage Fund:

(A) in fiscal year 2021, \$1,355,358.00; and

(B) in subsequent fiscal years, at a minimum, the amount specified in subdivision (A) of this subdivision (1) as adjusted annually by increasing the previous fiscal year's amount by the percentage increase in the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) during the two most recently closed State fiscal years.

(2) Each fiscal year, the sum of the following shall be appropriated from the Central Garage Fund exclusively for the purpose specified in subsection (b) of this section:

(A) the amount transferred pursuant to subdivision (1) of this subsection (c);

(B) the amount of the equipment depreciation expense from the prior fiscal year; and

(C) the amount of the net equipment sales from the prior fiscal year.

(d) In each fiscal year, net income of the Fund earned during that fiscal year shall be retained in the Fund.

(e) For the purposes of computing net worth and net income, the fiscal year shall be the year ending June 30.

(f) As used in this section, "equipment" means registered motor vehicles and ~~highway maintenance equipment assigned to~~ necessary assets required by the Central Garage in order to fulfill the objectives established in subsection (a) of this section.

(g) [Repealed.]

*** Appropriation for Acquisition of New or Replacement Equipment in State Fiscal Years 2024–2026 ***

Sec. 13. CALCULATION OF APPROPRIATION FROM CENTRAL GARAGE FUND FOR ACQUISITION OF NEW OR REPLACEMENT EQUIPMENT IN STATE FISCAL YEARS 2024–2026

Notwithstanding 19 V.S.A. § 13(c)(2)(B), the amount appropriated from the Central Garage Fund exclusively for the purposes specified in 19 V.S.A. § 13(b) in State fiscal years 2024–2026 shall be:

(1) the amount transferred pursuant to 19 V.S.A. § 13(c)(1);

(2) the amount of the equipment depreciation expense from the prior fiscal year or, for equipment that is fully depreciated and still actively in service, an amount equal to the depreciation on that piece of equipment from the prior year; and

(3) the amount of the net equipment sales from the prior fiscal year.

*** Public Transit ***

Sec. 14. ONE-TIME PUBLIC TRANSIT MONIES; GREEN MOUNTAIN TRANSIT; PLAN FOR TIERED-FARE SERVICE; REPORT

(a) Project addition. The following project is added to the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program: Increased One-Time Monies for Public Transit for Fiscal Year 2024.

(b) Authorization. Spending authority for Increased One-Time Monies for Public Transit for Fiscal Year 2024 is authorized as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	0	850,000	850,000
Total	0	850,000	850,000
<u>Sources of funds</u>			
State	0	850,000	850,000
Total	0	850,000	850,000

(c) Federal monies. The Agency shall utilize available federal monies in lieu of the authorization in subsection (b) of this section to the greatest extent practicable, provided that there is no negative impact on any local public transit providers.

(d) Implementation. The Agency of Transportation shall distribute the authorization in subsection (b) of this section to Green Mountain Transit for

the following during fiscal year 2024:

(1) to operate routes on a zero-fare basis, with a return to the collection of fares from some passengers not later than January 1, 2024; and

(2) to prepare for the transition to tiered-fare service in accordance with the plan prepared pursuant to subsection (e) of this section, which may include the acquisition and maintenance of fare-collection systems.

(e) Plan for tiered-fare service.

(1) Green Mountain Transit shall, in consultation with community action agencies and other relevant entities, such as those that represent the migrant and refugee populations, develop and implement, not later than January 1, 2024, a plan to establish tiered-fare service on urban Green Mountain Transit routes.

(2) At a minimum, the plan to establish tiered-fare service shall:

(A) incorporate a low-income transit program to provide certain passengers with service at no cost or a reduced cost to the passenger through digital methods, such as a handheld device, and nondigital methods, such as an electronic benefits transfer (EBT) card or a transit card; and

(B) be designed, based on reasonable revenue estimates, to generate fare revenue of at least 10 percent of projected operational costs on urban Green Mountain Transit routes.

(3) Green Mountain Transit shall advise the House and Senate Committees on Transportation of its plan to establish tiered-fare service by filing the final version of the plan to establish tiered-fare service with the House and Senate Committees on Transportation Committees on or before December 1, 2023.

Sec. 15. RECOMMENDATIONS ON FUNDING SOURCE FOR
NONFEDERAL MATCH; PUBLIC TRANSIT; REPORT

The Vermont Public Transportation Association, in consultation with the Agency of Transportation and the Vermont League of Cities and Towns, shall provide, not later than January 15, 2024, the House and Senate Committees on Transportation with a written recommendation on one or more funding sources for the nonfederal match required of public transit providers operating in the statewide transit system.

Sec. 16. STATEWIDE PUBLIC TRANSIT SYSTEM;
RECOMMENDATIONS; REPORT

(a) The Agency of Transportation, in consultation with the Agency of Human Services, Division of Vermont Health Access, and the Vermont Public

Transportation Association, shall conduct a benefit and risk assessment of the current systems for delivering public transit and nonemergency medical transportation services in Vermont, known as the “braided service model.”

(b) The assessment shall also include a review of other public transit service approaches implemented in the United States and make recommendations on modifications to the management of Vermont’s statewide mobility service design to make Vermont’s public transit system as efficient, robust, and resilient as possible and fully maximize all available federal funding.

(c) The Agency of Transportation shall file the written assessment with the House and Senate Committees on Transportation, the House Committee on Human Services, and the Senate Committee on Health and Welfare not later than January 15, 2024.

Sec. 17. SEPARATING THE MOBILITY AND TRANSPORTATION INNOVATIONS (MTI) GRANT PROGRAM FROM GO! VERMONT

(a) Go! Vermont. Within the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Public Transit, authorized spending for Go! Vermont STPG GOVT() is amended as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	905,000	405,000	-500,000
Total	905,000	405,000	-500,000
<u>Sources of funds</u>			
State	30,000	30,000	0
Federal	875,000	375,000	-500,000
Total	905,000	405,000	-500,000

(b) Mobility and Transportation Innovations (MTI) Grant Program.

(1) Project addition. The following project is added to the Agency of Transportation’s Proposed Fiscal Year 2024 Transportation Program for Public Transit: Mobility and Transportation Innovations (MTI) Grant Program.

(2) Authorization. Spending authority for MTI Grant Program is authorized as follows:

<u>FY24</u>	<u>As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other	0	500,000	500,000
Total	0	500,000	500,000

Sources of funds

Federal	0	500,000	500,000
Total	0	500,000	500,000

* * * Vehicle Incentive Programs * * *

* * * Repeal of Existing Vehicle Incentive Programs * * *

Sec. 18. REPEALS

(a) 2019 Acts and Resolves No. 59, Sec. 34, as amended by 2020 Acts and Resolves No. 121, Sec. 14, 2020 Acts and Resolves No. 154, Sec. G.112, 2021 Acts and Resolves No. 3, Sec. 56, 2021 Acts and Resolves No. 55, Secs. 18, 19, and 21–24, and 2022 Acts and Resolves No. 184, Sec. 6, is repealed.

(b) 2021 Acts and Resolves No. 55, Sec. 27, as amended by 2022 Acts and Resolves No. 184, Sec. 22, is repealed.

* * * Codification of Vehicle Incentive Programs * * *

Sec. 19. 19 V.S.A. chapter 29 is added to read:

CHAPTER 29. VEHICLE INCENTIVE PROGRAMS

§ 2901. DEFINITIONS

As used in this chapter:

(1) “Adaptive electric cycle” means an electric bicycle or an electric cargo bicycle that has been modified to meet the physical needs or abilities of the operator or a passenger.

(2) “Electric bicycle” has the same meaning as in 23 V.S.A. § 4(46)(A).

(3) “Electric cargo bicycle” means a motor-assisted bicycle, as defined in 23 V.S.A. § 4(45)(B)(i), with an electric motor, as defined under 23 V.S.A. § 4(45)(B)(i)(II), that is specifically designed and constructed for transporting loads, including at least one or more of the following: goods; one or more individuals in addition to the operator; or one or more animals. A motor-assisted bicycle that is not specifically designed and constructed for transporting loads, including a motor-assisted bicycle that is only capable of transporting loads because an accessory rear or front bicycle rack has been installed, is not an electric cargo bicycle.

(4) “Plug-in electric vehicle (PEV),” “battery electric vehicle (BEV),” and “plug-in hybrid electric vehicle (PHEV)” have the same meanings as in 23 V.S.A. § 4(85).

§ 2902. INCENTIVE PROGRAM FOR NEW PLUG-IN ELECTRIC VEHICLES

(a) Creation; administration.

(1) There is created the Incentive Program for New Plug-In Electric Vehicles (PEVs), which shall be administered by the Agency of Transportation.

(2) Subject to State procurement requirements, the Agency may retain a contractor or contractors to assist with marketing, program development, and administration of the Program.

(b) Program structure. The Incentive Program for New PEVs shall structure PEV purchase and lease incentive payments by income to help all Vermonters benefit from electric driving, including Vermont's most vulnerable. Specifically, the Incentive Program for New PEVs:

(1) shall apply to both purchases and leases of new PEVs with an emphasis on incentivizing the purchase and lease of battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs) with an electric range of 20 miles or greater per complete charge as rated by the Environmental Protection Agency when the vehicle was new;

(2) shall provide not more than one incentive of not more than \$3,000.00 for a PEV, per individual per year, to:

(A) an individual domiciled in the State whose federal income tax filing status is single with an adjusted gross income under the laws of the United States greater than \$60,000.00 and at or below \$100,000.00;

(B) an individual domiciled in the State whose federal income tax filing status is head of household with an adjusted gross income under the laws of the United States greater than \$75,000.00 and at or below \$125,000.00;

(C) an individual domiciled in the State whose federal income tax filing status is surviving spouse with an adjusted gross income under the laws of the United States greater than \$90,000.00 and at or below \$150,000.00;

(D) an individual who is part of a married couple with at least one spouse domiciled in the State whose federal income tax filing status is married filing jointly with an adjusted gross income under the laws of the United States greater than \$90,000.00 and at or below \$150,000.00; or

(E) an individual who is part of a married couple with at least one spouse domiciled in the State and at least one spouse whose federal income tax filing status is married filing separately with an adjusted gross income under the laws of the United States greater than \$60,000.00 and at or below

\$100,000.00;

(3) shall provide not more than one incentive of not more than \$6,000.00 for a PEV, per individual per year, to:

(A) an individual domiciled in the State whose federal income tax filing status is single with an adjusted gross income under the laws of the United States at or below \$60,000.00;

(B) an individual domiciled in the State whose federal income tax filing status is head of household with an adjusted gross income under the laws of the United States at or below \$75,000.00;

(C) an individual domiciled in the State whose federal income tax filing status is surviving spouse with an adjusted gross income under the laws of the United States at or below \$90,000.00;

(D) an individual who is part of a married couple with at least one spouse domiciled in the State whose federal income tax filing status is married filing jointly with an adjusted gross income under the laws of the United States at or below \$90,000.00; or

(E) an individual who is part of a married couple with at least one spouse domiciled in the State and at least one spouse whose federal income tax filing status is married filing separately with an adjusted gross income under the laws of the United States at or below \$60,000.00;

(4) shall, as technology progresses, establish a minimum electric range in order for a PHEV to be eligible for an incentive;

(5) shall apply to:

(A) manufactured PEVs with any base Manufacturer's Suggested Retail Price (MSRP) that will be issued a special registration plate by the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 304a or will predominately be used to provide accessible transportation for the incentive recipient or a member of the incentive recipient's household, provided that the incentive recipient or the member of the incentive recipient's household has a removable windshield placard issued by the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 304a;

(B) manufactured PHEVs with a base MSRP as determined by the Agency of Transportation and meeting the following requirements:

(i) shall not exceed a base MSRP of \$55,000.00;

(ii) shall phase out incentives for PHEVs with an electric range of less than 20 miles as rated by the Environmental Protection Agency when the vehicle was new; and

(iii) shall be benchmarked to a base MSRP of the equivalent of approximately \$50,000.00 or less in model year 2023; and

(C) manufactured BEVs with a base MSRP as determined by the Agency of Transportation and meeting the following requirements:

(i) shall not exceed a base MSRP of \$55,000.00; and

(ii) shall be benchmarked to a base MSRP of the equivalent of approximately \$50,000.00 or less in model year 2023; and

(6) shall provide incentives that may be in addition to any other available incentives, including through another program funded by the State, provided that not more than one incentive under the Incentive Program for New PEVs is used for the purchase or lease of any one PEV.

(c) Administrative costs. Up to 15 percent of any appropriations for the Incentive Program for New PEVs may be used for any costs associated with administering and promoting the Incentive Program for New PEVs.

(d) Outreach and marketing. The Agency, in consultation with any retained contractors, shall ensure that there is sufficient outreach and marketing, including the use of translation and interpretation services, of the Incentive Program for New PEVs so that Vermonters who are eligible for an incentive can easily learn how to secure as many different incentives as are available, and such costs shall be considered administrative costs for purposes of subsection (c) of this section.

§ 2903. MILEAGESMART

(a) Creation; administration.

(1) There is created a used high fuel efficiency vehicle incentive program, which shall be administered by the Agency of Transportation and known as MileageSmart.

(2) Subject to State procurement requirements, the Agency may retain a contractor or contractors to assist with marketing, program development, and administration of MileageSmart.

(b) Program structure. MileageSmart shall structure high fuel efficiency purchase incentive payments by income to help all Vermonters benefit from more efficient driving and reduced greenhouse gas emissions, including Vermont's most vulnerable. Specifically, MileageSmart shall:

(1) apply to purchases of used high fuel-efficient motor vehicles, which for purposes of this program shall be pleasure cars with a combined city/highway fuel efficiency of at least 40 miles per gallon or miles-per-gallon equivalent as rated by the Environmental Protection Agency when the vehicle

was new; and

(2) provide not more than one point-of-sale voucher worth up to \$5,000.00 to an individual who is a member of a household with an adjusted gross income that is at or below 80 percent of the State median income.

(c) Administrative costs. Up to 15 percent of any appropriations for MileageSmart may be used for any costs associated with administering and promoting MileageSmart.

(d) Outreach and marketing. The Agency, in consultation with any retained contractors, shall ensure that there is sufficient outreach and marketing, including the use of translation and interpretation services, of MileageSmart so that Vermonters who are eligible for an incentive can easily learn how to secure as many different incentives as are available, and such costs shall be considered administrative costs for purposes of subsection (c) of this section.

§ 2904. REPLACE YOUR RIDE PROGRAM

(a) Creation; administration.

(1) There is created the Replace Your Ride Program, which shall be administered by the Agency of Transportation.

(2) Subject to State procurement requirements, the Agency may retain a contractor or contractors to assist with marketing, program development, and administration of the Program.

(b) Program structure. The Replace Your Ride Program shall structure incentive payments by income to help all Vermonters benefit from replacing lower efficient modes of transportation with modes of transportation that reduce greenhouse gas emissions. The Agency may apply a sliding scale incentive based on electric range, with larger incentives being available for PEVs with a longer electric range.

(c) Incentive amount. The Replace Your Ride Program shall provide up to a \$2,500.00 incentive for those who qualify under subdivision (d)(1)(A) of this section and up to a \$5,000.00 incentive for those who qualify under subdivision (d)(1)(B) of this section, either of which may be in addition to any other available incentives, including through a program funded by the State, to individuals who qualify based on both income and the removal of an internal combustion vehicle. Only one incentive per individual is available under the Replace Your Ride Program.

(d) Eligibility. Applicants must qualify through both income and the removal of an eligible vehicle with an internal combustion engine.

(1) Income eligibility.

(A) The lower incentive amount of up to \$2,500.00 is available to the following, provided that all other eligibility requirements are met:

(i) an individual domiciled in the State whose federal income tax filing status is single with an adjusted gross income under the laws of the United States greater than \$60,000.00 and at or below \$100,000.00;

(ii) an individual domiciled in the State whose federal income tax filing status is head of household with an adjusted gross income under the laws of the United States greater than \$75,000.00 and at or below \$125,000.00;

(iii) an individual domiciled in the State whose federal income tax filing status is surviving spouse with an adjusted gross income under the laws of the United States greater than \$90,000.00 and at or below \$150,000.00;

(iv) an individual who is part of a married couple with at least one spouse domiciled in the State whose federal income tax filing status is married filing jointly with an adjusted gross income under the laws of the United States greater than \$90,000.00 and at or below \$150,000.00; or

(v) an individual who is part of a married couple with at least one spouse domiciled in the State and at least one spouse whose federal income tax filing status is married filing separately with an adjusted gross income under the laws of the United States greater than \$60,000.00 and at or below \$100,000.00.

(B) The higher incentive amount of up to \$5,000.00 is available to the following, provided that all other eligibility requirements are met:

(i) an individual domiciled in the State whose federal income tax filing status is single with an adjusted gross income under the laws of the United States at or below \$60,000.00;

(ii) an individual domiciled in the State whose federal income tax filing status is head of household with an adjusted gross income under the laws of the United States at or below \$75,000.00;

(iii) an individual domiciled in the State whose federal income tax filing status is surviving spouse with an adjusted gross income under the laws of the United States at or below \$90,000.00;

(iv) an individual who is part of a married couple with at least one spouse domiciled in the State whose federal income tax filing status is married filing jointly with an adjusted gross income under the laws of the United States at or below \$90,000.00;

(v) an individual who is part of a married couple with at least one spouse domiciled in the State and at least one spouse whose federal income tax filing status is married filing separately with an adjusted gross income under the laws of the United States at or below \$60,000.00; or

(vi) an individual who is a member of a household with an adjusted gross income that is at or below 80 percent of the State median income.

(2) Vehicle removal.

(A) In order for an individual to qualify for an incentive under the Replace Your Ride Program, the individual must remove an older low-efficiency vehicle from operation and switch to a mode of transportation that produces fewer greenhouse gas emissions. The entity that administers the Replace Your Ride Program, in conjunction with the Agency of Transportation, shall establish Program guidelines that specifically provide for how someone can show that the vehicle removal eligibility requirement has been, or will be, met.

(B) For purposes of the Replace Your Ride Program:

(i) An “older low-efficiency vehicle”:

(I) is currently registered, and has been for two years prior to the date of application, with the Vermont Department of Motor Vehicles;

(II) is currently titled in the name of the applicant and has been for at least one year prior to the date of application;

(III) has a gross vehicle weight rating of 10,000 pounds or less;

(IV) is at least 10 model years old;

(V) has an internal combustion engine; and

(VI) passed the annual inspection required under 23 V.S.A. § 1222 within the prior year.

(ii) Removing the older low-efficiency vehicle from operation must be done by disabling the vehicle’s engine from further use and fully dismantling the vehicle for either donation to a nonprofit organization to be used for parts or destruction.

(iii) The following qualify as a switch to a mode of transportation that produces fewer greenhouse gas emissions:

(I) purchasing or leasing a new or used PEV;

(II) purchasing a new or used bicycle, electric bicycle, electric cargo bicycle, adaptive electric cycle, or motorcycle that is fully electric, and

the necessary safety equipment; and

(III) utilizing shared-mobility services.

(e) Administrative costs. Up to 15 percent of any appropriations for the Replace Your Ride Program may be used for any costs associated with administering and promoting the Replace Your Ride Program.

(f) Outreach and marketing. The Agency, in consultation with any retained contractors, shall ensure that there is sufficient outreach and marketing, including the use of translation and interpretation services, of the Replace Your Ride Program so that Vermonters who are eligible for an incentive can easily learn how to secure as many different incentives as are available and such costs shall be considered administrative costs for purposes of subsection (e) of this section.

§ 2905. ANNUAL REPORTING

(a) The Agency shall annually evaluate the programs established under this chapter to gauge effectiveness and shall submit a written report on the effectiveness of the programs to the House and Senate Committees on Transportation, the House Committee on Environment and Energy, and the Senate Committee on Finance on or before the 31st day of January in each year following a year that an incentive was provided through one of the programs.

(b) The report shall also include:

(1) any intended modifications to program guidelines for the upcoming fiscal year along with an explanation for the reasoning behind the modifications and how the modifications will yield greater uptake of PEVs and other means of transportation that will reduce greenhouse gas emissions; and

(2) any recommendations on statutory modifications to the programs, including to income and vehicle eligibility, along with an explanation for the reasoning behind the statutory modification recommendations and how the modifications will yield greater uptake of PEVs and other means of transportation that will reduce greenhouse gas emissions.

(c) Notwithstanding 2 V.S.A. § 20(d), the annual report required under this section shall continue to be required if an incentive is provided through one of the programs unless the General Assembly takes specific action to repeal the report requirement.

* * * Vehicle Incentive Program; Fiscal Year 2023 Authorizations * * *

Sec. 20. 2022 Acts and Resolves No. 184, Sec. 5 is amended to read:

Sec. 5. VEHICLE INCENTIVE PROGRAMS

(a) Incentive Program for New PEVs. The Agency is authorized to spend up to \$12,000,000.00 as appropriated in the fiscal year 2023 budget on the Incentive Program for New PEVs established in 2019 Acts and Resolves No. 59, Sec. 34, as amended, and subsequently codified in 19 V.S.A. chapter 29.

(b) MileageSmart. The Agency is authorized to spend up to \$3,000,000.00 as appropriated in the fiscal year 2023 budget on MileageSmart as established in 2019 Acts and Resolves No. 59, Sec. 34, as amended, and subsequently codified in 19 V.S.A. chapter 29.

(c) Replace Your Ride Program. The Agency is authorized to spend up to \$3,000,000.00 as appropriated in the fiscal year 2023 budget on the Replace Your Ride Program established in 2021 Acts and Resolves No. 55, Sec. 27, as amended, and subsequently codified in 19 V.S.A. chapter 29.

* * *

* * * Electrify Your Fleet Program and eBike Incentive Program * * *

* * * Creation of Electrify Your Fleet Program and Authorization * * *

Sec. 21. ELECTRIFY YOUR FLEET PROGRAM; AUTHORIZATION

(a) Creation; administration.

(1) There is created the Electrify Your Fleet Program, which shall be administered by the Agency of Transportation.

(2) Subject to State procurement requirements, the Agency may retain a contractor or contractors to assist with marketing, program development, and administration of the Program.

(b) Authorization. The Agency is authorized to spend up to \$500,000.00 in one-time General Fund monies on the Electrify Your Fleet Program established pursuant to subdivision (a)(1) of this section.

(c) Definitions. The definitions in 19 V.S.A. § 2901, as added by Sec. 19 of this act, shall apply to this section.

(d) Program structure. The Electrify Your Fleet Program shall reduce the greenhouse gas emissions of persons operating a motor vehicle fleet in Vermont by structuring purchase and lease incentive payments on a first-come, first-served basis to replace vehicles other than a plug-in electric vehicle (PEV) cycled out of a motor vehicle fleet or avoid the purchase of vehicles other than a PEV for a motor vehicle fleet. Specifically, the Electrify Your Fleet Program

shall:

(1) provide incentives to Vermont municipalities and business entities registered in Vermont that maintain a fleet of motor vehicles that are registered in Vermont with no single applicant being eligible for more than 20 incentives over the existence of the Program;

(2) provide \$2,500.00 purchase and lease incentives for:

(A) BEVs with a base Manufacturer's Suggested Retail Price (MSRP) of \$60,000.00 or less;

(B) PHEVs with an electric range of 20 miles or greater per complete charge as rated by the Environmental Protection Agency when the vehicle was new and a base MSRP of \$60,000.00 or less;

(C) electric bicycles and electric cargo bicycles with a base MSRP of \$6,000.00 or less;

(D) adaptive electric cycles with any base MSRP;

(E) electric motorcycles with a base MSRP of \$30,000.00 or less;

and

(F) electric snowmobiles with a base MSRP of \$20,000.00 or less;

(3) require a showing that the incentive will be used to electrify the applicant's motor vehicle fleet; and

(4) require a showing of any other requirements implemented by the Agency of Transportation that are designed to maximize the impact of State-funded Electrify Your Fleet Program incentives by ensuring that, as applicable, other incentives, subsidies, and credits are fully taken advantage of.

(e) Increased incentives for nonprofit mobility services organizations. Nonprofit mobility services organizations incorporated in the State of Vermont for the purpose of providing Vermonters with transportation alternatives to personal vehicle ownership shall be entitled to:

(1) up to 15 \$2,500.00 incentives available under subsection (d) of this section on a first-come, first-served basis amongst all applicants for incentives under the Electrify Your Fleet Program over the existence of the Program, provided that the requirements of subsection (d) of this section are met; and

(2) notwithstanding subdivisions (d)(1) and (2) of this section, up to five increased incentives at the incentive amount available to individuals who purchase or lease a BEV and who qualify for an incentive under 19 V.S.A. § 2902(b)(3) (the lower-income tier for the Incentive Program for New PEVs), as added by Sec. 19 of this act, for BEVs with a base MSRP of \$55,000.00 or

less, provided that the requirements of subdivisions (d)(3) and (4) of this section are met.

(f) Administrative costs. Up to 15 percent of any appropriations for the Electrify Your Fleet Program may be used for any costs associated with administering and promoting the Electrify Your Fleet Program.

(g) Outreach and marketing. The Agency, in consultation with any retained contractors, shall ensure that there is sufficient outreach and marketing, including the use of translation and interpretation services, of the Electrify Your Fleet Program so that persons who are eligible for an incentive can easily learn how to secure an incentive and such costs shall be considered administrative costs for purposes of subsection (f) of this section.

(h) Reporting. The reporting requirements of 19 V.S.A. § 2905, as added by Sec. 19 of this act, shall, notwithstanding 2 V.S.A. § 20(d), apply to the Electrify Your Fleet Program if an incentive is provided through the Electrify Your Fleet Program unless the General Assembly takes specific action to repeal the report requirement.

* * * eBike Incentive Program; Authorization * * *

Sec. 22. MODIFICATIONS TO EBIKE INCENTIVE PROGRAM;
REPORT

(a) Definitions. The definitions in 19 V.S.A. § 2901, as added by Sec. 19 of this act, shall apply to this section.

(b) Authorization and modifications. The Agency is authorized to spend up to \$50,000.00 in one-time General Fund monies on the continuation of the eBike Incentive Program established pursuant to 2021 Acts and Resolves No. 55, Sec. 28, as amended by 2022 Acts and Resolves No. 184, Sec. 23, with the following modifications:

(1) incentives shall be provided in the form of a voucher redeemable as a point-of-sale rebate at participating retail shops;

(2) vouchers shall be provided to applicants that self-certify as to both:

(A) meeting income eligibility requirements under 19 V.S.A. § 2902(b)(3) (the lower-income tier for the Incentive Program for New PEVs), as added by Sec. 19 of this act; and

(B) that the incentivized electric bicycle, electric cargo bicycle, or adaptive electric cycle shall be used in a way that reduces greenhouse gas emissions, such as a substitute for trips that would have been taken in a vehicle other than a plug-in electric vehicle;

(3) only electric bicycles with a base Manufacturer's Suggested Retail Price (MSRP) of \$4,000.00 or less shall be eligible for an incentive;

(4) only electric cargo bicycles with a base MSRP of \$5,000.00 or less shall be eligible for an incentive;

(5) an adaptive electric cycle with any base MSRP shall be eligible for an incentive; and

(6) only electric bicycles, electric cargo bicycles, and adaptive electric cycles that meet one or more of the following standards shall be eligible for an incentive:

(A) American National Standard (ANSI)/Controller Area Network (CAN)/Underwriters Laboratories (UL) 2849 – Standard for Electrical Systems for eBikes, as amended, and any standards incorporated by reference in ANSI/CAN/UL 2849;

(B) Europäische Norm (EN) 15194 – Electrically Power Assisted Cycles (EPAC Bicycles), as amended; or

(C) another applicable standard designed to reduce the serious risk of dangerous fires, as determined by the Agency of Transportation, if neither of the standards in subdivisions (A) and (B) of this subdivision (6) are applicable.

(c) Administrative costs. Up to 15 percent of the authorization in subsection (b) of this section may be used for any costs associated with administering and promoting the eBike Incentive Program.

(d) Reporting. The Agency of Transportation shall address incentives for electric bicycles, electric cargo bicycles, and adaptive electric cycles provided pursuant to this section in the January 31, 2024 report required under 19 V.S.A. § 2905, as added by Sec. 19 of this act, including:

(1) the demographics of who received an incentive under the eBike Incentive Program;

(2) a breakdown of where vouchers were redeemed;

(3) a breakdown, by manufacturer and type, of electric bicycles, electric cargo bicycles, and adaptive electric cycles incentivized;

(4) a detailed summary of information provided in the self-certification forms; and

(5) a detailed summary of information collected through participant surveys.

Sec. 23. AGENCY OF TRANSPORTATION AUTHORITY TO MODIFY
INCOME ELIGIBILITY REQUIREMENTS FOR EBIKE
INCENTIVE PROGRAM ON PASSAGE; LEGISLATIVE INTENT

(a) Notwithstanding 2022 Acts and Resolves No. 55, Sec. 28(a)(3), the Agency of Transportation may choose to only provide incentives under an eBike Incentive Program to individuals who self-certify as to meeting income eligibility requirements under 19 V.S.A. § 2902(b)(3) (the lower-income tier for the Incentive Program for New PEVs), as added by Sec. 19 of this act.

(b) It is the intent of the General Assembly that:

(1) the \$100,000.00 made available for the eBike Incentive Program under 2023 Acts and Resolves No. 3, Secs. 83 and 85, less administrative costs allowed under 2022 Acts and Resolves No. 184, Sec. 5(f), be expeditiously distributed under the first eBike Incentive Program established pursuant to 2022 Acts and Resolves No. 55, Sec. 28(a)(3) while the Agency works with its contractor to establish the modified eBike Incentive Program in accordance with Sec. 22 of this act; and

(2) the balance of the \$100,000.00 made available for the eBike Incentive Program under 2023 Acts and Resolves No. 3, Secs. 83 and 85, less administrative costs allowed under 2022 Acts and Resolves No. 184, Sec. 5(f), that is not yet expended as of the implementation of the modified eBike Incentive Program in accordance with Sec. 22 of this act and the \$50,000.00 made available for the eBike Incentive Program under Sec. 22(b) of this act, less administrative costs allowed under Sec. 22(c) of this act, shall be distributed under the modified eBike Incentive Program, which shall launch not later than July 1, 2023.

* * * Reallocation of Funding * * *

Sec. 24. 2022 Acts and Resolves No. 184, Sec. 2(8)(C), as amended by 2023 Acts and Resolves No. 3, Sec. 83, is further amended to read:

(C) Replace Your Ride Program. Sec. 5(c) of this act authorizes ~~\$2,900,000.00~~ \$2,350,000.00 for incentives under Replace Your Ride, which will be the State's program to incentivize Vermonters to remove older low-efficiency vehicles from operation and switch to modes of transportation that produce fewer greenhouse gas emissions, and capped administrative costs.

Sec. 25. 2022 Acts and Resolves No. 184, Sec. 5(c), as amended by 2023 Acts and Resolves No. 3, Sec. 84, is further amended to read:

(c) Replace Your Ride Program. The Agency is authorized to spend up to ~~\$2,900,000.00~~ \$2,350,000.00 as appropriated in the fiscal year 2023 budget on the Replace Your Ride Program established in 2021 Acts and Resolves No. 55,

Sec. 27, as amended.

Sec. 26. 2022 Acts and Resolves No. 185, Sec. G.600(b)(5), as amended by 2023 Acts and Resolves No. 3, Sec. 85, is further amended to read:

(5) ~~\$2,900,000.00~~ \$2,350,000.00 to the Agency of Transportation for the Replace Your Ride Program, established in 2021 Acts and Resolves No. 55, Sec. 27, as amended.

* * * Mileage-Based User Fee (MБУF) * * *

Sec. 27. MILEAGE-BASED USER FEE LEGISLATIVE INTENT

It is the intent of the General Assembly for the State:

(1) to start collecting a mileage-based user fee from all battery-electric vehicles registered in Vermont starting on July 1, 2025, which is expected to be the first day of the first fiscal year when more than 15 percent of new pleasure car registrations in the State are plug-in electric vehicles (PEVs);

(2) to start subjecting plug-in hybrid electric vehicles (PHEVs) that are a pleasure car to an increased annual or a biennial registration fee starting on July 1, 2025, and that PHEVs shall not be subject to a mileage-based user fee;

(3) to work towards collecting a fee on kWhs that are dispensed through certain electric vehicle supply equipment available to the public so as to supplant lost gas tax revenue from PEVs; and

(4) to not commence collecting a mileage-based user fee until such authorizing language is codified in statute and becomes effective.

Sec. 28. MILEAGE-BASED USER FEE AUTHORIZATION

(a) Within the Agency of Transportation's Proposed Fiscal Year 2024 Transportation Program for Environmental Policy and Sustainability, the Agency of Transportation, including the Department of Motor Vehicles, is authorized to apply for and accept a competitive federal Strategic Innovation for Revenue Collection grant established pursuant to the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (IIJA), Sec. 13001, with up to \$350,000.00 in Transportation Fund monies authorized for the nonfederal match in fiscal year 2024 and a to-be-determined amount for the nonfederal match in subsequent fiscal years.

(b) As permitted under federal regulations and grant terms, the Agency shall utilize grant monies to design a mileage-based user fee that is consistent with Secs. 27 and 29 of this act.

(c) Subject to State procurement requirements, the Agency may retain one or more contractors or consultants, or both, to assist with the design of a

process to commence collecting a mileage-based user fee on July 1, 2025.

Sec. 29. MILEAGE-BASED USER FEE DESIGN

(a) Definitions. As used in Secs. 27–30 of this act:

(1) “Account manager” means a person under contract with the Agency of Transportation or Department of Motor Vehicles to administer and manage the mileage-based user fee.

(2) “Annual vehicle miles traveled” means the total number of miles that a BEV is driven between annual inspections as reported by an inspection mechanic to the Department of Motor Vehicles.

(3) “Mileage-based user fee” means the total amount that an owner or lessee of a BEV registered in Vermont owes the State and is calculated by multiplying the mileage-based user fee rate by the annual vehicle miles traveled or, in the case of a terminating event, by multiplying the mileage-based user fee rate by the vehicle miles traveled between the last Vermont annual inspection and the terminating event.

(4) “Mileage-based user fee rate” means the per-mile usage fee charged to the owner or lessee of a BEV registered in Vermont.

(5) “Mileage reporting period” means the time between annual inspections or the time between an annual inspection and a terminating event.

(6) “Pleasure car” has the same meaning as in 23 V.S.A. § 4(28).

(7) “Plug-in electric vehicle (PEV)” has the same meaning as in 23 V.S.A. § 4(85) and includes battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs), which have the same meaning as in 23 V.S.A. § 4(85)(A) and (B).

(8) “Terminating event” means either the registering of a BEV that had been registered in Vermont in a different state or a change in ownership or lesseeship of the BEV, or both.

(b) Commencement date. The Agency shall design a process to collect a mileage-based user fee for miles driven by a BEV registered in Vermont to commence collecting revenue on July 1, 2025.

(c) Covered vehicles. The Agency shall design a process to collect a mileage-based user fee based on the annual vehicle miles traveled by BEVs registered in the State.

(d) Imposition of a mileage-based user fee. The Agency shall design a process to collect a mileage-based user fee from the owner or lessee of a BEV registered in Vermont for each mileage reporting period within 60 days after

the Vermont annual inspection or terminating event that closes the mileage reporting period.

Sec. 30. REPORTS

The Secretary of Transportation and the Commissioner of Motor Vehicles shall file a written report not later than January 31, 2024 with the House and Senate Committees on Transportation, the House Committee on Ways and Means, and the Senate Committee on Finance that provides the following:

(1) a comprehensive implementation plan to commence collecting, on July 1, 2025, a mileage-based user fee for miles driven by a BEV registered in Vermont;

(2) a recommendation on what language should be codified in statute to enable the State to commence collecting, on July 1, 2025, a mileage-based user fee for miles driven by a BEV registered in Vermont, which shall include a recommendation for the mileage-based user fee rate and that includes, for that recommendation:

(A) an explanation for how the recommended mileage-based user fee rate was calculated;

(B) what the recommended mileage-based user fee rate is estimated to yield in revenue for the State in total per year; and

(C) how the anticipated mileage-based user fee for a pleasure car is expected to compare to the amount collected by the State in gas tax revenue from the use of a non-PEV pleasure car registered in Vermont and the amount collected by the State in gas tax revenue and increased registration fee from the use of a PHEV pleasure car registered in Vermont based on estimates of low, medium, and high annual vehicle miles traveled;

(3) a recommendation on what should be required in annual reporting on the mileage-based user fee starting in 2026 for fiscal year 2025, which shall, at a minimum, address whether the following should be reported on:

(A) the total amount of revenue collected in mileage-based user fees for the prior fiscal year and an estimate of the total amount of revenue anticipated to be collected in mileage-based user fees during the subsequent fiscal year;

(B) the average mileage-based user fee collected for a BEV with low, medium, and high annual vehicle miles traveled in the prior fiscal year;

(C) an estimate of the average amount in motor fuel revenue that was collected for a pleasure car that is not a PEV with low, medium, and high annual vehicle miles traveled in the prior fiscal year;

(D) an estimate of the average amount in motor fuel revenue and increased registration fee that was collected for a pleasure car that is a PHEV with low, medium, and high annual vehicle miles traveled in the prior fiscal year;

(E) the total number of delinquent mileage-based user fees in the prior fiscal year;

(F) the total number of outstanding payment plans for delinquent mileage-based user fees; and

(G) the cost to collect the mileage-based user fees in the prior fiscal year;

(4) an outline of what the Agency intends to adopt, if authorized, as rule in order to commence collecting, on July 1, 2025, a mileage-based user fee for miles driven by a BEV registered in Vermont, which shall, at a minimum, establish:

(A) a process to calculate and report the annual vehicle miles traveled by a BEV registered in Vermont;

(B) payment periods and other payment methods and procedures for the payment of the mileage-based user fee, which shall include the option to prepay the anticipated mileage-based user fee in installments on a monthly, quarterly, or annual basis;

(C) standards for mileage reporting mechanisms for an owner or lessee of a BEV to report vehicle miles traveled throughout the year;

(D) procedures to provide security and protection of personal information and data connected to a mileage-based user fee;

(E) penalty and appeal procedures necessary for the collection of a mileage-based user fee, which, to the extent practicable, shall duplicate and build upon existing Department of Motor Vehicles processes; and

(F) Agency oversight of any account manager, including privacy protection of personal information and access and auditing capability of financial and other records related to administration of the process to collect a mileage-based user fee; and

(5) an update on what other states and the federal government are doing to address lost gas tax revenue from the adoption of PEVs along with any applicable suggestions for opportunities for regional collaboration and an explanation of the source of the information provided under this subdivision.

* * * Transportation Programs; Federal Carbon Reduction Program;
PROTECT Formula Program; Prioritization; Equity * * *

Sec. 31. AGENCY OF TRANSPORTATION EFFORTS TO IMPLEMENT
THE FEDERAL CARBON REDUCTION PROGRAM AND
PROTECT FORMULA PROGRAM; PRIORITIZATION; EQUITY

(a) The Agency of Transportation, through its development of the State's Carbon Reduction Strategy, shall:

(1) develop a methodology to:

(A) quantify the emissions reductions the Agency will achieve from the State's Transportation Program;

(B) measure the gap between the emissions reductions calculated under subdivision (A) of this subdivision (a)(1) and the emissions reductions required under the Global Warming Solutions Act, as codified in 10 V.S.A. § 578; and

(C) evaluate what additional emissions reductions are possible through the implementation of additional policies and programs within the State's Transportation Program;

(2) articulate the ongoing investments, particularly under the Carbon Reduction Program, established through the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (IIJA) and codified as 23 U.S.C. § 175, that the Agency intends to implement through the State's annual Transportation Program in order to reduce emissions from activities within the control of the Agency;

(3) identify and evaluate the effectiveness of other policies and programs to reduce transportation sector greenhouse gas emissions as required by the Global Warming Solutions Act, as codified in 10 V.S.A. § 578, and as identified in the Vermont Climate Action Plan, as amended, which shall include:

(A) an analysis of the potential to generate revenue sources sufficient for ongoing greenhouse gas emissions reduction implementation; and

(B) recommendations regarding additional policy or revenue sources to close any implementation gaps identified in subdivision (a)(1)(B) of this section;

(4) engage in public outreach through the following:

(A) establishing an advisory committee with a broad group of stakeholders, including representatives of the Vermont Climate Council, to help guide the identification and evaluation of policies and programs to reduce

transportation sector greenhouse gas emissions;

(B) working with stakeholders, including environmental groups; community-based organizations that represent equity and environmental justice interests; business community groups, including chambers of commerce; transportation industry associations, including those representing rail and trucking; municipalities; regional planning commissions; and elected officials on ways to reduce transportation sector greenhouse gas emissions; and

(C) hosting not less than two public meetings, with at least one to gather input on proposed policies and programs to reduce transportation sector greenhouse gas emissions and at least one to address the evaluation of the anticipated outcomes of the draft of the State's Carbon Reduction Strategy; and

(5) coordinate with the Climate Action Office within the Agency of Natural Resources to track and report progress towards achieving the State's greenhouse gas emissions as required by the Global Warming Solutions Act and codified in 10 V.S.A. § 578.

(b) The Agency shall develop the State's Resilience Improvement Plan to establish how it will use federal monies available under the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program, established through the IIJA and codified as 23 U.S.C. § 176, and existing tools and processes to address transportation resilience, specifically for:

(1) resilience planning, predesign, design, or the development of data tools to simulate transportation disruption scenarios, including vulnerability assessments, community response strategies, or evacuation planning and preparation;

(2) resilience projects to improve the ability of an existing surface transportation asset to withstand one or more elements of a weather event or natural disaster; and

(3) community resilience and evacuation route activities that strengthen and protect routes that are essential for providing and supporting evacuations caused by emergency events.

(c) The Agency shall develop recommendations for the integration of carbon reduction, resilience, and equity factors into its project prioritization system through the Agency's existing prioritization process and the development of the Equity Framework Project.

Sec. 32. REPORT ON TRANSPORTATION POLICY STATUTES

The Agency of Transportation shall provide a written report summarizing the work completed pursuant to Sec. 31 of this act and written recommendations on how to amend statute, including 19 V.S.A. §§ 10b and 10i, to reflect the work completed pursuant to Sec. 31 of this act to the House and Senate Committees on Transportation on or before November 15, 2023.

* * * Complete Streets * * *

Sec. 33. 19 V.S.A. § 10b is amended to read:

§ 10b. STATEMENT OF POLICY; GENERAL

(a) The Agency shall be the responsible agency of the State for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that State transportation policy shall be to encompass, coordinate, and integrate all modes of transportation and to consider “complete streets”, as defined in section 2401 of this title, principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the State’s economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways, and that will be consistent with the recommendations of the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b.

(b) The Agency shall coordinate planning ~~and~~, education, and training efforts with those of ~~the Vermont Climate Change Oversight Committee and those of~~ local and regional planning entities to:

(1) ~~to~~ ensure that the transportation system as a whole is integrated; ~~that~~ access to the transportation system as a whole is integrated; ~~and~~ that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) ~~to~~ support employer-led or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative transportation advances, especially employer-based incentives.

(c) In developing the State’s annual Transportation Program, the Agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 ~~as amended by 1988 Acts and Resolves No. 200~~ and with appropriate consideration to local, regional, and State agency plans:

(1) ~~Develop~~ develop or incorporate designs that provide integrated, safe, and efficient transportation and that are consistent with the recommendations of the CEP.;

~~(2)(A) Consider the safety and accommodation of all transportation system users, including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities, consider complete streets principles in all State- and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. If, after the consideration required under this subdivision, a State-managed project does not incorporate complete streets principles, the project manager shall make a written determination, supported by documentation and available for public inspection at the Agency, that one or more of the following circumstances exist:~~

~~(i) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.~~

~~(ii) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors including land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The Agency shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.~~

~~(iii) Incorporating complete streets principles is outside the scope of a project because of its very nature.~~

~~(B) The written determination required under subdivision (A) of this subdivision (2) shall be final and shall not be subject to appeal or further review.;~~

(3) ~~Promote~~ promote economic opportunities for Vermonters and the best use of the State's environmental and historic resources.;

(4) ~~Manage~~ manage available funding to:

* * *

Sec. 34. REPEAL

19 V.S.A. § 309d (policy for municipally managed transportation projects) is repealed.

Sec. 35. 19 V.S.A. chapter 24 is added to read:

CHAPTER 24. COMPLETE STREETS

§ 2401. DEFINITION

As used in this chapter, “complete streets” means streets that provide safe and accessible options for multiple travel modes for individuals of all ages and abilities, including walking, cycling, public transportation, and motor vehicles.

§ 2402. STATE POLICY

(a) Agency of Transportation funded, designed, or funded and designed projects shall seek to increase and encourage more pedestrian, bicycle, and public transit trips, with the State goal to promote intermodal access to the maximum extent feasible, which will help the State meet the transportation-related recommendations outlined in the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b and the recommendations of the Vermont Climate Action Plan (CAP) issued under 10 V.S.A. § 592.

(b) Except in the case of projects or project components involving unpaved highways, for all transportation projects and project phases managed by the Agency or a municipality, including planning, development, construction, or maintenance, it is the policy of this State for the Agency and municipalities, as applicable, to incorporate complete streets principles that:

(1) serve individuals of all ages and abilities, including vulnerable users as defined in 23 V.S.A. § 4(81);

(2) follow state-of-the-practice design guidance; and

(3) are sensitive to the surrounding community, including current and planned buildings, parks, and trails and current and expected transportation needs.

§ 2403. PROJECTS NOT INCORPORATING COMPLETE STREETS PRINCIPLES

(a) State projects. A State-managed project shall incorporate complete streets principles unless the project manager makes a written determination, supported by documentation, that one or more of the following circumstances exist:

(1) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(2) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors including land use, current and projected user volumes, population density, crash data,

historic and natural resource constraints, and maintenance requirements. The Agency shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors. If the project manager bases the written determination required under this subsection in whole or in part on this subdivision then the project manager shall provide a supplemental written determination with specific details on costs, needs, and probable uses, as applicable.

(3) Incorporating complete streets principles is outside the limited scope of a project as defined in the latest version of the Agency's Complete Streets Guidance.

(b) Municipal projects. A municipally managed project shall incorporate complete streets principles unless the municipality managing the project makes a written determination, supported by documentation, that one or more of the following circumstances exist:

(1) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(2) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors such as land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The municipality shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors. If the municipality managing the project bases the written determination required under this subsection in whole or in part on this subdivision then the project manager shall provide a supplemental written determination with specific details on costs, needs, and probable uses, as applicable.

(3) Incorporating complete streets principles is outside the limited scope of a project as defined in the latest version of the Agency's Complete Streets Guidance.

(c) Finality of determinations. The written determinations required by subsections (a) and (b) of this section shall be final and shall not be subject to appeal or further review.

(d) Posting and availability of determinations. The written determinations required by subsections (a) and (b) of this section shall be posted to a web page on the Agency of Transportation's website dedicated to complete streets, in the case of a State-managed project, and made available for public inspection at the office of the municipal clerk, in the case of a municipally managed project.

§ 2404. ANNUAL REPORT; PUBLIC DATA SOURCE

(a) Annual report. Notwithstanding 2 V.S.A. § 20(d), the Agency shall annually, on or before September 1 starting in 2025, submit a report detailing the State's efforts in following the complete streets policy established in section 2402 of this chapter during the previous fiscal year to the House and Senate Committees on Transportation.

(b) Public data source.

(1) The Agency of Transportation shall maintain a web-accessible and web-searchable data source dedicated to complete streets on the Agency's website that shall contain information on all State-managed transportation projects that have been bid since January 1, 2023, including a description of the project, the location of the project, which complete streets principles were incorporated in the project, as applicable, and an explanation as to which circumstance or circumstances contained in subsection 2403(a) of this chapter existed in the case of projects not incorporating complete streets principles.

(2) The web-accessible and web-searchable data source required under this subsection shall be updated on at least an annual basis.

Sec. 36. IMPLEMENTATION; PUBLIC DATA SOURCE

The Agency shall create and make accessible to the general public the web-accessible and web-searchable data source required under 19 V.S.A. § 2404(b), as added by Sec. 35 of this act, on or before January 1, 2024.

Sec. 37. MUNICIPAL TRAINING ON COMPLETE STREETS

The Agency of Transportation, in consultation with the Vermont League of Cities and Towns and regional planning commissions, shall design and implement a program to provide training on complete streets to municipalities.

Sec. 38. REPLACEMENT OF THE CURRENT VERMONT STATE STANDARDS

(a) The Agency of Transportation will be preparing replacements to the current Vermont State Standards and related documents, standards, guidance, and procedures in accordance with the plan required pursuant to 2022 Acts and Resolves No. 184, Sec. 19.

(b) The Agency shall provide an oral update on the process to replace the current Vermont State Standards and related documents, standards, guidance, and procedures to the House and Senate Committees on Transportation on or before February 15, 2024.

* * * Municipal and Regional Support for a Route 5 Bicycle Corridor * * *

Sec. 39. SUPPORT FOR A ROUTE 5 BICYCLE CORRIDOR; SURVEY REPORT

(a) The Agency of Transportation, in partnership with regional planning commissions through the annual Transportation Planning Initiative, shall conduct a survey of municipal support for the creation of a bicycle corridor—consisting of one or more segments of bicycle lanes or bicycle paths, or both—to provide a safe means of travel via bicycle on or along a route that is roughly adjacent to U.S. Route 5 for the approximately 190 miles spanning between the State border with Massachusetts and the State border with Quebec, Canada.

(b) The survey shall address the level of interest of municipalities and regional planning commissions in prioritizing the creation of a bicycle corridor along some or all of U.S. Route 5, including the consideration of the costs of creation and benefits to the tourism industry in Vermont in general and to the municipalities along U.S. Route 5 in particular.

(c) The Agency shall provide a report on outcome of the survey to the House and Senate Committees on Transportation on or before January 15, 2024.

* * * Micromobility Safety Education Program; Report * * *

Sec. 40. MICROMOBILITY SAFETY EDUCATION PROGRAM; REPORT

(a) The Agency, in consultation with stakeholders identified by the Agency, shall develop a comprehensive micromobility safety education program that enhances and expands on current efforts to increase safety for individuals who use roads, sidewalks, corridors, and paths in Vermont, with an emphasis on bicycle safety.

(b) The Agency shall provide an oral report on micromobility safety program design, recommended modifications to current efforts to increase micromobility safety throughout the State, and any recommendations for statutory changes, including how, if at all, the State’s driving under the influence statutes should be amended to address utilizing micromobility while under the influence, needed to support expanded micromobility safety in the State to the House and Senate Committees on Transportation on or before January 31, 2024.

(c) As used in this section, “micromobility” includes the following, as defined in 23 V.S.A. § 4:

- (1) bicycles;
- (2) electric bicycles;

- (3) electric personal assistive mobility devices,
- (4) motor-driven cycles, which includes scooters; and
- (5) motor-assisted bicycles.

* * * Sunset Extension * * *

Sec. 41. 2018 Acts and Resolves No. 158, Sec. 21 is amended to read:

Sec. 21. REPEAL OF TRANSPORTATION P3 AUTHORITY

19 V.S.A. §§ ~~2613 (Agency of Transportation's P3 authority) and 2614 (legislative approval of P3 proposals)~~ chapter 26, subchapter 2 shall be repealed on July 1, ~~2023~~ 2026.

* * * Repeals * * *

Sec. 42. REPEALS

(a) 5 V.S.A. § 3616 (connection of passenger trains; Board may determine) is repealed.

(b) 19 V.S.A. § 314 (covered bridges restrictions; vote at town meeting) is repealed.

* * * Effective Dates * * *

Sec. 43. EFFECTIVE DATES

(a) This section and Secs. 22 (eBike Incentive Program), 23 (authority to modify eBike Incentive Program eligibility requirements and legislative intent), 24–26 (reallocation of funding for incentive programs), and 41 (extension of sunset for Agency of Transportation's P3 authority) shall take effect on passage.

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

*RICHARD T. MAZZA
THOMAS I. CHITTENDEN
RUSSELL H. INGALLS*

Committee on the part of the Senate

*SARA E COFFEY
TIMOTHY R. CORCORAN
MOLLIE SULLIVAN BURKE*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Baruth, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

H. 270, S.95.

Proposal of Amendment; Third Reading Ordered

H. 270.

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

An act relating to miscellaneous amendments to the adult-use and medical cannabis programs.

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

Sec. 1. 7 V.S.A. § 843 is amended to read:

§ 843. CANNABIS CONTROL BOARD; DUTIES; MEMBERS

* * *

(h) Advisory committee.

~~(1) There is an advisory committee established within the Board that shall be composed of members with expertise and knowledge relevant to the Board's mission. The Board shall collaborate with the advisory committee on recommendations to the General Assembly. The advisory committee shall be composed of the following 14 members:~~

~~(A) one member with an expertise in public health, appointed by the Governor;~~

~~(B) the Secretary of Agriculture, Food and Markets or designee;~~

~~(C) one member with an expertise in laboratory science or toxicology, appointed by the Governor;~~

~~(D) one member with an expertise in systemic social justice and equity issues, appointed by the Speaker of the House;~~

~~(E) one member with an expertise in women and minority-owned business ownership, appointed by the Speaker of the House;~~

~~(F) the Chair of the Substance Misuse Prevention Oversight and Advisory Council or designee;~~

~~(G) one member with an expertise in the cannabis industry, appointed by the Senate Committee on Committees;~~

~~(H) one member with an expertise in business management or regulatory compliance, appointed by the Treasurer;~~

~~(I) one member with an expertise in municipal issues, appointed by the Senate Committee on Committees;~~

~~(J) one member with an expertise in public safety, appointed by the Attorney General;~~

~~(K) one member with an expertise in criminal justice reform, appointed by the Attorney General;~~

~~(L) the Secretary of Natural Resources or designee;~~

~~(M) the Chair of the Cannabis for Symptom Relief Oversight Committee or designee; and~~

~~(N) one member appointed by the Vermont Cannabis Trade Association.~~

~~(2) Initial appointments to the advisory committee as provided in subdivision (1) of this subsection (h) shall be made on or before July 1, 2021.~~

~~(3) The Board may establish subcommittees within the advisory committee to accomplish its work.~~

~~(4) Members of the advisory committee who are not otherwise compensated by the member's employer for attendance at meetings 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 annually. These payments shall be made from the Cannabis Regulation Fund. [Repealed.]~~

Sec. 2. REPEAL; SUNSET OF CANNABIS CONTROL BOARD

2020 Acts and Resolves No. 164, Sec. 6e is repealed.

Sec. 3. 7 V.S.A. § 845 is amended to read:

§ 845. CANNABIS REGULATION FUND

* * *

(c) Monies from the Fund shall only be appropriated for the purposes of implementation, administration, and enforcement of this chapter and ~~chapter 33~~ chapters 33, 35, and 37 of this title.

* * *

Sec. 4. 7 V.S.A. § 861 is amended to read:

§ 861. DEFINITIONS

As used in this chapter:

* * *

(2) “Advertisement” means any written or verbal statement, illustration, or depiction that ~~is calculated to induce~~ would reasonably have the effect of inducing sales of cannabis or cannabis products, including any written, printed, graphic, or other material; billboard, sign, or other outdoor display; other periodical literature, publication, or in a radio or television broadcast; the Internet; or in any other media. The term does not include:

(A) any label affixed to any cannabis or cannabis product or any individual covering, carton, or other wrapper of that container that constitutes a part of the labeling under provisions of these standards;

(B) any editorial or other reading material, such as a news release, in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any cannabis establishment, and that is not written by or at the direction of the licensee;

(C) any educational, instructional, or otherwise noncommercial material that is not intended to induce sales and that does not propose an economic transaction, but that merely provides information to the public in an unbiased manner; or

(D) a sign attached to the premises of a cannabis establishment that merely identifies the location of the cannabis establishment.

* * *

(8) “Cannabis establishment” means a cannabis cultivator, propagation cultivator, wholesaler, product manufacturer, retailer, testing laboratory, or integrated licensee licensed by the Board to engage in commercial cannabis activity in accordance with this chapter.

* * *

(31) “Cannabis propagation cultivator” or “propagation cultivator” means a person licensed by the Board to cultivate cannabis clones, immature plants, and mature plants in accordance with this chapter.

Sec. 5. 7 V.S.A. § 863 is amended to read:

§ 863. REGULATION BY LOCAL GOVERNMENT

* * *

(b) A municipality that hosts any cannabis establishment may establish a cannabis control commission composed of commissioners who may be members of the municipal legislative body. The local cannabis control commission may issue and administer local control licenses under this subsection for cannabis establishments within the municipality but shall not assess a fee for a local control license issued to a cannabis establishment. The commissioners may condition the issuance of a local control license upon compliance with any bylaw adopted pursuant to 24 V.S.A. § 4414 or upon ordinances regulating signs or public nuisances adopted pursuant to 24 V.S.A. § 2291, except that ordinances may not regulate public nuisances as applied to outdoor cultivators that are regulated in the same manner as the Required Agricultural Practices under subdivision 869(f)(2) of this title. The commission may suspend or revoke a local control license for a violation of any condition placed upon the license. The Board shall adopt rules relating to a municipality's issuance of a local control license in accordance with this subsection and the local commissioners shall administer the rules furnished to them by the Board as necessary to carry out the purposes of this section.

(c) Prior to issuing a license to a cannabis establishment under this chapter, the Board shall ensure that the applicant has obtained a local control license from the municipality, if required, unless the Board finds that the municipality has exceeded its authority under this section.

(d) A municipality shall not:

(1) prohibit the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. § 2291 or a bylaw adopted pursuant to 24 V.S.A. § 4414, or regulate a cannabis establishment in a manner that has the effect of prohibiting the operation of a cannabis establishment;

(2) condition the operation of a cannabis establishment, or the issuance or renewal of a municipal permit to operate a cannabis establishment, on any basis other than the conditions in subsection (b) of this section; ~~and~~ or

(3) exceed the authority granted to it by law to regulate a cannabis establishment.

Sec. 6. 7 V.S.A. § 869 is amended to read:

§ 869. CULTIVATION OF CANNABIS; ENVIRONMENTAL AND LAND USE STANDARDS; REGULATION OF SMALL CULTIVATORS CULTIVATION

(a) A cannabis establishment shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741, or other relevant State law.

(b) The cultivation, processing, and manufacturing of cannabis regulated under this chapter shall comply with all applicable State, federal, and local environmental, energy, or public health law, unless otherwise provided under this chapter.

(c) A cannabis establishment regulated under this chapter shall be subject to regulation under 24 V.S.A. chapter 117 as authorized by this chapter, unless otherwise provided under this chapter.

(d)(1) The cultivation, processing, and manufacturing of cannabis by all cultivators regulated under this chapter shall comply with the following sections of the Required Agricultural Practices as administered and enforced by the Board:

(A) section 6, regarding conditions, restriction, and operating standards;

(B) section 8, regarding groundwater quality and groundwater quality investigations; and

(C) section 12, regarding subsurface tile drainage.

(2) Application of or compliance with the Required Agricultural Practices under subdivision (1) of this subsection shall not be construed to provide a presumption of compliance with or exemption to any applicable State, federal, and local environmental, energy, public health, or land use law required under subsections (b) and (c) of this section.

(e) Persons cultivating cannabis or handling pesticides for the purposes of the manufacture of cannabis products shall comply with the worker protection standard of 40 C.F.R. Part 170.

(f) Notwithstanding subsection (a) of this section, a ~~small~~ cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land ~~that was subject to the Required Agricultural Practices prior to licensed cultivation of cannabis~~ shall:

(1) be regulated in the same manner as “farming” and not as “development” on the tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A);

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis, ~~provided that the agricultural land or farm building on the parcel where cannabis cultivation occurs was enrolled in the Use Value Appraisal Program prior to commencement of licensed cannabis cultivation and the parcel continues to qualify for enrollment; and~~

(4) be exempt under 32 V.S.A. § 9741(3), (25), and (50) from the tax on retail sales imposed under 32 V.S.A. § 9771; and

(5) be entitled to the rebuttable presumption that cultivation does not constitute a nuisance under 12 V.S.A. chapter 195 in the same manner as “agricultural activities” are entitled to the rebuttable presumption, provided that, notwithstanding 12 V.S.A. § 5753(a)(1)(A), the cultivation is complying with subsections (b) and (d) of this section.

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

§ 881. RULEMAKING; CANNABIS ESTABLISHMENTS

(a) The Board shall adopt rules to implement and administer this chapter in accordance with subdivisions (1)–~~(7)~~(8) of this subsection.

* * *

(3) Rules concerning product manufacturers shall include:

(A) requirements that a single package of a cannabis product shall not contain more than ~~50~~ 100 milligrams of THC, except in the case of:

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

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

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

* * *

(5) Rules concerning retailers shall include:

* * *

(E) facility inspection requirements and procedures for facility inspection to occur at least annually.

* * *

(8) Rules concerning propagators shall include:

(A) requirements for proper verification of age of customers;

(B) pesticides or classes of pesticides that may be used by propagators, provided that any rules adopted under this subdivision (8) shall comply with and shall be at least as stringent as the Agency of Agriculture, Food and Markets' Vermont Pesticide Control Regulations;

(C) standards for indoor cultivation of cannabis;

(D) procedures and standards for testing cannabis for contaminants, potency, and quality assurance and control;

(E) labeling requirements for cannabis sold to retailers and integrated licensees;

(F) regulation of visits to the establishments, including the number of visitors allowed at any one time and record keeping concerning visitors; and

(G) facility inspection requirements and procedures.

* * *

Sec. 8. 7 V.S.A. § 901 is amended to read:

§ 901. GENERAL PROVISIONS

(a) Except as otherwise permitted by law, a person shall not engage in the cultivation, preparation, processing, packaging, transportation, testing, or sale of cannabis or cannabis products without obtaining a license from the Board.

* * *

~~(h)(1) The following records shall be exempt from public inspection and copying under the Public Records Act and shall be confidential:~~

~~(A) any record in an application for a license relating to security, public safety, transportation, or trade secrets, including information provided in an operating plan pursuant to subdivision 881(a)(1)(B) of this title; and~~

~~(B) any licensee record relating to security, public safety, transportation, trade secrets, or employees.~~

~~(2) Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption created in this subsection shall continue in effect and shall not be repealed through operation of 1 V.S.A. § 317(e). [Repealed.]~~

Sec. 9. 7 V.S.A. § 901a is added to read:

§ 901a. ACCESSIBILITY AND CONFIDENTIALITY OF LICENSING
AND DISCIPLINARY MATTERS

(a) It is the purpose of this section to protect the reputation, security practices, and trade secrets of licensees from undue public disclosure while securing the public's right to know of government licensing actions relevant to the public health, safety, and welfare.

(b) All meetings and hearings of the Board shall be subject to the Vermont Open Meeting Law.

(c) The following shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential:

(1) records related to licensee security, safety, transportation, or trade secrets, including information provided in an operating plan pursuant to subdivision 881(a)(1)(B) of this title; and

(2) records related to complaints, investigations, or proceedings, except as provided in subsection (d) of this section.

(d)(1) If a complaint or investigation results in formal action to revoke, suspend, condition, reprimand, warn, fine, or otherwise to penalize a licensee based on noncompliance with law or regulation, the case record, as defined by 3 V.S.A. § 809(e), shall be available for public inspection and copying under Vermont's Public Records Act.

(2) The Board shall prepare and maintain an aggregated list of all closed investigations into misconduct or noncompliance from whatever source derived. The information contained in the list shall be available for public inspection and copying under Vermont's Public Records Act. The list shall contain the date, nature, and outcome of each complaint. The list shall not contain the identity of the subject licensee unless formal action resulted, as described in subdivision (1) of this subsection.

(e) Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption created in this section shall continue in effect and shall not be repealed through operation of 1 V.S.A. § 317(e).

Sec. 10. 7 V.S.A. § 904 is amended to read:

§ 904. CULTIVATOR LICENSE

(a) A cultivator licensed under this chapter may:

(1) cultivate, process, package, label, transport, test, and sell cannabis to a licensed wholesaler, product manufacturer, retailer, integrated licensee, and

dispensary ~~and may~~;

(2) purchase and sell cannabis seeds and immature cannabis plants to another licensed cultivator and propagation cultivator; and

(3) possess and sell cannabis products to a licensed wholesaler, product manufacturer, retailer, integrated licensee, and dispensary.

* * *

Sec. 11. 7 V.S.A. § 904b is added to read:

§ 904b. PROPAGATION CULTIVATOR LICENSE

(a) A propagation cultivator licensed under this section may:

(1) cultivate not more than 3,500 square feet of cannabis clones, immature cannabis plants, or mature cannabis plants;

(2) test, transport, and sell cannabis clones and immature cannabis plants to licensed cultivators; and

(3) test, transport, and sell cannabis seeds that meet the federal definition of hemp to a licensed cultivator or retailer or to the public.

(b) A licensed propagation cultivator shall not cultivate mature cannabis plants for the purpose of producing, harvesting, transferring, or selling cannabis flower for or to any person.

Sec. 12. PROPAGATION CULTIVATOR LICENSE IMPLEMENTATION

The Cannabis Control Board shall begin issuing propagation cultivator licenses on or before July 1, 2024.

Sec. 13. 7 V.S.A. § 905 is amended to read:

§ 905. WHOLESALER LICENSE

A wholesaler licensed under this chapter may:

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

(2) transport, process, package, and sell cannabis and cannabis products to a licensed product manufacturer, retailer, integrated licensee, and dispensary cannabis establishment; and

(3) sell cannabis seeds or immature cannabis plants to a licensed cultivator.

Sec. 14. 7 V.S.A. § 906 is amended to read:

§ 906. PRODUCT MANUFACTURER LICENSE

A product manufacturer licensed under this chapter may:

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

(2) use cannabis and cannabis products to produce cannabis products;
and

(3) transport, process, package, and sell cannabis products to a licensed ~~wholesaler, product manufacturer, retailer, integrated licensee, and dispensary~~ cannabis establishment.

Sec. 15. 7 V.S.A. § 907 is amended to read:

§ 907. RETAILER LICENSE

(a) A retailer licensed under this chapter may:

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

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

* * *

Sec. 16. 7 V.S.A. § 910 is amended to read:

§ 910. CANNABIS ESTABLISHMENT FEE SCHEDULE

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

* * *

(3) Manufacturers.

(A) Manufacturer tier 1. Manufacturers that process and manufacture cannabis in order to produce cannabis products without using solvent-based extraction and not more than ~~\$10,000.00~~ \$50,000.00 per year in cannabis products based on the manufacturer's total annual sales in cannabis products shall be assessed an annual licensing fee of \$750.00.

* * *

(7) Propagation cultivators. Propagation cultivators shall be assessed an annual licensing fee of \$500.00.

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

~~(8)~~(9) Products. Cannabis establishments licensed by the Board shall be assessed an annual product licensing fee of \$50.00 for every type of cannabis and cannabis product that is sold in accordance with this chapter.

~~(9)~~(10) Local licensing fees. Cannabis establishments licensed by the Board shall be assessed an annual local licensing fee of \$100.00 in addition to each fee assessed under subdivisions (1)–~~(6)~~(7) of this section. Local licensing fees shall be distributed to the municipality in which the cannabis establishment is located pursuant to section 846(c) of this title.

~~(10)~~(11) One-time fees.

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

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

Sec. 17. 7 V.S.A. chapter 35 is amended to read:

CHAPTER 35. MEDICAL CANNABIS REGISTRY

§ 951. DEFINITIONS

As used in this chapter:

* * *

(8) “Qualifying medical condition” means:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, Crohn’s disease, Parkinson’s disease, post-traumatic stress disorder, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

~~(B) post-traumatic stress disorder, provided the Department confirms the applicant is undergoing psychotherapy or counseling with a licensed mental health care provider; or~~

~~(C)~~ a disease or medical condition or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome, chronic pain, severe nausea, or seizures.

* * *

§ 952. REGISTRY

* * *

(b) A person who is a registered patient or a registered caregiver on behalf of a patient may:

(1) Cultivate not more than ~~two~~ six mature and ~~seven~~ 12 immature cannabis plants. Any cannabis harvested from the plants shall not count toward the two-ounce possession limit in subdivision (2) of this subsection, provided it is stored in an indoor facility on the property where the cannabis was cultivated and reasonable precautions are taken to prevent unauthorized access to the cannabis.

(2) Possess not more than two ounces of cannabis.

(3) Purchase cannabis and cannabis products at a licensed medical cannabis dispensary. Pursuant to chapter 37 of this title, a dispensary may offer goods and services that are not permitted at a cannabis establishment licensed pursuant to chapter 33 of this title.

* * *

§ 954. CAREGIVERS

(a) Pursuant to rules adopted by the Board, a person may register with the Board as a caregiver of a registered patient to obtain the benefits of the Registry as provided in section 952 of this title.

~~(b)(1) The Board shall adopt rules that set forth standards for determining whether an applicant should be denied a caregiver card because of his or her criminal history record. An applicant shall not be denied solely on the basis of a criminal conviction that is not listed in 13 V.S.A. chapter 25 or 28~~ conduct a name and date of birth Vermont criminal conviction record background check and obtain information from the Child Protection Registry maintained by the Department for Children and Families and from the Vulnerable Adult Abuse, Neglect, and Exploitation Registry maintained by the Department of Disabilities, Aging, and Independent Living (collectively, the Registries) for any person who applies to be a caregiver.

~~(2) The Board shall obtain from the Vermont Crime Information Center a copy of the caregiver applicant's fingerprint-based Vermont criminal history records, out-of-state criminal history records, and criminal history records from the Federal Bureau of Investigation.~~

(c) The Board shall adopt rules that set forth standards for determining whether an applicant should be denied a ~~cannabis establishment license~~ caregiver card because of his or her criminal history record the applicant's

criminal history record or status on either Registry.

(d)(1) Except as provided in subdivision (2) of this subsection, a caregiver ~~shall serve only one patient~~ may serve not more than two patients at a time, and a patient shall have only one registered caregiver at a time. A patient may serve as a caregiver for one other patient.

(2) A patient who is under 18 years of age may have two caregivers. Additional caregivers shall be at the discretion of the Board.

(e) Medicaid funds shall not be used to support a caregiver in the cultivation or distribution of cannabis on behalf of a patient.

§ 955. REGISTRATION; FEES

(a) A registration card shall expire one year after the date of issuance for patients with a qualifying medical condition of chronic pain and the caregivers who serve those patients. For all other patients and the caregivers who serve those patients, a registration card shall expire three years after the date of issuance. A patient or caregiver may renew the card according to protocols adopted by the Board.

(b) The Board shall charge and collect a \$50.00 ~~annual~~ registration and renewal fee for patients and caregivers. Fees shall be deposited in the Cannabis Regulation Fund as provided in section 845 of this title.

§ 956. RULEMAKING

The Board shall adopt rules for the administration of this chapter. ~~No rule shall be more restrictive than any rule adopted by the Department of Public Safety pursuant to 18 V.S.A. chapter 86.~~

Sec. 18. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The Commissioner may disclose a Registry record only as follows:

* * *

(11) To the Cannabis Control Board, in accordance with the provisions of 7 V.S.A. § 954.

* * *

Sec. 19. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

* * *

(c) The Commissioner or designee may disclose Registry information only

to:

* * *

(12) The Cannabis Control Board for the purpose of evaluating an individual's suitability to be a registered caregiver under 7 V.S.A. § 954.

* * *

Sec. 20. 7 V.S.A. § 974 is amended to read:

§ 974. RULEMAKING

(a)(1) The Board shall adopt rules to implement and administer this chapter. In adoption of rules, the Board shall strive for consistency with rules adopted for cannabis establishments pursuant to chapter 33 of this title where appropriate. ~~No rule shall be more restrictive than any rule adopted by the Department of Public Safety pursuant to 18 V.S.A. chapter 86.~~

* * *

Sec. 21. CANNABIS CONTROL BOARD REPORTING; MEDICAL CANNABIS REGISTRY

(a) The Cannabis Control Board shall work with the Vermont Academic Detailing Program, Registry patients and caregivers, licensed medical cannabis dispensaries, and medical professional stakeholders to review the Medical Cannabis Registry. The review shall include:

(1) an assessment of the illnesses or symptoms most appropriately treated by cannabis;

(2) the strains of cannabis recommended for such treatment;

(3) the doses of active chemicals recommended for treatment;

(4) appropriate treatment protocols for patients, including whether ongoing medical oversight such as counseling or other services is needed for each condition being treated;

(5) how the use of cannabis is communicated to patients and patients' providers; and

(6) any other issues that will improve the Registry.

(b) The Board shall convene the working group not less than four times to complete its work.

(c) The Board shall provide recommendations for improvement to the Medical Cannabis Registry to the Senate Committee on Health and Welfare and the House Committees on Human Services and on Health Care on or before January 15, 2024.

Sec. 22. 7 V.S.A. § 1001(8) is amended to read:

(8) “Tobacco substitute” means products, including electronic cigarettes or other electronic or battery-powered devices, that contain or are designed to deliver nicotine or other substances into the body through the inhalation of vapor and that have not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes. Products Cannabis products as defined in section 831 of this title or products that have been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes shall not be considered to be tobacco substitutes.

Sec. 23. 32 V.S.A. § 7702(15) is amended to read:

(15) “Other tobacco products” means any product manufactured from, derived from, or containing tobacco that is intended for human consumption by smoking, chewing, or in any other manner, including products sold as a tobacco substitute, as defined in 7 V.S.A. § 1001(8), and including any liquids, whether nicotine based or not, or delivery devices sold separately for use with a tobacco substitute, but shall not include cigarettes, little cigars, roll-your-own tobacco, snuff, ~~or~~ new smokeless tobacco as defined in this section, or cannabis products as defined in 7 V.S.A. § 831.

Sec. 24. TRANSFER AND APPROPRIATION

Notwithstanding 7 V.S.A. § 845(c), in fiscal year 2024:

(1) \$500,000.00 is transferred from the Cannabis Regulation Fund established pursuant to 7 V.S.A. § 845 to the Cannabis Business Development Fund established pursuant to 7 V.S.A. § 987; and

(2) \$500,000.00 is appropriated from the Cannabis Business Development Fund to the Agency of Commerce and Community Development to fund technical assistance and provide loans and grants pursuant to 7 V.S.A. § 987.

Sec. 25. EFFECTIVE DATE

This act shall take effect on passage.

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

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

By inserting two new sections to be numbered Secs. 23a and 23b to read as follows:

Sec. 23a. 7 V.S.A. § 831(3) is amended to read:

(3) “Cannabis product” means concentrated cannabis and a product that is composed of cannabis and other ingredients and is intended for use or consumption, including an edible product, ointment, and tincture. Cannabis product shall include a vaporizer cartridge containing cannabis oil that is intended for use with a battery-powered device and any device designed to deliver cannabis into the body through inhalation of vapor that is sold at a cannabis establishment licensed pursuant to chapter 33 of this title. “Cannabis product” does not mean a “tobacco product” as defined in 32 V.S.A. § 7702, a “tobacco substitute” as defined in section 1001 of this title, or “tobacco paraphernalia” as defined in section 1001 of this title.

Sec. 23b. 7 V.S.A. § 1002 is amended to read:

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

(a)(1) ~~No~~ Except as provided in subsection (h) of this section, no person shall engage in the retail sale of tobacco products, tobacco substitutes, or tobacco paraphernalia in ~~his or her~~ the person’s place of business without a tobacco license obtained from the Division of Liquor Control.

* * *

(h) This section shall not apply to a cannabis establishment licensed pursuant to chapter 33 of this title to engage in the retail sale of cannabis products as defined in section 831 of this title, but not engaged in the sale of tobacco products or tobacco substitutes.

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

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Economic Development, Housing, and General Affairs, as amended.

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

Thereupon, the proposal of amendment recommended by the Committee on Economic Development, Housing and General Affairs, as amended, was agreed to and third reading of the bill was ordered.

House Proposal of Amendment Concurred In**S. 95.**

House proposal of amendment to Senate bill entitled:

An act relating to banking and insurance.

Was taken up.

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

Sec. 1. 8 V.S.A. § 6011(b) is amended to read:

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of subsections 3634a(a) through ~~(f)(e)~~ of this title. Prior approval of the Commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with subsections 3634a(a) through ~~(f)(e)~~ of this title, except for business written by an alien captive insurance company outside the United States.

Sec. 2. 8 V.S.A. § 4728(c)(7) is amended to read:

(7) “Licensee” means a person licensed, authorized to operate, or registered or required to be licensed, authorized, or registered pursuant to the insurance laws of this State, but shall not include:

(A) a captive insurance company;

(B) a purchasing group or risk retention group chartered; or

(C) a licensee domiciled in a jurisdiction other than this State ~~or a person~~ that is acting as an assuming insurer for a licensee domiciled in this State.

Sec. 3. 8 V.S.A. § 2103(b)(3)(A) is amended to read:

(A) ~~return to the applicant any amounts paid for the applicable bond requirement and the bond, if any, and any amounts paid for the applicable license fee; and~~ return to the applicant any amounts paid for the applicable bond requirement and the bond, if any, and any amounts paid for the applicable license fee; and

Sec. 4. 8 V.S.A. § 2759a(b)(2)(A) is amended to read:

(A) The notice of cancellation shall contain the following information and statements, printed in not less than ~~ten-point~~ ten-point boldface type:

NOTICE OF CANCELLATION

(enter date of transaction)

.....

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any payments made by you under the contract will be returned within ~~ten~~ 10 business days following our receipt of your cancellation notice.

To cancel the debt adjustment contract, ~~mail or deliver~~ return a signed and dated copy of this cancellation notice or any other written notice ~~or send a telegram using first-class mail or e-mail~~, to at

(name of licensee)

.....

(address of licensee's place of business)

(e-mail address of licensee)

not later than midnight of

(date)

I hereby cancel this transaction.

.....

(date)

.....

(debtor's signature)

Sec. 5. 9 V.S.A. § 43 is amended to read:

§ 43. DEPOSIT REQUIREMENT PROHIBITED; EXCEPTION

A lender shall not, as a condition to granting or extending a loan, require a borrower to keep or place any sum on deposit with the lender or nominee of the lender, except for deposit arrangements directly related to secured credit cards in a manner consistent with rules adopted by the Commissioner, rules that shall include disclosure requirements, and specific types of alternative mortgages approved by the Commissioner as provided in 8 V.S.A. § 1256. Any deposit arrangement permitted under this section shall not result in an effective interest rate that exceeds legal rates established in 9 V.S.A. § 41a.

Sec. 6. 8 V.S.A. § 4688(e) is amended to read:

(e) Filings open to inspection. All rates, supplementary rate information, and any nonproprietary supporting information for risks filed under this chapter shall, as soon as filed or after approval for those matters subject to prefiling, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge in the manner and amount prescribed by the Commissioner.

Sec. 7. 8 V.S.A. § 8084a is amended to read:

§ 8084a. REQUIRED DISCLOSURE OF RATING PRACTICES TO CONSUMERS

(a) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this subsection to the applicant not later than at the time of delivery of the policy or certificate:

(1) ~~a~~ A statement that the policy may be subject to rate increases in the future;

(2) ~~an~~ An explanation of potential future premium rate or rate schedule revisions and the policyholder's or certificate holder's option in the event of a ~~premium rate~~ revision;

(3) ~~the~~ The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(4) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(A) a description of when premium rate or rate schedule adjustments will be effective; and

(B) the right to a revised premium rate or rate schedule as provided in subdivision (2) of this subsection (a) if the premium rate or rate schedule is changed; ~~and~~.

(5) ~~information~~ Information regarding each premium rate or rate schedule increase on this policy form or similar policy forms over the past 10 years for this State or any other state that, at a minimum, identifies:

(A) ~~the~~ The policy forms for which premium rates or rate schedules have been increased;

(B) ~~the~~ The calendar years during which the form was available for purchase; ~~and.~~

(C) ~~the~~ The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

* * *

(c) The insurer ~~may~~ shall, in a form and in a fair manner approved by the Commissioner, provide explanatory information related to ~~the~~ premium rate and rate schedule increases covered by this section.

(d) An applicant shall, at the time of application, unless the method of application does not allow for acknowledgment at that time, in such a case, not later than at the time of delivery of the policy or certificate, sign an acknowledgment that the insurer made the ~~disclosure~~ disclosures required under subdivisions (a)(1) and (5) of this section.

(e) An insurer shall provide notice of an upcoming premium rate or rate schedule increase to all policyholders or certificate holders, if applicable, at least ~~45~~ 90 days prior to the implementation of the premium rate or rate schedule increase by the insurer. The notice shall include the information required by subsection (a) of this section when the rate increase is implemented, as well as the explanatory information required by subsection (c) of this section that is specific to the upcoming premium rate or rate schedule increase.

Sec. 7a. 8 V.S.A. § 23(a) is amended to read:

(a) This section shall apply to all persons licensed, authorized, or registered, or required to be licensed, authorized, or registered, under this title or under 9 V.S.A. chapter 150.

Sec. 8. REPEAL

8 V.S.A. chapter 112, subchapter 1 (Life and Health Insurance Companies) and subchapter 2 (Health Maintenance Organization Guaranty Association) are repealed.

Sec. 9. 8 V.S.A. chapter 112, §§ 4171–4190 are added to read:

§ 4171. SHORT TITLE

This chapter shall be known and may be cited as the Vermont Life and Health Insurance Guaranty Association Act.

§ 4172. PURPOSE

The purpose of this chapter is to protect, subject to certain limitations, the persons specified in subsection 4173(a) of this chapter, against failure in the performance of contractual obligations under life, health, and annuity policies, plans, and contracts specified in subsection 4173(b) of this chapter, due to the impairment or insolvency of the member insurer that issued such policies, plans, or contracts. To provide this protection:

(1) an association of member insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(2) members of the Association are subject to assessment to provide funds to carry out the purpose of this chapter; and

(3) the Association is authorized to assist the Commissioner, in the prescribed manner, in the detection and prevention of insurer impairment or insolvency.

§ 4173. SCOPE

(a) This chapter shall provide coverage for a policy or contract specified in subsection (b) of this section to a person who:

(1) regardless of where the person resides, except for nonresident certificate holders under group policies or contracts, is the beneficiary, assignee, or payee, including a health care provider who renders services covered under a health insurance policy or certificate, of a person covered under subdivision (2) of this subsection; or

(2) is an owner of or certificate holder or enrollee under such policy or contract, other than an unallocated annuity contract or structured settlement annuity, and in each case who:

(A) is a Vermont resident; or

(B) is not a Vermont resident, provided all of the following conditions are met:

(i) the member insurer that issued the policy or contract is domiciled in Vermont;

(ii) the state in which the person resides has an association similar to the Association created by this chapter; and

(iii) the person is not eligible for coverage by an association in any other state due to the fact that the insurer or the health maintenance organization was not licensed in that state at the time specified in that state's guaranty association law.

(3) For an unallocated annuity contract specified in subsection (b) of this section, subdivisions (1) and (2) of this subsection shall not apply and this chapter shall, except as provided in subdivisions (5) and (6) of this subsection, provide coverage to a person who is the owner of an unallocated annuity contract if the contract is issued to or in connection with:

(A) a specific benefit plan whose plan sponsor has its principal place of business in Vermont; or

(B) a government lottery, if the owner is a resident of Vermont.

(4) For a structured settlement annuity specified in subsection (b) of this section, subdivisions (1) and (2) of this subsection shall not apply, and this chapter shall, except as provided in subdivisions (5) and (6) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity, or a beneficiary of such deceased payee, provided that the payee:

(A) is a Vermont resident, regardless of where the contract owner resides; or

(B) is not a Vermont resident, provided that both of the following conditions are met:

(i)(I) the contract owner of the structured settlement annuity is a Vermont resident; or

(II) the contract owner of the structured settlement annuity is not a Vermont resident, provided:

(aa) the insurer that issued the structured settlement annuity is domiciled in Vermont; and

(bb) the state in which the contract owner resides has an association similar to the Association created by this chapter; and

(ii) neither the payee, beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee, beneficiary, or contract owner resides.

(5) This chapter shall not provide coverage to a person who:

(A) is a payee or beneficiary of a contract owner who is a Vermont resident, if the payee or beneficiary is afforded any coverage by the association of another state;

(B) is covered under subdivision (3) of this subsection, if any coverage is provided by the association of another state to the person; or

(C) acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A),

regardless of whether the transaction occurred before or after such section became effective.

(6) This chapter is intended to provide coverage to a person who is a Vermont resident and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of the provisions of this subdivision in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(b)(1) This chapter shall provide coverage to a person specified in subsection (a) of this section for a policy or contract of direct, nongroup life insurance, health insurance, which for purposes of this chapter includes health maintenance organization subscriber contracts and certificates, an annuity, or a certificate under a direct group policy or contract, and supplemental policies or contracts to any of these, and for an unallocated annuity contract, in each case, issued by a member insurer, except as limited by this chapter. An annuity contract or certificate under a group annuity contract includes a guaranteed investment contract, guaranteed interest contract, guaranteed accumulation contract, deposit administration contract, unallocated funding agreement, allocated funding agreement, structured settlement annuity, annuity issued to or in connection with a government lottery, and any immediate or deferred annuity contract.

(2) Except as otherwise provided in subdivision (3) of this subsection, this chapter shall not provide coverage for:

(A) a portion of a policy or contract not guaranteed by the member insurer or under which the risk is borne by the policy or contract holder;

(B) a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(C) a portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield

Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(ii) on and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(D) a portion of a policy or contract issued to a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(i) a Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(E) a portion of a policy or contract to the extent that it provides dividends or experience rating credits, voting rights, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(F) a policy or contract issued in Vermont by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in Vermont;

(G) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

(H) a portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan, or a government lottery;

(I) a portion of a policy or contract to the extent that the assessments required by section 4179 of this chapter with respect to the policy or contract are preempted by federal or State law;

(J) an obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including:

(i) a claim based on marketing materials;

(ii) a claim based on a side letter, rider, or other document issued by the member insurer without meeting applicable policy or contract form-filing or approval requirements;

(iii) a misrepresentation of or regarding the benefits of a policy or contract;

(iv) an extra-contractual claim; or

(v) a claim for penalties or consequential or incidental damages;

(K) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, that in each case is not an affiliate of a member insurer;

(L) any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(M) any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Medicare Part C, 42 U.S.C. §§ 1395w-21 to 1395w-29, or Medicare Part D, 42 U.S.C. §§ 1395w-101 to 1395w-154, or Subchapter XIX, Chapter 7 of Title 42 of the U.S.C., commonly known as Medicaid, or any regulations issued pursuant to those sections, or

(N) structured settlement annuity benefits to which a payee or beneficiary has transferred the payee's or beneficiary's rights in a structured settlement factoring transaction as defined in 26 U.S.C. § 5891(c)(3)(A),

regardless of whether the transaction occurred before or after such section became effective.

(3) The exclusion from coverage referenced in subdivision (2)(C) of this subsection shall not apply to any portion of a contract, including a rider, that provides long-term care or any other health benefits.

(c) The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2)(A) with respect to one life, regardless of the number of policies or contracts:

(i) \$300,000.00 in life insurance death benefits, but not more than \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(ii) for health insurance benefits:

(I) \$100,000.00 for coverages not defined as disability income insurance or health benefit plans or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(II) \$300,000.00 for disability income insurance, and \$300,000.00 for long-term care insurance;

(III) \$500,000.00 for health benefit plans;

(iii) \$250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(B) with respect to each individual participating in a governmental retirement benefit plan established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, \$250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(C) with respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, \$250,000.00 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(D) however, in no event shall the Association be obligated to cover more than:

(i) an aggregate of \$300,000.00 in benefits with respect to any one life under subdivisions (2)(A)–(C) of this subsection (c) except with respect to benefits for health benefit plans under subdivision (2)(A)(ii) of this subsection (c), in which case the aggregate liability of the Association shall not exceed \$500,000.00 with respect to any one individual; or

(ii) with respect to one owner of multiple nongroup policies of life insurance, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than \$5,000,000.00 in benefits, regardless of the number of policies and contracts held by the owner;

(E) with respect to either one contract owner provided coverage under subdivision (a)(3)(B) of this section, or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subdivision (2)(B) of this subsection (c), \$5,000,000.00 in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in Vermont and in no event shall the Association be obligated to cover more than \$5,000,000.00 in benefits with respect to all these unallocated contracts.

(F) The limitations set forth in this subsection (c) are limitations on the benefits for which the Association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the Association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the Association pursuant to its subrogation and assignment rights.

(G) For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(d) In performing its obligations to provide coverage under section 4178 of this chapter, the Association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, or reissued, or performed, the contractual obligations of the insolvent or impaired

insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

§ 4174. CONSTRUCTION

This chapter shall be liberally construed to effect the purpose under section 4172 of this chapter, which shall constitute an aid and guide to interpretation.

§ 4175. DEFINITIONS

As used in this chapter:

(1) “Account” means either of the two accounts created under section 4176 of this chapter.

(2) “Affiliate” means affiliate as defined in section 3681 of this title.

(3) “Association” means the Vermont Life and Health Insurance Guaranty Association created under section 4176 of this chapter.

(4) “Authorized assessment” or the term “authorized” when used in the context of assessments means a resolution by the Board of Directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(5) “Benefit plan” means a specific employee, union, or association of natural persons benefit plan.

(6) “Called assessment” or the term “called” when used in the context of assessments means that a notice has been issued by the Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Association to member insurers.

(7) “Commissioner” means the Commissioner of Financial Regulation.

(8) “Contractual obligation” means any obligation under a policy or contract, or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 4173 of this chapter.

(9) “Covered contract” or “covered policy” means a policy or contract, or portion of a policy or contract, for which coverage is provided under section 4173 of this chapter.

(10) “Extra-contractual claims” includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys’ fees and costs.

(11) “Health benefit plan” means any hospital or medical expense policy or certificate, or health maintenance organization subscriber contract, or any other similar health contract. “Health benefit plan” does not include:

(A) accident only insurance;

(B) credit insurance;

(C) dental only insurance;

(D) vision only insurance;

(E) Medicare Supplement insurance;

(F) benefits for long-term care, home health care, community-based care, or any combination thereof;

(G) disability income insurance;

(H) coverage for on-site medical clinics; or

(I) specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

(12) “Impaired insurer” means a member insurer that, after the effective date of this chapter, is not an insolvent insurer and who is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(13) “Insolvent insurer” means a member insurer that, after the effective date of this chapter, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(14) “Member insurer” means any insurer or health maintenance organization licensed or that holds a certificate of authority to transact in this State any kind of insurance or health maintenance organization business for which coverage is provided under section 4173 of this chapter and includes an insurer or health maintenance organization whose license or certificate of authority in this State may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(A) a hospital or medical service organization, whether for-profit or nonprofit;

(B) a fraternal benefit society;

(C) a mandatory State pooling plan;

(D) a mutual assessment company or other person that operates on an assessment basis;

(E) an insurance exchange;

(F) an organization that has a certificate or license limited to the issuance of charitable gift annuities under section 3718a of this title; or

(G) an entity similar to any of the above.

(15) “Moody’s Corporate Bond Yield Average” means the Monthly Average Corporates as published by Moody’s Investors Service, Inc., or any successor thereto.

(16) “Owner” of a policy or contract and “policyholder,” “policy owner,” and “contract owner” mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. The terms owner, contract owner, policyholder, and policy owner do not include persons with a mere beneficial interest in a policy or contract.

(17) “Person” means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(18) “Plan sponsor” means:

(A) the employer in the case of a benefit plan established or maintained by a single employer;

(B) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(19) “Premiums” mean amounts or considerations, by whatever name called, received on covered policies or contracts, less returned premiums, considerations, and deposits, and less dividends and experience credits. “Premiums” does not include amounts or considerations received for policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 4173(b) of this chapter except that assessable premium shall not be reduced on account of subdivision 4173(b)(2)(C) of this chapter, relating to interest limitations, and of subdivision 4173(c)(2) of this chapter, relating to limitations with respect to one individual, one participant, and one policy or contract owner. “Premiums” shall not include:

(A) premiums in excess of \$5,000,000.00 on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under 26 U.S.C. § 401, 403(b), or 457 of the U.S. Internal Revenue Code; or

(B) with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy or contract owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of \$5,000,000.00 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(20)(A) “Principal place of business” of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters of the entity is located;

(ii) the state in which the principal office of the chief executive officer of the entity is located;

(iii) the state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) the state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) the state from which the management of the overall operations of the entity is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors;

(vii) however, in the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

(B) The principal place of business of a plan sponsor of a benefit plan described in subdivision (18)(C) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish

or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(21) “Receivership court” means the court in the insolvent or impaired insurer’s state having jurisdiction over the conservation, rehabilitation, or liquidation of the member insurer.

(22) “Resident” means any person to whom a contractual obligation is owed and who resides in Vermont on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person shall be that state where it has its principal place of business. Citizens of the United States who are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the Association created by this chapter shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts.

(23) “Structured settlement annuity” means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(24) “State” means a state, the District of Columbia, Puerto Rico, and a U. S. possession, territory, or protectorate.

(25) “Supplemental contract” means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

(26) “Unallocated annuity contract” means any annuity contract or group annuity certificate that is not issued to and owned by an individual except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

§ 4176. CREATION OF THE ASSOCIATION

(a) There is created a nonprofit legal entity to be known as the Vermont Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance or health maintenance organization business in Vermont. The Association shall perform its functions under the plan of operation established and approved under section 4180 of this chapter and shall exercise its powers through a board of directors established under section 4177 of this

chapter. For purposes of administration and assessment, the Association shall maintain two accounts:

(1) The life insurance and annuity account that includes the following subaccounts;

(A) life insurance account;

(B) annuity account, which shall include annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

(C) unallocated annuity account, which shall exclude contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the U.S. Internal Revenue Code.

(2) The health account.

(b) The Association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State. Meetings and records of the Association may be opened to the public upon majority vote of the Board of Directors of the Association.

§ 4177. BOARD OF DIRECTORS

(a) The Board of Directors of the Association shall consist of not less than seven nor more than 11 member insurers serving terms as established in the plan of operation. Members of the Board shall be selected by member insurers subject to the approval of the Commissioner. A vacancy on the Board shall be filled for the remaining period of the term by a majority vote of the remaining board members, for member insurers subject to the approval of the Commissioner. To select the initial Board of Directors, and initially organize the Association, the Commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the Board of Directors is not selected within 60 days after notice of the organizational meeting, the Commissioner may appoint the initial insurer members. At least one of the directors shall be a person who is an officer, director, or employee of an insurance company incorporated under the laws of this State; provided, however, this provision shall not apply in the event there is no member insurer incorporated under the laws of this State.

(b) In approving selections or in appointing members to the Board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors, but members of the Board shall not otherwise be compensated by the Association for their services.

§ 4178. POWERS AND DUTIES OF THE ASSOCIATION

(a) If a member insurer is an impaired insurer, the Association may, in its discretion and subject to any conditions imposed by the Association that do not impair the contractual obligations of the impaired insurer and that are approved by the Commissioner:

(1) guarantee, assume, or reissue, reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(2) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (1) of this subsection and ensure payment of the contractual obligations of the impaired insurer pending action under subdivision (1) of this subsection.

(b) If a member insurer is an insolvent insurer, the Association, in its discretion, shall either:

(1)(A)(i) guarantee, assume, or reissue, reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the policies or contracts of the insolvent insurer; or

(ii) ensure payment of the contractual obligations of the insolvent insurer; and

(B) provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the Association's duties; or

(2) provide benefits and coverages in accordance with the following provisions:

(A) With respect to policies and contracts, ensure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) with respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the Association becomes obligated with respect to the policies and contracts;

(ii) with respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the Association becomes obligated with respect to the policies or contracts.

(B) Make diligent efforts to provide all known insureds, enrollees, or annuitants, for nongroup policies and contracts, or group policy or contract owners with respect to group policies and contracts, 30 days' notice of the termination, pursuant to subdivision (2)(A) of this subsection (b), of the benefits provided.

(C) With respect to nongroup policies and contracts covered by the Association, make available to each known insured, enrollee, or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly an insured, enrollee, or annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (2)(D) of this subsection (b) if the insureds, enrollees, or annuitants had a right under law or the terminated policy, contract, or annuity to convert coverage to individual coverage or to continue an individual policy, contract, or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract, or annuity or had a right only to make changes in premium by class.

(D)(i) In providing the substitute coverage required under subdivision (2)(C) of this subsection (b), the Association may offer either to reissue the terminated coverage or to issue an alternative policy or contract, subject to the prior approval of the Commissioner.

(ii) Alternative or reissued policies or contracts shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy or contract.

(iii) The Association may reinsure any alternative or reissued policy or contract.

(E)(i) Alternative policies or contracts adopted by the Association shall be subject to the approval of the Commissioner. The Association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies or contracts shall contain at least the minimum statutory provisions required in Vermont and provide benefits that shall not be unreasonable in relation to the premium charged. The Association

shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured. The premium shall not reflect any changes in the health of the insured after the original policy or contract was last underwritten.

(iii) Any alternative policy or contract issued by the Association shall provide coverage of a type similar to that of the policy or contract issued by the impaired or insolvent insurer, as determined by the Association.

(F) If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be set by the Association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the Commissioner.

(G) The Association's obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the Association.

(H) When proceeding under this subdivision (b)(2) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the Association shall ensure the payment or crediting of a rate of interest consistent with subdivision 4173(b)(2)(C) of this chapter.

(c) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the Association's obligations under the policy, contract, or coverage under this chapter with respect to the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this chapter.

(d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association. If the liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator regarding such premium collected by the Association. The Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(e) The protection provided by this chapter shall not apply where any guaranty protection is provided to residents of Vermont by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

(f) In carrying out its duties under subsection (b) of this section, the Association may:

(1) Subject to approval by a court in this State, impose permanent policy or contract liens, in connection with a guarantee, assumption, or reinsurance agreement, if the Association finds that the amounts that can be assessed under this chapter are less than the amounts needed to ensure full and prompt performance of the Association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest.

(2) Subject to the approval by a court in this State, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association may defer the payment of cash values, policy loans, or other rights by the Association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the Association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(g) A deposit in Vermont, held pursuant to law or required by the Commissioner for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this State or in a reciprocal state, shall be promptly paid to the Association. The Association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the Association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this State related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the Association less the amount retained pursuant to this subsection. Any amount so paid to the Association and retained by it shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

(h) If the Association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection (b) of this section, the

Commissioner shall have the powers and duties of the Association under this chapter with respect to the insolvent insurer.

(i) The Association may render assistance and advice to the Commissioner, upon the Commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(j) The Association shall have standing to appear or intervene before any court or agency in Vermont with jurisdiction over an impaired or insolvent insurer concerning which the Association is or may become obligated under this chapter or with jurisdiction over any person or property against which the Association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the Association, including proposals for reinsuring, reissuing, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The Association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or with jurisdiction over any person or property against whom the Association may have rights through subrogation or otherwise.

(k)(1) Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The Association may require an assignment to it of such rights and cause of action by any enrollee, payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon such person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(3) In addition to subdivisions (1) and (2) of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contracts, including, without limitation, in the case of a structured settlement annuity, any rights of the owner,

beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefore, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the U.S. Internal Revenue Code.

(4) If the preceding subdivisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the Association.

(5) If the Association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the Association has rights as described in the preceding subdivisions of this subsection, the person shall pay to the Association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the Association.

(1) In addition to the rights and powers elsewhere in this chapter, the Association may:

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(2) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4179 of this chapter and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this chapter; and any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic member insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary or appropriate to handle the financial transactions of the Association, and to perform such other functions as become necessary or proper under this chapter;

(5) take such legal action as may be necessary or appropriate to avoid payment or recover payment of improper claims;

(6) exercise, for the purposes of this chapter and to the extent approved by the Commissioner, the powers of a domestic life insurer, health insurer, or health maintenance organization, but in no event may the Association issue policies or contracts other than those issued to perform its obligations under this chapter;

(7) organize itself as a corporation or in other legal form permitted by Vermont law;

(8) request information from a person seeking coverage from the Association in order to aid the Association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request;

(9) unless prohibited by law, in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this chapter; and

(10) take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(m) The Association may join an organization of one or more other State associations of similar purposes, to further the purposes and administer the powers and duties of the Association.

(n)(1)(A) At any time within 180 days after the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or by the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(B) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings:

(i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and

(ii) notices of any defaults under the reinsurance contracts or any known event or condition that, with the passage of time, could become a default under the reinsurance contracts.

(C) Subdivisions (i)–(iv) of this subdivision (1)(C) shall apply to reinsurance contracts assumed by the Association under subdivision (1)(A) of this subsection (n):

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case that relate to policies, contracts, or annuities covered, in whole or in part, by the Association. The Association may charge policies, contracts, or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator.

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy, contracts, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(I) the amount received by the Association; and

(II) the excess of the amount received by the Association over the amount equal to the benefits paid by the Association on account of the policy, contracts, or annuity, less the retention of the insurer applicable to the loss or event.

(iii) Within 30 days following the Association's election (the election date), the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies, contracts, or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no

arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to subdivision (1)(C)(ii) of this subsection (n), the receiver shall remit the same to the Association as promptly as practicable.

(iv) If the Association or receiver, on the Association's behalf, within 60 days following the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts, or annuities covered, in whole or in part, by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies, contracts, or annuities covered, in whole or in part, by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

(2) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until 180 days after the date of the order of liquidation:

(A)(i) neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under subdivision (1) of this subsection (n), whether for periods prior to or after the date of the order of liquidation; and

(ii) the reinsurer, the receiver, and the Association shall, to the extent practicable, provide each other data and records reasonably requested;

(B) provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (1) of this subsection (n).

(3) If the Association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (1) of this subsection (n), the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies, contracts, or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the Association, in the case of contracts assumed under subdivision (1) of this subsection (n), subject to the following:

(i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance, contracts, or annuities in addition to those transferred;

(ii) the obligations described in subdivision (1) of this subsection (n) shall no longer apply with respect to matters arising after the effective date of the transfer; and

(iii) notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

(5) The provisions of this subsection shall supersede the provisions of any State law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(6) Except as otherwise provided in this section, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this subsection shall:

(A) abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract;

(B) give a policyholder, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(C) limit or affect the Association's rights as a creditor of the estate against the assets of the estate; or

(D) apply to reinsurance agreements covering property or casualty risks.

(o) The Board of Directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this chapter in an economical and efficient manner.

(p) Where the Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Association's obligations under this chapter, the person shall not be entitled to benefits from the Association in addition to or other than those provided under the plan or arrangement.

(q) Venue in a suit against the Association arising under this chapter shall be in the Civil Division of the Washington Superior Court. The Association

shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(r) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under subsection (a) or (b) of this section, the Association may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with all of the following provisions:

(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:

(A) a fixed interest rate;

(B) payment of dividends with minimum guarantees; or

(C) a different method for calculating interest or changes in value.

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

§ 4179. ASSESSMENTS

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the Board of Directors shall assess the member insurers, separately for each account, at such times and for such amounts as the Board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at nine percent per annum on and after the due date.

(b) There shall be two classes of assessments, as follows:

(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the Association under section 4178 of this chapter with regard to an impaired or insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the Board and may be authorized and called on a pro rata or non-pro rata basis. If

pro rata, the Board may provide that it be credited against future Class B assessments.

(2) The amount of a Class B assessment, except assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account, pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the Board in its sole discretion as being fair and reasonable under the circumstances.

(3) The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the Commissioner. The methodology shall provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers.

(4) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the member insurer became impaired, bears to premiums received on business in this State for those calendar years by all assessed member insurers.

(5) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The Association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.

(d) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the Board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner

consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association.

(e)(1)(A) Subject to the provisions of subdivision (1)(B) of this subsection (e), the total of all assessments authorized by the Association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account shall not in one calendar year exceed two percent of that member insurer's average annual premiums received in Vermont on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the member insurer became an impaired or insolvent insurer.

(B) If two or more assessments are authorized in one calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision (1)(A) of this subsection (e) shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

(C) If the maximum assessment, together with the other assets of the Association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

(2) The Board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(3) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subdivision (c)(2) of this section, the Board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision (1) of this subsection.

(f) The Board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer to that account, the amount by which the assets of the account exceed the amount the Board finds is necessary to carry out during the coming year the obligations of the Association with regard to that account, including

assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses claims.

(g) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance or health maintenance organization business within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(h) The Association shall issue to each member insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the Commissioner may approve.

(i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(2) Within 60 days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within 30 days after a final decision has been made, the Association shall notify the protesting member insurer in writing of that final decision. Within 60 days after receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Commissioner.

(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer protests to the Commissioner for a final decision, with or without a recommendation from the Association.

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund

due a protesting member insurer shall be paid at the rate actually earned by the Association.

(j) The Association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

§ 4180. PLAN OF OPERATION

(a)(1) The Association shall submit to the Commissioner a plan of operation and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments to the plan shall become effective upon approval in writing by the Commissioner.

(2) If the Association fails to submit a suitable plan of operation within 120 days following the effective date of this chapter or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

(1) establish procedures for handling the assets of the Association;

(2) establish the amount and method of reimbursing members of the Board of Directors under section 4177 of this chapter;

(3) establish regular places and times including virtual conference calls for meetings of the Board of Directors;

(4) establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board of Directors;

(5) establish the procedures whereby selections for the Board of Directors will be made and submitted to the Commissioner;

(6) establish any additional procedures for assessments under section 4179 of this chapter;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the Association;

(8) establish procedures whereby a Director may be removed for cause, including in the case where a member insurer Director becomes an impaired or insolvent insurer; and

(9) require the Board of Directors to establish a policy and procedures for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under subdivision 4178(1)(3) and section 4179 of this chapter, are delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this Association, or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association. A delegation under this subsection shall take effect only with the approval of both the Board of Directors and the Commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this chapter.

§ 4181. DUTIES AND POWERS OF THE COMMISSIONER

(a) In addition to the duties and powers enumerated elsewhere in this chapter, the Commissioner shall:

(1) Upon the request of the Board of Directors, provide the Association with a statement of the premiums in Vermont and in any other appropriate states for each member insurer.

(2) Notify the Board of Directors of the existence of an impaired or insolvent insurer not later than three days after a determination of impairment or insolvency is made or the Commissioner receives notice of impairment or insolvency.

(3) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the impaired insurer to promptly comply with such demand shall not excuse the Association from the performance of its powers and duties under this chapter.

(4) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the Commissioner shall be appointed conservator.

(b) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in Vermont of any member

insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$500.00 per month.

(c) A final action of the Board of Directors or the Association may be appealed to the Commissioner by a member insurer if such appeal is taken within 60 days following its receipt of notice of the final action being appealed. A final action or order of the Commissioner shall be subject to judicial review in the Vermont Supreme Court.

(d) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may notify all interested persons of the effect of this chapter.

§ 4182. PREVENTION OF INSOLVENCIES

(a) To aid in the detection and prevention of member insurer impairment or insolvency, it shall be the duty of the Commissioner to:

(1) Notify the commissioners of all the other states within 30 days following the action taken or the date the action occurs when the Commissioner takes any of the following actions against a member insurer:

(A) revocation of license;

(B) suspension of license; or

(C) makes a formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from Vermont, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

(2) Report to the Board of Directors when the Commissioner has taken any of the actions set forth in subdivision (1) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the Board of Directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) Report to the Board of Directors when the Commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer.

(4) Furnish to the Board of Directors the NAIC Insurance Regulatory Information System ratios and listings of companies not included in the ratios

developed by the National Association of Insurance Commissioners, and the Board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the Board of Directors until such time as made public by the Commissioner or other lawful authority.

(b) The Commissioner may seek the advice and recommendations of the Board of Directors concerning any matter affecting the duties and responsibilities of the Commissioner regarding the financial condition of member insurers and insurers or health maintenance organizations seeking admission to transact business in Vermont.

(c) The Board of Directors, upon majority vote, may make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer or health maintenance organization seeking to do business in Vermont. Such reports and recommendations shall not be considered public documents.

(d) The Board of Directors, upon majority vote, shall notify the Commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(e) The Board of Directors, upon majority vote, may make recommendations to the Commissioner for the detection and prevention of member insurer insolvencies.

(f) The Board of Directors shall, at the conclusion of any insurer impairment or insolvency in which the Association carried out its duties under this chapter or exercised any of its powers under this chapter, prepare a report on the history and causes of such impairment or insolvency, based on the information available to the Association, and submit such report to the Commissioner.

§ 4183. CREDITS FOR ASSESSMENTS PAID

(a) A member insurer may offset against its premium tax liability to Vermont an assessment described in subsection 4179(h) of this chapter to the extent of 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) A member insurer that is exempt from taxes referenced in subsection (a) of this section may recoup its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup the assessments over a reasonable

period of time, as approved by the Commissioner. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission. If a member insurer collects excess surcharges, the insurer shall remit the excess amount to the Association, and the excess amount shall be applied to reduce future assessments in the appropriate account.

(c) Any sums acquired by refund, pursuant to subsection 4179(f) of this chapter, from the Association that have been written off by contributing insurers and offset against premium taxes as provided in subsection (a) of this section, and are not then needed for purposes of this chapter, shall be paid by the insurer to the Commissioner, who shall deposit them with the State Treasurer for credit to the General Fund.

§ 4184. MISCELLANEOUS PROVISIONS

(a) This chapter shall not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b)(1) Records shall be kept of all meetings of the Board of Directors to discuss the activities of the Association in carrying out its powers and duties under section 4178 of this chapter. The records of the Association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except:

(A) upon the termination of the impairment or insolvency of the member insurer; or

(B) upon the order of a court of competent jurisdiction.

(2) Nothing in this subsection shall limit the duty of the Association to render a report of its activities under section 4185 of this chapter.

(c) For the purpose of carrying out its obligations under this chapter, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to subsection 4178(k) of this chapter. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets that the reserves that should have been established for such policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

(d) As a creditor of the impaired or insolvent insurer pursuant to subsection (c) of this section and consistent with section 7073 of this title, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days after a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(e)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders, contract owners, certificate holders, enrollees, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyowners, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the Association with interest thereon for funds expended in carrying out its powers and duties under section 4178 of this chapter with respect to the member insurer have been fully recovered by the Association.

(f) If an order for liquidation or rehabilitation of a member insurer domiciled in Vermont has been entered, the receiver appointed under such order shall have a right to recover on behalf of the member insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the following limitations:

(1) A distribution shall not be recoverable if the member insurer shows that, when paid, the distribution was lawful and reasonable and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(2) Any person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. Any person who was an affiliate that controlled the

member insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(3) The maximum amount recoverable under this subdivision shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(g) If any person liable under subdivision (f)(2) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

§ 4185. EXAMINATION; ANNUAL REPORT

The Association shall be subject to examination and regulation by the Commissioner. The Board of Directors shall submit to the Commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner and a report of its activities during the preceding calendar year. Upon request of a member insurer, the Association shall provide the member insurer with a copy of the report.

§ 4186. TAX EXEMPTIONS

The Association shall be exempt from payment of all fees and all taxes levied by Vermont or any of its subdivisions, except taxes levied on real property.

§ 4187. IMMUNITY

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Association or its agents or employees, members of the Board of Directors, or the Commissioner or the Commissioner's representatives for any action or omission by them in the performance of their powers and duties under this chapter. This immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

§ 4188. STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS

All proceedings in which the insolvent insurer is a party in any court in Vermont shall be stayed 180 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on the default, the

Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

§ 4189. PROHIBITED ADVERTISEMENT; NOTICE TO POLICY OWNERS

(a) No person, including a member insurer, or agent or affiliate of a member insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, that uses the existence of the Insurance Guaranty Association of Vermont for the purpose of sales, solicitation, or inducement to purchase any form of insurance or other coverage covered by this chapter. However, this section shall not apply to the Vermont Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance or coverage by a health maintenance organization.

(b) Within 180 days after the effective date of this chapter, the Association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (c) of this section. This document shall be submitted to the Commissioner for approval. At the expiration of the 60th day after the date on which the Commissioner approves the document, a member insurer may not deliver a policy or contract to a policy owner, contract owner, certificate holder, or enrollee unless the summary document is delivered to the policy owner, contract owner, certificate holder, or enrollee at the time of delivery of the policy or contract. The document shall also be available upon request by a policy owner, contract owner, certificate holder, or enrollee. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the policy owner, contract owner, certificate holder, or enrollee is covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the Association as amendments to the chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, enrollee, or insured any greater rights than those stated in this chapter.

(c) The document prepared under subsection (b) of this section shall contain a clear and conspicuous disclaimer on its face. The Commissioner shall establish the form and content of the disclaimer. The disclaimer shall:

(1) state the name and address of the Association and the Department of Financial Regulation;

(2) prominently warn the policy owner, contract owner, certificate holder, or enrollee that the Association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in Vermont;

(3) state the types of policies or contracts for which guaranty funds will provide coverage;

(4) state that the member insurer and its agents are prohibited by law from using the existence of the Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance or health maintenance organization coverage;

(5) state that the policy owner, contract owner, certificate holder, or enrollee should not rely on coverage under the Association when selecting an insurer or health maintenance organization;

(6) explain rights available and procedures for filing a complaint to allege a violation of any provision of this chapter; and

(7) provide other information as directed by the Commissioner, including sources for information about the financial condition of insurers, provided that the information is not proprietary and is subject to disclosure under Vermont's Public Records Act.

(d) A member insurer shall retain evidence of compliance with subsection (b) of this section for so long as the policy or contract for which the notice is given remains in effect.

§ 4190. PROSPECTIVE APPLICATION

(a) This chapter shall apply to all matters relating to any impaired or insolvent insurer for which the Association first became obligated on or after July 1, 2023.

(b) Matters relating to any impaired or insolvent insurer for which the Association first became obligated prior to July 1, 2023, shall be governed by the provisions of this chapter in effect at the time the Association first became obligated for such matters.

Sec. 10. 8 V.S.A. § 7033 is amended to read:

§ 7033. INJUNCTIONS AND ORDERS

(a) A receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, restraining

orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:

- (1) the transaction of further business;
- (2) the transfer of property;
- (3) interference with the receiver or with a proceeding under this chapter;
- (4) waste of the insurer's assets;
- (5) dissipation and transfer of bank accounts;
- (6) the institution or further prosecution of any actions or proceedings;
- (7) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders;
- (8) the levying of execution against the insurer, its assets or its policyholders;
- (9) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (10) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
- (11) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(b) The receiver may apply to a court outside the State for the relief described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, subsection 7054(a) of this title, or any other provision of this chapter to the contrary, no person, for more than 10 days, shall be restrained, stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action under any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank is a party.

(d) A federal home loan bank exercising its rights regarding collateral pledged by an insurer-member shall, within seven days after receiving a redemption request made by the insurer-member, repurchase any of the insurer-member's outstanding capital stock in excess of the amount the insurer-member must hold as a minimum investment. The federal home loan bank shall repurchase the excess outstanding capital stock only to the extent that it determines in good faith that the repurchase is both of the following:

(1) permissible under federal laws and regulations and the federal home loan bank's capital plan; and

(2) consistent with the capital stock practices currently applicable to the federal home loan bank's entire membership.

(e) Not later than 10 days after the date of appointment of a receiver in a proceeding under this chapter involving an insurer-member of a federal home loan bank, the federal home loan bank shall provide to the receiver a process and timeline for the following:

(1) the release of any collateral held by the federal home loan bank that exceeds the amount that is required to support the secured obligations of the insurer-member and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer-member;

(2) the release of any collateral of the insurer-member remaining in the federal home loan bank's possession following repayment in full of all outstanding secured obligations of the insurer-member;

(3) the payment of fees owed by the insurer-member and the operation, maintenance, closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed upon by the receiver and the federal home loan bank; and

(4) any redemption or repurchase of federal home loan bank stock or excess stock of any class that the insurer-member is required to own under agreements between the federal home loan bank and the insurer-member.

(f) Upon the request of a receiver appointed in a proceeding under this chapter involving a federal home loan bank insurer-member, the federal home loan bank shall provide to the receiver any available options for the insurer-member to renew or restructure a loan. In determining which options are available, the federal home loan bank may consider market conditions, the terms of any loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and the federal laws and regulations applicable to federal home loan banks.

(g) As used in this section, "federal home loan bank" means an institution chartered under the "Federal Home Loan Bank Act of 1932," 12 U.S.C. 1421, et seq. and "insurer-member" means a member of the federal home loan bank in question that is an insurer.

Sec. 11. 8 V.S.A. § 7065 is amended to read:

§ 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

* * *

(e) Notwithstanding subsection (a) of this section, section 7066 of this title, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party, that is made, incurred, or assumed prior to or after the filing of a successful petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under this section or section 7066 of this title; provided, however, that a transfer may be avoided under this section or section 7066 of this title if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Sec. 12. 8 V.S.A. § 7067 is amended to read:

§ 7067. VOIDABLE PREFERENCES AND LIENS

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of

the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if:

(A) the insurer was insolvent at the time of the transfer of property;

(B) the transfer of property was made within four months before the filing of the petition;

(C) the creditor receiving it or to be benefited by it or the creditor's agent acting with reference to it had, at the time when the transfer of property was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(D) the creditor receiving transferred property was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than five per centum of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, ~~he or she~~ the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by ~~him or her~~ the purchaser or lienor. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

(4) Notwithstanding subdivision (2) of this section, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any preference arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party.

* * *

Sec. 12a. STUDY; AUTOMOBILE INSURANCE; LABOR RATES; USE
OF AFTERMARKET PARTS; BUSINESS PRACTICES

(a) In order to ensure that the business practices of automobile insurance companies in Vermont are fair and reasonable, the Commissioner of Financial Regulation shall conduct a study of labor rates, the use of aftermarket parts, market conditions, and other business practices identified in this section. The Commissioner shall investigate and make findings and recommendations regarding the following:

(1) The average hourly labor rates charged by auto body shops in Vermont on both a statewide and a regional basis; the rates charged in other jurisdictions, including the regions of New York, Massachusetts, and New Hampshire that share a border with Vermont; and the rates paid by automobile insurance companies for repair work in Vermont. In addition, the Commissioner shall consult with the Economic & Labor Market Information Division within the Department of Labor to obtain, as a reference, hourly wage data for auto body and related repairers. The Commissioner shall also take into consideration other forms of insurance labor reimbursement including flat rates for repair work, as well as the factors used by auto body shops and insurance companies to arrive at labor repair rates. Based on this data, the Commissioner shall recommend whether Vermont should establish a minimum labor reimbursement rate for both first- and third-party automobile insurance claims and, if so, what that rate should be and how it should be adjusted to reflect market changes such as inflation.

(2) Whether the appraisal practices of automobile insurance companies and independent appraisers equally consider the interests of insurance companies, auto body shops, and consumers.

(3) The extent to which an automobile insurance company controls or influences repair work done at an auto body shop chosen by the consumer and how any such control or influence should affect the liability of the insurance company, particularly regarding the quality and safety of the repair work.

(4) The use of direct repair programs, generally, and their impact on both the automobile repair industry and consumers.

(5) The disclosures made to a consumer by an insurance company, both at the point of sale and upon the submission of a claim, as well as the existing consumer information developed and maintained by the Department of Financial Regulation and whether and to what extent additional disclosures are necessary to ensure a consumer is adequately informed of their potential financial exposure under a policy, including with regard to any labor rate

differential, material rate differential, hour differential, and rental differential for loss of use.

(6) Whether Insurance Regulation I-79-2 (revised) should be updated to reflect market changes or business practices that may impede the prompt, fair, and equitable settlement of claims in which liability has become reasonably clear. In particular, the Commissioner shall review Section 8 of the regulation, which concerns standards for the settlements of property and physical damage claims, and further clarify the independence of the appraisals under subdivision (A)(1); the ability of an insurer to negotiate with a repairer under subdivision (A)(2); and the ability of an insurer to insist that repairs be done by a specific repairer under subdivision (A)(3). If the Commissioner determines revisions to the regulation are necessary, the Commissioner shall initiate a rulemaking to effectuate those revisions.

(7) The betterment practices of insurance companies and whether the valuation methods employed are legitimate and fair to consumers.

(8) The use of aftermarket or recycled parts in automobile repairs, including their potential cost savings, and whether aftermarket parts, in particular, should be certified and whether and to what extent an insurer should be liable for incidental costs related to the use of aftermarket or recycled parts, such as for any necessary modifications, and the notification that should be provided to a consumer regarding the use of aftermarket or recycled parts in a repair.

(9) The number and nature of complaints received by the Department of Financial Regulation with respect to automobile insurance policies. In addition, the Commissioner shall request and the Attorney General shall provide the number and nature of any such complaints received by the Consumer Assistance Program, as well as the number and nature of any complaints regarding repair work by auto body shops.

(10) Any other acts or practices or market conditions related to insurance coverage for automobile repairs and whether any additional regulatory measures are necessary to prevent anticompetitive behavior and ensure the interests of all parties, especially consumers, are adequately protected.

(11) How the costs of auto repairs contribute to the price and availability of automobile insurance in Vermont and whether the establishment of a minimum labor rate and all other findings and recommendations made by the Commissioner pursuant to this section could impact the price and availability of automobile insurance in Vermont.

(b) The Commissioner shall establish a process for soliciting and receiving input regarding the matters addressed in this section from stakeholders, including insurance companies, consumers, auto body shops, and any other persons deemed appropriate by the Commissioner.

(c) The Commissioner of Financial Regulation shall submit a final report that includes the Commissioner's finding and recommendations under this section to the House Committee on Commerce and Economic Development and the Senate Committees on Finance and on Judiciary on or before November 15, 2024 and shall submit an interim progress report to the same legislative committees on or before January 15, 2024.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

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

Consideration Postponed

S. 33.

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous judiciary procedures.

Was taken up.

An act relating to miscellaneous judiciary procedures

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

Sec. 1. 3 V.S.A. § 5014(f) is amended to read:

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

Sec. 2. 4 V.S.A. § 22 is amended to read:

§ 22. DESIGNATION AND SPECIAL ASSIGNMENT OF JUDICIAL OFFICERS AND RETIRED JUDICIAL OFFICERS

(a)(1) The Chief Justice may appoint and assign a retired Justice or judge with the Justice's or judge's consent or a Superior or Probate judge to a special assignment on the Supreme Court. The Chief Justice may appoint, and the Chief Superior Judge shall assign, an active or retired Justice or a retired judge, with the Justice's or judge's consent, to any special assignment in the Superior Court or the Judicial Bureau.

(2) The Chief Superior Judge may appoint and assign a judge to any special assignment in the Superior Court. ~~As used in~~ For purposes of this subdivision, a judge shall include a Superior judge, a Probate judge, a Family Division magistrate, or a judicial hearing officer, or a judicial master.

* * *

Sec. 3. 4 V.S.A. § 27 is amended to read:

§ 27. COURT TECHNOLOGY SPECIAL FUND

There is established the Court Technology Special Fund ~~which~~ that shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5. Administrative fees collected pursuant to 13 V.S.A. § 7252 and revenue collected pursuant to fees established pursuant to sections 1105 and 1109 of this title shall be deposited and credited to this Fund. The Fund shall be available to the Judicial Branch to pay for contractual and operating expenses and project-related staffing not covered by the General Fund related to the following:

(1) ~~The~~ the acquisition and maintenance of software and hardware needed for case management, electronic filing, an electronic document management system, and the expense of implementation, including training;

(2) ~~The~~ the acquisition and maintenance of electronic audio and video court recording and conferencing equipment; and

(3) ~~The~~ the acquisition, maintenance, and support of the Judiciary's information technology network, including training.

Sec. 4. 4 V.S.A. § 27b is amended to read:

§ 27b. ~~ELECTRONICALLY FILED VERIFIED DOCUMENTS SELF-ATTESTED DECLARATION IN LIEU OF NOTARIZATION~~

(a) ~~A registered electronic filer in the Judiciary's electronic document filing system may file any~~ Any document that would otherwise require the approval or verification of a notary ~~by filing the document~~ may be filed with the following language inserted above the signature and date:

"I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury or to other sanctions in the discretion of the court."

(b) A document filed pursuant to subsection (a) of this section shall not require the approval or verification of a notary.

(c) This section shall not apply to an affidavit in support of a search warrant application, ~~or to~~ an application for a nontestimonial identification order, an oath required by 14 V.S.A. §108, or consents and relinquishments in adoption proceedings governed by Title 15A.

Sec. 5. 4 V.S.A. § 32 is amended to read:

§ 32. JURISDICTION; CRIMINAL DIVISION

* * *

(c) The Criminal Division shall have jurisdiction of the following civil actions:

* * *

(12) proceedings to enforce 9 V.S.A. chapter 74, relating to energy efficiency standards for appliances and equipment; and

(13) proceedings to enforce 30 V.S.A. § 53, relating to commercial building energy standards.

Sec. 6. 4 V.S.A. § 36(a) is amended to read:

(a) Composition of the court. Unless otherwise specified by law, when in session, a Superior Court shall consist of:

* * *

Sec. 7. 12 V.S.A. § 5 is amended to read:

§ 5. DISSEMINATION OF ELECTRONIC CASE RECORDS

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

(b) This section shall not be construed to prohibit the Court from providing electronic access to:

(1) court schedules of the Superior Court, or opinions of the Criminal Division of the Superior Court;

(2) State agencies in accordance with data dissemination contracts entered into under ~~Rule 6 of the Vermont Rules of Electronic Access to Court Records~~ Rule 12 of the Vermont Rules for Public Access to Court Records; or

(3) decisions, recordings of oral arguments, briefs, and printed cases of the Supreme Court.

Sec. 8. 12 V.S.A. § 4853a is amended to read:

§ 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

* * *

(h) If the tenant fails to pay rent into court in the amount and on the dates ordered by the court, the landlord shall be entitled to judgment for immediate possession of the premises. The court shall forthwith issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, not earlier than ~~five~~ business seven days after the writ is served, or, in the case of an eviction brought pursuant to 10 V.S.A. chapter 153, 30 days after the writ is served, to put the plaintiff into possession.

Sec. 9. 12 V.S.A. § 5531 is amended to read:

§ 5531. RULES GOVERNING PROCEDURE

(a) The Supreme Court, pursuant to section 1 of this title, shall make rules under this chapter applicable to such Court providing for a simple, informal, and inexpensive procedure for the determination, according to the rules of substantive law, of actions of a civil nature of which they have jurisdiction, other than actions for slander or libel and in which the plaintiff does not claim as debt or damage more than ~~\$5,000.00~~ \$10,000.00. Small claims proceedings shall be limited in accord with this chapter and the procedures made available under those rules. The procedure shall not be exclusive, but shall be alternative to the formal procedure begun by the filing of a complaint.

(b) Parties may not request claims for relief other than money damages under this chapter. Nor may parties split a claim in excess of ~~\$5,000.00~~ \$10,000.00 into two or more claims under this chapter.

(c) In small claims actions where the plaintiff makes a claim for relief greater than \$3,500.00, the defendant shall have the right to request a special assignment of a judicial officer. Upon making this request, a Superior judge or a member of the Vermont bar appointed pursuant to 4 V.S.A. § 22(b) shall be assigned to hear the action.

(d) Venue in small claims actions shall be governed by section 402 of this title.

(e) Notwithstanding this section or any other provision of law, the small claims court shall not have jurisdiction over actions for collection of any debt greater than \$5,000.00 arising out of:

- (1) a consumer credit transaction as defined in 15 U.S.C. § 1679a; or
- (2) medical debt as defined in 18 V.S.A. § 9481.

Sec. 10. 12 V.S.A. § 5804 is amended to read:

§ 5804. OATH TO BE ADMINISTERED TO PETIT JURORS IN
CRIMINAL CAUSES

You solemnly swear or affirm that, without respect to persons or favor of any ~~man~~ person, you will well and truly try and true deliverance make, between the State of Vermont and the ~~prisoner at the bar~~ defendant, whom you shall have in charge, according to the evidence given you in court and the laws of the State. So help you God, or under the penalty of perjury pursuant to the laws of the State of Vermont.

Sec. 11. 13 V.S.A. § 3016(c) is amended to read:

(c) A person who commits an act punishable under ~~33 V.S.A. § 2581(a) or (b)~~ 33 V.S.A. § 141(a) or (b) may not be prosecuted under this section.

Sec. 12. 13 V.S.A. § 7403 is amended to read:

§ 7403. APPEAL BY THE STATE

(a) In a prosecution for a misdemeanor, questions of law decided against the State shall be allowed and placed upon the record before final judgment. The court may pass the same to the Supreme Court before final judgment. The Supreme Court shall hear and determine the questions and render final judgment thereon, or remand the cause for further trial or other proceedings, as justice and the State of the cause may require.

(b) In a prosecution for a felony, the State shall be allowed to appeal to the Supreme Court any decision, judgment, or order dismissing an indictment or information as to one or more counts.

(c) In a prosecution for a felony, the State shall be allowed to appeal to the Supreme Court from a decision or order:

- (1) granting a motion to suppress evidence;
- (2) granting a motion to have confessions declared inadmissible; or
- (3) granting or refusing to grant other relief where the effect is to impede seriously, although not to foreclose completely, continuation of the prosecution.

(d) In making this appeal, the attorney for the State must certify to the court that the appeal is not taken for purpose of delay and that:

- (1) the evidence suppressed or declared inadmissible is substantial proof of a fact material in a proceeding; or
- (2) the relief to be sought upon appeal is necessary to avoid seriously impeding such proceeding.

(e) The appeal in all cases shall be taken within seven business days after the decision, judgment, or order has been rendered. In cases where the defendant is detained for lack of bail, ~~he or she~~ the defendant shall be released pending the appeal upon such conditions as the court shall order unless bail is denied as provided in the Vermont Constitution or in other pending cases. Such appeals shall take precedence on the docket over all cases and shall be assigned for hearing or argument at the earliest practicable date and expedited in every way.

(f) For purposes of this section, “prosecution for a misdemeanor” and “prosecution for a felony” shall include youthful offender proceedings filed pursuant to 33 V.S.A. chapter 52A, and the State shall have the same right of appeal in those proceedings as it has in criminal proceedings under this section.

Sec. 13. 14 V.S.A. § 3098 is amended to read:

§ 3098. VULNERABLE NONCITIZEN CHILDREN

* * *

(i) Confidentiality. In any judicial proceedings in response to a request that the court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child’s immigration status, nationality, or place of birth that is not otherwise protected by State laws shall remain confidential. This information shall also be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the information shall be available for inspection by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child’s counsel, and the child’s guardian.

Sec. 14. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER’S LICENSE OR CERTIFICATE; PENALTIES

* * *

(g) The holder of an ignition interlock RDL or certificate shall operate only motor vehicles equipped with an ignition interlock device, shall not attempt or take any action to tamper with or otherwise circumvent an ignition interlock device, and, after failing a random retest, shall pull over and shut off the vehicle’s engine as soon as practicable. A Except as provided in subsection (k) of this section, a person who violates any provision of this section commits a criminal offense, shall be subject to the sanctions and procedures provided for in subsections 674(b)–(i) of this title, and, upon conviction, the applicable

period prior to eligibility for reinstatement under section 1209a or 1216 of this title shall be extended by six months.

* * *

(k) A person shall not knowingly and voluntarily tamper with an ignition interlock device on behalf of another person or otherwise assist another person to circumvent an ignition interlock device. A person ~~adjudicated of a violation of~~ who violates this subsection shall be ~~subject to~~ assessed a civil penalty of ~~up to~~ not more than \$500.00.

* * *

Sec. 15. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(31) Violations of 23 V.S.A. § 1213(k) relating to tampering with an ignition interlock device on behalf of another person.

* * *

Sec. 16. 32 V.S.A. § 1591 is amended to read:

§ 1591. SHERIFFS AND OTHER OFFICERS

There shall be paid to sheriffs' departments and constables in civil causes and to sheriffs, deputy sheriffs, and constables for the transportation and care of prisoners, juveniles, and patients with a mental condition or psychiatric disability the following fees:

(1) Civil process:

(A) For serving each process, the fees shall be as follows:

(i) \$10.00 for each reading or copy in which the officer is directed to make an arrest;

(ii) \$75.00 upon presentation of each return of service for the service of papers relating to divorce, annulments, separations, or support complaints;

(iii) \$75.00 upon presentation of each return of service for the service of papers relating to civil suits except as provided in ~~subdivisions (ii) and subdivision~~ subdivision (vii) of this subdivision (1)(A);

(iv) \$75.00 upon presentation of each return of service for the service of a subpoena and shall be limited to that one fee for each return of service;

(v) for each arrest, \$15.00;

(vi) for taking bail, \$15.00;

(vii) on levy of execution or order of foreclosure: for each mile of actual travel in making a demand, sale, or adjournment, the rate allowed State employees under the terms of the prevailing contract between the State and the Vermont State Employees' Association, Inc.; for making demand, \$15.00 for posting notices, \$15.00 each, and the rate per mile allowed State employees under the terms of the prevailing contract between the State and the Vermont State Employees' Association, Inc. for each mile of necessary travel; for notice of continuance, \$15.00;

* * *

Sec. 17. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

(b)(1) Notwithstanding the foregoing, inspection of such records and files by or dissemination of such records and files to the following is not prohibited:

* * *

(I) the Department for Children and Families; ~~and~~

(J) the Office of the Child, Youth, and Family Advocate for the purpose of carrying out the provisions in chapter 32 of this title;

(K) a service provider named in a disposition order adopted by the court, or retained by or contracted with a party to fulfill the objectives of the disposition order, including referrals for treatment and placement;

(L) a court diversion program or youth-appropriate community-based provider to whom the child is referred by the State's Attorney or the court, if the child accepts the referral; and

(M) other State agencies, treatment programs, service providers, or those providing direct support to the youth, for the purpose of providing supervision or treatment to the youth.

* * *

(d) Such records and files shall be available to:

(1) State's Attorneys and all other law enforcement officers in connection with record checks and other legal purposes; and

(2) the National Instant Criminal Background Check System in connection with a background check conducted on a person under 22 years of age pursuant to 18 U.S.C. § 922(t)(1)(C) and 34 U.S.C. § 40901(l).

* * *

Sec. 18. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

* * *

(b) Risk and needs screening.

(1) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts.

(2) If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening, the number and source of the collateral contacts made, and the recommendation for charging or other alternatives to the State's Attorney. The State's Attorney shall consider the results of the risk and needs screening in determining whether to file a charge. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subsection shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

(3) Information related to the present alleged offense directly or indirectly derived from the risk and needs screening or from other conversations with the Department or community-based provider shall not be used against the youth in the youth's case for any purpose, including impeachment or cross-examination, provided that the fact of the youth's participation in risk and needs screening may be used in subsequent proceedings.

(4) If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney.

(c) Referral to diversion. Based on the results of the risk and needs screening, if a child presents a low to moderate risk to reoffend, the State's Attorney shall refer the child directly to court diversion unless the State's Attorney states on the record why a referral to court diversion would not serve the ends of justice. If the court diversion program does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration.

* * *

Sec. 19. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION ORDER

* * *

(c)(1) If the court approves the motion for youthful offender treatment after an adjudication pursuant to subsection 5281(d) of this title, the court:

~~(1)(A)~~ shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

~~(2)(B)~~ may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(2) Prior to the approval of a disposition case plan, the court may refer a child directly to a youth-appropriate community-based provider that has been approved by the department and which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for further proceedings, including the imposition of the disposition order.

(d) The Department for Children and Families and the Department of Corrections shall be responsible for supervision of and providing services to the youth until ~~he or she~~ the youth reaches 22 years of age. Both Departments shall designate a case manager who together shall appoint a lead Department to have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by both Departments.

Sec. 20. 13 V.S.A. chapter 76A is added to read:

CHAPTER 76A. DOMESTIC TERRORISM

§ 1703. DOMESTIC TERRORISM

(a) As used in this section:

(1) “Domestic terrorism” means engaging in or taking a substantial step to commit a violation of the criminal laws of this State with the intent to:

(A) cause death or serious bodily injury to multiple persons; or

(B) threaten any civilian population with mass destruction, mass killings, or kidnapping.

(2) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.

(3) “Substantial step” means conduct that is strongly corroborative of the actor’s intent to complete the commission of the offense.

(b) A person who willfully engages in an act of domestic terrorism shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.

(c) It shall be an affirmative defense to a charge under this section that the actor abandoned the actor’s effort to commit the crime or otherwise prevented its commission under circumstances manifesting a complete and voluntary renunciation of the actor’s criminal purpose.

Sec. 21. 13 V.S.A. § 1703 is amended to read:

~~§ 1703. DOMESTIC TERRORISM~~

~~(a) As used in this section:~~

~~(1) “Domestic terrorism” means engaging in or taking a substantial step to commit a violation of the criminal laws of this State with the intent to:~~

~~(A) cause death or serious bodily injury to multiple persons; or~~

~~(B) threaten any civilian population with mass destruction, mass killings, or kidnapping.~~

~~(2) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.~~

~~(3) “Substantial step” means conduct that is strongly corroborative of the actor’s intent to complete the commission of the offense.~~

~~(b) A person who willfully engages in an act of domestic terrorism shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.~~

~~(c) It shall be an affirmative defense to a charge under this section that the actor abandoned his or her effort to commit the crime or otherwise prevented its commission under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose. [Repealed.]~~

Sec. 22. 20 V.S.A. § 1940(b) is amended to read:

(b) If any of the circumstances in subsection (a) of this section occur, the court with jurisdiction or, as the case may be, the Governor, shall so notify the Department, and the person’s DNA record in the State DNA database and CODIS and the person’s DNA sample in the State DNA data bank shall be removed and destroyed. The Laboratory shall purge the DNA record and all other identifiable information from the State DNA database and CODIS and destroy the DNA sample stored in the State DNA data bank. If the person has more than one entry in the State DNA database, CODIS, or the State DNA data bank, only the entry related to the dismissed case shall be deleted. The Department shall notify the person upon completing its responsibilities under this subsection, by certified mail addressed to the person’s last known address.

Sec. 23. 23 V.S.A. § 1213 is amended to read:

§ 1213. IGNITION INTERLOCK RESTRICTED DRIVER’S LICENSE OR CERTIFICATE; PENALTIES

(a)(1) An individual whose license or privilege to operate is suspended or revoked under this subchapter may operate a motor vehicle, other than a

commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL or ignition interlock certificate. Upon application, the Commissioner shall issue an ignition interlock RDL or ignition interlock certificate to an individual otherwise licensed or eligible to be licensed to operate a motor vehicle if:

(A) the individual submits a \$125.00 application fee;

(B) the individual submits satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated and of financial responsibility as provided in section 801 of this title;

(C) at least one year has passed since the suspension or revocation was imposed if the offense involved death or serious bodily injury to an individual other than the operator; ~~and~~

(D) the applicable period set forth in this subsection has passed since the suspension or revocation was imposed if the offense involved refusal of an enforcement officer's reasonable request for an evidentiary test:

(i) 30 days for a first offense;

(ii) 90 days for a second offense; or

(iii) one year for a third or subsequent offense; and

(E) the individual is serving a suspension pursuant to section 2506 if the individual was charged with a violation of subdivision 1201(a) of this title and pled guilty to a reduced charge of negligent operation under section 1091 of this title, notwithstanding any points assessed against the individual's driving record for the negligent operation offense under section 2502 of this title.

* * *

Sec. 24. 2017 Acts and Resolves No. 142, Sec. 5, as amended by 2021 Acts and Resolves No. 65, Sec. 4, and further amended by 2021 Acts and Resolves No. 147, Sec. 33, is further amended to read:

Sec. 5. REPEAL

13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452 (creation of Vermont Sentencing Commission) shall be repealed on July 1, ~~2023~~ 2025.

Sec. 25. SENTENCING COMMISSION REPORT

On or before December 15, 2023, the Vermont Sentencing Commission shall report to the Senate and House Committees on Judiciary on whether any

modifications should be made to the definitions of stalking in 13 V.S.A. § 1061 or 15 V.S.A. § 5131.

Sec. 26. 10 V.S.A. § 8222 is added to read:

§ 8222. ACCRUAL OF ENVIRONMENTAL CONTAMINATION CLAIMS

(a) A common-law or statutory claim based on environmental contamination shall accrue so long as the contamination remains on or in an affected property or natural resource.

(b) As used in this section:

(1) “Environmental contamination” means any hazardous material or hazardous waste as defined in 10 V.S.A. § 6602, or other substance or material that has the potential to adversely affect human health or the environment (A) on or in an affected property, including in buildings or other structures, or (B) on or in a natural resource.

(2) “Natural resource” has the same meaning as in 10 V.S.A. § 6615d(a)(8).

(c) Nothing in this section shall shorten or otherwise limit any later accrual date that may apply under other source of law.

(d)(1) Except as otherwise provided in this subsection, and notwithstanding 1 V.S.A. §§ 213 and 214, or any other provision of law, this section shall apply to:

(A) any action or proceeding commenced on or after the effective date of this act; and

(B) any action or proceeding that is pending on the effective date of this act.

(2) This section shall not revive claims subject to a final, nonappealable judgment rendered prior to the effective date of this act.

(3) This section shall not apply to a criminal claim whose limitations period expired prior to the effective date.

Sec. 27. 10 V.S.A. § 8015 is amended to read:

§ 8015. STATUTE OF LIMITATIONS

Notwithstanding any other provision of law, actions brought under this chapter or chapter 211 of this title shall be commenced within the later of:

(1) six years from the date the violation is or reasonably should have been discovered; ~~or~~

(2) six years from the date a continuing violation ceases; or

(3) six years from the date of accrual under section 8222 of this title.

Sec. 28. 13 V.S.A. § 5451 is amended to read:

§ 5451. CREATION OF COMMISSION

(a) The Vermont Sentencing Commission is established for the purpose of overseeing criminal sentencing practices in the State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the General Assembly.

(b) The Commission shall consist of the following members:

* * *

(4) the Chair of the Senate Committee on Judiciary or designee;

(5) the Chair of the House Committee on Judiciary or designee;

* * *

Sec. 29. 13 V.S.A. § 3259 is amended to read:

§ 3259. SEXUAL EXPLOITATION OF A PERSON WHO IS BEING INVESTIGATED, DETAINED, ARRESTED, OR IS IN THE CUSTODY OF A LAW ENFORCEMENT OFFICER

(a) No law enforcement officer shall engage in ~~a sexual act~~ sexual conduct as defined in section 2821 of this title with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer. For purposes of this section “detaining” and “detained” include a traffic stop or questioning pursuant to an investigation of a crime.

(b)(1) No law enforcement officer shall engage in sexual conduct as defined in section 2821 of this title with a person whom the officer:

(A) is investigating pursuant to an open investigation;

(B) knows is being investigated by another law enforcement officer pursuant to an open investigation; or

(C) knows is a victim or confidential informant in any open investigation.

(2) This subsection shall not apply if the law enforcement officer was engaged in a consensual sexual relationship with the person prior to the officer’s knowledge that the person was a suspect, victim, or confidential informant in an open investigation.

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

Sec. 30. 7 V.S.A. § 1005(a)(1) is amended to read:

(a)(1) A person under 21 years of age shall not possess, purchase, or attempt to purchase tobacco products, tobacco substitutes, or tobacco paraphernalia unless:

(A) the person is an employee of a holder of a tobacco license and is in possession of tobacco products, tobacco substitutes, or tobacco paraphernalia to effect a sale in the course of employment; or

(B) the person is in possession of tobacco products or tobacco paraphernalia in connection with Indigenous cultural tobacco practices.

Sec. 31. 15 V.S.A. § 1105 is amended to read:

§ 1105. SERVICE

* * *

(b)(1) A defendant who attends a hearing held under section 1103 or 1104 of this title at which a temporary or final order under this chapter is issued and who receives notice from the court on the record that the order has been issued shall be deemed to have been served. A defendant notified by the court on the record shall be required to adhere immediately to the provisions of the order. ~~However, even when the court has previously notified the defendant of the order, the court shall transmit the order for additional service by a law enforcement agency. The clerk shall mail a copy of the order to the defendant at the defendant's last known address.~~

* * *

Sec. 32. VERMONT SENTENCING COMMISSION REPORT ON
WHETHER TO ELIMINATE CASH BAIL

(a)(1) The Vermont Sentencing Commission, in consultation with the entities designated in subdivision (2) of this subsection, shall identify the conditions that would be required to move toward the elimination of the use of cash bail for the purpose of mitigating risk of flight from prosecution and make a recommendation as to whether cash bail should be eliminated in Vermont. If the Commission proposes to eliminate cash bail, it shall provide a proposal that does so.

(2) The Commission shall solicit input from:

(A) the Vermont Network Against Domestic and Sexual Violence;

(B) the Community Justice Unit of the Office of the Attorney General;

(C) Vermont Legal Aid;

(D) the Vermont Office of Racial Equity;

(E) the Vermont chapter of the American Civil Liberties Union;

(F) the Vermont Freedom Fund; and

(G) national experts on bail reform.

(b) The Commission shall report its findings and recommendations to the General Assembly on or before December 1, 2023.

Sec. 33. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with an amendment as follows:

By inserting a new Sec. 33 to read as follows:

Sec. 33. EXECUTIVE DIRECTOR OF DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS; AUTHORITY TO REASSIGN FRANKLIN COUNTY STATE'S ATTORNEY'S OFFICE EMPLOYEES

The Executive Director of the Department of State's Attorneys and Sheriffs is authorized to reassign the supervision of employees in the Franklin County State's Attorney's Office to other State's Attorneys or to the Executive Director's Office until the Executive Committee of the Department of State's Attorneys and Sheriffs determines that the reassignment is no longer necessary.

And by renumbering the remaining section to be numerically correct.

Pending the question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, consideration was postponed to the next legislative day.

Committee of Conference Appointed

S. 6.

An act relating to law enforcement interrogation policies.

Was taken up.

Pursuant to the request of the Senate, the President announced the appointment of

Senator Sears
Senator Hashim
Senator Norris

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Rules Suspended; Bills Messaged

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

H. 479, H. 489, H.504, H. 505, H. 506, H. 507, S. 4, S. 6, S. 47, S. 89, S. 95.

Adjournment

On motion of Senator Baruth, the Senate adjourned until ten o'clock in the forenoon on Thursday, May 11, 2023.