
TUESDAY, MARCH 17, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

Pledge of Allegiance

The President *pro tempore* then led the members of the Senate in the pledge of allegiance.

Bill Referred to Committee on Finance**S. 107.**

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

An act relating to an entrepreneurial manifesto for Vermont.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 110.

By Senator Hartwell,

An act relating to sheltering livestock.

To the Committee on Judiciary.

S. 111.

By Senator White,

An act relating to legislative apportionment board appointments.

To the Committee on Government Operations.

S. 112.

By Senator Racine,

An act relating to requiring postsecondary credits in African American history as a condition of teacher licensing.

To the Committee on Education.

S. 113.

By Senators Ayer, Carris, Cummings, Giard, Hartwell, Lyons and White,
An act relating to coyote hunting competitions.
To the Committee on Natural Resources and Energy.

S. 114.

By Senator Hartwell,
An act relating to clarifying the district of residence of a student whose
parents live in different districts from each other.
To the Committee on Education.

S. 115.

By Senators Shumlin, Campbell and Ayer,
An act relating to civil marriage .
To the Committee on Judiciary.

S. 116.

By Senators Ayer, Bartlett, Campbell, Giard, Hartwell, MacDonald,
McCormack, Nitka and White,
An act relating to public health and preventive health services for
agricultural and food service workers.
To the Committee on Health and Welfare.

S. 117.

By Senators Ayer, Bartlett, Carris and Racine,
An act relating to the date of the primary election.
To the Committee on Government Operations.

S. 118.

By Senator Racine,
An act relating to improving the nutrition of low-income children.
To the Committee on Health and Welfare.

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

J.R.S. 23. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 20, 2009, it be to meet again no later than Tuesday, March 24, 2009.

Joint Resolution Placed on Calendar

J.R.S. 24.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By the Committee on Judiciary,

Joint resolution relating to criminal procedure, the sex offender registry, and the Adam Walsh Child Protection and Safety Act of 2006.

Whereas, in 2006, President Bush signed the Adam Walsh Child Protection and Safety Act, and the states are required to comply with the Act by July 27, 2009, or lose 10 percent of the state's federal Byrne/Justice Access Grant funds, and

Whereas, the General Assembly agrees with the Act's purpose of protecting the public, especially children, from violent sex offenders, as evidenced by the substantial amount of legislation enacted in Vermont during the past five years to protect citizens of our state from the dangers that sex offenders pose, and

Whereas, despite the Act's good intentions, the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the Act, has not certified any state in substantial compliance largely due to the costs and complexities associated with the Act, and

Whereas, regulations that former United States Attorney General Alberto Gonzales issued to implement the Act have exacerbated the Act's problems and made state compliance even more difficult, and

Whereas, the inability to comply with the Act means that every state in the country stands to lose 10 percent of its federal Byrne/Justice Access Grant funds on July 27 of this year, and

Whereas, in addition to its financial challenges for states, the Act contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices and at a substantial financial cost to the state, and

Whereas, Vermont has adopted a practice of assigning offender risk levels through the use of actuarial risk assessment instruments that have a high correlation to sexual recidivism, and

Whereas, the Act mandates an entirely different offense tier structure and demands that risk determinations be based solely on an offender's crime of conviction, a methodology that, according to the most recent research, is a far less reliable predictor of reoffense than the use of actuarial tools, and

Whereas, Vermont, long a national leader in juvenile justice matters, has since 1981 permitted prosecutors to hold minors accountable for serious criminal behavior by charging them in adult court for serious crimes, and is therefore not an appropriate state for the Act's retroactive application to juveniles, and

Whereas, the Council of State Governments found that the Act's juvenile provisions "contradict the rehabilitative intent and confidentiality that has been inherent in the juvenile justice system" and "ignore important developmental differences between juveniles and adults, namely that juvenile sex offenders are at a much lower risk to reoffend than adult sex offenders," and, on the basis of those findings, adopted a resolution on December 6, 2008, strongly opposing the Act's application to juvenile sex offenders and urging Congress to revise it to address more accurately the needs of juvenile offenders, and

Whereas, the National Conference of State Legislatures's 2008-09 Law and Criminal Justice Committee policies state that "NCSL objects to the Adam Walsh Act's one-size-fits-all approach to classifying, registering and, in some circumstances, sentencing sex offenders" because provisions of the Act "preempt many state laws and create an unfunded mandate for states," "were crafted without state input or consideration of current state practices," and "are inflexible and, in some instances, not able to be implemented," and

Whereas, the General Assembly recognizes the Act's worthy goal of establishing some continuity and uniformity among the sex offender registry laws of the various states, but believes such a goal can be accomplished while preserving the ability of each state to develop its own approaches that are specifically fashioned to meet its particular needs and circumstances, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Vermont Congressional delegation to ask Congress to extend the state compliance date under the Adam Walsh Act and to ask the SMART office to reconsider the rules issued under it, so that Congress and the states have the opportunity to work toward a solution that will honor the intent of the Act by creating a more consistent system of sex

offender registries throughout the country while preserving the authority of individual states to develop the approaches that are most effective for them, *and be it further*

Resolved: That the Secretary of State be directed to send copies of this resolution to the Vermont Congressional delegation and to United States Attorney General Eric Holder.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Amended; Third Reading Ordered

S. 7.

Senate bill entitled:

An act to prohibit the use of lighted tobacco products in the workplace.

Having been called up, was taken up.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, Senator Mullin, moved to amend the proposal of amendment of the Committee on Health and Welfare, in Sec. 1, 18 V.S.A. §1421 by striking out subdivision (2) and inserting in lieu thereof the following:

(2) ~~“Workplace”~~ The use of lighted tobacco products is prohibited in any “workplace,” which, for the purposes of this subchapter, means an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located. Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure ~~which~~ that also serves as the employee's or employer's personal residence. For schools, workplace ~~shall include~~ includes any enclosed location ~~at which~~ where instruction or other school-sponsored functions are occurring and students are present.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Third Reading Ordered

H. 166.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the Vermont Student Assistance Corporation.

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.

Bills Amended; Third Readings Ordered

S. 2.

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

An act relating to offenders with a mental illness or other functional impairment.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 701a is amended to read:

§ 701a. SEGREGATION OF INMATES WITH A SERIOUS MENTAL ILLNESS FUNCTIONAL IMPAIRMENT

(a) The commissioner shall adopt rules pursuant to chapter 25 of Title 3 regarding the classification, treatment, and segregation of an inmate with a serious ~~mental illness~~ functional impairment as defined in ~~subdivision 906(1) and identified under subchapter 6~~ of this ~~title~~ chapter; provided that the length of stay in segregation for an inmate with a serious ~~mental illness~~ functional impairment:

(1) Shall not exceed 15 days if the inmate is segregated for disciplinary reasons.

(2) Shall not exceed 30 days if the inmate requested the segregation, except that the inmate may remain segregated for successive 30-day periods following assessment by a qualified mental health professional and approval of a physician for each extension.

(3) Shall not exceed 30 days if the inmate is segregated for any reason other than the reasons set forth in subdivision (1) or (2) of this subsection, except that the inmate may remain segregated for successive 30-day periods following a due process hearing for each extension, which shall include

assessment by a qualified mental health professional and approval of a physician.

(b) For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, “segregation” means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons.

(c) On or before the 15th day of each month, the department’s health services director shall provide to the joint legislative corrections oversight committee a report that, while protecting inmate confidentiality, lists each inmate who was in segregation during the preceding month by a unique indicator and identifies the reason the inmate was placed in segregation, the length of the inmate’s stay in segregation, whether the inmate has a serious ~~mental illness~~, functional impairment or is otherwise ~~on the department’s mental health roster~~ identified as receiving mental health services, and, if so, the nature of the ~~mental illness~~ functional impairment or services provided. The report shall also indicate any incident of self harm or attempted suicide by inmates in segregation. ~~The committee chair~~ department shall ensure that a copy of the report is forwarded to the Vermont defender general and the executive director of Vermont Protection and Advocacy, Inc. on a monthly basis.

Sec 2. 28 V.S.A. chapter 11, subchapter 6 is amended to read:

Subchapter 6. Services for Inmates with Serious
~~Mental Illness~~ Functional Impairment

§ 906. DEFINITIONS

As used in this subchapter:

(1) “Serious ~~mental illness~~ functional impairment” means:

(A) a ~~substantial~~ disorder of thought, mood, perception, orientation, or memory, ~~any of as~~ diagnosed by a qualified mental health professional, which ~~grossly~~ substantially impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or

(B) a developmental disability, traumatic brain injury, or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impair the ability to function in the correctional setting.

(2) “~~Mental~~ Qualified mental health professional” means a person with professional training, experience, and demonstrated competence in the

treatment of mental illness or serious functional impairments who is a physician, psychiatrist, psychologist, social worker, nurse, or other qualified person determined by the commissioner of mental health.

(3) “Mental illness or disorder” means a condition that falls under any Axis I diagnostic categories or the following Axis II diagnostic categories as listed in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition (Text Revision), as updated from time to time: borderline personality disorder, histrionic personality disorder, mental retardation, obsessive-compulsive personality disorder, paranoid personality disorder, schizoid personality disorder, or schizotypal personality disorder.

(4) “Screening” means an initial survey to identify whether an inmate has immediate treatment needs or is in need of further evaluation.

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The commissioner shall administer a program of mental health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1) Within 24 hours of admittance to a correctional facility all inmates shall be screened for any signs of serious mental illness or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(2) A thorough evaluation, conducted in a timely and reasonable fashion by a qualified mental health professional, which includes a review of available medical and psychiatric records. The evaluation shall be made of each inmate who:

(A) has a history of serious mental illness or disorder;

(B) has received community rehabilitation and treatment services; or

(C) who shows signs or symptoms of serious mental illness or disorder or of serious functional impairment at the initial screening or as observed subsequent to entering the department in a timely and reasonable fashion. The evaluation shall be conducted by a mental health professional who is qualified by training and experience to provide diagnostic, rehabilitative, treatment or therapeutic services to persons with serious mental illness. The evaluation shall include review of available medical and psychiatric records facility.

(3) The development and implementation of an individual treatment plan, when a clinical diagnosis by a qualified mental health professional indicates an inmate is suffering from ~~serious~~ mental illness or disorder or from serious functional impairment. The treatment plan shall be developed in accord with the National Commission on Corrections Health Care Standards and explained to the inmate by a qualified mental health professional.

(4) Access to a variety of services and levels of care consistent with the treatment plan to inmates suffering ~~serious~~ mental illness or disorder or serious functional impairment. These services shall include, as appropriate, the following:

(A) Follow-up evaluations.

(B) Crisis intervention.

(C) Crisis beds.

(D) Residential care within a correctional institution.

(E) Clinical services provided within the general population of the correctional facility.

(F) Services provided in designated special needs units.

(G) As a joint responsibility with the department of mental health and the department of disabilities, aging, and independent living, and working with ~~community mental health centers~~ designated agencies, the implementation of discharge planning developed in accord with the National Commission on Corrections Health Care Standards and for community services for which the offender is eligible.

(H) Other services that the department of corrections, the department of disabilities, aging, and independent living, and the department of mental health jointly determine to be appropriate.

(5) Procedures to actively seek and identify any inmate who has not received the enhanced screening, evaluation, and access to mental health services appropriate for inmates suffering from a ~~serious~~ mental illness or disorder or a serious functional impairment.

(6) Special training to medical and correctional staff to enable them to identify and initially deal with inmates with a ~~serious~~ mental illness or disorder or a serious functional impairment. This training shall include the following:

(A) Recognition of signs and symptoms of ~~serious~~ mental illness or disorder or a serious functional impairment in the inmate population.

(B) Recognition of signs and symptoms of chemical dependence and withdrawal.

- (C) Recognition of adverse reactions to psychotropic medication.
- (D) Recognition of improvement in the general condition of the inmate.
- (E) Recognition of mental retardation.
- (F) Recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action.
- (G) Suicide potential and prevention.
- (H) Precise instructions on procedures for mental health referrals.
- (I) Any other training determined to be appropriate.

Sec. 3. REPORT

The agency of human services shall make a quarterly report to the corrections oversight committee regarding the status of the Enhanced Integration of AHS Services for Seriously Functionally Impaired Persons in Corrections pilot program.

Sec. 4. SUNSET

Sec. 3 of this act shall be repealed on July 1, 2012.

And that when so amended the bill ought to pass.

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

S. 26.

Senator Mullin, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to recovery of profits from crime.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5351(8) is added to read:

(8) “Profits from crimes” means:

(A) any property obtained through or income generated from the commission of a crime in which the defendant was convicted;

(B) any property obtained by or income generated from the sale, conversion, or exchange of proceeds of a crime, including any gain realized by such sale, conversion, or exchange;

(C) any property that the defendant obtained or any income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge acquired during the commission of or in preparation for the commission of the crime, as well as any property obtained or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange, and

(D) any property defendant obtained or any income generated from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

Sec. 2. 13 V.S.A. chapter 167, subchapter 4 is added to read:

Subchapter 4. Profits from Crime

§ 5421. NOTICE OF PROFITS FROM A CRIME

(a) Every person, firm, corporation, partnership, association, or other legal entity which knowingly contracts for, pays, or agrees to pay any profits from a crime, as defined in subdivision 5351(8) of this title, to a person charged with or convicted of that crime shall give written notice to the attorney general of the payment or obligation to pay as soon as is practicable after discovering that the payment is or will be a profit from a crime.

(b) The attorney general, upon receipt of notice of a contract, agreement to pay, or payment of profits of the crime shall send written notice of the existence of such profits to all known victims of the crime at their last known addresses.

§ 5422. ACTIONS TO RECOVER PROFITS FROM A CRIME

(a) Notwithstanding any other provision of law, including any statute of limitations, any crime victim shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of that crime, or the legal representative of that convicted person, within three years of the discovery of any profits from the crime. Any damages awarded in such action shall be recoverable only up to the value of the profits of the crime. This section shall not limit the right of a victim to proceed or recover under another cause of action.

(b) The attorney general may, within three years of the discovery of any profits from the crime, bring a civil action on behalf of the state to enforce the subrogation rights described in section 5357 of this title.

(c) If the full value of any profits from the crime has not yet been claimed by either the victim of the crime or the victim's representative, the attorney general, or both, within three years of the discovery of such profits, then the

state may bring a civil action in a court of competent jurisdiction to recover the costs incurred by providing the defendant with counsel, if any, and other costs reasonably incurred in the incarceration of the defendant.

(d) Upon the filing of an action pursuant to subsection (a) of this section, the victim shall deliver a copy of the summons and complaint to the attorney general. Upon receipt of a copy of the summons and complaint, the attorney general shall send written notice of the alleged existence of profits from the crime to all other known victims at their last known addresses.

(e) To avoid the wasting of assets identified in the complaint as newly discovered profits of the crime, the attorney general, acting on behalf of the plaintiff and all other victims, shall have the right to apply for all remedies that are also otherwise available to the victim.

Sec. 3. 27 V.S.A. § 2 is amended to read:

§ 2. ESTATE IN COMMON PREFERRED TO JOINT TENANCY; JOINT TENANCY WITH UNEQUAL SHARES

(a) Conveyances and devises of lands, whether for years, for life or in fee, made to two or more persons, shall be construed to create estates in common and not in joint tenancy, unless it is expressed therein that the grantees or devisees shall take the lands jointly or as joint tenants or in joint tenancy or to them and the survivors of them. This provision shall not apply to devises or conveyances made in trust or made to husband and wife or to conveyance in which it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy.

(b)(1) An instrument may create a joint tenancy in which the interests of the joint tenants are equal or unequal.

(2) Unless the instrument creating a joint tenancy contains language indicating a contrary intent:

(A) It shall be presumed that the joint tenants' interests are equal.

(B) Upon the death of a joint tenant, the deceased joint tenant's interest shall be allocated among the surviving joint tenants, as joint tenants, in proportion to their respective joint interests at the time of the deceased joint tenant's death.

(c) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes immediately to the decedent's estate, and the killer has no rights of survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan

associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.

(d) A final judgment of conviction of an unlawful and intentional killing is conclusive for purposes of this section. In the absence of a conviction a court may determine by clear and convincing evidence whether the killing was unlawful and intentional for purposes of this section.

(e) A severance under subsection (c) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a certified copy of the judgment referenced in subsection (d) is recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership, but the killer is liable for the amount of the proceeds or the value of the property.

(f) The rights of a mortgage or lienholder in any property that is severed under subsection (c) of this section shall not be affected.

And that when so amended the bill ought to pass.

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

S. 27.

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

An act relating to tastings and sale of wines by wineries.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2(15), (16), and (28) are amended to read:

(15) "Manufacturer's or rectifier's license": a license granted by the liquor control board that permits the holder to manufacture or rectify, as the case may be, malt beverages and vinous beverages for export and for sale to bottlers or wholesale dealers, or spirituous liquors for export and for sale to the liquor control board, upon application of a manufacturer or rectifier and the payment to the liquor control board of the license fee as required by subdivision 231(1) of this title for either license. The liquor control board may grant to a licensed manufacturer or rectifier a first class restaurant or cabaret license or first and third class restaurant or cabaret license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's premises. A manufacturer of malt beverages who also holds a first class restaurant or cabaret license may serve to a customer malt beverages by the glass, not to exceed eight glasses at

one time and not to exceed four ounces in each glass. The liquor control board may grant to a licensed manufacturer or a rectifier of malt or vinous beverages a second class license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer's or rectifier's premises. A licensed manufacturer or rectifier of vinous beverages may serve, with or without charge, at an event held on or near the premises of the licensee, vinous and malt beverages, provided the licensee gives the department written notice of the event, including details required by the department, at least 15 days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer. Upon application and payment of the license fee as required by subdivision 231(11) of this title, the liquor control board may grant to a licensed manufacturer or rectifier of vinous beverages fourth class or farmers' market licenses permitting the licensee to sell ~~these~~ fortified wines and vinous beverages by the bottle to the public at the licensed premises or at a farmers' market, provided that the beverages were produced by the manufacturer or rectifier. No more than a combined total of ten fourth class and farmers' market licenses may be granted to any licensed manufacturer or rectifier. An application for a farmers' market license shall include copies of the farmers' market regulations, the agreement between the farmers' market and the applicant, and the location and dates of operation of the farmers' market. A farmers' market license shall be valid for all dates of operation for a specific farmers' market location. However, in no case may a person with an interest in more than one manufacturer's or rectifier's license have an interest in more than four fourth class licenses. The manufacturer or rectifier shall pay directly to the commissioner of taxes the sum of \$0.265 cents per gallon for every gallon of malt beverage and the sum of \$0.55 cents per gallon for each gallon of vinous beverage manufactured by the manufacturer or rectifier and provided for sale pursuant to the first class license or the second class license or the fourth class license or combination thereof held by the manufacturer or rectifier. Holders of a manufacturer's or rectifier's second class license for malt beverages may distribute, with or without charge, malt beverages by the glass, not to exceed two ounces per product and eight ounces in total, to all persons of legal drinking age. The malt beverages must be consumed upon the premises of the holder of the license. At the request of a person holding a first class or second class license, a holder of a manufacturer's or rectifier's license for malt beverages may distribute without charge to the management and staff of the license holder, provided they are of legal drinking age, no more than four ounces per person of a malt beverage for the purpose of promoting the beverage. Written notice shall be provided to the department of liquor control at least 10 days prior to the date of the tasting. A licensed manufacturer or rectifier of spirits may do either or both of the following:

(1) Sell by the glass or bottle spirits manufactured by the licensee to the public only at the manufacturer's or rectifier's premises.

(2) Dispense by the glass, with or without charge, spirits manufactured by the licensee provided that no more than one-quarter ounce per product and no more than one ounce in total is dispensed to each individual of legal age.

(16) "Person," as applied to licensees: , means individuals who are ~~both~~ citizens ~~and residents of the state~~ of the United States, partnerships composed ~~solely~~ of individuals, a majority of whom are ~~both~~ citizens ~~and residents~~ of the state United States, and ~~to~~ corporations organized under the laws of this or another state ~~whereof~~ in which a majority of the directors are ~~both~~ citizens of the United States ~~and residents of this state~~, or to corporations subject to the jurisdiction of the public service board, and to limited liability companies organized under the laws of this or another state in which a majority of the members or managers are ~~both~~ citizens of the United States ~~and residents of this state~~.

* * *

(28) "Fourth class license": the license granted by the liquor control board permitting a manufacturer or rectifier of vinous beverages to sell fortified wines manufactured by the licensed manufacturer or rectifier and vinous beverages by the bottle and distribute vinous those beverages by the glass as hereinbefore defined.

Sec. 2. 7 V.S.A. § 223 is amended to read:

§ 223. ~~FIRST AND SECOND CLASS LICENSES; RESIDENCE REQUIREMENTS; LICENSES TO ENFORCEMENT OFFICER OR CONTROL BOARD MEMBER; EXCEPTIONS~~

~~(a) No first or second class license for the sale of malt or vinous beverages shall be granted to an individual, unless the individual is, at the time of application, a legal resident of the town or city in which the application is made. No first or second class license shall be granted to a partnership unless one or more of its general partners is a legal resident of the town or city in which the application is made and a majority of the partners are both legal residents of Vermont and U.S. citizens. No license of any class shall be granted to any enforcement officer or to any person or corporation acting in his or her the officer's behalf. A member of a local control board to whom or in behalf of whom a first or second class license was issued by that board shall not participate in any control board action regarding any first or second class license. If a majority of the members of a local control board is unable to participate in a control board action regarding any first or second class license, that action shall be referred to the state liquor control board for investigation and action. An application for a first or second class license by or in behalf of~~

a member of the local control board or a complaint or disciplinary action regarding a first or second class license issued by a board on which any member is a licensee shall be referred to the state liquor control board for investigation and action. ~~The provisions of this section, however, shall not apply where application is made by a citizen and legal resident of a town or city in Vermont for a license to sell malt or vinous beverages in a town or city wherein he or she is not a legal resident, provided such applicant owns improved real estate or personal property other than stock of goods for sale in the town wherein such license is to be issued upon which he or she pays taxes appraised by the listers at not less than \$2,500.00 on real estate or \$1,000.00 on personal property. The provisions of this title shall not apply to an individual who applies for a license to be used at the site of flood control projects or national guard encampments whose application is approved by the commanding officer thereof.~~

~~(b) A second class license may be granted, however, where an application is made by a citizen and legal resident of any town or city in the state and who has openly conducted a place of business in such town or city in which the application is made for one year next prior to the making of the application, or who has purchased a going business which has been conducted openly in such town or city for a period of one year next prior to the making of the application, and who is a legal resident of the town or city in which he resides.~~

And that when so amended the bill ought to pass.

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

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

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

J.R.S. 22.

Appearing on the Calendar for notice, on motion of Senator Campbell, the rules were suspended and House proposal of amendment to joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

Was taken up for immediate consideration.

The House proposes to the Senate to amend the resolution by striking out the following: “Thursday, March 19” and inserting in lieu thereof the following: Wednesday, March 25

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Campbell moved that the Senate concur in the House proposal of amendment with an amendment, as follows;

By striking out the following: “ten o’clock” and inserting in lieu thereof the following: eight o’clock

Which was agreed to.

Message from the House No. 33

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 26. An act relating to plans for treatment of unmarked burial sites.

H. 62. An act relating to an exemption from municipal dog-control ordinances for working farm dogs.

H. 91. An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

H. 109. An act relating to the Uniform Limited Cooperative Association Act.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 63. House concurrent resolution congratulating the Pico Ski Club on its 60th anniversary.

H.C.R. 64. House concurrent resolution in memory of John C. Donahue Jr. of Northfield.

H.C.R. 65. House concurrent resolution congratulating the Roxbury Free Library on its 75th anniversary.

H.C.R. 66. House concurrent resolution commemorating the 60th anniversary of U.S. Senator George Aiken’s popularizing the geographic designation Northeast Kingdom.

H.C.R. 67. House concurrent resolution honoring retiring Putney town moderator John Caldwell.

H.C.R. 68. House concurrent resolution recognizing the 62 years of extraordinary school board service of Dr. Harry Rowe.

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

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

S.C.R. 12. Senate concurrent resolution commemorating the tenth anniversary of the sister-state relationship between the state of Vermont and the province of Taiwan.

S.C.R. 13. Senate concurrent resolution honoring the civic education role of the Bridport Grange's legislative breakfast.

And has adopted the same in concurrence.

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Illuzzi, Bartlett, Cummings, Doyle and McCormack,

By Representatives Nease and Partridge,

S.C.R. 12.

Senate concurrent resolution commemorating the tenth anniversary of the sister-state relationship between the state of Vermont and the province of Taiwan.

By Senators Ayer and Giard,

By Representative Bray and others,

S.C.R. 13.

Senate concurrent resolution honoring the civic education role of the Bridport Grange's legislative breakfast.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Smith,

H.C.R. 63.

House concurrent resolution congratulating the Pico Ski Club on its 60th anniversary.

By Representative Grad and others,

By Senators Cummings, Doyle and Scott,

H.C.R. 64.

House concurrent resolution in memory of John C. Donahue Jr. of Northfield.

By Representatives Donahue and Grad,

H.C.R. 65.

House concurrent resolution congratulating the Roxbury Free Library on its 75th anniversary.

By Representative Wheeler and others,

By Senators Choate, Illuzzi, Kitchel and Starr,

H.C.R. 66.

House concurrent resolution commemorating the 60th anniversary of U.S. Senator George Aiken's popularizing the geographic designation Northeast Kingdom.

By Representatives Mrowicki and Deen,

By Senators Shumlin and White,

H.C.R. 67.

House concurrent resolution honoring retiring Putney town moderator John Caldwell.

By Representatives Conquest and Larocque,

By Senators Choate, Kitchel and MacDonald,

H.C.R. 68.

House concurrent resolution recognizing the 62 years of extraordinary school board service of Dr. Harry Rowe.

Message from the Governor

A message was received from His Excellency, the Governor, by Dennis Casey, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the fourth day of March, 2009, he approved and signed bill originating in the Senate of the following title:

S. 13. An act relating to improving Vermont's sexual abuse response system.

**Appointment of Senate Members to the Mental Health Oversight
Committee**

Pursuant to the provisions of Sec. 141c of No. 122 of the Acts of 2004, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Mental Health Oversight Committee for terms of two years:

Senator Racine
Senator Choate
Senator Snelling
Senator White

**Appointment of Commission on International Trade and State
Sovereignty**

Pursuant to the provisions of 3 V.S.A. §23(b)(2), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Commission on International Trade and State Sovereignty during this biennium:

Senator Lyons

Appointment of Workforce Development Board

Pursuant to the provisions of 10 V.S.A. §541(a), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Workforce Development Board during this biennium:

Senator Mullin
Senator Miller

Appointment of Government Accountability Committee

Pursuant to the provisions of Sec. 5 of No. 206 of the Acts of 2008, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Government Accountability Committee during this biennium:

Senator White
Senator Snelling
Senator Cummings
Senator Mullin

Appointment of Senate Member to Petroleum Clean-Up Fund Advisory Committee

Pursuant to the provisions of 10 V.S.A. §1941(e), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Petroleum Clean-Up Fund Advisory Committee during this biennium:

Senator MacDonald

Appointment of Senate Members to the Senate Sexual Harassment Panel

Pursuant to the provisions of Senate Rule 101, the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Senate Sexual Harassment Panel (SSHP) during this biennium:

Senator Kittell
Senator Snelling
Senator Miller
Senator MacDonald
Senator Maynard
Senator Nitka

Appointment of Senate Members to the Joint Transportation Oversight Committee

Pursuant to the provisions of 19 V.S.A. §12b the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senators to serve on the Joint Transportation Oversight Committee for terms of two years:

Senator Mazza, *ex officio*
Senator Bartlett, *ex officio*
Senator Cummings, *ex officio*

**Appointment of Senate Member to the Criminal Justice Cabinet
(successor to Criminal Justice Council)**

Pursuant to the provisions of Executive Order No. 13-1, issued on July 22, 1992, by Governor Howard B. Dean, the President, on behalf of the Committee

on Committees, announced the appointment of the following Senator as a member of the Criminal Justice Cabinet during this biennium:

Senator Campbell

Appointment of Senate Member to the Education Commission of the States

Pursuant to federal law (as previously set forth in 16 V.S.A. §1503, now repealed), the President *pro tempore*, on behalf of the Committee on Committees, announced the appointment of the following Senator to serve on the Education Commission of the States during this biennium:

Senator Starr

Adjournment

On motion of Senator Mazza, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 20, 2009.

FRIDAY, MARCH 20, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mark Pitton of Montpelier.

Message from the House No. 34

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 23. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 35

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 16. An act relating to deer doing damage to forest resources.

H. 131. An act relating to the codification of and approval of an amendment to the charter of Cold Brook Fire District No. 1.

H. 160. An act relating to approval of the charter of the Town of Hartford.

H. 204. An act relating to payment of diversion program fees.

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

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

H. 232. An act relating to fiscal year 2009 budget adjustment.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

And the Speaker appointed as members of such Committee on the part of the House:

Rep. Heath of Westford
Rep. Helm of Castleton
Rep. Larson of Burlington

The House has adopted joint resolution of the following title:

J.R.H. 13. Joint resolution urging Congress to support the International Violence Against Women Act.

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

Bill Referred to Committee on Finance

S. 28.

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

An act relating to the regulation of landscape architects.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 119.

By Senators Lyons, MacDonald, Miller and Shumlin,

An act relating to renewable energy, energy efficiency, decommissioning, and rural economic development.

To the Committee on Natural Resources and Energy.

S. 120.

By Senators Carris, Ayer, Hartwell, Maynard, McCormack and Mullin,

An act relating to health care applications at points of service.

To the Committee on Health and Welfare.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 121.

By the Committee on Government Operations,

An act relating to miscellaneous election laws.

Bills Introduced

Senate bills of the following titles were severally introduced, read the first time and referred:

S. 122.

By Senators Ayer and Brock,

An act relating to recounts in elections for statewide offices.

To the Committee on Government Operations.

S. 123.

By Senator Carris,

An act relating to regulation of hospitals and health care facilities.

To the Committee on Health and Welfare.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 16.

An act relating to deer doing damage to forest resources.

To the Committee on Natural Resources and Energy.

H. 26.

An act relating to plans for treatment of unmarked burial sites.

To the Committee on Economic Development, Housing and General Affairs.

H. 62.

An act relating to an exemption from municipal dog-control ordinances for working farm dogs.

To the Committee on Agriculture.

H. 91.

An act relating to technical corrections to the juvenile judicial proceedings act of 2008.

To the Committee on Judiciary.

H. 109.

An act relating to the Uniform Limited Cooperative Association Act.

To the Committee on Agriculture.

H. 131.

An act relating to the codification of and approval of an amendment to the charter of Cold Brook Fire District No. 1.

To the Committee on Government Operations.

H. 160.

An act relating to approval of the charter of the Town of Hartford.

To the Committee on Government Operations.

H. 204.

An act relating to payment of diversion program fees.

To the Committee on Judiciary.

Joint Resolution Placed on Calendar**J.R.H. 13**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to support the International Violence Against Women Act.

Whereas, since 1996, the eastern region of the Democratic Republic of the Congo has been the epicenter of the deadliest war since World War II, leading to the deaths of nearly six million people, and

Whereas, combatants on all sides routinely use rape and sexual violence as a weapon to destroy women, families, and communities, and over 200,000 women have been raped in the course of combat, and

Whereas, Vermont is home to 175 new families from the Democratic Republic of the Congo, many of them from areas that remain embattled in conflict, and

Whereas, rape is unfortunately a not-uncommon event here in Vermont, and Congolese women share the grief Vermont women experience, but rape in a war situation forces additional levels of trauma upon women, including being gang raped, enduring the violence in a family situation with their children and husbands serving as forced onlookers, and the lack of any medical care, and

Whereas, however, the international community has failed to sanction the looting of the Democratic Republic of the Congo's spectacular wealth, and consequently, poverty in this nation is extremely high, and 80 percent of the population lives on 30 cents or less per day, and

Whereas, the International Violence Against Women Act that Vice President Biden introduced while in the U.S. Senate, and that Representative Howard Berman of California introduced in the U.S. House of Representatives, will be reintroduced in Congress during the coming weeks, and it would establish in the Department of State an Advisory Commission on International Violence Against Women, and

Whereas, the bill would among other directives provide that foreign assistance programs, as well as U.S. training of foreign military and police forces, include measures designed to prevent violence against women, and

Whereas, assistance to reduce violence against women would be beneficial for many countries but it is desperately needed in the Democratic Republic of the Congo, and

Whereas, enactment of the International Violence Against Women Act would provide both political support and tangible assistance to the struggling women of the Democratic Republic of the Congo, and

Whereas, U.S. Senator Leahy has also included funding in appropriations legislation to assist women and girls who are victims of sexual violence in the Democratic Republic of the Congo, and to train and support prosecutors and judges who handle these cases, and

Whereas, Congokazi Vermont is an organization of women in Vermont who came from the Democratic Republic of the Congo, and who are fighting to end sexual violence being perpetrated against women and children in their native country, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to support the International Violence Against Women Act and to include the Democratic Republic of the Congo among those nations specifically targeted to be assisted in the effort to stop this egregious violence, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to the Vermont Congressional Delegation and Congokazi Vermont.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Message from the Governor Appointments Referred

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Thomas, Brian of Shrewsbury - Member of the Plumbers' Examining Board, - from March 2, 2009, to February 28, 2012.

To the Committee on Economic Development, Housing and General Affairs.

Champine, Celine F. of Newport Center - Member of the Community High School of Vermont Board, - from March 2, 2009, to February 28, 2012.

To the Committee on Education.

Milne, Linda R. of Montpelier - Member of the Vermont State Colleges Board of Trustees, - from March 2, 2009, to February 28, 2015.

To the Committee on Education.

Moore, Gary W. of Bradford - Member of the Connecticut River Valley Flood Control Commission, - from March 2, 2009, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Fairbrother, Michelle of Rutland - Member of the Vermont State Colleges Board of Trustees, - from March 2, 2009, to February 28, 2015.

To the Committee on Education.

Hall, John of West Danville - Member of the State Board of Education, - from March 1, 2009, to February 28, 2015.

To the Committee on Education.

Collins, Donald of Swanton - Member of the State Board of Education, - from March 1, 2009, to February 28, 2015.

To the Committee on Education.

Livingston, Judith of Manchester - Member of the State Board of Education, - from March 1, 2009, to February 28, 2015.

To the Committee on Education.

Young, Mark of Orwell - Member of the University of Vermont and State Agricultural College Board of Trustees, - from March 1, 2009, to February 28, 2015.

To the Committee on Education.

Clark, Sue Y. of Vergennes - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Coulman, Stephen P. of Waltham - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Grant, Crystal of Bristol - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Pinkham, Kreig of Northfield - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Poehlmann, Jennifer of Richmond - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Schatz, Kenneth of South Burlington - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Smith, Daniel P. of Burlington - Member of the Children and Family Council for Prevention Programs, - from March 2, 2009, to February 29, 2012.

To the Committee on Health and Welfare.

Bressor, Julie P. of Montpelier - Member of the Capitol Complex Commission, - from March 2, 2009, to February 28, 2012.

To the Committee on Institutions.

Billings, Jireh of Bridgewater - Member of the Capitol Complex Commission, - from March 2, 2009, to February 28, 2012.

To the Committee on Institutions.

Kelley, Robert of Derby Line - Member of the Current Use Advisory Board, - from February 2, 2009, to January 31, 2012.

To the Committee on Natural Resources and Energy.

Moore, Gary of Bradford - Member of the Vermont State Colleges Board of Trustees, - from March 2, 2009, to February 28, 2015.

To the Committee on Education.

Linsley, Kenneth of Danville - Member of the Vermont Educational and Health Buildings Financing Agency, - from February 24, 2009, to January 31, 2014.

To the Committee on Finance.

Election of Senate Members to Judicial Nominating Board

The President announced that the next order of business was the election of three members of the Senate to serve on the Judicial Nominating Board pursuant to 4 V.S.A. §601.

Senator Shumlin, on behalf of the Committee on Committees, placed in nomination the names of the following Senators to serve on the Board:

SARA BRANON KITTELL

of Franklin District, as the majority party member of the Board.

PHILIP B. SCOTT

of Washington District, as the minority party member of the Board.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board.

There being no further nominations, on motion of Senator Mazza, the nominations were closed, and the Secretary was instructed to cast one ballot for

SARA BRANON KITTELL

of Franklin District, as the majority party member of the Board, for a term of two years or until her successor is elected and has qualified.

PHILIP B. SCOTT

of Washington District, as the minority party member of the Board, for a term of two years or until his successor is elected and has qualified.

JOHN F. CAMPBELL

of Windsor District, as the third member of the Board, for a term of two years or until his successor is elected and has qualified.

Third Reading Ordered**S. 85.**

Senator Nitka, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to the patient's privilege.

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.

Bill Amended; Bill Passed**S. 7.**

Senate bill entitled:

An act to prohibit the use of lighted tobacco products in the workplace.

Was taken up.

Thereupon, pending third reading of the bill, Senators Mullin and Sears moved to amend the bill in Sec. 1, by striking out 18 V.S.A. §1421 in its entirety and inserting in lieu thereof the following:

§ 1421. DEFINITIONS SMOKING IN THE WORKPLACE; PROHIBITION

~~As used in this subchapter:~~

~~(1) "Smoking area" means an area that nonsmoking employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under this subchapter. Up to 30 percent of employee cafeteria and lounge areas may be designated as a smoking area.~~

~~(2) "Workplace" The use of lighted tobacco products is prohibited in any "workplace," which, for the purposes of this subchapter, means an~~

enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions, or similar organizational units, the enclosed portion of a structure ~~where the unit to which the employee is assigned is located.~~ Workplace does not include a residential facility for elders or disabled persons that is regulated by C.M.S., centers for Medicaid and Medicare services. Except for schools, workplace does not include areas commonly open to the public nor any portion of a structure ~~which~~ that also serves as the employee's or employer's personal residence. For schools, workplace ~~shall include~~ includes any enclosed location ~~at which~~ where instruction or other school-sponsored functions are occurring and students are present.

Which was agreed to.

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

Bill Amended; Third Reading Ordered

S. 3.

Senator Mullin, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to prohibiting retaliation for legislative testimony.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 499 is amended to read:

§ 499. JURORS ~~AND~~; WITNESSES; RETALIATION PROHIBITED

(a) ~~No employer may~~ An employer shall not discharge or otherwise penalize an employee by reason of his service as a juror, or penalize such employee or deprive him of any right, privilege, or benefit on a basis which discriminates between such employee and other employees not serving as jurors. All employees depriving the employee of any right, privilege, or benefit of employment:

(1) For serving as a juror, and the employee who is absent from work for jury duty shall be considered in the service of their employer an employee during all times while serving as jurors in accordance with this section a juror for purposes of determining seniority, fringe benefits, credit toward vacations and other rights, privileges, and benefits of employment.

~~(b) No employer may discharge an employee by reason of the employee's~~

(2) For absence from work while in attendance as a witness pursuant to a summons duly issued and served in any proceeding, civil or criminal, in any court of competent jurisdiction within or without the state, or in any other

proceeding before a board, commission, attorney, or other person or tribunal in the state authorized by law to hear testimony under oath; ~~nor shall an employer penalize such employee or deprive him of any right, privilege, or benefit on a basis which discriminates between such employee and other employees not appearing as witnesses. All employees shall be considered in the service of their employer while appearing as witnesses in accordance with this section for purposes of determining seniority, fringe benefits, credit toward vacations, and other rights, privileges, and benefits of employment.~~

(3) For absence from work while in attendance as a witness before, and pursuant to a request from, a committee of the state legislature or federal Congress.

(e)(b) Subdivision (a)(3) of this section shall not apply to state employees whose communications with the general assembly are protected by section 974 of Title 3.

(c) A person who violates a provision of this section shall be fined not more than \$200.00.

And that when so amended the bill ought to pass.

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

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 2. An act relating to offenders with a mental illness or other functional impairment.

S. 26. An act relating to recovery of profits from crime.

Bill Amended; Bill Passed

S. 27.

Senate bill entitled:

An act relating to tastings and sale of wines by wineries.

Was taken up.

Thereupon, pending third reading of the bill, Senator Miller, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the bill as follows:

First: In Sec. 1., in 7 V.S.A. §2(15) in the fifth sentence by striking out the words “or near the premises of the licensee” and inserting in lieu thereof the words premises of the licensee or the vineyard property

Second: In Sec. 1., 7 V.S.A. §28, after the word “distribute” by adding the following: , with or without charge.

After passage, the title of the bill is to be amended to read:

“An act relating to tastings and sale of wines, fortified wines, and spirits.”

Which was agreed to.

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

Bill Passed in Concurrence

H. 166.

House bill of the following title was read the third time and passed in concurrence:

An act relating to the Vermont Student Assistance Corporation.

Bill Amended; Third Reading Ordered

S. 25.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the repeal or revision of certain state agency reporting requirements.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2 V.S.A. § 20 is amended to read:

§ 20. LIMITATION ON DISTRIBUTION AND DURATION OF AGENCY REPORTS

* * *

(d) Unless otherwise provided by law, whenever it is required by statute, regulation, or otherwise that an agency submit an annual, biennial, or other periodic report to the general assembly, that requirement shall no longer be required after five years and the legislative council, pursuant to section 424 of Title 2, shall revise the Vermont Statutes Annotated accordingly.

Sec. 2. 2 V.S.A. § 603 is amended to read:

§ 603. FUNCTIONS

The joint energy committee shall:

* * *

~~(2) at least annually report to the general assembly the results of its deliberations;~~

~~(3)~~(2) work with, assist, and advise other committees of the general assembly, the executive, and the public, in ~~energy related~~ energy-related matters within their respective responsibilities.

Sec. 3. 3 V.S.A. § 22(h) is amended to read:

(h) The powers of the commission shall include, but not be limited to, the following:

* * *

~~(6) To report by January 15 of each year to the governor, speaker of the house and senate president pro tempore an annual summary of Vermont women's social and economic status including, but not limited to, employment and earnings, economic autonomy, and political participation and representation;~~

~~(7)~~ To utilize such voluntary and uncompensated services of private individuals, agencies, and organizations as may, from time to time, be offered and needed;

~~(8)~~(7) To accept and solicit funds, including any gifts, donations, grants, or bequests or any federal funds, for any commission related purposes.

Sec. 4. 3 V.S.A. § 123(g) is amended to read:

~~(g) On or before January 1 of each year, the director shall file a report of all rules adopted for professions attached to the office of professional regulation within the last 12 months to the house and senate committees on government operations of the general assembly.~~

Sec. 5. 3 V.S.A. § 631(d) is amended to read:

~~(d)~~(4) Notwithstanding any other provision of this section to the contrary, and in addition to the powers and duties described in sections 2852 and 2853 of this title and section 2603 of Title 10, the secretary of natural resources, through the commissioner of the department of forests, parks and recreation, is authorized to expend funds for purposes of continuing employee medical insurance benefits provided to seasonal temporary state employees by their

off-season employers. Any such expenditure shall be subject to the following limitations:

~~(A)~~(1) funds may be paid either directly to the benefit provider or to the off-season employer as a reimbursement;

~~(B)~~(2) the total amount paid for any temporary employee medical insurance reimbursement shall not exceed the costs of group medical benefits for a permanent state employee as determined by the commissioner of human resources, and it shall be within the discretion of the commissioner of the department of forests, parks and recreation to pay some lesser amount than the maximum;

~~(C)~~(3) the commissioner of the department of forests, parks and recreation shall establish written guidelines regarding the administration of this program, subject to the approval of the commissioner of human resources;

~~(D)~~(4) the amount expended by the commissioner for this program shall be limited to the amount directly saved by the department of forests, parks and recreation on expenses, such as advertising, unemployment compensation, and training, as a result of encouraging the return to state seasonal employment by seasonal employees who have consistent off-season employment; and

~~(E)~~(5) this subsection shall expire on July 1, 2004, unless sooner extended.

~~(2) The secretary of natural resources, through the commissioner of the department of forests, parks and recreation, shall report to the legislature on the effectiveness of this program, to include information on the number of employees affected, the amounts spent to pay for benefits, and any amounts saved by the department of forests, parks and recreation.~~

Sec. 6. 3 V.S.A. § 2222(i) is amended to read:

(i) The secretary of administration is authorized to transfer vacant positions throughout the executive branch of state government, and to adjust appropriations in the executive branch in accordance with the secretary's statewide vacancy savings plan that reflects realistic savings due to vacant positions. Such appropriation adjustments shall result in no change to the total statewide legislative appropriations to the executive branch. This authority is separate from the secretary's authority provided in section 706 of Title 32. ~~A report of all actions taken during the preceding fiscal year pursuant to this authority shall be furnished to the legislature no later than January 15 of each year. The report shall include a list of all authorized filled and vacant positions by department and all positions subject to this subdivision and shall indicate whether each position is classified, exempt, or temporary. In addition, the~~

~~secretary shall periodically furnish the legislature with a report of accomplishments and recommendations concerning improvements in better managing resources on a statewide basis.~~

Sec. 7. 3 V.S.A. § 2422 is amended to read:

§ 2422. BUDGET AND REPORT

The secretary shall be responsible to the governor and shall plan, coordinate, and direct the functions vested in the agency. ~~He shall prepare and submit to the governor an annual budget and shall prepare and submit to the governor and the general assembly in November of each year a report concerning the operation of the agency for the preceding fiscal year and the future goals and objectives of the agency.~~

Sec. 8. 3 V.S.A. § 2472a is amended to read:

§ 2472a. HISTORIC SITE MARKERS PROGRAM

A program for the erection of historic site markers is created within the agency of commerce and community development and shall be administered by the state historic preservation officer. The preservation officer shall ~~annually recommend 30 sites for the funding of historic site markers to the house and senate institutions committees, and shall~~ oversee the erection, restoration and maintenance of historic site markers. In performing these duties, the preservation officer shall consult with the Vermont Historical Society, the University of Vermont Historic Preservation Program, the Preservation Trust of Vermont, and other similar entities.

Sec. 9. 3 V.S.A. § 3022 is amended to read:

§ 3022. BUDGET AND REPORT

The secretary shall be responsible to the governor and shall plan, coordinate, and direct the functions vested in the agency. ~~He shall prepare and submit to the governor an annual budget and shall prepare and submit to the governor and the general assembly in November of each year a report concerning the operations of the agency for the preceding fiscal year and the future goals and objectives of the agency.~~

Sec. 10. 3 V.S.A. § 4021 is amended to read:

§ 4021. ADOPTION OF STATE AGENCY PLANS

By January 1, 1991, each state agency that has programs or that takes actions affecting land use shall adopt an interim plan that is compatible with regional and approved municipal plans, and that is consistent with the goals established in 24 V.S.A. § 4302. By January 1, 1993, each state agency that has programs or that takes actions affecting land use shall adopt a plan that is

compatible with regional plans and approved municipal plans, and that is consistent with the goals established in 24 V.S.A. § 4302. Thereafter, the agency shall readopt its plan biennially, to ensure that its plan remains compatible with regional plans and approved municipal plans, and remains consistent with the goals established in 24 V.S.A. § 4302. ~~All proposed, adopted and readopted state agency plans and amendments, including interim plans and amendments, shall be submitted to the council of regional commissions for review pursuant to the procedures set out in 24 V.S.A. § 4305.~~ The term “approved municipal plans” as used in this section has the meaning established in 24 V.S.A. § 4350.

Sec. 11. 5 V.S.A. § 38 is amended to read:

§ 38. FEES OF WITNESSES; DUTIES OF EXECUTIVE SECRETARY;
DUTIES OF SECRETARY OF AGENCY

The fees of witnesses before the board or the agency shall be the same as in the superior court. In all causes on behalf of or for the convenience or safety of the public, and in the investigation of accidents, the fees of witnesses, and the expense of summoning them shall be paid by the executive secretary or the secretary of the agency. Periodically, the executive secretary and the secretary of the agency of transportation may request money from the commissioner of finance and management to pay fees and expenses, and the commissioner of finance and management shall issue his or her warrants. ~~The executive secretary and the secretary of the agency of transportation shall quarterly, on February, May, August and November 1, render to the commissioner of finance and management an account of his or her receipts and disbursements under this section, and pay any unexpended balance into the state treasury.~~

Sec. 12. 6 V.S.A. § 1102(d) is amended to read:

(d) The functions of the council are:

* * *

~~(5) To prepare annually or more frequently as deemed necessary, a summary of pesticides which because of their hazardous characteristics or properties warrant special surveillance and stricter control of availability and use.~~

~~(6)~~ To recommend studies necessary for the performance of its functions as established under this section.

~~(7)~~(6) To recommend benchmarks with respect to the state goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices, and to issue an annual report to the general assembly, detailing the state’s progress in reaching those benchmarks

and attaining that goal. The benchmarks should be designed to enable evaluation of multiple indicators of pesticide usage, use patterns, and associated risks. Benchmarks should take into consideration, but shall not be limited to, the following:

* * *

Sec. 13. 6 V.S.A. § 2763 is amended to read:

§ 2763. SECRETARY'S VERIFICATION

* * *

~~(e) The secretary shall annually prepare a list of each milk handler, and of each milk or dairy product of the handler concerned, whose claim of non-rbST use pursuant to section 2762 of this title has been validated. The list shall be available to the public upon request.~~

(f) If the secretary determines that the claims of a milk handler of non-rbST use pursuant to section 2762 of this title cannot be verified, the secretary shall immediately so notify the attorney general and the handler concerned.

~~(g) The secretary shall annually by January 15 report to the general assembly on implementing this section, consistent with the confidentiality requirements of section 2766 of this title.~~

Sec. 14. 6 V.S.A. § 2963a(b) is amended to read:

(b) Comprehensive plan. The agricultural development division shall prepare a comprehensive plan for the most efficient and productive future development of diversified agriculture in Vermont. In so doing, the division shall continue its initiative to organize and lead the dozens of commodity groups in a collaborative self-assessment and planning effort. Through this initiative plus the assistance of educational institutions and other government agencies, the division shall organize and manage:

* * *

(3) The preparation of an action and finance plan, based on the needs assessment and market evaluation, including annual performance benchmarks and annual budgets for at least a five-year period. The plan shall be updated annually, and shall be presented annually by January 15 to ~~the governor, the general assembly and~~ the public. The plan presented in January 2000 may be preliminary in nature.

Sec. 15. 6 V.S.A. § 2963a(e) is amended to read:

(e) Coordination; reports.

(1) In the implementation of this section, the agricultural development division shall collaborate with the Vermont economic development authority to ensure that the economic development activities provided for by chapter 12 of Title 10 are consistent with the needs of Vermont producers of diverse agricultural commodities. The division shall also collaborate with relevant private and public organizations, including the sustainable agricultural council established by section 4701 of this title.

~~(2) The agricultural development division shall report annually by January 15 to the general assembly on the implementation of this section, including the extent to which performance benchmarks contained in the comprehensive plan were achieved during the previous fiscal year, and a description of and justification for the allocation of state, federal or other funds during the previous fiscal year. Such information contained in the report submitted in January 2000 shall cover the first half of fiscal year 2000.~~

Sec. 16. 6 V.S.A. § 4701(d) is amended to read:

(d) By January 15, annually, the council shall prepare a report for distribution to participating organizations, ~~the general assembly~~ and the public summarizing developments in sustainable agriculture in Vermont and nationally. The report shall also make recommendations for future activities that will promote the objectives of this section.

Sec. 17. 8 V.S.A. § 4089b(h) is amended to read:

(h) The commissioner shall establish a task force to develop performance quality measures, address oversight issues for managed behavioral health care organizations, and review the results of any quality improvement projects not otherwise confidential or privileged; undertaken by managed care organizations for mental health and substance abuse care and treatment under subdivision (d)(1)(A)(vii) of this section and section 9414(i) of Title 18. ~~The task force shall report to the senate committee on health and welfare and the house committees on health care and on human services on or before January 15 of each year with a report on the activities and recommendations of the task force.~~ The task force shall include the following:

* * *

Sec. 18. 10 V.S.A. § 7(c) is amended to read:

(c) Each economic development recipient shall report annually, in a manner and on a form prescribed by the commissioner of economic development, the amount or monetary value of economic assistance or incentive granted, awarded or approved, and such information as is necessary to determine whether the recipient has reached its job creation or other public benefit goals stated pursuant to subsection (b) of this section. ~~On or before January 15 of~~

~~each year the commissioner of economic development shall submit to the general assembly a benchmarks report identifying for each economic development assistance or incentives program subject to the provisions of this section, and for each economic development recipient, the amount or monetary value of economic assistance or incentive granted, awarded or approved, and the number of new jobs that have been created and existing jobs that have been retained as a result of such assistance, the wages and employee benefits associated with such jobs, and any other public benefits associated with such economic development assistance or incentives. The benchmarks report shall also compare the performance of such programs with the performance anticipated by economic development recipients under subsection (b) of this section. Such annual reports shall not be considered confidential, and may be inspected and copied pursuant to subchapter 3, chapter 5 of Title 1 (public records law), notwithstanding the provisions of section 317(b)(17) of Title 1, section 3102 of Title 32, or any other law.~~

Sec. 19. 10 V.S.A. § 175(b) is amended to read:

~~(b) Each year, prior to February 1, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the authority, and a copy of the audit shall be filed with the state treasurer.~~

Sec. 20. 10 V.S.A. § 283 is amended to read:

§ 283. LIMITATIONS ON PURPOSES AND POWERS

The Vermont venture capital fund raised from Vermont taxpayers shall form as either a business corporation or limited partnership as set forth in Title 11, subject to the following:

* * *

(3) the Vermont venture capital fund shall cause to be prepared a report which shall include an audited financial statement certified by an independent certified public accountant, within 120 days after the close of each fiscal year of its operations. This report shall be ~~distributed to the governor and legislative council and~~ made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment;

* * *

Sec. 21. 10 V.S.A. § 541(i) is amended to read:

(i) The workforce development council shall:

* * *

~~(6) Receive annual reports from the department of labor on the workforce education and training revenues and expenditures of agencies and institutions which are members of the council.~~

* * *

~~(10) Annually, on or before January 15, report to the general assembly on activities carried out during the previous year in order to accomplish its mandate.~~

Sec. 22. 10 V.S.A. § 542(d) is amended to read:

(d) Subject to available resources, each investment board shall report to the workforce development council in the manner described by the council. The report shall include the following:

* * *

~~(3) An annual evaluation and report on the success of the members in carrying out the following:~~

~~(A) The annual workforce development work plan, including information about the effectiveness and rate of workforce retention of any training programs implemented in the work plan.~~

~~(B) The workforce education training fund programs based on the indicators in the workforce investment act and any other performance indicators requested by the workforce development council.~~

Sec. 23. 10 V.S.A. § 543(g) is amended to read:

(g) Accountability. The commissioner of labor in consultation with the commissioner of economic development and the workforce development council shall ~~do all the following:~~

~~(1) develop evaluation standards that measure the effectiveness of the programs and projects funded by this section, which shall include an objective process that documents the state's return on investment; and,~~

~~(2) on or before December 1 of each year, submit a report to the governor, the speaker of the house, the president pro tempore of the senate, the chair of the house committee on commerce, and the chair of the senate committee on economic development, housing and general affairs that includes all the following information for the prior fiscal year:~~

~~(A) the number of applications received, grants awarded, jobs created, including wages for each, jobs filled, including wages for each, internships created, and interns served; the information shall be categorically posted every quarter on the department of labor's website;~~

~~(B) funds needed for the next fiscal year; and~~

~~(C) the extent to which the program has improved coordination, cooperation, and effective expenditure of resources by workforce education and training entities and increased employers' participation in and provision of workforce training opportunities and internships by employers, educational institutions, and other private entities.~~

Sec. 24. 10 V.S.A. § 675 is amended to read:

§ 675. AUDITS OF A SMALL BUSINESS INVESTMENT COMPANY;
REPORT

The Vermont small business investment company shall annually submit to the board an independent financial audit of the company conducted by a certified public accountant at the company's expense in accordance with rules adopted by the board under subsection 673(b) of this title. The company shall also submit an annual report of its activities to the board. The board in its discretion may examine the financial accounts and any other records of the company at any time. ~~The board shall report annually to the general assembly, on or before November 1. The board's report shall contain all audits conducted of the company since the board's last report, and the board's findings and recommendations concerning whether the activities of the Vermont small business investment company are fulfilling the purposes of this chapter.~~

Sec. 25. 10 V.S.A. § 1253(d) is amended to read:

(d) The board shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by it before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them every five years thereafter. ~~On or before January 1 of each year, the secretary shall report to the house committees on agriculture and natural resources and energy and to the senate committees on agriculture and natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.~~

Sec. 26. 10 V.S.A. § 1264(f) is amended to read:

(f)(1) In a stormwater-impaired water, the secretary may issue:

* * *

(3) By January 15, 2010, the secretary shall issue a watershed improvement permit, issue a general or individual permit implementing a TMDL approved by the EPA, or issue a general or individual permit implementing a water quality remediation plan for each of the stormwater-impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C.1313(d). In developing a TMDL or a water quality remediation plan for a stormwater-impaired water, the secretary shall consult “A Scientifically Based Assessment and Adaptive Management Approach to Stormwater Management” and “Areas of Agreement about the Scientific Underpinnings of the Water Resources Board’s Original Seven Questions” set out in appendices A and B, respectively, of the final report of the water resources board’s “Investigation Into Developing Cleanup Plans For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9, 2004. ~~Beginning January 30, 2005 and until a watershed improvement permit, a general or individual permit implementing a TMDL, or a general or individual permit implementing a water quality remediation plan is set for each of the stormwater-impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C. § 1313(d), the secretary shall report annually to the general assembly on agency progress in establishing the watershed improvement permits, TMDLs, and water quality remediation plans for the stormwater impaired waters of the state; on the accuracy of assessment and environmental efficacy of any stormwater impact fee paid to the state stormwater-impaired waters restoration fund; and on the efforts by the secretary to educate and inform owners of real estate in watersheds of stormwater impaired waters regarding the requirements of the state stormwater law.~~

* * *

Sec. 27. 10 V.S.A. § 1941(e) is amended to read:

(e) The secretary shall establish a petroleum cleanup fund advisory committee which shall meet not less than annually to review receipts and disbursements from the fund, to evaluate the effectiveness of the fund in meeting its purposes, the reasonableness of the cost of cleanup and to recommend alterations and statutory amendments deemed appropriate. ~~The advisory committee shall submit an annual report of its findings to the general assembly on January 15 of each year. In its annual report, the advisory committee shall review the financial stability of the fund, evaluate the implementation of assistance related to underground farm or residential heating~~

~~fuel storage tanks and aboveground storage tanks, and the need for continuing assistance, and shall include recommendations for sustainable funding sources to finance the provision of that assistance.~~ The membership of the committee shall include the following or their designated representative:

* * *

Sec. 28. 10 V.S.A. § 1961(a) is amended to read:

(a) The advisory committee shall:

* * *

(4) By June 15, 1991 and every January thereafter, recommend to the secretary, a Vermont policy for Lake Champlain or changes to existing policy. ~~By June 15, 1991 and every January thereafter, the secretary shall recommend to the legislature a policy or policy changes regarding Lake Champlain.~~ The policy shall:

* * *

~~(5) On or before June 15, 1991 and every January thereafter present a report to the Vermont legislature. The report shall include the following:~~

~~(A) An update on the quality of the waters of the lake.~~

~~(B) Findings of pertinent research.~~

~~(C) An action plan including, but not limited to, water quality and fishery improvement measures and ways to enhance public use of and access to the lake.~~

~~(D) Recommended budgets and revenue sources including an expanded lake user fee structure.~~

* * *

Sec. 29. 10 V.S.A. § 6083(d) is amended to read:

(d) The panels of the board and commissions shall make all practical efforts to process matters before the board and permits in a prompt manner. The land use panel shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. ~~The land use panel shall report annually by February 15 to the house and senate committees on natural resources and energy and on government operations, and the house committee on fish, wildlife and water resources. The annual report shall assess the performance of the board and commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance;~~

~~and describe staffing needs for the coming year. The annual report shall list the number of enforcement actions taken by the land use panel, the disposition of such cases, and the amount of penalties collected.~~

Sec. 30. 10 V.S.A. § 6523(d) is amended to read:

(d) Expenditures authorized.

* * *

~~(3) By January 15 of each year, commencing in 2007, the department of public service shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce a report detailing the revenues collected and the expenditures made under this subchapter, together with recommended principles to be followed in the allocation of funds and a proposed five-year plan for future expenditures from the fund.~~

~~(4)~~ Projects for funding may include the following:

* * *

~~(5)~~(4) If during a particular year, the department determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the department may consult with the board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

~~(6)~~(5) The sum of \$20,000.00 shall be transferred annually from the clean energy development fund to the general fund to support the cost of the solar energy income tax credits.

Sec. 31. 10 V.S.A. § 7002(a) is amended to read:

(a) The following timetable and responsibilities shall be adhered to:

* * *

~~(20) Every year after the initial report required by subdivision (a)(12) of this section, and until otherwise directed by the legislature, the authority shall, after public comment, report to the legislature its recommendations for the permanent disposal of the long-lived waste and, no later than the beginning of operations of the disposal facility authorized by this chapter, propose to the legislature a specific disposal plan for the permanent disposal of the long-lived waste.~~

(21) Within 120 days of the completion of decommissioning of the Vermont Yankee nuclear generating facility, the authority shall begin closure of the disposal facility.

Sec. 32. 10 V.S.A. § 7108(d) is amended to read:

(d) Agency responsibility.

* * *

~~(3) The agency shall report to the general assembly, no later than January 15, 2008, and each year thereafter, on the effectiveness of the mercury added switch recovery program, including the amount of mercury removed and recycled and the status of compliance by motor vehicle recyclers and auto manufacturers with this section. In consultation with the advisory committee on mercury pollution, the agency shall make recommendations for other actions, including a defined incentive based system, if the program does not succeed in achieving high participation rates and switch capture rates sufficient to assure that a majority of switches is collected.~~

Sec. 33. 10 V.S.A. § 7113(a) is amended to read:

(a) There is created an advisory committee on mercury pollution to consist of one member of the house of representatives, appointed by the speaker; one member of the senate, appointed by the committee on committees; the secretary of natural resources or the secretary's designee; the commissioner of fish and wildlife or the commissioner's designee; and the following persons, as appointed by the governor: one representative of an industry that manufactures consumer products that contain mercury; one public health specialist; one hospital representative; one representative of the Abenaki Self-Help Association, Inc.; one toxicologist; one representative of a municipal solid waste district; and one scientist who is knowledgeable on matters related to mercury contamination. The advisory committee shall advise the general assembly, the executive branch, and the general public on matters relating to the prevention and cleanup of mercury pollution and the latest science on the remediation of mercury pollution. ~~By January 15 of each year, the advisory committee will report to the general assembly updated information on the following:~~

~~(1) The extent of mercury contamination in the soil, waters, air, and biota of Vermont.~~

~~(2) The extent of any health risk from mercury contamination in Vermont, especially to pregnant women, children of the Abenaki Self Help Association, Inc., and other communities that use fish as a major source of food.~~

~~(3) Methods available for minimizing risk of further contamination or increased health risk to the Vermont public.~~

~~(4) Potential costs of minimizing further risk and recommendations of how to raise funds necessary to reduce contamination and minimize risk of mercury-related problems in Vermont.~~

~~(5) Coordination needed with other states to address effectively mercury contamination.~~

~~(6) The effectiveness of the established programs, including manufacturer based reverse distribution systems for in state collection, subsequent transportation, and subsequent recycling of mercury from waste mercury added products, and recommendations for altering the programs to make them more effective.~~

~~(7) Ways to reduce the extent to which solid waste produced within the state is incinerated at incinerators, regardless of location, that fail to use the best available technology in scrubbing and filtering emissions from the incinerator stack.~~

Sec. 34. 13 V.S.A. § 5231 is amended to read:

§ 5231. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES

A needy person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed or is being detained under a conviction of a serious crime, is entitled:

* * *

(2) To be provided with the necessary services and facilities of representation. Any such necessary services and facilities of representation that exceed \$1,500.00 per item must receive prior approval from the court after a hearing involving the parties. The court may conduct the hearing outside the presence of the state, but only to the extent necessary to preserve privileged or confidential information. This obligation and requirement to obtain prior court approval shall also be imposed in like manner upon the attorney general or a state's attorney prosecuting a violation of the law. ~~The court shall annually submit a report of such approvals to the house and senate committees on appropriations on January 1 of each year.~~ The attorney, services and facilities, and court costs shall be provided at public expense to the extent that the person, at the time the court determines need, is unable to provide for the person's payment without undue hardship.

Sec. 35. 13 V.S.A. § 7283 is amended to read:

§ 7283. COLLECTION AND TRANSMITTAL

The court shall collect the amount due under this subchapter and transmit it to the state treasurer for deposit in the general fund. ~~Annually, on or before July 1, the court administrator shall prepare and file with the state treasurer a report setting out the amounts collected under this subchapter.~~

Sec. 36. 16 V.S.A. § 2281(f) is amended to read:

(f) Control of funds appropriated and of the work carried on under the terms of section 2321 of this title shall be vested in the board of trustees of the University of Vermont and State Agricultural College. ~~The University of Vermont and State Agricultural College shall provide an accounting service which shall account for the expenditure of funds by divisions and shall make an annual financial report to the governor of the state.~~ All funds appropriated to the agricultural college shall be kept in a separate account and shall be audited annually by an independent accounting firm registered in the state of Vermont in accordance with government auditing standards issued by the United States Government Accountability Office (GAO).

Sec. 37. 16 V.S.A. § 2325 is amended to read:

§ 2325. AGENCY FOR COOPERATION UNDER FEDERAL SOIL CONSERVATION LAW

In order that the policy of cooperating with the governments and agencies of other states and of the United States in carrying out the policy and purposes specified in section 7(a) of the act of Congress, known as the "Soil Conservation and Domestic Allotment Act" may become established in the state of Vermont, and in order to effectuate such policy, the University of Vermont and State Agricultural College is hereby authorized and empowered:

* * *

(10) To provide for the submission to the secretary of agriculture of such reports as may be required to ascertain whether such plans are being carried out according to their terms and to assure the correctness of and make possible verification of such reports; ~~and~~

~~(11) To submit to the governor of the state an annual report for each year covering the administration and operation of such program.~~

Sec. 38. 16 V.S.A. § 2879f is amended to read:

§ 2879f. ANNUAL REPORTS

The corporation shall review, on an annual basis, the financial status of the program and the participation rate in the program. The corporation shall also

review the continued viability of the program and the administration of the program by the corporation. ~~The corporation shall report by January 15th the findings to the speaker of the house, the president pro tem of the senate, and to the house and senate committees on education.~~

Sec. 39. 18 V.S.A. § 9406(b) is amended to read:

(b)(1) Annually the division shall prepare a three-year projection of health care expenditures made on behalf of Vermont residents, based on the format of the health care budget and expenditure analysis adopted by the commissioner under this section, projecting expenditures in broad sectors such as hospital, physician, home health, or pharmacy. The projection shall include estimates for:

* * *

~~(4) The division shall prepare a report of the final projections made under this subsection, and file the report with the general assembly on or before January 15 of each year.~~

Sec. 40. 19 V.S.A. § 10h(a) is amended to read:

(a) The agency shall report to the transportation board each project for which the current construction cost estimate exceeds the last approved construction cost estimate by a substantial level, as substantial level is defined by the transportation board. The transportation board shall review such a project, and may grant approval to proceed. If not approved by the transportation board, the project shall not proceed to contract award until approved by the general assembly. ~~On or before December 31 of each year, the agency shall inform the house and senate committees on transportation of any project for which the current construction cost estimate exceeds the last approved construction cost estimate by a substantial level, as defined by the transportation board, regardless of whether such a project has been submitted to the transportation board for its approval to proceed, or regardless of the status of such a project before the transportation board.~~

Sec. 41. 20 V.S.A. § 38(a) is amended to read:

(a)(1) There is created a radiological emergency response plan fund, into which any entity operating a nuclear reactor or storing nuclear fuel and radioactive waste in this state (referred to hereinafter as “the nuclear power plant”) shall deposit the amount appropriated to support the Vermont radiological response plan for that fiscal year, adjusted by any balance in the radiological emergency response plan fund from the prior fiscal year. There shall also be deposited into the fund any monies received from any other source, public or private, that is intended to support the radiological emergency response planning process. The fund shall be managed in accordance with

subchapter 5 of chapter 7 of Title 32. Any interest earned on the balance in the fund shall be retained by the fund.

* * *

~~(4) By January 15 of each year, the division of emergency management shall submit to the general assembly a report detailing expenditures from the fund for the preceding fiscal year.~~

* * *

Sec. 42. 20 V.S.A. § 3132(b) is amended to read:

(b) The state fire marshal shall have power to adopt reasonable rules and regulations for granting permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. ~~The state fire marshal shall compile an annual report of all injuries to person and property resulting from the use of fireworks and sparklers reported for the preceding fiscal year. The state fire marshal shall annually by March 15 submit a report to the house committee on general housing and military affairs and the senate committee on economic development, housing and general affairs.~~

Sec. 43. 21 V.S.A. § 641(a) is amended to read:

(a) When as a result of an injury covered by this chapter, an employee is unable to perform work for which the employee has previous training or experience, the employee shall be entitled to vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. Vocational rehabilitation services shall be provided as follows:

* * *

~~(6) The commissioner shall make annual reports to the general assembly on the success and status of the workers' compensation vocational rehabilitation program.~~

Sec. 44. 22 V.S.A. § 606 is amended to read:

§ 606. OTHER DUTIES AND FUNCTIONS

The department, in addition to the functions specified in section 605 of this title:

* * *

~~(2) Shall compile and publish annual statistics covering all libraries in the state, including those maintained by the department of libraries.~~

~~(3)~~ Shall provide consultative services to other libraries in the state, and shall encourage formation of central records of library holdings.

~~(4)~~(3) Shall promote improved communications among libraries in the state as well as cooperative use of facilities.

~~(5)~~(4) May provide facilities in cooperation with other libraries for storage of little used materials.

~~(6)~~(5) May conduct seminars, workshops, and other programs to increase the professional competence of librarians in the state.

~~(7)~~(6) May receive and administer gifts of real and personal property accepted by the governor on behalf of the state under section 101 of Title 29.

~~(8)~~(7) May dispose of by sale or exchange, or may discard, material which is obsolete or has ceased to be useful, because of its physical condition or otherwise. Any proceeds from the sale or disposition of materials shall be credited to a special fund established and managed pursuant to subchapter 5 of chapter 7 of Title 32, and shall be available to the department for the purchase of library materials. Materials constituting public records or which are archival in nature may be disposed of only following ~~thirty~~ 30 days' notice to the commissioner of buildings and general services.

~~(9)~~(8) Shall be the primary access point for state information, and provide advice on state information technology policy.

Sec. 45. 22 V.S.A. § 610 is amended to read:

§ 610. NONPROFIT FOUNDATION FOR PUBLIC LIBRARY SERVICES

The state librarian is authorized to establish a nonprofit foundation for the purpose of raising funds from private sources to enhance public library services in Vermont. All funds from private sources shall be used for grants to Vermont public libraries as defined by section 101 of this title to further any purpose considered to be in harmony with the original purpose of the gift. The state librarian shall not spend more than \$5,000.00 of appropriated funds in any one fiscal year to establish and to administer the nonprofit foundation. No funds raised from private sources shall be used by the state librarian to replace funds appropriated for the operation of the department of libraries. ~~Annually, the state librarian shall file a report with the general assembly describing the funds received and grants made by the foundation.~~

Sec. 46. 23 V.S.A. § 304b(a) is amended to read:

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds and excluding vehicles

registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the commissioner and shall pay an initial fee of \$20.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of \$20.00. The commissioner shall adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. ~~The commissioner of motor vehicles and the commissioner of fish and wildlife shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.~~

Sec. 47. 24 V.S.A. § 4753a(a) is amended to read:

(a) Pollution control. The general assembly shall approve all categories of awards made from the special funds established by section 4753 of this title for water pollution control facility construction, in order to assure that such awards conform with state policy on water quality and pollution abatement, and with the state policy that, except as provided in subsection (c) of this section, municipal entities shall receive first priority in the award of public monies for such construction, including monies returned to the revolving funds from previous awards. ~~To facilitate this legislative oversight, the secretary of natural resources shall annually no later than January 15 report to the house and senate committees on institutions and on natural resources and energy on all awards made from the relevant special funds during the prior and current fiscal years, and shall report on and seek legislative approval of all the types of projects for which awards are proposed to be made from the relevant special funds during the current or any subsequent fiscal year. Where feasible, the specific projects shall be listed.~~

Sec. 48. 28 V.S.A. § 102(c) is amended to read:

(c) The commissioner is charged with the following responsibilities:

* * *

~~(13)~~ To report biennially to the general assembly, submitting a summary of the operations of the department during the preceding two years.

~~(14)~~ To collect a fee up to the amount of \$30.00 per month as a supervisory fee from each person under the supervision of the department who is on probation, furlough, pre-approved furlough, supervised community sentence, or parole. Supervisory fees collected by the department shall be credited to a special supervision and victim restitution fund, established and managed pursuant to subchapter 5 of chapter 7 of Title 32, for this purpose. The commissioner shall adopt rules governing the collection of supervisory fees, including the maximum period of time offenders are subject to supervision fees and the offender's ability to pay such fees.

~~(15)~~(14) To lease farms or lands, with the approval of the department of buildings and general services in accordance with section 160 of Title 29, and to administer and manage such farms.

~~(16)~~(15) To exercise all powers and perform all duties established in the office of commissioner by the agency of human services and stated in sections 3052 and 3053 of Title 3.

~~(17)~~(16) To exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities and in fulfilling the purposes and objectives of this title.

~~(18)~~(17) To establish within the department programs for inmates to participate in work, industry, community service, public works activities, and employment at correctional facilities.

~~(19)~~(18) If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of a convicted and sentenced offender to the country of which the offender is a citizen or national, the commissioner may, with the written consent of such offender obtained only after the opportunity to consult with counsel, and in accordance with the terms of the treaty, consent to the transfer or exchange of any such offender and take any other action necessary to initiate the participation of the state in the treaty.

~~(20)~~(19) To utilize the department of buildings and general services' competitive bidding practices in order to determine the most effective and cost-effective alternatives for housing inmates in any out-of-state correctional facility.

~~(21)~~(20) The commissioner is authorized to contract for payment processing services for receiving deposits to inmate financial accounts. The department, directly or through a processing agent, may assess a fee for deposits to each account so long as the fee does not exceed the costs incurred.

Sec. 49. 28 V.S.A. § 121 is amended to read:

§ 121. COMMUNITY HIGH SCHOOL OF VERMONT BOARD

* * *

~~(d) The board shall report on its activities annually to the state board of education.~~

(e) The board may, with the approval of the commissioner of corrections, appoint the education supervisor of the independent school.

Sec. 50. 28 V.S.A. § 701b(a) is amended to read:

(a) When a defendant or person in a civil or criminal action is sentenced to the custody of the commissioner or committed to the commissioner's custody pending a prosecution on a misdemeanor charge or for sentencing, the commissioner or the commissioner's designee shall within five days of sentencing or commitment, excluding weekends and holidays, classify the person to determine whether he or she shall be incarcerated, held at a community work camp or furloughed. Failure to classify within the five-day period shall not create a private right of action against the state, its political subdivisions or its employees. ~~The department shall annually report to the house and senate institutions committees on the time within which individuals have been classified upon commitment or sentencing.~~

Sec. 51. 28 V.S.A. § 751b is amended to read:

§ 751b. GENERAL PROVISIONS GOVERNING OFFENDER WORK

* * *

(c) The commissioner shall establish written guidelines governing the hours and conditions of offender work, and the rates of compensation of offenders for employment. Wage payments of offenders shall be set aside in a separate fund. The guidelines of the department may provide for the making of deductions from wages of offenders to defray part or all of the cost of offender maintenance or payments to victims of crime. The guidelines may also provide for the setting aside by the department of a portion of an offender's wages to enable the offender to contribute to the support of his or her dependents, if any, to make necessary purchases from a commissary, to purchase approved books, instruments and instruction not supplied by a correctional facility and to set aside sums to be paid to the offender upon release from the custody or supervision of the commissioner. Any interest which accrues from these wages during the period of such custody of an offender shall be credited to any fund maintained by the correctional facility for the welfare of offenders. ~~The commissioner shall annually, by January 1, provide a current copy of any guidelines promulgated under this section to the~~

~~chairs of the senate and house committees on institutions and the offender work programs board established under section 761 of this title.~~

(d) The labor, work product, or time of an offender may be sold, contracted, or hired out by the state only:

* * *

(2) To any state or political subdivision of a state, or to any nonprofit organization which is exempt from federal or state income taxation, subject to federal law, to the laws of the recipient state and to the rules of the department. ~~The director of work offender programs shall annually, by January 1, submit to the chairs of the senate and house committees on institutions and to the offender work programs board a list of any such nonprofit organizations receiving goods or services in the prior and current fiscal year. Five members of such the offender work programs board at a scheduled and warned board meeting may vote to disapprove any future sales of offender produced goods or services to any nonprofit organization and such vote shall be binding on the department.~~

* * *

~~(f) Annual report and two year work programs plan. Annually by October 1, the director of offender work programs shall submit to the offender work programs board, and to the chairs of the house and senate committees on institutions, a written report on all offender work program activities authorized under this section for the previous fiscal year and a two year plan for the current and future fiscal years.~~

~~(1) The annual report shall include, but not be limited to, appropriations, income, production costs, offender injury compensation, prices as they relate to enterprise performance, depreciation of equipment, capital expenses, the status and progress of vocational training programs for offenders, including the number of offenders placed in private or public sector jobs upon release from custody of the commissioner, the reasons for not expanding its operations or not developing new products and any other related operational or financial considerations.~~

~~(2) The two year plan shall address the direction of offender work programs authorized by this section working at full capacity in the current and following fiscal years, identify recipients of offender produced goods or services, and analyze any potential impact on existing private businesses.~~

~~(g) The department of corrections shall, in any new initiative involving sales of offender work products, seek to use the provisions of the federally authorized federally authorized Prison Industries Enhancement Program.~~

~~(h)~~(g) Assembled products shall not be sold to any person, enterprise, or entity unless the offender work programs board has first reviewed any such proposed sale, and five members of the board have voted in favor of the proposal at a scheduled and warned meeting of the board.

~~(i)~~(h) The commissioner shall consult and collaborate with the commissioner of labor at least annually to seek funding and support for vocational training for offenders to help offenders achieve a successful transition from the custody of the commissioner to private life. To the extent feasible, any vocational training program for offenders shall incorporate the professional training standards applicable to the construction and other trades, and industries, existing in the private sector.

Sec. 52. 28 V.S.A. § 761 is amended to read:

§ 761. OFFENDER WORK PROGRAMS BOARD

(a) Offender work programs board established. An offender work programs board is established for the purpose of advising the commissioner on the use of offender labor for the public good. The board shall base its considerations and recommendations to the commissioner on a review of plans for offender work programs pursuant to subsection (b) of this section, and on other information as it deems appropriate.

* * *

~~(3) The board shall report on its activities at the request of the commissioner, and at least annually to the commissioner and to the joint fiscal office.~~

* * *

~~(b) Review of the annual report and two-year plan. In reviewing the annual report and two-year plan submitted by the director of offender work programs as required by subsection 751b(f) of this title, and forming its recommendations concerning them to the commissioner, the board shall:~~

~~(1) assure itself that the plan is informed by thorough and accurate analysis of private business activity in the specific market segments concerned, for which purpose the board may, with the commissioners' approval of funds, hire by contract such persons the board deems necessary to assist it in analyzing the plan. The board shall also conduct public hearings to hear from members of the public or from potentially affected private businesses and labor groups;~~

~~(2) forward annually by January 1 to the joint fiscal office a maximum level of offender work program activity in each market segment during the term of the plan; and~~

~~(3) make publicly known and available its recommendations for offender work programs operations.~~

* * *

Sec. 53. 28 V.S.A. § 1154(b) is amended to read:

(b) The supervising officer of the Weeks School is hereby authorized to sell articles made by the children in the handiwork departments in such school and the proceeds thereof shall be used to create a revolving fund for the purchase of materials for these departments. The revolving fund shall be held by the supervising officer ~~and an annual report submitted to the commissioner.~~

Sec. 54. 29 V.S.A. § 152(a) is amended to read:

(a) The commissioner of buildings and general services, in addition to the duties expressly set forth elsewhere by law, shall have the authority to:

* * *

(24) Accept from the Federal Emergency Management Agency (FEMA) hazard mitigation grants on behalf of the state on an as-needed basis, or accept from any municipality any funds received by the municipality from FEMA. This authority is intended to permit the state to assist towns in certain situations by taking advantage of federal money in order to avoid depletion of state resources. ~~Each receipt of a grant or gift as authorized by this subdivision shall be reported to the chairs of the house and senate committees on institutions and to the joint fiscal office.~~

* * *

(26) Be available to consult with and share the department's expertise with school districts regarding the design, construction, or purchase of any new buildings or alterations of existing buildings in connection with any technical center receiving funding under Title 16. The commissioner, in collaboration with the commissioner of education, shall periodically update the standards developed pursuant to Sec. 44 of No. 148 of the Acts of the 1999 Adj. Sess. (2000), ~~and shall report the updated standards to the house and senate committees on institutions on or before January 15 of the next occurring legislative session.~~

(27) After consulting with the state treasurer to determine the effect of the contract on the state's debt and reviewing the creditworthiness of the company with which the state proposes to contract, and with the approval of the emergency board, enter into multiyear contracts with energy service companies or third-party leasing companies for energy efficiency and fuel switching improvements to state facilities, the cost of which will be recovered through the avoided fuel, utility, operating, and maintenance costs resulting

from the improvements. Improvements must within 20 years achieve savings sufficient to cover their costs. ~~The commissioner shall report annually to the house and senate committees on institutions regarding the status of contracts undertaken under this subsection.~~

(28) With the approval of the emergency board, enter into performance contracts with private sector providers to create energy-smart state buildings and facilities primarily through revised operating strategies that will result in operating cost savings. The commissioner shall work with private energy contractors and utilities companies to develop a plan to conduct energy audits, analyze the state's energy needs, improve purchasing procedures to speed the conversion to new technology, and develop revised operating strategies to identify the best use of the latest energy-saving technology. ~~The commissioner shall report annually to the house and senate committees on institutions regarding the status of contracts undertaken under this section.~~

* * *

Sec. 55. 29 V.S.A. § 160(c) is amended to read:

(c) Moneys from the fund shall be expended for rental of property for the purposes contemplated herein, and to defray the cost of custodial services and other expenses necessary to the proper use and enjoyment of such premises by the occupant. Moneys from the fund may also be expended for management of buildings and property under the jurisdiction of the department of buildings and general services including but not limited to inventory, appraisal, space study and allocation, and renovations. Cost of studies, renovations, alterations, and modifications shall not exceed \$50,000.00 unless approved by the secretary of administration. ~~The secretary shall furnish the legislature each year a listing of projects which he or she approved that exceeded the \$50,000.00 limit.~~

Sec. 56. 29 V.S.A. § 168(b) is amended to read:

(b) Revolving fund.

* * *

(7) The commissioner of buildings and general services shall maintain accurate and complete records of all receipts by and expenditures from the fund ~~and shall report to the general assembly on January 15 of each year regarding projects approved through the fund, the status of the fund, and a consolidated amortization schedule.~~

* * *

Sec. 57. 29 V.S.A. § 903(d) is amended to read:

(d) The commissioner of buildings and general services, with the assistance of all state agencies, shall cooperate with the generators and managers of waste materials which may be recycled and with the producers of products which use recycled materials to maximize the state's use of those materials and products, particularly where the added cost of using waste materials rather than virgin materials is less than the cost avoided by not having that waste in the waste stream. Proceeds from the sale of waste materials collected by the department of buildings and general services shall be credited to a special fund and shall be available to the department to offset the cost of recycling efforts. The goal for the purchase of recycled materials shall be at least 40 percent by the end of 2008. For purposes of this section, "recycled materials" include, but are not limited to, recycled paper products, retreaded automobile tires, re-refined lubricating oil, used automotive parts, reclaimed solvents, recycled asphalt, recycled concrete, and compost materials. ~~By January 15 of each odd-numbered year, the commissioner of buildings and general services shall submit a report to the governor and to the natural resources committees of the general assembly reporting on the implementation of this subsection.~~

Sec. 58. 30 V.S.A. § 22 is amended to read:

§ 22. TAX TO FINANCE DEPARTMENT OF PUBLIC SERVICE AND PUBLIC SERVICE BOARD

* * *

~~(c) The board and the department shall report to the general assembly on or before January 15 of each year stating their revenues and expenditures, including receipts authorized in sections 20 and 21 of this title, during the previous fiscal year and their anticipated revenues and expenditures in the current and succeeding fiscal year. The reports shall also state for the previous fiscal year the allocation of time and resources devoted to regulation of each type of regulated utility and the allocation of time and resources devoted to the wholesale and retail sale of electrical energy by the department. The report shall also contain a review of the rules of the board and department, regardless of the process for adopting such rules, at a frequency such that each rule is reviewed at least every five years for efficiency and effectiveness in carrying out the public service policies and goals of this state. Copies of the report shall be sent to the members of the house committee on ways and means, the house committee on commerce, and the senate committee on finance.~~

~~(d)~~ Of the revenue deposited into the special fund for the maintenance of engineering and accounting forces, 40 percent shall be allocated to the public service board and 60 percent shall be allocated to the department of public service.

~~(e)~~(d)(1) On June 30 of each year any balance in the amount allocated to the public service board from the special fund for the maintenance of engineering and accounting forces, after accounting for expenditures and encumbrances, in excess of 20 percent of the board's allocation for that year shall be used in the manner provided by subdivision (3) of this subsection.

(2) On June 30 of each year any balance in the amount allocated to the department of public service from the special fund for the maintenance of engineering and accounting forces, after accounting for expenditures and encumbrances, in excess of 20 percent of the department's allocation for that year shall be used in the manner provided by subdivision (3) of this subsection.

(3) The excess balances determined under subdivisions (1) and (2) of this subsection shall be used in the next succeeding year to directly reduce the rates otherwise collected from the ratepayers of this state for the costs of the telephone lifeline program authorized by section 218(c) of this title.

Sec. 59. 30 V.S.A. § 226a(d) is amended to read:

(d) The board shall retain jurisdiction over any contract under this section and shall hear and resolve any disputes or claims which may arise regarding its application. During the period of any contract under this section, a company shall continue to file with the board and the department its rates, tariffs, and tolls for any service provided including any service subject to the contract, and shall also file on a monthly basis its rate of return under the contract. ~~No less than annually, the department shall report to the senate finance and house commerce committees of the general assembly, or such subcommittees or joint committee thereof as may be established for this purpose, a summary and analysis of the rates, tariffs and tolls for any service provided by a company under a contract, the rate of return of a company under the contract, and any other information pertaining to the contract which the committees may request. Concurrently, the public contract advocate shall report to such committees, subcommittees or joint committees, his or her analysis of the effect of the contract on the cost and quality of basic exchange telecommunications services and intrastate toll rates and modernization of telecommunications services.~~

Sec. 60. 30 V.S.A. § 8059 is amended to read:

§ 8059. RECORDS; ANNUAL REPORT; AUDIT

~~(a)~~ The authority shall keep an accurate account of all its activities and of all its receipts and expenditures.

~~(b)~~ Each year, prior to February 1, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an

~~audit of its books and accounts to be made at least once in each year by a certified public accountant. The cost of the audit shall be considered an expense of the authority, and a copy of the audit shall be filed with the state treasurer.~~

Sec. 61. 31 V.S.A. § 642(d) is amended to read:

(d) Annually, the board shall make a report of the distribution of funds under subsection (c) of this section, including amount and recipient, ~~to the secretary of agriculture, food and markets, the governor, and the general assembly, and that~~ shall be available to the public.

Sec. 62. 32 V.S.A. § 466(a) is amended to read:

(a) Upon requisition of an officer having authority to expend money for the payment of expenses chargeable to the state, with the approval of the governor, the commissioner of finance and management is authorized to issue his or her warrant on the treasurer for funds necessary for such expenses. Such advances shall not be made until such officer files with the state treasurer a good and sufficient bond, approved by the governor and commissioner of finance and management, to indemnify the state against all loss or shortage of sums so advanced. The expense of such bond shall be paid by the state. ~~Such officer shall quarterly, and at such other times as the commissioner of finance and management requires, render an account, in such form as the commissioner of finance and management prescribes, of the expenditures of moneys so advanced and furnish vouchers therefor.~~

Sec. 63. 32 V.S.A. § 954(c) is amended to read:

(c) Notwithstanding any other provisions of law, the state treasurer with the approval of the secretary of administration is hereby authorized to transfer to any authorized projects unspent proceeds derived from the sale of state bonds or notes previously issued for projects heretofore authorized; and the state treasurer is hereby further authorized to issue bonds or notes of the state to replenish such transferred funds for application to the original authorized capital projects. ~~The state treasurer shall by January 15 of each year provide the chairs of the house and senate institutions committees with a report of all such transfers during the preceding fiscal year.~~

Sec. 64. 32 V.S.A. § 3113(c) is amended to read:

(c) ~~Every agency shall, upon request of the commissioner, furnish a list of licenses and contracts issued or renewed by such agency during the reporting period; provided, however, that the secretary of state shall, with respect to certificates of authority to transact business issued to foreign corporations, furnish to the commissioner only those certificates originally issued by the secretary of state during the reporting period and not renewals of such~~

~~certificates. The lists should include the name, address, social security or federal identification number of such licensee or provider, and such other information as the commissioner may require.~~

Sec. 65. 33 V.S.A. § 143b is amended to read:

§ 143b. EDUCATION AND INFORMATION

(a) Within six months of the effective date of section 143a of this title, the office of Vermont health access shall issue rules establishing a procedure for health care providers enrolled in ~~state~~ state and ~~federally funded~~ federally funded medical assistance programs to obtain advisory opinions regarding coverage and reimbursement under those programs. Each advisory opinion issued by the office shall be binding on the office and the party or parties requesting the opinion only with regard to the specific questions posed in the opinion, the facts and information set forth in it, and the statutes and rules specifically noted in the opinion.

~~(b) At least four times a year, the office of Vermont health access shall alert health care providers enrolled in state and federally funded assistance programs by publication distributed to such health care providers, regarding current issues relating to fraud and abusive billing in such programs.~~

Sec. 66. 33 V.S.A. § 308(c) is amended to read:

(c) The board shall advise the director of the division of child development and the commissioner for children and families on all functions related to child care that are within the jurisdiction of state government. The board shall review and evaluate the child-care-related programs and activities of the division of child development. ~~On or before January 15, the board shall report its findings and recommendations to the general assembly.~~

Sec. 67. 33 V.S.A. § 4305 is amended to read:

§ 4305. COORDINATED SYSTEM OF CARE

* * *

~~(c) The commissioners of developmental and mental health services, social and rehabilitation services and education shall jointly submit to the general assembly a report on the status of programs for children and adolescents with a severe emotional disturbance and their families which shall include a system of care plan. The report shall be submitted together with the general appropriation bill provided for by section 701 of Title 32. The system of care plan shall~~

~~(1) identify the characteristics and number of children and adolescents with a severe emotional disturbance in need of appropriate services, describe the educational, residential, mental health or other treatment services needed,~~

~~describe currently available programs and resources, recommend a plan to meet the needs of such children, recommend priorities for the continuation or development of programs and resources, and make an assessment of the success of such programs; and~~

~~(2) provide information as available on the extent to which children and adolescents with a severe emotional disturbance have not received services, the characteristics and number of those children and adolescents who have not received services and recommendations on how to address their identified needs.~~

~~(d)~~ The secretary of human services and the commissioner of education shall report to the general assembly by January 15, 1991 with their recommendations concerning the coordination and provision of adequate and appropriate services to all children with disabilities. The report shall identify the characteristics and number of children with disabilities in need of services, describe the educational, residential, mental health, or other services needed, describe currently available programs and resources, recommend priorities for the needs of children with disabilities, and recommend a plan to meet the continuation or development of programs and resources.

~~(e)~~(d) Nothing contained in this chapter shall be construed to diminish the rights of children with disabilities, their parents, guardians, or surrogate parents under federal or state law, including ~~but not limited to~~ confidentiality, consent for services and evaluation, and parental involvement.

~~(f)~~(e) Nothing contained in this chapter shall entitle children and adolescents with a severe emotional disturbance to special education services unless they are otherwise eligible for such services under state or federal law.

~~(g)~~(f) Except as otherwise provided in chapter 55 of this title, the receipt of appropriate services for a child or adolescent with a severe emotional disturbance or the child or adolescent's family, including an out-of-home placement, shall not be conditioned on placement of the child or adolescent in the legal custody, protective supervision or protection of the department of social and rehabilitation services.

Sec. 68. 33 V.S.A. § 6703(b) is amended to read:

(b) The director shall not be required to enter into contracts under this section if:

* * *

(2) the director determines that the program is not accomplishing its goal of protecting dual eligible individuals from improper denials of Medicare coverage. The director shall base his or her determination under this

subdivision on information obtained from the contractors, providers of health care, area agencies on aging, and other individuals and organizations affected by the program. ~~On or before January 15 of any fiscal year in which a determination is made under this subdivision, the director shall report his or her determination to the general assembly.~~

Sec. 69. Sec. 87a(A) of No. 1 of the Acts of 1999 is amended to read:

(A) To the Vermont housing and conservation board for Champion land and acquisition and affordable housing \$5,500,000

(i) Of this appropriation, \$4,500,000 shall be used to purchase and ensure that the lands commonly referred to as the Champion lands in northeastern Vermont are conserved as a working forest for the sustainable production of wood products, for natural resources, including the maintenance of wildlife habitat and conservation of identified natural heritage sites, and for perpetual public access for traditional recreational uses. The Vermont housing and conservation board and its grantees, through easements and through agreements with its state, federal and private partners, shall permanently protect the following uses:

(I) Camp leases. On state lands renewal shall be for the life of the leaseholder or, in the event of the leaseholder's death, renewal by immediate family members for not more than 20 years. The state shall make a special effort to repair roads, whenever possible, on state-owned land ~~and annually shall file a report with the general assembly and the municipality describing any road maintenance performed during the year.~~ In the event of extreme erosion due to natural causes on a road leading to a camp, the department of fish and wildlife shall fix the roads if funding is available for the purpose. Camp owners shall be responsible for maintaining driveways to their respective camps. Lease payments on land which is owned and managed by the department of fish and wildlife shall be set aside for road maintenance on department of fish and wildlife property. Further the Vermont housing and conservation board shall negotiate aggressively and diligently to obtain for camp holders on private lands the same or greater protections as are provided to camp holders on state lands, and to provide for free access thereto.

* * *

Sec. 70. Sec. 114(d) of No. 62 of the Acts of 1999 is amended to read:

(d) Of the above tobacco settlement fund appropriation, \$500,000.00 is to support the Vermont coalition of clinics for the uninsured health care and dental services provided by clinics for uninsured individuals and families. ~~The coalition shall report to the general assembly on or before January 1 of each~~

~~year with a fiscal and program accounting of expenditures made with the monies appropriated by the general assembly.~~

Sec. 71. Sec. 2(b) of No. 125 of the Acts of the 1999 Adj. Sess. (2000) is amended to read:

(b) The commissioners of health and of buildings and general services, education and health, with help from the secretary of the agency of natural resources when appropriate, shall:

* * *

~~(7) Report annually to the house and senate committees on education on the extent of indoor air and hazardous exposure problems in Vermont schools and on the percentage of Vermont schools that have established a school environmental health program or qualified for environmental health certification.~~

Sec. 72. Sec. 111(c) of No. 152 of the Acts of the 1999 Adj. Sess. (2000) is amended to read:

(c) Of the above appropriation, \$200,000.00 is to support the Burlington Health Clinic. ~~The Burlington Health Clinic shall report to the general assembly on or before January 1 of each year with a fiscal and program accounting of expenditures made with the monies appropriated by the general assembly.~~

Sec. 73. Sec. 251(a) of No. 152 of the Acts of the 1999 Adj. Sess. (2000) is amended to read:

(a) The following amounts are appropriated from the general fund to the secretary of administration, for transfer and use by the referenced departments as indicated in fiscal year 2000:

* * *

(22) To the agency of natural resources for a one-time enhancement of watershed basin planning initiatives. The agency must prepare these basin plans in conformance with all applicable state and federal law, including but not limited to the water quality management planning regulations at 40 C.F.R. 130.6, ~~and must report back to the legislature on its progress annually.~~

* * *

Sec. 74. Sec. 3(a) of No. 156 of the Acts of the 1999 Adj. Sess. (2000) is amended to read:

(a) To enable the state of Vermont to take advantage of additional federal funds that may be made available, the secretary of transportation is authorized to accelerate projects in the state's transportation capital program and project

~~development plan. The secretary shall report quarterly to the members of the joint transportation oversight committee and members of the House and Senate committees on transportation on any changes in the scheduling of the projects in the transportation capital program or project development plan, and shall additionally submit the report required in 19 V.S.A. § 10h, relating to cost overruns.~~

Sec. 75. Sec. 4 of No. 62 of the Acts of 2001 is amended to read:

Sec. 4. DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS;
AFFORDABLE HOUSING; DEVELOPMENT INCENTIVES; VERMONT
HOUSING BUDGET; HOUSING INVESTMENT PLAN

The commissioner of housing and community affairs shall:

~~(1) Compile compile a list of discretionary loans, grants and other funding over which the Agency of Natural Resources, the Department of Labor and Industry and the Department of Transportation, or any other state entity, has discretion or control, and for which the addition or adaptation of criteria would create incentives for communities and developers to build more affordable housing. On or before November 15, 2001, the commissioner shall submit to the General Assembly a written report outlining recommendations for program or criteria changes that will provide incentives for affordable housing development.~~

~~(2) Create a Vermont housing budget designed to assure efficient expenditure of state funds appropriated for housing development, to encourage and enhance cooperation among housing organizations, to eliminate overlap and redundancy in housing development efforts, and to ensure appropriate geographic distribution of housing funds. The Vermont housing budget shall include any state funds of \$50,000.00 or more awarded or appropriated for housing. The Vermont housing budget and appropriation recommendations shall be submitted to the General Assembly annually on or before January 15, and shall include the amounts and purposes of funds appropriated for or awarded to the following:~~

- ~~(A) The Vermont Housing and Conservation Trust Fund.~~
- ~~(B) The Agency of Human Services.~~
- ~~(C) The Agency of Commerce and Community Development.~~
- ~~(D) Any other entity that fits the funding criteria.~~

~~(3) Annually, develop a Vermont housing investment plan in consultation with the Vermont housing council. The housing investment plan shall be consistent with the Vermont consolidated plan for housing, in order to coordinate the investment of state, federal and other resources, such as state~~

~~appropriations, tax credits, rental assistance and mortgage revenue bonds, to increase the availability and improve the quality of Vermont's housing stock. The housing investment plan shall be submitted to the General Assembly, annually on January 15, and shall:~~

~~(A) target investments at single family housing, mobile homes, multifamily housing and housing for homeless persons and people with special needs;~~

~~(B) recommend approaches that maximize the use of available state and federal resources;~~

~~(C) identify areas of the state that face the greatest housing shortages;~~
and

~~(D) recommend strategies to improve coordination among state, local and regional offices in order to remedy identified housing shortages.~~

Sec. 76. Sec. 113(b) of No. 63 of the Acts of 2001 is amended to read:

(b) Of the above general fund appropriation, \$300,000.00 is to support the Vermont coalition of clinics for the uninsured health care and dental services provided by clinics for uninsured individuals and families. ~~The coalition shall report to the general assembly on or before January 1 of each year with a fiscal and program accounting of expenditures made with the monies appropriated by the general assembly.~~

Sec. 77. Sec. 123c of No. 63 of the Acts of 2001 is amended to read:

Sec. 123c. FEDERALLY-QUALIFIED HEALTH CENTERS

* * *

~~(e) The commissioner of health and its contractor shall report to the general assembly on or before January 15 of each year with its progress in implementing the provisions of this section, and with an accounting of its use of grant funds.~~

(f) Vermont's Congressional Delegation is urged to take all actions necessary and desirable in securing designations, approvals and other actions by the federal government required to carry out the purposes of this section.

~~(g)~~(f) The commissioner of health may exercise sole source contracting authority to carry out the provisions of this section.

Sec. 78. Sec. 20 of No. 149 of the Acts of the 2001 Adj. Sess. (2002) is amended to read:

Sec. 20. AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT; REALLOCATION

The state historic preservation officer, with the concurrence of the commissioner of buildings and general services, may reallocate the funds in Sec. 4(a) of this act (commerce and community development) to other state historic sites only for major maintenance, should a more pressing need arise following the session. ~~If a reallocation occurs, the state historic preservation officer and the commissioner of buildings and general services shall notify the house and senate committees on institutions that a reallocation has taken place.~~

Sec. 79. Sec. 7 of No. 45 of the Acts of 2003 is amended to read:

Sec. 7. STRATEGIC PLAN

On or before January 15, 2005, the secretary shall prepare a strategic plan which shall be updated biannually ~~and presented to the general assembly and to members of the house and senate health and welfare committees.~~ The strategic plan shall include desired outcomes for Vermonters, shall report on the outcomes experienced by individuals and measured by quality indicators, shall set and clarify goals, shall describe the process for engagement of agency staff, community partners, clients, advocacy groups, providers, advisory groups, and other affected agencies, shall provide an ongoing assessment of the effectiveness of the plan and shall establish and describe milestones for development of the plan.

Sec. 80. Sec. 25 of No. 53 of the Acts of 2003 is amended to read:

Sec. 25. REPORT ON COLLABORATION AMONG HOSPITALS

The commissioner of banking, insurance, securities, and health care administration shall invite Fletcher Allen Health Care and the Dartmouth Hitchcock Medical Center to identify fields of excellence or discrete areas of specialty focus for the respective health care institutions, and to make recommendations for collaboration. ~~The commissioner shall report to the general assembly on or before December 15, 2003 and annually thereafter on the progress of the collaboration.~~

Sec. 81. Sec. 129(b) of No. 66 of the Acts of 2003 is amended to read:

(b) Of the above appropriation, \$300,000.00 is to support the Vermont coalition of clinics for the uninsured health care and dental services provided by clinics for uninsured individuals and families. ~~The coalition shall report to the general assembly on or before January 1 of each year, with a fiscal and program accounting of expenditures made with the monies appropriated by the general assembly.~~

Sec. 82. Sec. 3(b) of No. 43 of the Acts of 2005 is amended to read:

(b) Vermont state hospital; future planning.

* * *

~~(2) The department shall provide regular reports to the joint legislative mental health oversight committee and to the chairs of the house and senate committees on institutions regarding the status of the work authorized in this subsection.~~

Sec. 83. REPEAL

(a) The following sections in Title 2 are repealed:

(1) § 203 (report of the uniform legislation commission);

(2) § 264(g) (compilation of lobbyist disclosure reports).

(b) The following sections in Title 3 are repealed:

(1) § 161 (report by the attorney general on activities for the year);

(2) § 2476(d) (report on the status of the Connecticut River valley tourism district);

(3) § 2826 (environmental notice bulletin and permit handbook update);

(4) § 3085c(g) (report on the activities and findings of the commission on juvenile justice).

(c) The following sections in Title 6 are repealed:

(1) § 5 (annual report by the secretary of agriculture, food and markets);

(2) § 335 (publication of information regarding commercial feeds);

(3) § 612 (publication of information regarding standards, regulations, and forms for seeds);

(4) § 925 (notice of judgments in insecticide-, fungicide-, and rodenticide-related actions);

(5) § 2962(6) (report by the agricultural development commission on its activities for the year).

(d) 8 V.S.A. § 14 (annual report by the commissioner of banking, insurance, securities, and health care administration) is repealed.

(e) The following sections in Title 10 are repealed:

(1) § 15(c) (Vermont qualifying facility contract mitigation authority's annual report on activities, including operating and financial statements);

(2) § 276 (report by the Vermont rehabilitation corporation on its progress and recommendations for improvements to the family farm assistance program);

(3) § 1283(e) (report on the condition and disbursements from the environmental contingency fund);

(4) § 4049b(c) (report on the Green Mountain Conservation Camp endowment fund's expenditures and balance);

(5) § 4050(d) (report on the watershed management account);

(6) § 4255(f) (report on recipients of free and honorary licenses issued by the fish and wildlife department);

(7) § 4609(d) (report on the impact of fishing license reciprocity with New York on state revenues);

(8) § 6622a (report on the status of whether there are sufficient quantities of quality recycled newsprint at a reasonable price);

(9) § 6631 (report on efforts to encourage toxics use reduction and hazardous waste reduction);

(10) § 7065(d) (report on the Texas Low-Level Radioactive Waste Disposal Compact);

(11) § 8017 (report on enforcement actions taken through administrative environmental law enforcement).

(f) 12 V.S.A. § 5601(h) (report on the adequacy of dollar limits on liability for state employee actions) is repealed.

(g) The following sections in Title 16 are repealed.

(1) § 128 (report on the activities of the council on civics education);

(2) § 1049a(d) (report on participation in and the cost of the graduation education plan);

(3) § 2177(c) (report on the amount appropriated to the corporation and expended for the current fiscal biennium by the Vermont state colleges);

(4) § 2281(b) (report on the amount appropriated and expended for the current fiscal biennium by the University of Vermont and State Agricultural College);

(5) § 2531f (report of the name of each student receiving a scholarship from a state senator).

(h) 18 V.S.A. § 9507(b) (report itemizing all administrative and programmatic expenses of the department of social welfare, the department of education, and the department of health pertaining to preventing the use of tobacco) is repealed.

(i) The following sections in Title 20 are repealed:

(1) § 45(e) (report on expenditures for disaster relief);

(2) § 487 (report of the quartermaster general concerning the disposition of the ordnance, arms, ammunition, and other property belonging to the department);

(3) § 1487 (report of the adjutant general on activities and expenditures);

(j) 24 V.S.A. § 367(e) (report by the department of state's attorneys on its activities and expenditures).

(k) 26 V.S.A. § 1449 (report on the progress of the Vermont Program for Quality in Health Care, Inc.) is repealed.

(l) The following sections in Title 28 are repealed:

(1) § 104(e) (report by the commissioner of corrections on implementing notice of community placements);

(2) § 911(d) (report by the alternatives to incarceration board on its activities and the programs it oversees);

(3) § 1101(7) (report on studies relating to community conditions which affect the problem of delinquency).

(m) The following sections in Title 32 are repealed:

(1) § 308b(c) (report by the secretary of human services and the secretary of administration on carry-forward cases which would transfer to the human services caseload management reserve);

(2) § 505 (report by county clerks regarding money collected for the state);

(3) § 543 (report from district courts on cost bills and returns);

(4) § 561 (report by probate judges on all fees paid to their offices due the state);

(5) § 1059 (report of a list of officers, members, and employees entitled to mileage and the amount due to each);

(6) § 3463 (report by county treasurers of the grand list, the rate per dollar, and the amount of county taxes assessed in the county for the previous year).

(n) The following sections in Title 33 are repealed:

(1) § 2001(d) (report on the implementation of a pharmacy benefit manager contract entered into by the pharmacy best practices and cost control program);

(2) § 2001(e)(1) (requirements for the fiscal report on the pharmacy benefit manager contract);

(3) § 3308 (report by the children and family council for prevention programs on its activities for the previous year);

(4) § 3703 (report by the secretary of the agency of human services on the status of parent-child center programs);

(5) § 6105 (report on the activities of the Vermont independence fund for the previous year);

(6) § 6303(e) (report on findings and recommendations regarding the provision of home health services in Vermont).

(o) The following sections of the Acts of 1997 are repealed:

(1) Sec. 3 of No. 33 (report on the status of the youthful offender system);

(2) Sec. 13(c) of No. 58 (report on the methodology and results of compliance tests for tobacco licensees);

(3) Sec. 29 of No. 63 (report on the consequences and effectiveness of amending the child support statute to comply with the Federal Welfare Act of 1996);

(p) The following sections of the Acts of the 1997 Adj. Sess. (1998) are repealed:

(1) Sec. 58(c) of No. 66 (report on disbursements by and obligations of the financial management system development special fund);

(2) Sec. 5 of No. 114 (report on involuntary medication for mental health patients);

(3) Sec. 3(a) and (b) of No. 117 (report on DUI enforcement and reduction programs);

(4) Sec. 32 of No. 117 (report on time limits for conducting drivers' license suspension hearings);

(5) Sec. 120(d) of No. 147 (as added by Sec. 118a of No. 62 of the Acts of 1999) (report on services provided under the job access/reverse commute program).

(q) The following sections of the Acts of 1999 are repealed:

(1) Sec. 6 of No. 56 (report on statistics relating to hate crimes);

(2) Sec. 100(c) of No. 62 (report on the development and accomplishments of state and regional partnerships).

(r) The following sections of the Acts of the 1999 Adj. Sess. (2000) are repealed:

(1) Sec. 97(c) of No. 152 (report on the development and accomplishments of the state team for children, families and individuals and regional and community partnerships);

(2) Sec. 111b(b) of No. 152 (evaluation of family partnership programs).

(s) The following sections of the Acts of 2001 are repealed:

(1) Sec. 28(b) of No. 61 (report by the commissioners of environmental conservation and of corrections on grants and gifts accepted from the federal government);

(2) Sec. 272(c) of No. 63 (report from the commissioner of personnel on the status of limited service positions).

(t) Sec. 22(b) of No. 149 of the Acts of the 2001 Adj. Sess. (2002) (report by the commissioners of environmental conservation, of corrections, of health, and of buildings and general services, and the chancellor of the Vermont State Colleges on grants and gifts accepted from the federal government) is repealed.

(u) The following sections of the Acts of 2003 are repealed:

(1) Sec. 22(b) of No. 63 (report by the commissioners of environmental conservation, of corrections, and of health on grants and gifts accepted from the federal government);

(2) Sec. 149a of No. 66 (report on the status and demands on the weatherization fund).

(v) The following sections of the Acts of the 2003 Adj. Sess. (2004) are repealed:

(1) Sec. 22(b) of No. 121 (report by the commissioners of environmental conservation, of corrections, and of buildings and general services on grants and gifts accepted from the federal government and other sources);

(2) Sec. 12(a) of No. 122 (report by the department of personnel on position reclassifications throughout state government).

(w) The following sections of the Acts of 2005 are repealed:

(1) Sec. 24(b) of No. 43 (report by the commissioners of environmental conservation, of corrections, and of buildings and general services on grants and gifts accepted from the federal government and other sources);

(2) Sec. 12 of No. 79 (report by the secretary of the agency of human services on reports received by adult protective services and by the attorney general on issues arising from an amendment to 13 V.S.A. § 1375(8)(C));

(3) Sec. 48(c) of No. 80 (report by the agency of transportation on the status of all Connecticut River bridge projects).

(x) Sec. 22(b) of No. 147 of the Acts of the 2005 Adj. Sess. (2006) (report by the commissioners of environmental conservation, of corrections, and of buildings and general services on grants and gifts accepted from the federal government and other sources) is repealed.

(y) The following sections of the Acts of 2007 are repealed:

(1) Sec. 110g(c) of No. 65 (report by the health access oversight committee on recommendations to changes in reimbursement contained in the deficit reduction act); and

(2) Sec. 131(b) of No. 65 (report on the weatherization data management system).

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senator White moved to amend the recommendation of the Committee on Government Operations as follows:

First: By striking out Sec. 5 in its entirety.

Second: In Sec. 83(e), after subdivision (3), by inserting new subdivisions (4) and (5) to read as follows:

(4) § 1978(e)(3) (report on potable water supplies and wastewater systems);

(5) § 1978(e)(4) (due date for report on potable water supplies and wastewater systems);

and by renumbering the remaining subdivisions to be numerically correct

Third: In Sec. 83(i), by adding a new subdivision (4) to read as follows:

(4) § 1872a (reference to reports on the radiological emergency response plan fund and DUI enforcement).

Fourth: In Sec. 83(m), by inserting a new subdivision (1) to read as follows:

(1) § 110(a)(5) (reference to report on the transfer of unspent bond proceeds);

And by renumbering the remaining subdivisions to be numerically correct.

Which was agreed to.

Thereupon, the recommendation of amendment of the Committee on Government Operations, as amended, was agreed to, and third reading of the bill was ordered.

Recess

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

Called to Order

At one o'clock in the afternoon the Senate was called to order by the President *pro tempore*.

Rules Suspended; Bills Committed

S. 115.

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

An act relating to civil marriage.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Mazza moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Judiciary *intact*,

Which was agreed to.

S. 51.

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

An act relating to Vermont's motor vehicle franchise laws.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Transportation, Senator Scott moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Economic Development, Housing and General Affairs with the report of the Committee on Transportation *intact*,

Which was agreed to.

Committee of Conference Appointed

H. 232.

An act relating to fiscal year 2009 budget adjustment.

Was taken up. Pursuant to the request of the House, the President *pro tempore* announced the appointment of

Senator Bartlett
Senator Kitchel
Senator Snelling

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

Message from the House No. 36

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 83. An act relating to underground storage tanks and the petroleum cleanup fund.

H. 135. An act relating to wireless communication facilities and project approvals for municipal and cooperative utilities.

H. 145. An act relating to composting.

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

Adjournment

On motion of Senator Mazza, the Senate adjourned, to reconvene on Monday, March 23, 2009, at three o'clock in the afternoon pursuant to J.R.S. 23.

MONDAY, MARCH 23, 2009

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 51. An act relating to Vermont's motor vehicle franchise laws.

S. 77. An act relating to the disposal of electronic waste.

Bill Introduced

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

S. 124.

By Senator White,

An act relating to election day registration.

To the Committee on Government Operations.

Committee Bills Introduced

Senate committee bills of the following titles were severally introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 125.

By the Committee on Judiciary,

An act relating to expanding the sex offender registry.

S. 126.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to digital forensic specialists.

S. 127.

By the Committee on Education,

An act relating to small school districts that pay tuition for their resident students.

S. 128.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to workers' compensation benefits and misclassification.

S. 129.

By the Committee on Health and Welfare,

An act relating to containing health care costs by decreasing variability in health care spending and utilization.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 83.

An act relating to underground storage tanks and the petroleum cleanup fund.

To the Committee on Natural Resources and Energy.

H. 135.

An act relating to wireless communication facilities and project approvals for municipal and cooperative utilities.

To the Committee on Finance.

H. 145.

An act relating to composting.

To the Committee on Agriculture.

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills and Joint resolution, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 5, S. 54, S. 99, and J.R.S. 18.

Third Reading Ordered**S. 109.**

Senate committee bill entitled:

An act relating to brominated flame retardants.

Having appeared on the Calendar for notice for one day, was taken up.

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

Joint Resolution Adopted on the Part of the Senate**J.R.S. 24.**

Joint Senate resolution entitled:

Joint resolution relating to criminal procedure, the sex offender registry, and the Adam Walsh Child Protection and Safety Act of 2006.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 3. An act relating to prohibiting retaliation for legislative testimony.

S. 25. An act relating to the repeal or revision of certain state agency reporting requirements.

S. 85. An act relating to the patient's privilege.

Third Reading Ordered**S. 69.**

Senator Brock, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to digital campaign finance filings.

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.

Bill Amended; Third Reading Ordered**S. 86.**

Senator McCormack, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the administration of trusts.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Title 14A is added to read:

TITLE 14A. TRUSTS

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

§ 101. SHORT TITLE

This title may be cited as the Vermont Trust Code.

§ 102. SCOPE

This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, chapters 5 and 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

§ 103. DEFINITIONS

In this title:

(1) “Action,” with respect to an act of a trustee, includes a failure to act.

(2) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

(3) “Beneficiary” means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in subsection 405(a) of this title.

(5) “Conservator” shall have the same meaning as “Guardian of the property” under subdivision 7(A)(ii) of this section.

(6) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7)(A) “Guardian.”

(i) “Guardian of the person” means a person appointed by the probate court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual.

(ii) “Guardian of the property” means a person appointed by the probate court to administer the estate of a minor or adult individual.

(B) Neither term includes a guardian ad litem.

(8) “Interests of the beneficiaries” means the beneficial interests provided in the terms of the trust.

(9) “Jurisdiction,” with respect to a geographic area, includes a state or country.

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

(11) “Power of withdrawal” means a presently exercisable general power of appointment other than a power:

(A) exercisable by a trustee and limited by an ascertainable standard;
or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

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

(13)(A) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, is:

(i) a “first tier” beneficiary as a distributee or permissible distributee of trust income or principal;

(ii) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision (13) terminated on that date without causing the trust to terminate; or

(iii) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(B) Notwithstanding subdivisions (i) and (ii) of subdivision (A) of this subdivision (13), a second tier beneficiary or a final beneficiary whose interest in the trust:

(i) is created by the exercise of a power of appointment and the exercise of the power of appointment is not irrevocable; or

(ii) may be eliminated by an amendment to the trust, shall not be a “qualified beneficiary.”

(14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(15) “Settlor” means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(16) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(18) “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(19) “Trust instrument” means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(20) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

§ 104. KNOWLEDGE

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the

employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 105. DEFAULT AND MANDATORY RULES

(a) Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this title except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the probate court to modify or terminate a trust under sections 410 through 416 of this title;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5 of this title;

(6) the power of the probate court under section 702 of this title to require, dispense with, or modify or terminate a bond;

(7) the power of the probate court under subsection 708(b) of this title to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008 of this title;

(9) the rights under sections 1010 through 1013 of this title of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the probate court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the probate court and venue for commencing a proceeding as provided in sections 203 and 204 of this title.

§ 106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this state.

§ 107. GOVERNING LAW

The meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 108. PRINCIPAL PLACE OF ADMINISTRATION

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the probate court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704 of this title.

§ 109. METHODS AND WAIVER OF NOTICE

(a) Notice to a person under this title or the sending of a document to a person under this title must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, commercial delivery service, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this title or a document otherwise required to be sent under this title need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this title or the sending of a document under this title may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of court procedure.

§ 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

(a) Whenever notice to qualified beneficiaries of a trust is required under this title, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b)(1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this title if the charitable organization, on the date the charitable organization's qualification is being determined, is:

(A) a "first tier" beneficiary as a distributee or permissible distributee of trust income or principal;

(B) a “second tier” beneficiary who would be a first tier beneficiary of trust income or principal if the interests of the distributees described in subdivision (1)(A) of this subsection (b) terminated on that date without causing the trust to terminate; or

(C) a “final beneficiary” who would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(2) Notwithstanding subdivision (1) of this subsection (b), a second tier beneficiary or a final beneficiary whose interest in the trust is created by the exercise of a power of appointment, and the exercise of the power of appointment is not irrevocable, shall not have the rights of a “qualified beneficiary.”

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 of this title has the rights of a qualified beneficiary under this title.

(d) The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

§ 111. NONJUDICIAL SETTLEMENT AGREEMENTS

(a) For purposes of this section, “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the probate court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the probate court under this title or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) the interpretation or construction of the terms of the trust;

(2) the approval of a trustee’s report or accounting;

(3) direction to a trustee to perform or to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee’s compensation;

(5) transfer of a trust's principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the probate court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 3 of this title was adequate, and to determine whether the agreement contains terms and conditions the probate court could have properly approved.

§ 112. RULES OF CONSTRUCTION

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

CHAPTER 2. JUDICIAL PROCEEDINGS

§ 201. ROLE OF COURT IN ADMINISTRATION OF TRUST

(a) The probate court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the probate court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(d) Upon motion of any party in a probate action concerning the administration of a trust under the provisions of this title, the presiding probate judge shall permit an appeal to be taken to the superior court from any interlocutory order or ruling if the judge finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.

§ 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally

to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 203. SUBJECT MATTER JURISDICTION

(a) The probate court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) The probate court has concurrent jurisdiction with other courts of this state of other proceedings involving a trust.

§ 204. VENUE

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the probate district of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the probate district in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a probate district of this state in which a beneficiary resides, in a probate district in which any trust property is located, and if the trust is created by will, in the probate district in which the decedent's estate was or is being administered.

§ 205. MATTERS IN EQUITY

The probate court may hear and determine in equity all matters relating to trusts in this title.

CHAPTER 3. REPRESENTATION

§ 301. REPRESENTATION; BASIC EFFECT

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 411 and 602 of this title, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

§ 302. REPRESENTATION BY HOLDER OF GENERAL TESTAMENTARY POWER OF APPOINTMENT

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§ 303. REPRESENTATION BY FIDUCIARIES AND PARENTS

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a guardian of the property may represent and bind the estate that the guardian controls;

(2) a guardian of the person may represent and bind the ward if a guardian of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a guardian for the child has not been appointed.

§ 304. REPRESENTATION BY PERSON HAVING SUBSTANTIALLY IDENTICAL INTEREST

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question between the representative and the person represented.

§ 305. APPOINTMENT OF REPRESENTATIVE

(a) If the probate court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the probate court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this title, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

CHAPTER 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

§ 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;

(5) by an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust.

§ 402. REQUIREMENTS FOR CREATION

(a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 408 of this title; or

(C) a trust for a noncharitable purpose, as provided in section 409 of this title;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and current and sole beneficiary.

(b) a settlor has capacity to create a trust if:

(1) the trust is created by an agent of the settlor under a power of attorney that expressly grants authority to create the trust; and

(2) the principal had capacity to create a trust at the time the power of attorney was executed.

(c) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(d) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 403. TRUSTS CREATED IN OTHER JURISDICTIONS

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a citizen;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

§ 404. TRUST PURPOSES

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

§ 405. CHARITABLE PURPOSES; ENFORCEMENT

(a) A charitable trust may be created for the relief of poverty; the advancement of education or religion; the promotion of health, scientific, literary, benevolent, governmental, or municipal purposes; or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary or if the designated charitable purpose cannot be completed or no longer exists, the trustee, if authorized by the terms of the trust, or if not, the probate court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, the attorney general, a cotrustee, or a person with a special interest in the charitable trust may maintain a proceeding to enforce the trust.

§ 406. CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 407. EVIDENCE OF ORAL TRUST

Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 408. TRUST FOR CARE OF ANIMAL

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court. A person having an interest in the welfare of the animal may request the probate court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 409. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Except as otherwise provided in section 408 of this title or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the probate court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the probate court determines that the

value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

(a) In addition to the methods of termination prescribed by sections 411 through 414 of this title, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 411 through 416 of this title, or trust combination or division under section 417 of this title, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 411 of this title may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 413 of this title.

§ 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If, upon petition, the probate court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the probate court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's guardian of the property with the approval of the probate court supervising the guardianship if an agent is not so authorized; or by the settlor's guardian of the person with the approval of the probate court supervising the guardianship if an agent is not so authorized and a guardian of the property has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the probate court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the probate court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the probate court if the probate court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

§ 412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

(a) The probate court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The probate court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

§ 413. CY PRES

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the probate court, on motion of any trustee, or any interested person, or the attorney general, may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the probate court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than 21 years have elapsed since the date of the trust's creation.

§ 414. MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000.00 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The probate court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the probate court or otherwise in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

§ 415. REFORMATION TO CORRECT MISTAKES

The probate court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 416. MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

The probate court may modify the terms of a trust to achieve the settlor's tax objectives if the modification is not contrary to the settlor's probable intention. The probate court may provide that the modification has retroactive effect.

§ 417. COMBINATION AND DIVISION OF TRUSTS

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

CHAPTER 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS

§ 501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

To the extent a beneficiary's interest is not protected by a spendthrift provision, the probate court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The probate court may limit the award to such relief as is appropriate under the circumstances.

§ 502. SPENDTHRIFT PROVISION

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 503. EXCEPTIONS TO SPENDTHRIFT PROVISION

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;

(2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and

(3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§ 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD

(a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution;
or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

§ 505. CREDITOR'S CLAIM AGAINST SETTLOR

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law governing the transfer to such a trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse

and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this title.

§ 506. OVERDUE DISTRIBUTION

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(1) the discretion is expressed in the form of a standard of distribution;

or

(2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 507. PERSONAL OBLIGATION OF TRUSTEE

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

CHAPTER 6. REVOCABLE TRUSTS

§ 601. CAPACITY OF SETTLOR OF REVOCABLE TRUST

The capacity of a settlor required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this title.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property or property held by tenants by the entirety when added to the trust, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property or property held by tenants by the entirety when added to the trust, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) executing a later will or codicil that expressly refers to and revokes or amends the trust or specifically devises or bequeaths specific property that would otherwise have passed according to the terms of the trust, or

(B) any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs, but with respect to community property or property held by tenants by the entirety when added to the trust under subdivision (b)(1) of this section, the trustee shall deliver one-half of the property to each spouse unless the governing instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A guardian of the property of the settlor or, if no guardian of the property has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the probate court supervising the guardianship.

(g) A trustee who does not have actual knowledge that a trust has been revoked or amended is not liable for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF TRUST PROPERTY

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of:

(1) three years after the settlor's death; or

(2) four months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee has actual knowledge of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the trust, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid in whole or in part is liable to return any distribution received to the extent that the invalidity applies to the distribution.

CHAPTER 7. OFFICE OF TRUSTEE§ 701. ACCEPTING OR DECLINING TRUSTEESHIP

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 702. TRUSTEE'S BOND

(a) A trustee shall give bond to secure performance of the trustee's duties only if the probate court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the probate court has not dispensed with the requirement.

(b) The probate court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The probate court may modify or terminate a bond at any time.

§ 703. COTRUSTEES

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence,

illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified in writing any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

(a) A vacancy in a trusteeship occurs if:

(1) a person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the probate court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or

(3) by a person appointed by the probate court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the probate court may appoint an additional trustee or special fiduciary whenever the probate court considers the appointment necessary for the administration of the trust.

§ 705. RESIGNATION OF TRUSTEE

(a) A trustee may resign:

(1) upon at least 30 days' notice in writing to the qualified beneficiaries except those qualified beneficiaries under a revocable trust which the settlor has the capacity to revoke and to all cotrustees; or

(2) with the approval of the probate court.

(b) In approving a resignation, the probate court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 706. REMOVAL AND REPLACEMENT OF TRUSTEE

(a) The settlor, a cotrustee, or a beneficiary may request the probate court to remove a trustee under subsection (b) of this section or to replace a trustee under subsection (c) of this section. A trustee may be removed by the probate court on its own initiative.

(b) The probate court may remove a trustee if:

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the probate court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(6) for any cause, if the interests of the trust estate require it.

(c) The probate court may remove an existing trustee, and appoint a replacement trustee subject to the provisions of section 704 of this title, if the probate court finds that a change in trustee would be in keeping with the intent of the settlor. In deciding whether to replace a trustee under this subsection, the probate court may consider the following factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the grantor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the trust.

(d) A probate court may order trustees who are replaced pursuant to an action brought under subsection (c) of this section to reimburse the trust for attorney's fees and court costs paid by the trust relating to the action.

(e) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the probate court may order such appropriate relief under subsection 1001(b) of this title as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 707. DELIVERY OF PROPERTY BY FORMER TRUSTEE

(a) Unless a cotrustee remains in office or the probate court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

§ 708. COMPENSATION OF TRUSTEE

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the probate court may allow more or less compensation if:

(1) the duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

(c)(1) Factors for the probate court to consider in deciding upon a trustee's compensation shall include:

(A) the size of the trust;

(B) the nature and number of the assets;

(C) the results obtained;

(D) the time and responsibility required;

(E) the expertise required;

(F) any management or sale of real property or closely held business interests;

(G) any involvement in litigation to protect the trust property;

(H) the fee customarily charged in the locality for similar services;

(I) the experience, reputation, and ability of the person performing the services;

(J) the effect that the particular employment may have on the ability of the person employed to engage in other employment;

(K) the time limitations imposed by the trustee or by the circumstances; and

(L) other relevant factors.

(2) The order of the factors in this subsection does not imply their relative importance.

§ 709. REIMBURSEMENT OF EXPENSES

(a) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

CHAPTER 8. DUTIES AND POWERS OF TRUSTEE

§ 801. DUTY TO ADMINISTER TRUST

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this title.

§ 802. DUTY OF LOYALTY

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 1012 of this title, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the probate court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 1005 of this title;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 1009 of this title;

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee;

(6) the transaction was consented to in writing by a settlor of the trust while the trust was revocable.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment is fairly priced and otherwise complies with the prudent investor rule of chapter 9 of this title. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must

include in the trustee's annual report of the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(i) The probate court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 803. IMPARTIALITY

If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust, giving due regard to the beneficiaries' respective interests.

§ 804. PRUDENT ADMINISTRATION

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 805. COSTS OF ADMINISTRATION

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

§ 806. TRUSTEE'S SKILLS

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 807. DELEGATION BY TRUSTEE

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§ 808. POWERS TO DIRECT

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The

holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 809. CONTROL AND PROTECTION OF TRUST PROPERTY

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 810. RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 811. ENFORCEMENT AND DEFENSE OF CLAIMS

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 812. COLLECTING TRUST PROPERTY

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

§ 813. DUTY TO INFORM AND REPORT

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. Notice does not need to be provided to the attorney general by the trustee of a charitable trust under this section except upon request by the attorney general or as provided in subsection (f) of this section.

(b) A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative may send the qualified beneficiaries a report on behalf of a deceased trustee, and a guardian or a duly authorized agent under a power of attorney may send the qualified beneficiaries a report on behalf of an incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subdivisions (b)(2) and (3) of this section do not apply to a trustee who accepts a trusteeship before the effective date of this title, to an irrevocable trust created before the effective date of this title, or to a revocable trust that becomes irrevocable before the effective date of this title.

(f)(1) A person seeking relief regarding a charitable trust under this subsection shall notify the attorney general upon filing a petition to:

(A) select a charitable purpose or charitable beneficiary as provided in subsection 405(b) of this title;

(B) enforce a charitable trust as provided in subsection 405(c) of this title;

(C) remove or replace a trustee of a charitable trust as provided in section 706 of this title; or

(D) remedy a breach of trust as provided in section 1001 off this title.

(2) Notice does not have to be given under this subsection if the trustee reasonably believes that the assets of the trust are less than \$10,000.00.

§ 814. DISCRETIONARY POWERS; TAX SAVINGS

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the probate court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this title, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title.

§ 815. GENERAL POWERS OF TRUSTEE

(a) A trustee, without authorization by the probate court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by this title.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

§ 816. SPECIFIC POWERS OF TRUSTEE

Without limiting the authority conferred by section 815 of this title, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial service institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan or account, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's guardian of the property or, if the beneficiary does not have a guardian of the property, the beneficiary's guardian of the person;

(B) paying it to the beneficiary's custodian under the Uniform Gifts to Minors Act, and, for that purpose, creating a custodianship; or

(C) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§ 817. DISTRIBUTION UPON TERMINATION

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

CHAPTER 9. UNIFORM PRUDENT INVESTOR ACT AND UNITRUSTS

§ 901. PRUDENT INVESTOR RULE

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§ 902. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) general economic conditions;

(2) the possible effect of inflation or deflation;

(3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

(7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

§ 903. DIVERSIFICATION

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 904. DUTIES AT INCEPTION OF TRUSTEESHIP

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

§ 905. REVIEWING COMPLIANCE

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 906. LANGUAGE INVOKING STANDARD OF THIS CHAPTER

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 907. TOTAL RETURN UNITRUSTS(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in Section 672(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this title (referred to in this section as the "I.R.C.)) with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the

trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) “Interested distributee” means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a “related or subordinate party” (as defined in I.R.C. § 672(c)) with respect to such distributee.

(4) “Interested trustee” means any or all of the following:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee;

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) “Total return unitrust” means an income trust which has been converted under and meets the provisions of this section.

(6) “Settlor” means an individual who created an inter vivos or a testamentary trust.

(7) “Unitrust amount” means an amount computed as a percentage of the fair market value of the trust.

(b) A trustee, other than an interested trustee, or when two or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case referred to in this subsection as “trustee”), may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protectors or trust advisors of the trust;

(C) At least one person receiving such notice in each tier described in subdivision 103(13) of this title is legally competent; and

(D) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, when two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without the approval of the probate court:

(1) Convert an income trust to a total return unitrust;

(2) Reconvert a total return unitrust to an income trust; or

(3) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust or both if:

(A) The trustee adopts a written policy for the trust providing:

(i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(ii) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(iii) That the percentage used to calculate the unitrust amount and the method used to determine the fair market value of the trust will be changed as stated in the policy;

(B) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(i) The percentage to be used to calculate the unitrust amount;

(ii) The method to be used in determining the fair market value of the trust; and

(iii) Which assets, if any, are to be excluded in determining the unitrust amount;

(C) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

(i) The settlor of the trust, if living;

(ii) All qualified beneficiaries; and

(iii) All persons acting as trust protector or trust advisor of the trust;

(D) At least one person receiving such notice in each tier described in subdivision 103(13) of this title (first tier, second tier and final beneficiaries) is legally competent; and

(E) No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) A trustee who desires to: convert an income trust to a total return unitrust; reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability or elects not to do it under the provisions of subsection (b) or (c) of this section, the trustee may petition the probate court for such order as the trustee deems appropriate. If there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the probate court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the probate court as shall be necessary to enable the probate court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and

appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent nor more than five percent, taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided that:

(1) Instead of sending written notice as provided in subsection (b) or (c) of this section, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the attorney general of this state;

(2) Subdivision (b)(3)(C) or (c)(3)(D) of this section (relating to legal competence of qualified beneficiaries), as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount and the amount required by I.R.C. § 4942.

(h) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) and then from net long-term capital gain described in I.R.C. § 1222(7); and

(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

(2) The timing of distributions (including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases);

(3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(4) If the trust is reconverted to an income trust, the effective date of such reconversion; and

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Vermont under Vermont law or to any trust, regardless of its place of administration, whose governing instrument provides that Vermont law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) or a charitable-remainder trust described in I.R.C. § 664(d);

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the settlor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 14A V.S.A. § 907, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount" or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the probate court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

§ 908. EXPRESS TOTAL RETURN UNITRUSTS

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under section 907 of this title, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust or a reconversion of an income trust to a unitrust similar to the mechanism under section 907 of this title.

(e) If an express total return unitrust does not specifically or by reference to section 907 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(f) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in the Internal Revenue Code of 1986 (as in effect on the effective date of this title and referred to in this section as the "I.R.C."), § 1222(9), from net realized short-term capital gain as described in I.R.C. § 1222(5) and then from net realized long-term capital gain described in I.R.C. § 1222(7); and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(2) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§ 1001. REMEDIES FOR BREACH OF TRUST

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the probate court may:

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

(5) appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided in section 706 of this title;

(8) reduce or deny compensation to the trustee;

(9) subject to section 1012 of this title, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) order any other appropriate relief.

§ 1002. DAMAGES FOR BREACH OF TRUST

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 1003. DAMAGES IN ABSENCE OF BREACH

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. Nothing in this section limits a trustee's right to reasonable compensation under section 708 of this title.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 1004. ATTORNEY'S FEES AND COSTS

In a judicial proceeding involving the administration of a trust, the probate court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 1005. LIMITATION OF ACTION AGAINST TRUSTEE

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a

representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (1) the removal, resignation, or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

(d) Subsections (a) through (c) of this section shall not apply to the filing of a petition in probate court by the attorney general for breach of trust against the trustee of a charitable trust with a principal place of administration in this state. The attorney general may file a petition within three years after the potential claim arises.

§ 1006. RELIANCE ON TRUST INSTRUMENT

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 1007. EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 1008. EXCULPATION OF TRUSTEE

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

§ 1009. BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 1010. LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in making the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 1011. INTEREST AS GENERAL PARTNER

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds, in a fiduciary capacity, an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract will be satisfied if the

trustee signs the contract or signs another writing which is contemporaneously delivered to the other parties to the contract in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 1012. PROTECTION OF PERSON DEALING WITH TRUSTEE

(a) A person other than a beneficiary who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 1013. CERTIFICATION OF TRUST

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee of a trust at any time after execution or creation of a trust may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge,

mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the trustee that the statements contained in the certificate of trust are true and correct. The signature of the trustee must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:

(1) the name of the trust, if one is given;

(2) the date of the trust instrument;

(3) the name of each grantor or settlor;

(4) the name of each original trustee;

(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;

(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;

(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions, and a statement that the trust exists;

(8) a statement that no provisions of the trust instrument limit the authority so granted; and

(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.

(b) A certificate of trust executed under subsection (a) of this section may be recorded in the municipal land records where the land identified in the certificate of trust or any attachment to it is located. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustee, the powers of the trustee and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.

(c) A certificate of trust is conclusive proof as to the matters contained in the certificate, and any party may rely upon the continued effectiveness of the certificate unless:

(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;

(2) the certificate is amended or revoked under subsection (d) of this section; or

(3) the full trust instrument including all amendments is recorded or filed.

(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is located.

(e) A certification of trust may be signed or otherwise authenticated by any trustee.

(f) A certification of trust need not contain the dispositive terms of a trust.

(g) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(h) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

CHAPTER 11. TRUST PROTECTORS AND TRUST ADVISORS

§ 1101. TRUST ADVISORS AND TRUST PROTECTORS

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including (without limitation) any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on

alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) the power to appoint a successor trust protector or trust advisor;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee for the reasons stated in the trust instrument, and to appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment, or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

§ 1102. TRUST ADVISORS AND TRUST PROTECTORS AS FIDUCIARIES

(a) A trust advisor or trust protector is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power

or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 1103. TRUST ADVISOR AND TRUST PROTECTOR SUBJECT TO COURT JURISDICTION

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 1104. NO DUTY TO REVIEW ACTIONS OF TRUSTEE, TRUST ADVISOR, OR TRUST PROTECTOR.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) monitor the conduct of the trustee, trust advisor, or trust protector;

(2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee's, trust advisor's, or trust protector's authority (such as confirming that the trustee's, trust advisor's, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee's, trust advisor's, or trust protector's direction or other information pursuant to section 813 of this title), shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the

excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

§ 1105. FIDUCIARY'S LIABILITY FOR ACTION OR INACTION OF TRUSTEE, TRUST ADVISOR, AND TRUST PROTECTOR

An excluded fiduciary is not liable for:

(1) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(2) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

CHAPTER 12. MISCELLANEOUS PROVISIONS

§ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this title, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 1202. ELECTRONIC RECORDS AND SIGNATURES

The provisions of this title governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 1203. SEVERABILITY CLAUSE

If any provision of this title or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 1204. APPLICATION TO EXISTING RELATIONSHIPS

(a) Except as otherwise provided in this title, on the effective date of this title:

(1) this title applies to all trusts created before, on, or after its effective date;

(2) this title applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) this title applies to judicial proceedings concerning testamentary trusts commenced before its effective date except that accountings shall continue to be due from the trustees of such trusts in the same manner and in the same frequency as required by the probate court prior to this title unless otherwise ordered by the probate court;

(4) this title applies to all other judicial proceedings concerning trusts commenced before its effective date unless the probate court finds that application of a particular provision of this title would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this title does not apply and the superseded law applies;

(5) any rule of construction or presumption provided in this title applies to trust instruments executed before the effective date of this title unless there is a clear indication of a contrary intent in the terms of the trust; and

(6) an act done before the effective date of this title is not affected by this title.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this title, that statute continues to apply to the right even if it has been repealed or superseded.

Sec. 2. 4 V.S.A. § 111a is amended to read:

§ 111a. DESIGNATION AND JURISDICTION OF SUPERIOR COURT

Until otherwise provided by law or by judicial rules adopted by the supreme court not inconsistent with law, a court designated as the superior court, to be presided over by a superior judge or a judge designated under section 74 of this title, shall be held in each county of this state. The setting of terms of the superior court shall be as was heretofore provided for the county courts under section 115 of this title. The jurisdiction of the superior court shall be the same as heretofore provided by law for the county courts in the Vermont Statutes Annotated, with the exception of actions relating to the administration of trusts as provided in section 311 of this title and as provided in Title 14A.

Sec. 3. 4 V.S.A. § 311 is amended to read:

§ 311. JURISDICTION GENERALLY

The probate court shall have jurisdiction of the probate of wills, the settlement of estates, the administration of trusts created by will pursuant to Title 14A, trusts of absent person's estates, charitable, cemetery and philanthropic trusts, irrevocable trusts created by inter vivos agreements solely for the purpose of removal and replacement of trustees pursuant to subsection 2314(c) of Title 14, the appointment of guardians, and of the powers, duties and rights of guardians and wards, proceedings concerning chapter 231 of Title 18, accountings of attorneys in fact where no guardian has been appointed and the agent has reason to believe the principal is incompetent, relinquishment for adoption, adoptions, uniform gifts to minors, changes of name, issuance of new birth certificates, amendment of birth certificates, correction or amendment of marriage certificates, correction or amendment of death certificates, emergency waiver of premarital medical certificates, proceedings relating to cemetery lots, trusts relating to community mausoleums or columbariums, civil actions brought under subchapter 3 of chapter 107 of Title 18 relating to disposition of remains, proceedings relating to the conveyance of a homestead interest of a spouse under a legal disability, the issuance of declaratory judgments, issuance of certificates of public good authorizing the marriage of persons under 16 years of age, appointment of administrators to discharge mortgages held by deceased mortgagees, appointment of trustees for persons confined under sentences of imprisonment, fixation of compensation and expenses of boards of arbitrators of death taxes of Vermont domiciliaries, and as otherwise provided by law.

Sec. 4. 4 V.S.A. § 311a is amended to read:

§ 311a. VENUE GENERALLY

For proceedings authorized to probate courts, venue shall lie as provided in Title 14A for the administration of trusts, and otherwise in a district of the court as follows:

- (1) Decedent's estate for a resident of this state: in the district where the decedent resided at the time of death.
- (2) Decedent's estate for a nonresident of this state: in any district where estate of the decedent is situated.
- (3) Appointment of a conservator for the estate of an absent person:
 - (A) in the district of the absent person's last legal domicile; or
 - (B) if a nonresident of this state, in any district where estate of the absent person is situated.
- (4) Trust estate created by will: in the district where the decedent's will is allowed.

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- (5) Appointment of a trustee for the estate of an absent person:
- (A) in the district of the absent person's last legal domicile; or
 - (B) if the absent person has no domicile in this state, in any district where property of the absent person is situated; or
 - (C) in any district of residence of a fiduciary or representative of an estate having possession and control of property the absent person received by virtue of a legacy or as an heir of an estate.
- (6) Charitable, cemetery and philanthropic trusts:
- (A) in the district where the trustee resides; or
 - (B) in the district where the creation of the trust is recorded.
- (7) Appointment of a guardian of a person resident in this state:
- (A) in the district where the ward resides at the time of appointment; except
 - (B) when the guardian is appointed for a minor who is interested in a decedent's estate as an heir, devisee or legatee or representative of either, in the district where the decedent's estate is being probated.
- (8) Appointment of a guardian for a nonresident minor: in the district where the minor owns or has an interest in real estate.
- (9) Termination or modification of a guardianship or change of a guardian:
- (A) in the district of the appointing court; or
 - (B) in the district where the ward resides.
- ~~(10) Estate of a nonresident testamentary trust: in the district where the estate is situated.~~
- (11) Estate of a nonresident charitable or philanthropic testamentary trust:
- (A) in any district where the legacy or gift is to be paid or distributed; or
 - (B) in any district where the beneficiary or beneficiaries reside or are located.
- (12) Appointment of a guardian as to the estate of a nonresident subject to guardianship in this state or under guardianship in another state: in any district where estate of the nonresident ward or prospective ward is situated.

(13) Change of residential placement for a ward under total or limited guardianship:

- (A) in the district of the appointing court; or
- (B) in the district where the ward resides.

(14) Petition to determine title to property in the name of a person deceased seven or more years without probate of a decedent estate: in the district where the property is situated.

(15) Uniform gifts to minors:

(A) petition to expend custodial property for a minor's support, education or maintenance: in the district where the minor resides;

(B) petition for permission to resign or for designation of a successor custodian: in the district where the minor resides.

(16) Relinquishment for adoption:

(A) in the district where a written relinquishment is executed; or

(B) in the district where a licensed child placing agency to which written relinquishment is made has its principal office.

(17) Adoption:

(A) if the adopting person or persons are residents of this state, in the district where they reside; or

(B) if the adopting person or persons are nonresidents, in a court of competent jurisdiction where they reside; or

(C) if the prospective adoptee is a minor who has been relinquished or committed to the department of social and rehabilitation services or a licensed child placing agency, in the district where the department or agency is located or has its principal office.

(18) Change of name: in the district where the person resides.

(19) Issuance of new or amended birth certificate: in the district where the birth occurred.

(20) Correction or amendment of a marriage certificate: in the district where the original certificate is filed.

(21) Correction or amendment of a death certificate: in the district where the original certificate is filed.

(22) Emergency waiver of premarital medical certificate: in the district where application is made for the marriage license.

(23) Proceedings relating to cemetery lots: in the district where the cemetery lot is located.

(24) Trusts relating to community mausoleums or columbariums: in the district where the community mausoleum or columbarium is located.

(25) Petition for license to convey homestead interest of an insane spouse: in the district where the homestead is situated.

(26) Declaratory judgments (unless otherwise provided in Title 14A for proceedings relating to the administration of trusts):

(A) if any related proceeding is then pending in any probate court, in that district;

(B) if no proceeding is pending:

(i) in the district where the petitioner resides; or

(ii) if a decedent's estate, a guardian or ward, or trust governed by Title 14 is the subject of the proceeding, in any district where venue lies for a proceeding thereon.

(27) Issuance of certificates of public good authorizing the marriage of persons under 16 years of age: in the district or county where either applicant resides, if either is a resident of the state; otherwise in the district or county in which the marriage is sought to be consummated.

(28) Appointment of a trustee for a person confined under a sentence of imprisonment: in the district or county in which the person resided at the time of sentence, or in the district or county in which the sentence was imposed.

(29) Proceedings concerning chapter 231 of Title 18: in the district where the principal resides or in the district where the principal is a patient admitted to a health care facility.

(30) Proceedings under subchapter 3 of chapter 107 of Title 18, in the district where the decedent resided at the time of death or where the remains are currently located.

Sec. 5. 12 V.S.A. § 4251 is amended to read:

§ 4251. ACTIONS FOR ACCOUNTING—JURY

The superior courts shall have original jurisdiction, exclusive of the district court, in actions for an accounting other than accountings involved in the administration of trusts under Title 14A. When the defendant in such an action brought in one of the following ways pleads in defense an answer which, if true, makes him or her not liable to account, the issue thus raised may be tried to a jury:

(1) By one joint tenant, tenant in common or coparcener, his or her administrator or executor against the other, his or her administrator or executor, as bailiff for receiving more than his or her just proportion of any estate or interest;

(2) By an administrator or executor against his or her coadministrator or coexecutor, who neglects to pay the debts and funeral charges of the intestate or testator, in proportion to the estate in his or her hands, and he or she may recover such proportion of such estate as is just;

(3) By an executor, being a residuary legatee, against the coexecutor to recover his or her equal and ratable part of the estate in the hands of such coexecutor;

(4) By a residuary legatee against the executor;

(5) On book account.

Sec. 6. 14 V.S.A. § 202 is amended to read:

§ 202. WHEN PARTIES BOUND BY OTHERS

In judicial proceedings involving trusts under this title or estates of decedents, minors, or persons under guardianship, the following apply:

(1) Persons are bound by orders binding others in the following cases:

(A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(B) To the extent there is no conflict of interest between them or among persons represented, orders binding a guardian bind the person whose estate he or she controls; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian has been appointed, a parent may represent his or her minor child.

(C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(2) At any point in a proceeding, a probate court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

(3) Parties shall be those persons so defined by the rules of probate procedure.

Sec. 7. 14 V.S.A. § 2301 is amended to read:

~~§ 2301. TRUSTEES; BOND; WHEN REQUIRED~~

~~Before entering upon the duties of office, a trustee appointed in a will shall file a petition and give a bond with surety to the probate court for the benefit of persons interested in the trust estate and conditioned for the faithful performance of duties. Unless the court deems it proper to require a bond with surety, only the individual bond of the trustees shall be required in a case in which the testator in the will appointing the trustee has directed that no bond, or a bond without surety, be required.~~

Sec. 8. 14 V.S.A. § 2302 is amended to read:

~~§ 2302. CONDITIONS~~

~~The conditions of the bond shall be as follows:~~

~~(1) To make a true inventory of the real estate and goods, chattels, rights and credits belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same to the probate court at such time as the court directs;~~

~~(2) To manage and dispose of such estate and effects, and faithfully discharge his trust in relation to the same, according to law and the will of the testator;~~

~~(3) To render an account of the property in his hands, and of the management and disposition of the same within one year, and at other times when required by the probate court;~~

~~(4) To settle his accounts with the probate court at the expiration of his trust, and to pay over and deliver the estate and effects remaining in his hands, or due from him on such settlement to the persons entitled to the same, according to law and the will of the testator.~~

Sec. 9. 14 V.S.A. § 2304 is amended to read:

~~§ 2304. BOND WHEN MORE THAN ONE TRUSTEE~~

~~When two or more persons are appointed trustees by a will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties.~~

Sec. 10. 14 V.S.A. § 2311 is amended to read:

~~§ 2311. TRUSTEES OF NONRESIDENT DECEDENTS; NONRESIDENT TRUSTEE; DECREE~~

~~When a nonresident testator has devised or bequeathed property, a minor portion of which is in this state, to a nonresident trustee for the benefit of nonresident beneficiaries, and a trustee under the will has been appointed in the state of the testator's domicile, and the domiciliary estate fully settled, the probate court in this state, on petition of the nonresident trustee and after notice to the commissioner of taxes, upon final settlement, may decree the trust property in this state to the nonresident trustee to be administered as a part of the foreign testamentary trust.~~

Sec. 11. 14 V.S.A. § 2312 is amended to read:

~~§ 2312. TRUSTEE FAILING TO GIVE BOND; EFFECT~~

~~A person appointed a trustee who neglects to give a bond when required and within the time directed by the probate court, shall be considered as having declined the trust.~~

Sec. 12. 14 V.S.A. § 2313 is amended to read:

~~§ 2313. RESIGNATION, REMOVAL AND APPOINTMENT OF TRUSTEES; TRUSTEE MAY DECLINE OR RESIGN~~

~~A trustee may decline or resign his trust, when the probate court deems it proper to allow the same.~~

Sec. 13. 14 V.S.A. § 2314 is amended to read:

~~§ 2314. TRUSTEE MAY BE REMOVED; SPECIAL FIDUCIARY; PETITION FOR REMOVAL BY BENEFICIARY OR CO-TRUSTEE~~

~~(a) When a trustee becomes incapacitated or otherwise unable to discharge the trust, or is obviously unsuitable, and when, for any cause, the interests of the trust estate require it, after giving notice as provided by the rules of probate procedure, the probate court may remove the trustee.~~

~~(b) When a trustee fails to perform duties required by law, the rules of probate procedure or order of the probate court, the court may suspend the trustee from further duties and appoint a special fiduciary to assume~~

~~temporarily the powers and duties of the trustee replaced. A special fiduciary shall give a bond as is otherwise required in the proceeding.~~

~~(c) A co-trustee or a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least 18 years of age who believe that an existing trustee should be replaced by a more suitable trustee may petition the court for a replacement. The court may grant the petition, remove an existing trustee, and appoint a replacement trustee if, after giving notice as provided by the Vermont Rules of Probate Procedure, the court finds that a change in trustee would be in keeping with the intent of the grantor. In deciding whether to replace a trustee, the court may consider the following factors:~~

~~(1) Whether removal would substantially improve or benefit the administration of the trust.~~

~~(2) The relationship between the grantor and the trustee as it existed at the time the trust was created.~~

~~(3) Changes in the nature of the trustee since the creation of the trust.~~

~~(4) The relationship between the trustee and the beneficiaries.~~

~~(5) The responsiveness of the trustee to the beneficiaries.~~

~~(6) The experience and skill level of the trustee.~~

~~(7) The investment performance of the trustee.~~

~~(8) The charges for services performed by the trustee.~~

~~(9) Any other relevant factors pertaining to the administration of the trust.~~

~~(d) As used in subsection (c) of this section:~~

~~(1) "Beneficiary" means a person who:~~

~~(A) has a present or future beneficial interest in a trust, vested or contingent; or~~

~~(B) in a capacity other than that of trustee, holds a power of appointment over trust property.~~

~~(2) "Court" means the probate court of the district in which the grantor resides or resided before dying or moving out of state, or where a co-trustee resides, or where a beneficiary resides.~~

~~(3) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes~~

~~property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.~~

~~(4) "Settler" and "grantor" have the same meaning.~~

~~(5) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution as defined in 8 V.S.A. § 10205(5), or other trust the nature of which does not admit of general trust administration.~~

~~(6) "Trustee" means an original, added, or successor trustee or co-trustee.~~

~~(e) A court may order trustees who are replaced pursuant to an action brought under this section to reimburse the trust for attorney fees and court costs paid by the trust relating to the action.~~

Sec. 14. 14 V.S.A. § 2315 is amended to read:

~~§ 2315. ADDITIONAL TRUSTEE MAY BE APPOINTED~~

~~When the interests of the trust estate require it and upon notice as provided by the rules of probate procedure the probate court may appoint an additional trustee, who shall act jointly with the other or others and be subject to the same conditions.~~

Sec. 15. 14 V.S.A. § 2316 is amended to read:

~~§ 2316. VACANCY, NEW TRUSTEE APPOINTED~~

~~When a person appointed trustee declines or resigns the trust, dies, or is removed before the object for which appointment was made is accomplished, and where adequate provision is not made by the will to fill the vacancy, after notice as provided by the rules of probate procedure, the probate court may appoint a new trustee to act alone or jointly with the others.~~

Sec. 16. 14 V.S.A. § 2317 is amended to read:

~~§ 2317. AUTHORITY OF NEW TRUSTEE; CONVEYANCE TO~~

~~The trustee so appointed shall have the same authority as if originally appointed by the testator or the probate court and the trust estate shall vest in~~

~~him in the same manner. The probate court may order such conveyances to be made by the former trustee, or his representatives, or by the remaining trustees, as are necessary or proper to vest in the new trustee, either alone or jointly with others, the estate and effects which are to be held in trust.~~

Sec. 17. 14 V.S.A. § 2319 is amended to read:

~~§ 2319. BOND~~

~~A trustee appointed by the probate court shall give a bond as provided for a trustee appointed by a will with such necessary changes as the court directs.~~

Sec. 18. 14 V.S.A. § 2320 is amended to read:

~~§ 2320. DUTIES OF TRUSTEES AND SETTLEMENT OF ACCOUNT; INVENTORY AND APPRAISAL~~

~~In accordance with the rules of probate procedure, trustees shall make and return an inventory, when an inventory is required, and the estate shall be appraised as provided in case of a decedent's estate.~~

Sec. 19. 14 V.S.A. § 2321 is amended to read:

~~§ 2321. DUTIES OF TRUSTEES; PROPERTY KEPT SEPARATE~~

~~In the management of the trust estate, trustees shall perform the duties specified in their bonds and shall keep separate and distinct all moneys, property or securities received by them in the capacity of trustees.~~

Sec. 20. 14 V.S.A. § 2322 is amended to read:

~~§ 2322. LICENSE; SALE AND INVESTMENT OF ESTATE; SUPPORT OF FAMILY~~

~~On motion, the probate court may authorize or require the trustee to sell all or a part of the real estate, stock or other personal estate belonging to the trust estate, when it appears to the court to be beneficial to the trust estate and to the parties interested therein, or necessary or desirable in order to carry out the terms of the trust, and with moneys in the hands of the trustee, invest the proceeds of such sale in real estate or in such other manner as the court judges most beneficial to those interested in such trust estate. The court may make further order or decree for the managing, investing or disposing of the trust fund as the case requires, consistent with the trust. In case of an absent person, the probate court may make such order for the support of the family as it deems necessary.~~

Sec. 21. 14 V.S.A. § 2323 is amended to read:

~~§ 2323. SALE OF REAL PROPERTY; ORDER OF COURT; REGULATIONS~~

The order of the probate court licensing the sale of real estate belonging to a trust estate shall be made under the following regulations:

(1) On motion, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure;

(2) At the hearing, the petitioner shall produce evidence of the value of the real estate to be sold, the interest of the trust estate therein, and of the necessity or desirability of such sale;

(3) Before license is granted, and if the probate court requires, the trustee shall give an additional bond with sufficient sureties for a suitable amount, conditioned that the trustee will account for the proceeds of the sale, according to law, and shall also be sworn to sell the real estate as in the trustee's judgment will be most beneficial to the trust estate; and a certificate of the oath, made by the authority administering it, shall be returned to the court before the license issues;

(4) If the foregoing requisites are complied with, the probate court may order the sale of the real estate of the trust estate, or its interest in the same, or that part thereof as the court deems necessary, at public or private sale, and shall furnish the trustee with a certified copy of its order;

(5) If the probate court directs a public sale, the order shall designate the mode of giving notice of the time and place thereof, and the sale shall be held in one of the towns where the real estate is located;

(6) The order of sale shall state that the requisites mentioned in subdivisions (1) (3) of this section have been complied with, and a copy thereof shall be recorded, previous to the sale, in the office where a deed of that real estate is required to be recorded.

Sec. 22. 14 V.S.A. § 2324 is amended to read:

~~§ 2324. ACCOUNTS, TIME~~

~~Trustees shall annually render a full account of the management of trust estates, showing their receipts, disbursements and charges therein and the condition of such estates. Notice of the accounting shall be given as provided by the rules of probate procedure. The decision of the court therein shall have the same effect as in case of settlement of accounts by executors or administrators.~~

Sec. 23. 14 V.S.A. § 2325 is amended to read:

~~§ 2325. EXAMINATIONS OF TRUSTEE~~

~~The probate court shall examine a trustee upon oath as to the correctness of the account before it is allowed by the court, but may dispense with an examination when objection is not made to the account.~~

Sec. 24. 14 V.S.A. § 2326 is amended to read:

~~§ 2326. RIGHT OF SURETY ON ACCOUNTING~~

~~Upon the filing of a trustee's account, a person interested as surety in respect to the account may intervene as a party with the same rights as are given to the surety of an administrator.~~

Sec. 25. 14 V.S.A. § 2328 is amended to read:

~~§ 2328. TRUSTS, DEVISE OR BEQUEST FOR CHARITY, CY PRES~~

~~If a trust for charity is or becomes illegal, impossible or impracticable of enforcement or if a devise or bequest for charity, at the time it was intended to become effective, is illegal, impossible or impracticable of enforcement and if the settlor or testator manifested a general intention to devote the property to charity, the superior court, on motion of any trustee, or any interested person, or the attorney general of the state, may order an administration of the trust, devise or bequest as nearly as possible to fulfill the general charitable intention of the settlor or testator.~~

Sec. 26. 14 V.S.A. § 2501 is amended to read:

~~§ 2501. CHARITABLE, CEMETERY, AND PHILANTHROPIC TRUSTS; ANNUAL REPORTS~~

~~Every trustee or board of trustees, incorporated or unincorporated, who holds in trust, within this state, property given, devised, or bequeathed for benevolent, charitable, humane or philanthropic purposes, including to cemetery associations or societies and towns which hold funds for cemetery purposes, and who administers or is under a duty to administer the same in whole or in part for such purposes, annually, on or before the first day of September, shall make a written report to the probate court showing the property so held and administered, the receipts and expenditures in connection therewith, the whole number of beneficiaries thereof and such other information as the probate court may require.~~

Sec. 27. 27 V.S.A. § 352 is amended to read:

~~§ 352. CERTIFICATE OF TRUST~~

~~(a) The settlor or trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument. The certificate of trust may be used as evidence of authority to sell, convey, pledge,~~

~~mortgage, lease, or transfer title to any interest in real or personal property. The certificate of trust shall be upon the representation of the settlors, grantors, or trustees that the statements contained in the certificate of trust are true and correct. The signature of the grantors or trustees must be under oath before a notary public or other official authorized to administer oaths. The certificate of trust must include:~~

- ~~(1) the name of the trust, if one is given;~~
- ~~(2) the date of the trust instrument;~~
- ~~(3) the name of each grantor or settlor;~~
- ~~(4) the name of each original trustee;~~
- ~~(5) the name and address of each trustee empowered to act under the trust instrument at the time of execution of the certificate;~~
- ~~(6) an abstract of the provisions of the trust instrument authorizing the trustee to act in the manner contemplated by the instrument;~~
- ~~(7) a statement that the trust instrument has not been revoked or amended as to the authorizing provisions;~~
- ~~(8) a statement that no provisions of the trust instrument limit the authority so granted; and~~
- ~~(9) a statement as to whether the trust is supervised by any court and, if so, a statement that all necessary approval has been obtained for the trustees to act.~~

~~(b) A certificate of trust executed under subsection (a) of this section may be recorded in the land records of the municipality where the land identified in the certificate of trust or any attachment to it is situated. When it is so recorded or filed for recording, or in the case of personal property, when it is presented to a third party, the certificate of trust serves to document the existence of the trust, the identity of the trustees, the powers of the trustees and any limitations on those powers, and other matters set forth in the certificate of trust, as though the full trust instrument had been recorded, filed, or presented.~~

~~(c) A certificate of trust is conclusive proof as to the matters contained in it, and any party may rely upon the continued effectiveness of the certificate unless:~~

- ~~(1) a party dealing with the trustee or trustees has actual knowledge of facts to the contrary;~~
- ~~(2) the certificate is amended or revoked under subsection (d) of this section; or~~

~~(3) the full trust instrument is recorded, filed, or presented.~~

~~(d) Amendment or revocation of a certificate of trust may be made only by a written instrument executed by the settlor or trustee of a trust. Amendment or revocation of a certificate of trust is not effective as to a party unless that party has actual notice of the amendment or revocation. For purposes of this subsection, "actual notice" means that a written instrument of amendment or revocation has been received by the party or, in the case of real property, that either a written instrument of amendment or revocation has been received by the party or that a written instrument of amendment or revocation identifying the real property involved has been recorded in the municipal land records where the real property is situated.~~

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Sec. 29. REPEAL

9 V.S.A. §§ 4651-4662 (Uniform Prudent Investor Act) are repealed.

Sec. 30. 32 V.S.A. § 1434 is amended to read:

§ 1434. PROBATE COURTS

(a) The following entry fees shall be paid to the probate court for the benefit of the state, except for subdivision (17) of this subsection which shall be for the benefit of the county in which the fee was collected:

* * *

<p>(9) Testamentary trusts of \$20,000.00 or less <u>For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust at the time the petition is filed is \$100,000.00 or less, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust</u></p>	<p>\$50.00 <u>150.00</u></p>
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<p>(10) Testamentary trusts of more than <u>For all trust petitions, other than those described in subdivision (11) of this subsection, where the corpus of the trust is more than \$100,000.00, including petitions to modify or terminate a trust, to remove or substitute a trustee or trustees, or seeking remedies for breach of trust</u></p>	<p>\$20,000.00</p> <p><u>\$100.00</u> <u>\$250.00</u></p>
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(11) Annual accounts on testamentary trusts of more than \$20,000.00	\$30.00
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* * *

(21) Petitions for the removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts of \$20,000.00 or less	\$50.00
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(22) Petitions for removal of a trustee pursuant to 14 V.S.A. § 2314(c) of trusts more than \$20,000.00	\$100.00
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(23) Petitions concerning advance directives pursuant to 18 V.S.A. § 9718	\$75.00
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* * *

And that when so amended the bill ought to pass.

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

Joint Resolution Adopted in Concurrence

J.R.H. 13.

Joint House resolution entitled:

Joint resolution urging Congress to support the International Violence Against Women Act.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 115.

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

An act relating to civil marriage.

Was taken up for immediate consideration on a division of the Senate, Yeas 21, Nays 6, the necessary three-quarter vote having been attained.

Senator Campbell, for the Committee on Judiciary, to which the bill was referred, reported recommending that the bill be amended as follows:

First: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 18 V.S.A. § 5131(a) is amended to read:

(a)(1) Upon application in a form prescribed by the department, a town clerk shall issue to a person a civil marriage license in the form prescribed by the department and shall enter thereon the names of the parties to the proposed marriage, fill out the form as far as practicable and retain in the clerk’s office a copy thereof.

(2) The department shall prescribe forms that allow each party to a marriage to be designated “bride,” “groom,” or “spouse,” as he or she chooses, and the application shall be in substantially the following form:

VERMONT DEPARTMENT OF HEALTH

APPLICATION FOR VERMONT LICENSE OF MARRIAGE

FEE FOR MARRIAGE LICENSE: \$45.00, FEE FOR CERTIFIED COPY \$10.00

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) (Middle) (Last)		
SEX	DATE OF BIRTH (e.g., July 1, 2009)	AGE
BIRTHPLACE	EDUCATION (Circle No. Yrs. Completed)	
	GRADE S 1-8	GRADES 9-12 COLLEGE (1-5+)
RESIDENCE (No. and Street)		
CITY OR TOWN	COUNTY	STATE
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)		
FATHER’S NAME (First, Middle, Last)		
FATHER’S BIRTHPLACE (State or Foreign Country)		MOTHER’S BIRTHPLACE (State or Foreign Country)
MOTHER’S MAIDEN NAME (First, Middle, Maiden Surname)		
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION

Date last marriage or civil union ended _____ Month _____ Year
LAST RELATIONSHIP ENDED BY: 1. <input type="checkbox"/> DEATH 2. <input type="checkbox"/> DISSOLUTION 3. <input type="checkbox"/> ANNULMENT 4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER
Does either party have a legal guardian _____ Yes _____ No

BRIDE/GROOM/SPOUSE (circle one)

NAME (First) _____ (Middle) _____ (Last) _____			
SEX	DATE OF BIRTH (e.g., July 1, 2009)		AGE
BIRTHPLACE		EDUCATION (Circle No. Yrs. Completed)	
		GRADES 1-8	GRADES 9-12 COLLEGE (1-5+)
RESIDENCE (No. and Street)			
CITY OR TOWN		COUNTY	STATE
RACE – White, Black, Native American, Indian, Chinese, Japanese, Hawaiian, Filipino (Specify)			
FATHER'S NAME (First, Middle, Last)			
FATHER'S BIRTHPLACE (State or Foreign Country)		MOTHER'S BIRTHPLACE (State or Foreign Country)	
MOTHER'S MAIDEN NAME (First, Middle, Maiden Surname)			
NO. OF THIS MARRIAGE (1st, 2nd, etc.)	NO. OF CIVIL UNIONS	IF PREVIOUSLY IN MARRIAGE OR CIVIL UNION, LAST RELATIONSHIP WAS 1. MARRIAGE 2. CIVIL UNION	
Date last marriage or civil union ended _____ Month _____ Year			

LAST RELATIONSHIP ENDED BY:	
1. <input type="checkbox"/> DEATH	2. <input type="checkbox"/> DISSOLUTION
3. <input type="checkbox"/> ANNULMENT	
4. <input type="checkbox"/> PREVIOUS CIVIL UNION DID NOT END. MARRYING CIVIL UNION PARTNER	
Does either party have a legal guardian _____ Yes _____ No	
APPLICANTS	
We hereby certify that the information provided is correct to the best of our knowledge and belief and that we are free to marry under the laws of Vermont.	
SIGNATURE _____	SIGNATURE _____
Date signed _____	Date signed: _____
Planned marriage date _____ Location (City or town) _____	
Officiant Name & Address _____	
Your mailing address after wedding _____	
Do you want a certified copy of your Marriage Certificate? (\$10.00) _____ Yes _____ No	

Date License issued _____ Clerk issuing License _____

This worksheet may be destroyed after marriage is registered

(3) At least one party to the proposed marriage shall sign the certifying application to the accuracy of the facts so stated. The license shall be issued by the clerk of the town where either ~~the bride or groom party~~ resides or, if neither is a resident of the state, by any town clerk in the state.

Second: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. 18 V.S.A. § 5144 is amended to read:

§ 5144. PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGE

(a) Marriages may be solemnized by a supreme court justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace, an individual who has registered as an officiant with the Vermont secretary of state pursuant to section 5144a of this title, a member of the clergy residing in this state and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or by such a clergy person residing in an adjoining state or country, whose parish, church, temple, mosque, or other religious organization lies wholly or in part in this state, or by a member of the clergy residing in some other state

of the United States or in the Dominion of Canada, provided he or she has first secured from the probate court of the district within which the marriage is to be solemnized a special authorization, authorizing him or her to certify the marriage if such probate judge determines that the circumstances make the special authorization desirable. Marriage among the Friends or Quakers, the Christadelphian Ecclesia, and the Baha'i Faith may be solemnized in the manner heretofore used in such societies.

(b) This section does not require a member of the clergy authorized to solemnize a marriage as set forth in subsection (a) of this section, nor societies of Friends or Quakers, the Christadelphian Ecclesia, or the Baha'i Faith to solemnize any marriage, and any refusal to do so shall not create any civil claim or cause of action.

And that when so amended the bill ought to pass.

Senator Ayer, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass.

Senator Mullin moves to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Judiciary as follows:

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

Sec. 1. ADVISORY REFERENDUM

There shall be submitted to the voters of the state of Vermont on a ballot prepared by the secretary of state on March 2, 2010, the question:

“Shall the General Assembly amend the laws of the state to allow couples of the same sex to marry?”

Which was disagreed to on a roll call, Yeas 11, Nays 19.

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

Roll Call

Those Senators who voted in the affirmative were: Brock, Choate, Doyle, Giard, Illuzzi, Kitchel, Maynard, Mazza, Mullin, Scott, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Bartlett, Campbell, Carris, Cummings, Flanagan, Hartwell, Kittell, Lyons, MacDonald, McCormack, Miller, Nitka, Racine, Sears, Shumlin, Snelling, White.

Those Senators absent and not voting were: None.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered on a roll call, Yeas 26, Nays 4.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, White.

Those Senators who voted in the negative were: Brock, Illuzzi, Maynard, Starr.

Those Senators absent and not voting were: None.

Rules Suspended; Bill Amended; Third Reading Ordered

S. 18.

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

An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

Was taken up for immediate consideration.

Senator McCormack, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the bill be amended as follows:

First: In Sec. 1, 24 V.S.A. § 2291a, after the second period by inserting the following: This section shall not apply to a municipal ordinance, resolution, or other enactment that is in effect as of June 1, 2009.

Second: In Sec. 2, 24 V.S.A. § 4413(g), after the period by inserting the following: This subsection shall not apply to a deed restriction, covenant, or similar binding agreement running with the land that is in effect as of June 1, 2009.

Third: In Sec. 3, 27 V.S.A. § 544, after subsection (c) by inserting a new subsection to be lettered subsection (d) to read as follows:

(d) This section shall not apply to a deed restriction, covenant, or similar binding agreement running with the land in effect as of June 1, 2009.

Fourth: By adding a new section to be numbered Sec. 4 to read as follows:

Sec. 4. EFFECTIVE DATE

This act shall take effect on June 1, 2009.

And that when so amended the bill ought to pass.

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

Adjournment

On motion of Senator Shumlin, the Senate adjourned until nine o'clock and fifteen minutes in the morning.

TUESDAY, MARCH 24, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Duane Somero of South Burlington.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 130.

By the Committee on Appropriations,

An act relating to premium changes to allow enhanced Medicaid match in fiscal year 2009.

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

J.R.S. 25. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 27, 2009, it be to meet again no later than Tuesday, March 31, 2009.

President Assumes the Chair**Bill Amended; Third Reading Ordered****S. 5.**

Senator Maynard, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to accidents involving an on-duty law enforcement officer, firefighter, or emergency medical personnel.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 1129(a) is amended to read:

(a) The operator of a motor vehicle involved in an accident whereby a person is injured or whereby there is total damage to all property to the extent of \$1,000.00 or more shall make a written report concerning the accident to the commissioner of motor vehicles on forms furnished by the commissioner. The written report shall be mailed to the commissioner within 72 hours after the accident. The commissioner may require further facts concerning the accident to be provided upon forms furnished by him or her. An accident report shall be prepared in all cases involving an on-duty law enforcement officer, firefighter, or emergency medical personnel, operating in the course of official business, a publicly owned vehicle, or one owned by a private nonprofit corporation or association. In those cases where there is a subsequent conviction and assessment of points under chapter 25 of this title, the report shall be filed with the department of motor vehicles within 72 hours of the conviction.

And that when so amended the bill ought to pass.

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

Rules Suspended; Bill Committed**S. 54.**

Senate bill entitled:

An act relating to clean energy assessment districts.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Shumlin moved that Senate Rule 49 be

suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Natural Resources and Energy *intact*,

Which was agreed to.

Proposals of Amendment; Third Reading Ordered

H. 11.

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

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 14 V.S.A. § 314, in subdivision (b)(2), by striking out the word "or" and inserting in lieu thereof the word and

Second: In Sec. 2, 14 V.S.A. § 336, by striking out the last sentence in its entirety and inserting in lieu thereof a new sentence to read: Before an order is made for the payment or distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

And that 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, the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

Third Reading Ordered

S. 99.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

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.

**Joint Resolution Amended; Third Reading Ordered; Rules Suspended;
Joint Resolution Adopted; Rules Suspended; Joint Resolution Messaged**

J.R.S. 18.

Senator Mullin, for the Committee on Health and Welfare, to which was referred joint Senate resolution entitled:

Joint resolution relating to prescription drug pricing.

Reported recommending that the joint resolution be amended by striking out all after the title of the joint resolution in its entirety and inserting in lieu thereof the following:

Whereas, in the United States, drug manufacturers are allowed to discriminate in drug pricing, and

Whereas, brand-name drug prices in the aggregate are higher in the United States than anywhere else in the world, and

Whereas, prescription drug spending is rising faster than most other health expenditures, and

Whereas, providing for affordable access to medically necessary prescription drugs will lower health care costs, and

Whereas, pharmaceutical companies benefit from public tax dollars appropriated to the National Institutes on Health and other government agencies to pay for a substantial portion of all new prescription drug research, and

Whereas, the cost of prescription drugs remains unaffordable for a large number of Vermonters, and

Whereas, among the persons who are most reliant on prescription drugs are Vermont's senior citizens, individuals with disabilities, and individuals with chronic diseases, and

Whereas, many citizens are reluctantly adopting unhealthy and potentially dangerous practices of reducing their physicians' prescribed prescription drug dosages or traveling to Canada to obtain their prescription drugs for lower costs, and

Whereas, pharmaceutical companies spend, on average, twice as much on advertising and marketing as they do on research and development, and

Whereas, one of the significant factors contributing to the increasing costs of prescription drugs is the growth of direct consumer promotional campaigns sponsored by the nation's pharmaceutical companies through print, broadcast and Internet media, and

Whereas, under Section 201(m) of the Food, Drug and Cosmetics Act, the Food and Drug Administration is responsible for regulating the promotional activities associated with prescription drugs, and

Whereas, the brief summaries of information relating to possible side-effects, contraindications, and effectiveness in advertisements is often overshadowed by the attractive and promotional character of the advertisement that has the potential to lure a lay person into accepting the positive claims and ignoring the less prominently promoted and possibly dangerous side-effects, and

Whereas, television advertisements have grown swiftly since 1997, when the Food and Drug Administration issued more relaxed guidance for direct consumer broadcast advertising, and

Whereas, prescription drug advertising may be misleading by not adequately communicating risk information, and may damage physician-patient relationships, increase prescription drug prices, increase liability actions, and lead to overmedication and drug abuse, and

Whereas, the Food and Drug Administration has repeatedly reprimanded drug companies for false or misleading advertising of prescription drugs that are prescribed for many maladies, including allergies, reduction of high blood pressure or cholesterol levels, and sexually transmitted diseases, and

Whereas, with the change of leadership at the Food and Drug Administration, and the-now more than a decade of nearly limitless television advertisements inducing unknowing consumers to purchase potentially harmful prescription drugs, as well the increased prevalence of similarly intended advertisements on popular websites, the time to rein in direct advertising of prescription drugs to consumers has clearly arrived, and

Whereas, an important price reduction option for both private consumers and state governments has been an increasing reliance on generic drugs which cost considerably less than their brand-name counterparts, but provide equivalent medicinal benefit, and

Whereas, a major impediment to the introduction of new generic drugs is a controversial patent infringement provision Congress adopted in 1984 as part of the Hatch-Waxman Act, and

Whereas, under this provision, a pharmaceutical company holding the patent on a brand-name drug can immediately trigger an automatic 30-month Food and Drug Administration-imposed delay in a generic drug's introduction, and

Whereas, in response to the impediment to the prompt introduction of effective generic drugs, Congress should speedily enact legislation to repeal this statutory impediment, and

Whereas, enactment of such federal legislation would serve as an important incentive for the expedited introduction of new generic drugs, and

Whereas, Medicare Part D prescription drug plans are unaffordable for many Vermonters without Vermont's state wrap-around program called "VPharm," and

Whereas, the federal government does not negotiate for rebates and discounts in the Medicare Part D program, and

Whereas, state Medicaid programs have greatly reduced drug prices in the Medicaid program by negotiating with pharmaceutical companies for reduced prices through rebates and discounts, and

Whereas, Medicare Part D is funded, in part, through payments from the states to the federal government, commonly known as the "clawback," and

Whereas, many senior citizens and individuals with disabilities on Medicare Part D, as well as states, would benefit from negotiated, reduced prices in the Medicare Part D program, and

Whereas, if the cost of prescription drugs is to be substantially reduced, the federal government must adopt new, more stringent, and effective regulatory restrictions on direct consumer prescription drug advertising, increase access to generic drugs, and negotiate prices in the Medicare Part D program, *now therefore be it*

Resolved by the Senate and the House of Representatives:

That the General Assembly calls upon our Congressional Delegation immediately to propose and seek passage of legislation that will:

1) Require any pharmaceutical company which receives or benefits from any federal funding for pharmaceutical research and development to amortize all of the company's research and development costs over the entire world market for prescription drugs, unless the federal Food and Drug Administration deems waiver of such amortization to be appropriate in the case of humanitarian or relief efforts;

2) Amend 42 U.S.C. § 381 and other related statutes so as to allow for the free trade of prescription drugs between the United States and Canada and between the United States and any other country whose prescription drugs the federal Food and Drug Administration determines to be safe and effective;

3) Restrain the huge expenditures by pharmaceutical companies on advertising and marketing;

4) Repeal the federal statutory patent infringement provision that enables the delay of the introduction of generic drugs to the public marketplace;

5) Create disincentives for states that have enacted or are considering enacting laws encouraging the use of higher-cost brand-name prescription drugs; and

6) Direct the Centers for Medicare and Medicaid to negotiate with pharmaceutical companies for rebates and discounts in the Medicare Part D program, *and be it further*

Resolved: That the General Assembly urges the federal Food and Drug Administration to institute a moratorium on the promotion of prescription drugs directly to consumers, and that during the moratorium, the Food and Drug Administration promulgate more effective regulations to address prescription drug advertisements directed at consumers, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of the Food and Drug Administration and to the Vermont Congressional Delegation.

And that when so amended the joint resolution ought to be adopted.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption forthwith.

Thereupon, the joint resolution was read the third time and adopted on the part of the Senate.

Thereupon, on motion of Senator Shumlin, the rules were suspended, and the joint resolution was ordered messaged to the House forthwith.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 18. An act relating to limiting the power of municipalities or deeds to prohibit the installation of solar collectors, clotheslines, or other energy devices based on renewable resources.

S. 69. An act relating to digital campaign finance filings.

S. 86. An act relating to the administration of trusts.

Consideration Postponed

Senate bill entitled:

S. 109.

An act relating to brominated flame retardants.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bill Amended; Bill Passed

S. 115.

Senate bill entitled:

An act relating to civil marriage.

Was taken up.

Thereupon, pending third reading of the bill, Senator Campbell moved to amend the bill in Sec. 7, 18 V.S.A. § 5131(a)(2) in the sample form, after the words "Application for Vermont License" by adding the word Civil and after the words "Fee for" and before the word "Marriage" by adding the word Civil

Which was agreed to.

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

Bill Amended; Third Reading Ordered

S. 47.

Senator Snelling, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to salvage yards.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

* * *

(25) "Fence" means a wall or structure that screens from view the contents inside the perimeter. Fences should be constructed of materials that

are commonly regarded as fencing material and that have an aesthetic value consistent with the surrounding area.

(26) "Scrap metal recycling facility" means a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

(27) "Salvage motor vehicle" means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or one other than an on-premises utility vehicle that is allowed to remain unregistered for a period of 90 days.

(28) "Salvage yard" means a scrap metal recycling facility or any place of outdoor storage or deposit which is maintained, operated, or used for storing, keeping, processing, buying, or selling seven or more unregistered salvage motor vehicles. The term does not include the following:

(A) A solid waste management facility certified pursuant to section 6605 or 6605c of this title.

(B) A vehicle or equipment repair garage where wrecked or disabled motor vehicles and equipment are stored for less than 90 days for inspection or repairs.

(C) A collection of unregistered farm vehicles, equipment, or parts utilized by an owner in the pursuit of farming.

Sec. 2. 10 V.S.A § 6605h is added to read:

§ 6605h. SALVAGE YARD PERMIT

(a) No person shall construct, substantially alter, or operate any salvage yard without first obtaining a permit from the secretary for such facility, site, or activity. A permit shall be valid for a period not to exceed three years.

(b) Salvage yard permits, where appropriate, shall:

(1) Specify the location of the facility, including limits on its development and isolation distances from surface waters, wetlands, and potable water supplies;

(2) Require proper operation and development of the facility in accordance with plans approved under the permit;

(3) Contain provisions for air, groundwater, and surface water monitoring throughout the life of the facility and for a reasonable time after closure of the facility;

(4) Contain provisions for erosion control, landscaping, drainage systems, and monitoring systems; and

(5) Contain such additional conditions, requirements, and restrictions as the secretary may deem necessary to preserve and protect the public health and air, groundwater, and surface water quality. Conditions may include, but are not limited to, requirements concerning reporting, recording, and inspection of the operation of the site.

(c) On or before the date of filing any permit application for a facility, the applicant shall send a notice and a copy of the application to the municipality in which the facility is located or proposed to be located and to any adjacent Vermont municipality if the land is located on a boundary. The applicant shall furnish to the secretary the names of those notified of the application. The secretary shall not issue a permit for a new facility or permit renewal for an existing facility unless the town, city, or village in which the facility is located, and the owners of land abutting the facility have been notified.

(d) The secretary shall not issue a permit under this section without being provided a certificate of approved location as required by section 2255 of Title 24.

Sec. 3. 10 V.S.A. § 6607a(b) is amended to read:

(b) For purposes of this section:

(1) “Commercial hauler” means:

(A) any person that transports regulated quantities of hazardous waste; ~~and~~

(B) any person that transports solid waste for compensation in a vehicle having a rated capacity of more than one ton; ~~and~~

(C) any person that operates a vehicle used for the crushing of salvage motor vehicles.

(2) The commercial hauler required to obtain a permit under this section is the legal or commercial entity that is transporting the waste, rather than the individual employees and subcontractors of the legal or commercial entity. In the case of a sole proprietorship, the sole proprietor is the commercial entity.

Sec. 4. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

* * *

(5) ~~“Junk~~ “Salvage” means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material, ~~including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.~~

(6) ~~“Junk~~ “Salvage motor vehicle” means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~“Junkyard~~ “Salvage yard” means any place of outdoor storage or deposit which is maintained, operated or used ~~in connection with a business~~ for storing, keeping, processing, buying or selling junk seven or more salvage motor vehicles or as a scrap metal processing facility. ~~“Junkyard” also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway. However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services. It does not mean~~ The term does not include:

(A) a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs A vehicle or equipment repair garage where wrecked or disabled motor vehicles and equipment are stored for less than 90 days for inspection or repairs;

(B) a solid waste facility certified under section 6605 or 6605c of Title 10;

(C) a collection of unregistered farm vehicles, equipment, or parts used by their owner in the pursuit of farming.

(8) ~~“Legislative body”~~ means the city council of a city, the ~~board of selectmen~~ selectboard of a town, or the board of trustees of a village.

* * *

(12) ~~“Scrap metal processing~~ recycling facility” means ~~a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process~~ a facility at a fixed location that uses equipment to process and refabricate scrap metal into prepared grades and principally produces scrap iron, steel, or

nonferrous metallic scrap for sale or a facility that stores scrap iron, steel, or nonferrous metallic scrap for future refabrication.

Sec. 5. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

A person shall not operate, establish, or maintain a ~~junkyard~~ salvage yard unless ~~he~~ that person:

~~(1) Holds~~ holds a certificate of approval for the location of the ~~junkyard~~; salvage yard and holds a permit to operate, establish, or maintain a salvage yard, pursuant to section 6605h of Title 10

~~(2) Holds a license to operate, establish or maintain a junkyard.~~

Sec. 6. 24 V.S.A. § 2243 is amended to read:

§ 2243. AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES

~~The agency of transportation is designated as the state agency for the purpose of carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:~~

~~(1) It may make such reasonable rules and regulations as it deems necessary, provided such rules and regulations do not conflict with any federal laws, rules and regulations, or the provisions of this subchapter.~~

~~(2) It shall~~ may enter into agreements with the United States Secretary of Transportation or ~~his~~ representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.

~~(3) It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.~~

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal.~~

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6) It may seek an injunction against the establishment, operation or maintenance of a junkyard which is or will be in violation of this subchapter and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located.~~

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8) It may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.~~

Sec. 7. 24 V.S.A. § 2245 is amended to read:

§ 2245. ~~INCINERATORS, SANITARY LANDFILLS, ETC., SOLID WASTE MANAGEMENT FACILITIES;~~ EXCEPTED

The provisions of this subchapter shall not be construed to apply to ~~incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services~~ solid waste facilities certified by the secretary of natural resources pursuant to section 6605 or 6605c of Title 10.

Sec. 8. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where it is located or where it is proposed to locate the ~~junkyard~~ salvage yard, and, in municipalities having a zoning ordinance and a zoning board of adjustment bylaw, subdivision regulations established under sections 4301-4492 ~~4301-4498~~ of this title, or a municipal ordinance or rule established under sections 1971-1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ordinance bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the ~~junkyard~~ salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 9. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant, the owners of land abutting the facility, and all other persons wishing to be heard on the application for certificate of approval for the location of the ~~junkyard~~ salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant;

(2) the nature and development of surrounding property, such as the proximity of highways and state and town roads and the feasibility of screening the proposed junkyard from such highways and state and town roads, the proximity of ~~churches~~ places of worship, schools, hospitals, existing or planned residential areas, public buildings, or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or ~~morals by reason of offensive or unhealthy odors or smoke, or of other causes~~ other nuisance conditions.

(b) Beginning on June 1, 2009, a person shall not establish, operate, or maintain a ~~junkyard~~ salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems or of the nearest edge of the right-of-way of a state or town road and visible from the main traveled way thereof at any season of the year.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, junkyards and scrap metal processing facilities, may be operated within areas adjacent to the interstate and primary highway systems or to a state or town road, which are within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way, provided they are zoned industrial under authority of state law, or if not zoned industrial under authority of state law, are used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

Sec. 10. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed ~~junkyard~~ salvage yard to established tourist and recreational areas or main

access routes, thereto, proximity to neighboring residences, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

Sec. 11. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall, within ~~two weeks~~ 30 days, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than five~~ issued for a period not to exceed three years from the following July 1. and shall contain at a minimum the following conditions:

(1) Conditions to ensure that the screening requirements of section 2257 of this title are met;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met; and

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, safety, or other nuisance conditions.

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor more than five~~ three years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the superior court for the county in which the proposed junkyard is located environmental court within 30 days of the decision. ~~The court by its order may affirm the action of the legislative body or direct the legislative body to grant or deny the application.~~ No costs shall be taxed against either party upon such appeal.

Sec. 12. 24 V.S.A. § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ Salvage yards shall be screened by a fence or vegetation which effectively screens it from public view ~~from the highway~~, and shall have a gate which shall be closed, except when entering or departing the yard.

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway.

(c) All ~~junk salvage and salvage motor vehicles~~ stored or deposited in a ~~junkyard~~ salvage yard shall be kept within the enclosure, except while being transported to or from the ~~junkyard~~ salvage yard. All wrecking or other work on the ~~junk salvage and salvage motor vehicles~~ shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber or other natural barrier screen the ~~junkyard~~ salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license~~ certificate of approved location, require the applicant to screen only those parts of the ~~junkyard~~ salvage yard not so screened.

~~(e) A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming.~~

Sec. 13. 24 V.S.A. § 2274 is amended to read:

§ 2274. CONSTRUCTION WITH OTHER STATUTES

In the event the provisions of this subchapter conflict with any other law relating to abandoned or unclaimed property, this subchapter controls, and its provisions shall not be construed to repeal or abrogate any other provisions of law relating to ~~junkyards~~ salvage yards but to be in aid thereof or as an alternative.

Sec. 14. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

In addition to the penalty in section 2282 of this title, ~~the agency or the~~ legislative body may seek a temporary restraining order, preliminary injunction or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is or will be in violation of this act and may obtain compliance with its orders for screening and protection of the public

health, safety, environment, or nuisance conditions by complaint to the superior court for the county in which the junkyard is located.

Sec. 15. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the agency of natural resources shall report to the senate and house committees on natural resources and energy, the senate and house committees on transportation, and the senate and house committees on government operations with recommendations for regulating additional activities in the state as salvage yards. The report shall include:

(1) Recommended rules, requirements, or methods for regulating the owners of property who store or keep outdoors less than seven salvage motor vehicles on their property, including rules, requirements, or methods for preventing environmental contamination from property on which less than 12 salvage motor vehicles are stored outdoors.

(2) Recommended rules, requirements, or methods for regulating as salvage yards property that does not qualify for a solid waste facility certification under 10 V.S.A. chapter 159 on which is stored outdoors salvage materials other than salvage motor vehicles. The recommendations shall include threshold levels under which the outdoor storage of certain salvage materials, which may include snowmobiles, all-terrain vehicles, all forms of appliances, and boats, shall trigger regulation as a salvage yard. Such threshold levels shall be provided as equivalent units of a salvage motor vehicle.

Sec. 16. REPEAL

24 V.S.A. §§ 2247 (junkyard licenses); 2261 (application); 2262 (eligibility); 2263 (fee); 2264 (compensation); 2272 (taking title to junk motor vehicles); 2273 (general contract authority for removal of junk vehicles); and 2283 (appeals) are repealed.

Sec. 17. TRANSITION

For facilities permitted prior to the effective date of this act, the permit shall remain in effect until the expiration of the permit. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing permitted and operating facilities unless the location of the facility creates a threat to public health, the environment, or a nuisance.

Sec. 18. IMPLEMENTATION AND EFFECTIVE DATES

(a) The secretary of natural resources shall adopt a rule for the management of scrap, salvage, and salvage yard permits on or before January 15, 2010.

(b) This act shall take effect on January 16, 2010.

(c) A new facility or an existing facility without a permit shall submit complete applications under 24 V.S.A. § 2251 (certificate of approved location) and 10 V.S.A. § 6605h (salvage yard permit) under this act on or before July 1, 2010.

And that when so amended the bill ought to pass.

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

Rules Suspended; Bills Messaged

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

S. 18, S. 69, S. 86, S. 115.

Bill Referred to Committee on Appropriations

S. 129

Senate 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 containing health care costs by decreasing variability in health care spending and utilization.

Senate Concurrent Resolutions

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted on the part of the Senate:

By Senators Snelling, Ashe, Ayer, Bartlett, Choate, Cummings, Doyle, Flanagan, Giard, Kitchel, Lyons, Miller, Racine and Scott,

By Representative Crawford and others,

S.C.R. 14.

Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards.

By Senators Illuzzi, Campbell, Carris, Flanagan, Hartwell, McCormack, Sears and Shumlin,

S.C.R. 15.

Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, U.S. Attorney for the District of Vermont.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Reis and others,

By Senators Kitchel and Choate,

H.C.R. 69.

House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes.

By Representative Jerman,

H.C.R. 70.

House concurrent resolution honoring the federal TRIO programs in Vermont.

By Representative Pugh and others,

By Senator Racine,

H.C.R. 71.

House concurrent resolution honoring the outstanding work of child care providers in Vermont.

By Representative Pugh and others,

H.C.R. 72.

House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award.

By Representative Obuchowski and others,

By Senators Shumlin and White,

H.C.R. 73.

House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School.

By Representative Ram and others,

H.C.R. 74.

House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments.

By Representative Jerman and others,

H.C.R. 75.

House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team.

By Representative Martin and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 76.

House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team.

By Representative Morrissey and others,

By Senators Hartwell and Sears,

H.C.R. 77.

House concurrent resolution congratulating William "Bill" Collins on answering his 10,000th call for the Bennington Rescue Squad .

By Representative Klein and others,

H.C.R. 78.

House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 79.

House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 80.

House concurrent resolution congratulating the J.W. & D.E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

H.C.R. 81.

House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team.

By Representative Edwards and others,

H.C.R. 82.

House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and twenty-five minutes in the morning.

WEDNESDAY, MARCH 25, 2009

The Senate was called to order by the President.

Message from the House No. 37

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 348. An act relating to the Interstate Pest Control Compact.

H. 427. An act relating to making miscellaneous amendments to education law.

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

The House has adopted House concurrent resolutions of the following titles:

H.C.R. 69. House concurrent resolution congratulating the primary care providers' offices in the Northeastern Vermont Regional Hospital service area that the National Committee for Quality Assurance has designated as patient-centered medical homes.

H.C.R. 70. House concurrent resolution honoring the federal TRIO programs in Vermont.

H.C.R. 71. House concurrent resolution honoring the outstanding work of child care providers in Vermont.

H.C.R. 72. House concurrent resolution congratulating Spectrum Youth and Family Services on its winning the 2009 National Network for Youth Agency of the Year Award.

H.C.R. 73. House concurrent resolution honoring Jayne Barber on her outstanding 28-year coaching career at Bellows Falls Union High School.

H.C.R. 74. House concurrent resolution congratulating University of Vermont basketball player Marqus Blakely on his 1,000th career point and award-winning accomplishments.

H.C.R. 75. House concurrent resolution congratulating the Albert D. Lawton Middle School boys' A-basketball ADL tournament championship team.

H.C.R. 76. House concurrent resolution congratulating the 2009 Springfield Cosmos Division II championship boys' basketball team.

H.C.R. 77. House concurrent resolution congratulating William "Bill" Collins on answering his 10,000th call for the Bennington Rescue Squad .

H.C.R. 78. House concurrent resolution congratulating the 2009 U-32 High School Raiders Division II championship Nordic ski team.

H.C.R. 79. House concurrent resolution congratulating the Panton General Store on its receipt of a 2009 Vermont Centennial Business Award.

H.C.R. 80. House concurrent resolution congratulating the J.W. & D.E. Ryan plumbing and heating contractors on the receipt of a 2009 Vermont Centennial Business Award.

H.C.R. 81. House concurrent resolution congratulating the 2009 Vergennes Union High School Commodores Division II championship cheerleading team.

H.C.R. 82. House concurrent resolution recognizing the work of the Brattleboro community to combat racial and ethnic intolerance.

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

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

S.C.R. 14. Senate concurrent resolution congratulating the 2009 Vermont winners of the Prudential Spirit of Community Awards.

S.C.R. 15. Senate concurrent resolution honoring the outstanding public service of Thomas Anderson, U.S. Attorney for the District of Vermont.

And has adopted the same in concurrence.

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

J.R.S. 22. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

And has concurred therein.

Joint Assembly

At eight o'clock, and thirty minutes, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 22. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges, and one District Judge.

The Senate repaired to the hall of the House.

Having returned therefrom, at nine o'clock and twenty-five minutes, the President assumed the Chair.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until eight o'clock and thirty minutes in the forenoon on Friday, March 27, 2009.

FRIDAY, MARCH 27, 2009

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mr. Regis Cummings of Montpelier.

President Assumes the Chair**Message from the House No. 38**

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

Mr. President:

I am directed to inform the Senate that:

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

J.R.S. 25. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Message from the House No. 39

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 34. An act relating to automated external defibrillators.

H. 287. An act relating to Uniform Prudent Management of Institutional Funds Act.

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

The House has adopted joint resolution of the following title:

J.R.H. 14. Joint resolution relating to the closure and rehabilitation of the Vilas Bridge.

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

Bills Referred to Committee on Finance

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

S. 89. An act relating to a maximum retail price for milk.

S. 130. An act relating to premium changes to allow enhanced Medicaid match in fiscal year 2009.

Bill Introduced

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

S. 131.

By Senators Carris and Mullin,

An act relating to advance directive on health coverage forms.

To the Committee on Health and Welfare.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 132.

By the Committee on Agriculture,

An act relating to agricultural funding education and outreach.

Bill Introduced

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

S. 133.

By Senator White,

An act relating to eliminating the public oversight commission.

To the Committee on Health and Welfare.

Committee Bill Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 134.

By the Committee on Government Operations,

An act relating to the reduction and consolidation of certain nonstanding legislative committees.

Bill Introduced

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

S. 135.

By Senator White,

An act relating to the creation of planned unit development distributed generation systems.

To the Committee on Natural Resources and Energy.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 34.

An act relating to automated external defibrillators.

To the Committee on Judiciary.

H. 287.

An act relating to Uniform Prudent Management of Institutional Funds Act.

To the Committee on Finance.

H. 348.

An act relating to the Interstate Pest Control Compact.

To the Committee on Agriculture.

H. 427.

An act relating to making miscellaneous amendments to education law.

To the Committee on Education.

Joint Resolutions Placed on Calendar**J.R.S. 26.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Maynard, Ayer, Brock, Carris, Choate, Cummings, Giard, Hartwell, Illuzzi, Kittell, MacDonald, McCormack and Scott,

J.R.S. 26. Joint resolution relating to the legalization of industrial hemp.

Whereas, industrial hemp refers to the nondrug oilseed and fiber varieties of *Cannabis* which have less than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) and which are cultivated exclusively for fiber, stalk, and seed, and

Whereas, industrial hemp is genetically distinct from drug varieties of *Cannabis* (also known as marijuana), and the flowering tops of industrial hemp cannot produce any drug effect when smoked or ingested, and

Whereas, Congress never intended to prohibit the production of industrial hemp when restricting the production, possession and use of marijuana, and

Whereas, the legislative history of the Marijuana Tax Act of 1937 (50 Stat. 551), the statutory source for the federal definition of marijuana, shows that industrial hemp farmers and manufacturers of industrial hemp products were assuaged by the Federal Bureau of Narcotics commissioner, that the proposed legislation bore no threat to hemp-related activities, and

Whereas, the United States Court of Appeals for the Ninth Circuit ruled in Hemp Industries v. Drug Enforcement Administration, 357 F.3d 1012 (9th Cir. 2004), that the federal Controlled Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana, and the federal government declined to appeal that decision, and

Whereas, the Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a Schedule I drug, and those findings include that the substance has a high potential for abuse, has no accepted medical use, and has a lack of accepted safety for use, none of which applies to industrial hemp, and

Whereas, Article 28, § 2 of the Single Convention on Narcotic Drugs of 1953, as amended by the 1954 Protocol, states that, “This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes,” and

Whereas, industrial hemp is commercially produced in more than 30 countries, including Australia, Canada, China, Great Britain, France, Germany and Romania, without undue restriction or complications, and

Whereas, American companies are forced to import million of dollars’ worth of hemp seed and fiber products, denying American farmers the opportunity to compete for and share in profits for cultivating hemp, and

Whereas, nutritious hemp foods can be found in grocery stores nationwide, and strong durable hemp fibers can be found in the interior parts of millions of American cars, and

Whereas, buildings are being constructed of a hemp and lime mixture that sequesters carbon, and

Whereas, retail sales of hemp products in this country are estimated to be \$365 million annually, and

Whereas, industrial hemp is a high-value low-input crop that is not genetically modified, requires little or no pesticides, can be dry-land farmed, and uses less fertilizer than wheat or corn, and

Whereas, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value low-input crop, which can provide significant economic benefits to producers and manufacturers, and

Whereas, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to:

- 1) Recognize industrial hemp as a valuable agricultural commodity;
- 2) Define industrial hemp in federal law as a nonpsychoactive and genetically identifiable species of the genus *Cannabis*;
- 3) Acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and
- 4) Assist United States producers by removing barriers to state regulation of the commercial production of industrial hemp, *and be it further*

Resolved: That the United States Drug Enforcement Administration allow the states to regulate industrial hemp farming without federal applications, licenses or fees, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Administrator of the United States Drug Enforcement Administration, United States Secretary of Agriculture Tom Vilsack, and the Vermont Congressional delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

J.R.H. 14

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the closure and rehabilitation of the Vilas Bridge.

Whereas, the Connecticut River divides the communities of Walpole, New Hampshire and Bellows Falls, Vermont, and

Whereas, the Vilas Bridge, with the state of New Hampshire owning 93 percent and the state of Vermont seven percent, is a 635-foot span that joins these municipalities into a single social and economic community within the Connecticut River Valley, and

Whereas, constructed in 1930, the Vilas Bridge was listed on the National Register of Historic Places in 1989 and is the only remaining three-span open spandrel reinforced concrete arch bridge in New Hampshire, and

Whereas, a May 1994 memorandum of agreement to which the Federal Highway Administration, the New Hampshire department of transportation, and the New Hampshire state historic preservation office were each a party commits the state of New Hampshire to restore the bridge in accordance with that state's ten-year highway program, and

Whereas, according to the New Hampshire department of transportation, an average of 4,600 vehicles cross the bridge each day, and

Whereas, over 20 years ago, the New Hampshire department of transportation placed the Vilas Bridge on the state's red or danger list, finding the bridge to be structurally insufficient, and assigned it a sufficiency rating of 3.1 percent out of a possible 100 percent, and

Whereas, the New Hampshire department of transportation's Ten Year Plan had previously proposed a rehabilitation of the Vilas Building in 2010, and a more recent version of the plan delayed that date until 2015, and

Whereas, on March 31, 2006, the Vermont General Assembly adopted a resolution urging the state of New Hampshire to expedite the rehabilitation of the Vilas Bridge, a vital roadway for the residents of Bellows Falls and Walpole, New Hampshire, and

Whereas, the danger of driving or walking across the Vilas Bridge has now become so acute that the New Hampshire department of transportation closed the span to all vehicular and pedestrian traffic on March 19, 2009, following a

semiannual inspection that found, to no one's surprise, that the bridge was absolutely unsafe for either mode of transportation, and

Whereas, the closure of the Vilas Bridge will block direct access from Walpole, New Hampshire into downtown Bellows Falls, forcing traffic to flow instead across the new arch bridge located approximately one mile to the north, and

Whereas, the diverting of traffic to the new arch bridge will cause excessive pressure on this span and connecting roads and potentially deprive Bellows Falls of severely needed consumer dollars, and

Whereas, the Vilas Bridge is currently ranked 18th on the New Hampshire department of transportation's priority replacement list, which is indefensible given the traffic congestion and economic hardship its closure may precipitate and the department's ranking of this span on its danger list for over two decades, and

Whereas, in Vermont, the Richmond Bridge, which is also a severely deteriorated bridge that serves as a community's economic lifeline was raised on the state's priority replacement list after Congressman Welch secured federal stimulus funding for its rehabilitation, and the rehabilitation work on this span has already commenced, and

Whereas, a comparable effort on the part of the New Hampshire Congressional Delegation might produce a similar result, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly implores the New Hampshire Congressional Delegation, New Hampshire Governor John Lynch, the New Hampshire Executive Council, and the New Hampshire General Court to make every possible effort to seek federal economic stimulus money to finance the rehabilitation of the Vilas Bridge as expeditiously as possible, and be it further

Resolved: That the General Assembly strongly urges the state of New Hampshire in the alternative to reprioritize upward the replacement ranking of the Vilas Bridge and to finance this project from either other federal transportation funds designated for the state of New Hampshire or state gasoline tax revenue, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the New Hampshire Congressional Delegation, New Hampshire Governor John Lynch, the New Hampshire Executive Council, New Hampshire Commission of Transportation George Campbell Jr., the chairs of the House and Senate transportation committees of the New Hampshire

General Court, Vermont Secretary of Transportation David Dill, and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**Message from the Governor
Appointment Referred**

A message was received from the Governor, by Heidi M. Tringe, Secretary of Civil and Military Affairs, submitting the following appointment, which was referred to a committee as indicated:

Benning, Joseph C., Esq. of Lyndonville - Chair of the Human Rights Commission, - from March 5, 2009, to February 28, 2014.

To the Committee on Judiciary.

Consideration Postponed

Senate bills entitled:

S. 94.

An act relating to licensing state forestland for maple sugar production.

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

S. 109.

An act relating to brominated flame retardants.

S. 126.

An act relating to digital forensic specialists.

S. 128.

An act relating to workers' compensation benefits and misclassification.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 5. An act relating to accidents involving an on-duty law enforcement officer, firefighter, or emergency medical personnel.

Bill Amended; Bill Passed**S. 47.**

Senate bill entitled:

An act relating to salvage yards.

Was taken up.

Thereupon, pending third reading of the bill, Senators Sears, Carris and Illuzzi moved to amend the bill by adding a new section to be numbered Sec. 19 to read as follows:

Sec. 19. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR REQUIREMENTS

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Snelling moved to amend the bill by striking out Sec. 15 in its entirety and inserting in lieu thereof the following:

Sec. 15. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the agency of natural resources shall report to the senate and house committees on natural resources and energy, the senate and house committees on transportation, and the senate and house committees on government operations with recommendations for regulating additional activities in the state as salvage yards and for additional operational requirements for existing salvage yards. The report shall include:

(1) Recommended rules, requirements, or methods for regulating the owners of property who store or keep outdoors less than seven salvage motor vehicles on their property, including rules, requirements, or methods for preventing environmental contamination from property on which less than seven salvage motor vehicles are stored outdoors.

(2) Recommended rules, requirements, or methods for regulating as salvage yards property that does not qualify for a solid waste facility certification under 10 V.S.A. chapter 159 on which is stored outdoors salvage materials other than salvage motor vehicles. The recommendations shall include threshold levels under which the outdoor storage of certain salvage materials, which may include snowmobiles, all-terrain vehicles, all forms of appliances, and boats, shall trigger regulation as a salvage yard. Such

threshold levels shall be provided as equivalent units of a salvage motor vehicle.

(3) Recommended rules or requirements for salvage yards to install or construct fencing that is of an adequate size and construction in order to prohibit entry or access to the salvage yard during nonbusiness hours.

Which was agreed to.

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

Consideration Postponed

House bill entitled:

H. 11.

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Bills Amended; Third Readings Ordered

S. 38.

Senator Brock, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

Reported recommending that the bill be amended by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 and by adding new Secs. 3, 4, and 5 to read as follows:

Sec. 2. 32 V.S.A. § 313 is added to read:

§ 313. GRANT REPORT

(a) Annually, beginning January 31, 2010, the department of finance and management shall publish on its website a report on all grants of federal monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant issued after October 1, 2008:

(1) An identification number or code for each federal grant issued by an agency;

-
- (2) The name and address of the subrecipient of the federal grant;
 - (3) A description of the purpose or use of the grant;
 - (4) The amount of the grant; and
 - (5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 3. 32 V.S.A. § 314 is added to read:

§ 314. GRANT REPORT

(a) Annually, beginning January 31, 2015, the department of finance and management shall publish on its website a report on all grants of federal and state monies made by each executive branch agency in the preceding calendar year. The report shall be formatted as a table and shall include, for each grant:

(1) An identification number or code for each federal or state grant issued by an agency;

(2) The name and address of the recipient or subrecipient of the state or federal grant;

(3) A description of the purpose or use of the grant;

(4) The amount of the grant; and

(5) The Catalog of Federal Domestic Assistance (CFDA) number for each federal grant.

(b) Grant reports issued under this section shall be public records available for inspection and review.

(c) For the purposes of this section, “grant” means a legally enforceable agreement between an agency (grantor) and a recipient or subrecipient (grantee) to carry out a purpose as defined in that agreement.

Sec. 4. REPEAL

Sec. 2, 32 V.S.A. § 313 (department of finance and management report on federal grants), shall be repealed on July 1, 2014.

Sec. 5. EFFECTIVE DATE

Sec. 3 shall take effect on July 1, 2014.

And that when so amended the bill ought to pass.

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

S. 125.

Senate committee bill entitled:

An act relating to expanding the sex offender registry.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senators Campbell, Cummings and Nitka, on behalf of the Committee on Judiciary, moved to amend the bill by striking out Sec. 10 in its entirety and by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears, on behalf of the Committee on Judiciary, moved to amend the bill by adding Sec. 9a to read as follows::

Sec. 9a. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment.~~ If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears, on behalf of the Committee on Judiciary, moved to amend the bill by adding Secs. 9b and 9c to read as follows:

Sec. 9b. 28 V.S.A. § 204 is amended to read:

§ 204. -SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

* * *

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

* * *

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 9c. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the commissioner. Each supervising officer is charged with the following powers and responsibilities:

* * *

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to

inmates at the facility. Except as otherwise provided by law, the contents of an inmate's file may be inspected by a state or federal prosecutor as part of a criminal investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears, on behalf of the Committee on Judiciary, moved to amend the bill by adding Sec. 9d to read as follows:

Sec. 9d. 28 V.S.A. § 856 is added to read:

§ 856. SPECIAL MANAGEMENT MEALS

(a) When an inmate misuses bodily waste or fluids, food, or eating utensils, the supervising officer of the facility or his or her designee may order that the inmate be served special management meals in lieu of regular inmate meals pursuant to this section.

(b)(1) When it appears to the supervising officer that an inmate may be subject to an order to receive special management meals, the officer shall notify the inmate in writing of the reason for the determination and the facility's evidence for it.

(2)(A) Before being served special management meals, the inmate shall be provided an opportunity to meet with a member of the facility's staff not involved in the incident. The purpose of the meeting shall be to serve as an initial check against mistaken decisions and to determine whether there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils.

(B) At a meeting between an inmate and a staff member held pursuant to this subdivision, the inmate may identify any disagreement he or she has with the facility's version of the facts, identify witnesses who support his or her defense, identify any mitigating circumstances which should be considered, and offer any other arguments that may be appropriate. The inmate shall not have the right to cross-examine witnesses or to call witnesses to testify on his or her behalf.

(c) If the officer determines that there are reasonable grounds to believe that the inmate misused bodily waste or fluids, food, or eating utensils, the officer may order that the inmate be served special management meals in lieu of regular inmate meals for a maximum of seven consecutive days.

(d) When the supervising officer orders that an inmate be served special management meals, a hearing officer designated by the officer shall conduct a fact-finding hearing within 48 hours pursuant to the following procedure:

(1) Notice of the charge and of the hearing shall be given to the inmate.

(2) The inmate shall have an opportunity, subject to reasonable rules, to confront the person bringing the charge.

(3) The inmate shall have the right to be present and heard at the hearing subject to reasonable rules of conduct.

(4) The hearing officer shall summon to testify any available witness or other persons with relevant knowledge of the incident, subject to reasonable rules. The inmate charged may be permitted to question any person who testifies pursuant to this subdivision.

(5) If the inmate so requests, he or she may be assisted in the preparation and presentation of his or her case by an assigned employee of the facility if the supervising officer determines in his or her discretion that the requested employee is reasonably available.

(e) If the hearing officer determines that a preponderance of the evidence does not establish that the inmate misused bodily waste or fluids, food, or eating utensils, the supervising officer shall discontinue service of special management meals to the inmate.

(f) The service of special management meals shall not be construed as punishment and shall not be subject to the requirements of sections 851–853 of this title.

Which was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative.

Consideration Postponed

S. 127.

Senate committee bill entitled:

An act relating to small school districts that pay tuition for their resident students.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senator McCormack moved to amend the bill by striking out Sec. 7 [Effective Date] in its entirety and inserting in lieu thereof three new sections to read as follows:

Sec. 7. 16 V.S.A. § 563 is amended to read:

~~§ 563. POWERS OF SCHOOL BOARDS; FORM OF VOTE IF BUDGET EXCEEDS BENCHMARK AND DISTRICT SPENDING IS ABOVE AVERAGE~~

The school board of a school district, in addition to other duties and authority specifically assigned by law:

* * *

(11)(A) Shall prepare and distribute annually a proposed budget for the next school year according to such major categories as may from time to time be prescribed by the commissioner.

~~(B) If the proposed budget contains education spending in excess of the Maximum Inflation Amount, and the district's education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed was in excess of the statewide average district education spending per equalized pupil in that same fiscal year, as determined by the commissioner of education, then in lieu of any other statutory or charter form of budget adoption or budget vote, the board shall present the budget to the voters by means of a divided question, in the form of vote provided in subdivision (ii) of this subsection.~~

~~(i) "Maximum Inflation Amount" in this section means:~~

~~(I) the statewide average district education spending per equalized pupil, as defined in subdivision 4001(6) of this title, in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education, multiplied by the New England Economic Project Cumulative Price Index percentage change, as of November 15 preceding distribution of the proposed budget, for state and local government purchases of goods and services for the fiscal year for which the budget is proposed, plus one percentage point; plus the district's education spending per equalized pupil in the fiscal year preceding the year for which the budget is proposed, as determined by the commissioner of education;~~

~~(II) multiplied by the higher of the following amounts as determined by the commissioner of education:~~

~~(aa) the district's equalized pupil count in the fiscal year preceding the year for which the budget is proposed; or~~

~~(bb) the district's equalized pupil count in the fiscal year for which the budget is proposed.~~

~~(ii) Form of vote.~~

~~“School Budget Question #1:~~

~~Shall the voters of the _____ School District approve a total budget in the amount of [\$ _____], which includes the Maximum Inflation Amount of education spending?~~

~~“School Budget Question #2:~~

~~If Question #1 is approved, shall the voters of the School District also approve additional education spending of [\$ _____]?”~~

~~(C)~~(B) At a school district’s annual meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district’s annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources and expenses, including as separate items any assessment for a union school district or a supervisory union of which it is a member, and any tuition to be paid to a technical center;

(ii) the specific amount of any deficit incurred in the most recently closed fiscal year and how the deficit was or will be remedied;

(iii) the anticipated homestead tax rate and the percentage of household income used to determine income sensitivity in the district as a result of passage of the budget; including those portions of the tax rate attributable to the union school and supervisory union assessments; and

(iv) in the case of a school district:

(I) other than a union school district, the definition of “education spending,” the number of pupils and number of equalized pupils in the school district, and the district’s education spending per equalized pupil in the proposed budget and in each of the prior three years; or

(II) in the case of a union school district, the amount of the assessment to each of the member districts and the amount of the assessments per equalized pupil in the proposed budget and for the past three years.

* * *

Sec. 8. REPEAL

Sec. 6 (effective date; a divided question is required when voting for school budgets that exceed the maximum inflation amount for fiscal years 2010 ((school year 2009-2010)) through 2014 ((school year 2013-2014))) of No. 82 of the Acts of 2007 is repealed.

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage and shall apply to all proposed school budgets on which the electorate will vote after the effective date of this act.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator McCormack?, Senator McCormack requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Cummings consideration of the bill was postponed until the next legislative day.

Proposed Amendment to the Constitution Made Special Order

Proposed Amendment to the Constitution designated as Proposal 5, having appeared on the Calendar for seven legislative days pursuant to Rule 83,

Was taken up.

Thereupon, pending third reading of the Proposed Amendment, on motion of Senator White, Proposal 5 was made a Special Order for Friday, April 3, 2009, at nine o'clock in the forenoon.

Rules Suspended; Committee Relieved of Further Consideration; Bills Committed**H. 36.**

On motion of Senator White, the rules were suspended, and H. 36 was taken up for immediate consideration, for the purpose of relieving the Committee on Government Operations from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Government Operations was relieved of House bill entitled:

An act relating to repealing the charter of the Enosburg Falls Incorporated School District,

and the bill was committed to the Committee on Education.

S. 101.

On motion of Senator White, the rules were suspended, and S. 101 was taken up for immediate consideration, for the purpose of relieving the

Committee on Finance from further consideration of the bill. Thereupon, on motion of Senator White, the Committee on Finance was relieved of Senate bill entitled:

An act relating to repeal of delinquent property tax penalty,
and the bill was committed to the Committee on Government Operations.

Adjournment

On motion of Senator Shumlin, the Senate adjourned, to reconvene on Tuesday, March 31, 2009, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 25.

TUESDAY, MARCH 31, 2009

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Mr. Regis Cummings of Montpelier.

Pledge of Allegiance

Pages Susanna Billings and Neel Desai then led the members of the Senate in the pledge of allegiance.

Message from the House No. 40

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

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 80. An act relating to the use of chloramine as a disinfectant in public water systems.

H. 94. An act relating to the collection and recycling of mercury-added lamps.

H. 186. An act relating to authorizing the department of fish and wildlife to administer polygraph examinations to applicants for law enforcement positions.

H. 205. An act relating to reporting to the Vermont criminal justice training council.

H. 431. An act relating to miscellaneous adjustments to the public retirement systems.

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

The House has adopted joint resolution of the following title:

J.R.H. 15. Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

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

Message from the House No. 41

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bill of the following title:

H. 15. An act relating to aquatic nuisance control.

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

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

S. 51. An act relating to Vermont's motor vehicle franchise laws.

S. 132. An act relating to agricultural funding education and outreach.

Committee Bills Introduced

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 136.

By the Committee on Education,

An act relating to reducing the drop-out rate in Vermont secondary schools to zero by the year 2020.

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

S. 137.

By the Committee on Economic Development, Housing and General Affairs,

An act relating to the Vermont recovery and reinvestment act of 2009.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 15.

An act relating to aquatic nuisance control.

To the Committee on Natural Resources and Energy.

H. 80.

An act relating to the use of chloramine as a disinfectant in public water systems.

To the Committee on Health and Welfare.

H. 94.

An act relating to the collection and recycling of mercury-added lamps.

To the Committee on Natural Resources and Energy.

H. 186.

An act relating to authorizing the department of fish and wildlife to administer polygraph examinations to applicants for law enforcement positions.

To the Committee on Government Operations.

H. 205.

An act relating to reporting to the Vermont criminal justice training council.

To the Committee on Government Operations.

H. 431.

An act relating to miscellaneous adjustments to the public retirement systems.

To the Committee on Government Operations.

Joint Resolution Adopted on the Part of the Senate

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

By Senator Shumlin,

J.R.S. 27. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 3, 2009, it be to meet again no later than Tuesday, April 7, 2009.

Joint Resolution Referred

J.R.H. 15.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution relating to the designation of commemorative observances in concurrent resolutions.

Whereas, annually, a number of resolutions designating a set period time to commemorate an event, celebrate a festival, or inform the public of a chronic physical condition or illness are presented before the General Assembly, and

Whereas, the Speaker of the House and the President of the Senate often place these resolutions on their respective body's calendar for consideration the next legislative day pursuant to House Rule 52 and Senate Rule 51, and

Whereas, these resolutions, other than their designation of a period of time, meet the general criteria for concurrent resolutions set forth in Joint Rule 16a and their adoption as concurrent resolutions would expedite the legislative process, now therefore be it

Resolved by the Senate and House of Representatives:

That Joint Rule 16a of the Joint Rules of the Senate and House of Representatives is amended to read:

16a. Resolutions that express sentiments of congratulations, commendations, condolences, or the like, or that designate, on a one-time basis, a specified period of time for a commemorative or public education purpose and do not address matters related to public policy, the rules and operations of either or both houses of the General Assembly, or other matters, shall be styled as concurrent resolutions, and may be jointly cosponsored by members of the Senate and House. The Senate and House cosponsors shall appear separately on two distinctive sponsorship lists on the concurrent resolution. ~~If members of the Senate and House cosponsor a concurrent resolution, it shall be introduced initially in the legislative body of the primary sponsor.~~ A concurrent resolution shall be cited by title only in the permanent

journals of the Senate and House with a cite to the Acts and Resolves for that session unless it has been treated as a bill or subject of a roll call vote, in which case, the resolution shall be printed in the permanent journal of the voting legislative body.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Rules.

Consideration Postponed

Senate bills entitled:

S. 94.

An act relating to licensing state forestland for maple sugar production.

S. 99.

An act relating to amending the Act 250 criteria relating to traffic, scattered development, and rural growth areas.

S. 109.

An act relating to brominated flame retardants.

S. 127.

An act relating to small school districts that pay tuition for their resident students.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Consideration Postponed

House bills entitled:

H. 11.

An act relating to the disposition of property upon death, transfer of interest in vehicle upon death, and homestead exemption.

H. 31.

An act relating to approval of amendments to the charter of the town of Williston.

H. 95.

An act relating to the approval of an amendment to the charter of the city of Burlington.

Were taken up.

Thereupon, without objection consideration of the bills was postponed until the next legislative day.

Consideration Postponed

Senate Committee bill entitled:

S. 126.

An act relating to digital forensic specialists.

Was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, without objection consideration was postponed to the next legislative day.

Third Reading Ordered

S. 128.

Senate committee bill entitled:

An act relating to workers' compensation benefits and misclassification.

Having appeared on the Calendar for notice for one day, was taken up.

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

Bills Amended; Third Readings Ordered

S. 19.

Senator Hartwell, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to extension of filing deadlines for homestead declarations and property tax adjustment claims.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. DEADLINE FOR CERTAIN 2008 HOMESTEAD DECLARATIONS AND PROPERTY TAX ADJUSTMENT CLAIMS

Notwithstanding any other provision of law, a claimant residing in a town that sent its 2008 property tax bill on September 15, 2008 and who, within 21 days of such date, filed a declaration of homestead and a property tax adjustment claim for that homestead shall be entitled to any refund resulting from the corrected property classification and education property tax adjustment claim. The commissioner of taxes shall pay any refund due under this section with respect to an education property tax adjustment to a claimant

who applies in writing to the commissioner on or before July 17, 2009. A refund due a claimant due to reclassification of property as homestead property under this section shall be refunded by the town.

And that when so amended the bill ought to pass.

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

S. 58.

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

An act relating to electronic payment of wages.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a) Any person having employees ~~in his service~~ doing and transacting business within the state shall ~~pay~~:

(1) Pay to those employees each week, in lawful money or checks, ~~each of his employees~~, the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of ~~such~~ payment.

~~(b)(2)~~ After giving written notice to ~~his~~ the employees, ~~any person having employees in his service doing and transacting business within the state may, notwithstanding subsection (a) of this section,~~ pay bi-weekly or semi-monthly in lawful money or checks; ~~each of his employees,~~ employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)(b)~~ An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(C) The employer provides that during each pay period the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance, at a financial institution, credit union, or other location convenient to the place of employment.

(D) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(E) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees. The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(F) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(G) The payroll card issued to the employee shall be a branded-type payroll card that complies with all the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(iii) The payroll card has no expiration date, unless the employer agrees to provide a replacement payroll card at no cost to the employee before the expiration date.

(H) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

§ 343. FORM OF PAYMENT

Such An employer shall not pay its employees with any form of evidence of indebtedness, including, without limitation, all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) the The employer is a cooperative corporation in which the employee is a stockholder. However, such , in which case, the cooperative corporation shall, upon request of any such shareholding employee, pay him the shareholding employee as provided in section 342 of this title; or .

(2) payment Payment is made by check as defined in Title 9A or by electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

And that when so amended the bill ought to pass.

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

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 38. An act relating to requiring the Department of Finance and Management to annually publish on its website a report on grants issued by executive branch agencies.

Bill Amended; Bill Passed

S. 125.

Senate bill entitled:

An act relating to expanding the sex offender registry.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill by adding two new sections to be numbered Secs. 10 and 11 to read as follows:

Sec. 10. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in section 811 of Title 28.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody in connection with the offense for which sentence was imposed. The commissioner of corrections shall award credit for time served as ordered by the court in the mittimus pursuant to any plea agreement approved by the court, except that no such credit shall be awarded for any time not served in a correctional center or residential treatment facility.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

Sec. 11. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

And by renumbering the remaining sections of the bill to be numerically correct and adjusting the internal references in the Effective Date clause accordingly.

Which was agreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 29, Nays 0.

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: Ashe, Ayer, Brock, Campbell, Carris, Choate, Cummings, Doyle, Flanagan, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Maynard, Mazza, McCormack, Miller, Mullin, Nitka, Racine, Scott, Sears, Shumlin, Snelling, Starr, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Bartlett.

Bill Amended; Third Reading Ordered

S. 28.

Senator Ayer, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the regulation of landscape architects.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 46 is added to read:

Chapter 46. Landscape Architects

Subchapter 1. General Provisions

§ 2611. DEFINITIONS

As used in this chapter:

(1) “Director” means the director of the office of professional regulation.

(2) “Disciplinary action” means any action taken against a licensed landscape architect for unprofessional conduct.

(3) “Landscape architect” means a person who complies with all provisions of this chapter and is licensed by the director to engage in the practice of landscape architecture.

(4) “License” means an authorization granted by the director to practice landscape architecture.

(5) “Practice of landscape architecture” means any service where landscape architectural education, training, experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, and design, including the preparation and filing of drawings, plans, specifications and other contract documents and the administration of contracts relative to projects principally directed at the functional and aesthetic development, use, or preservation of land that directly affects the health, safety and welfare of the public. These services include the implementation of land development concepts and natural resource management plans through the design or grading of: land forms; on-site, surface, and storm water drainage; soil conservation and erosion control; small water features; pedestrian, bicycle, and local motor vehicular circulation systems; and related construction details.

§ 2612. PROHIBITION AND ENFORCEMENT

(a) No person shall:

(1) Practice or attempt to practice landscape architecture or hold himself or herself as being able to do so in this state without first obtaining a valid license as required by this chapter.

(2) Use the title “landscape architect,” “landscape architecture,” or “landscape architectural” in connection with the person’s name without being duly licensed under this chapter.

(b) No person licensed under this chapter shall:

(1) Stamp or seal documents with his or her landscape architect seal if his or her license has expired or is revoked or suspended.

(2) Practice or attempt to practice landscape architecture during license revocation or suspension.

(3) Engage in unprofessional conduct.

(4) Violate any provisions of this chapter.

(c) A person who willfully violates any provisions of subsection (a) of this section shall be subject to the penalties provided in subsection 127(c) of Title 3.

(d) The administrative law officer may bring an action for injunctive relief to enforce the provisions of this chapter.

§ 2613. EXEMPTIONS

(a) This chapter shall not affect or prevent:

(1) The practice of architecture, land surveying, engineering, or other licensed profession by persons not licensed under this chapter;

(2) Drafters, clerks, project managers, superintendents, students, and other employees or interns from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of sites by contractors or superintendents employed by contractors or the preparation of shop drawings in connection with the construction, alteration, or supervision;

(4) Owners or contractors from engaging persons who are not landscape architects to observe and supervise site construction of a project;

(5) The preparation of construction documents showing plantings, other horticulture-related elements, or landscape materials unrelated to horticulture;

(6) Individuals from making plans, drawings, or specifications for any property owned by them and for their own personal use;

(7) The design of irrigation systems; and

(8) Officers or employees of the federal government from working in connection with their employment.

(b) This section shall not be construed to permit a person not licensed as provided in this chapter to use the title landscape architect or any title, sign, card, or device to indicate that the person is a landscape architect.

(c) This chapter shall not be construed to limit or restrict in any manner the right of a practitioner of another profession or occupation from carrying on in the usual manner any of the functions of that profession or occupation as their experience, education, and training allow them to practice, including the professions of landscape design, garden design, planning, forestry, and forestry management.

Subchapter 2. Administration

§ 2621. OFFICE OF PROFESSIONAL REGULATION

(a) The director shall:

(1) Provide general information to applicants for licensure as landscape architects.

(2) Explain appeal procedures to licensed landscape architects and applicants, and complaint procedures to the public.

(3) Administer fees as established by law.

(4) Receive applications for licensure, administer examinations, provide licenses to applicants qualified under this chapter, renew, revoke and reinstate licenses as ordered by an administrative law officer.

(5) Refer all disciplinary matters to an administrative law officer.

(b) The director may adopt rules necessary to perform his or her duties under this section.

§ 2622. ADVISOR APPOINTEES

(a) The secretary of state shall appoint two landscape architects for four-year terms to serve at the secretary's pleasure as advisors in matters relating to landscape architecture. One of the initial appointments may be for less than a four-year term. An appointee shall have not less than three years' experience as a landscape architect immediately preceding appointment, shall be licensed as a landscape architect in Vermont or be in the process of applying for licensure, and shall be actively engaged in the practice of landscape architecture in this state during incumbency.

(b) The director shall seek the advice of the landscape architect advisors in carrying out the provisions of this chapter.

§ 2623. APPLICATIONS

Applications for licensure shall be on forms provided by the director. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

§ 2624. QUALIFICATIONS

(a) A person shall be eligible for licensure as a landscape architect if the person qualifies under one of the following provisions:

(1) Comity or endorsement. A person holding a registration or license to engage in the practice of landscape architecture issued on the basis of an examination administered by the council of landscape architectural registration boards, by the appropriate regulatory authority of a state, territory, or possession of the United States, the District of Columbia, or another country based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter may be examined on landscape architecture matters peculiar to Vermont and granted a license at the discretion of the director. The director shall accept evidence that an applicant holds a valid certificate from the council of landscape architectural registration boards as proof of qualification for licensure under this subdivision.

(2) Graduation and examination. An applicant who has graduated, having completed a landscape architecture curriculum approved by the landscape architectural accreditation board, followed by at least three years of diversified experience in landscape architecture under the supervision of a licensed, registered, or certified landscape architect and who has passed an examination administered by the council of landscape architectural registration boards may be granted a license. The director may accept experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor for one year of the experience required under this subdivision. All applicants shall have at least two years of experience under the supervision of a licensed, certified, or registered landscape architect.

(3) Experience and examination. An applicant who has completed nine or more years' diversified experience in landscape architecture under the supervision of a licensed, certified, or registered landscape architect and who has passed an examination administered by the council of landscape architectural review boards may be granted a license. Experience received under the supervision of a licensed or registered architect, professional engineer, or land surveyor may be substituted for no more than three years of this requirement. Credits from a landscape architecture program accredited by the landscape architectural accreditation board may be substituted for up to no more than three years of this requirement.

(b) Upon application for licensure, an applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall file a report with the director certifying the practical experience requirements completed. The director shall certify that, to the best of the director's knowledge, the report is correct.

(c) An applicant may submit experience accrued for a period of three years in the practice of landscape architecture, as defined in subdivision 2612(5) of this title, in order to meet the experience requirements set forth in subsection (a) of this section if the experience was obtained in Vermont on or before December 31, 2011. Evidence of experience shall be reviewed and approved by the director.

(d) An applicant qualifying for licensure under subdivision (a)(2) or (3) of this section shall pass a written examination administered by the council of landscape architectural boards on technical and professional subjects as may be prescribed by the council of landscape architectural boards. Applicants may apply for examination before completing the experience requirement as long as the experience requirements will be fulfilled by the examination date. Notification of the results of examinations shall be mailed to each candidate within 30 days of the date the results are received by the director. A candidate failing to pass the examination may apply for reexamination and may sit for a regularly scheduled examination as many times as the candidate chooses to do so. If an applicant does not pass the entire examination, the applicant shall not be required to retake any section of an examination that the applicant has previously passed. No license shall be granted to an applicant until he or she passes all sections of the exam.

(e) Licensing standards and procedures adopted by the director by rule shall be fair and reasonable. Those standards and procedures shall be designed and implemented to ensure that all applicants are admitted to practice unless there is a good reason to believe that practice by a particular applicant would be inconsistent with the public health, safety, or welfare. Licensing standards shall not be designed or implemented for the purpose of limiting the number of licensed landscape architects.

§ 2625. LICENSURE; GENERALLY

The director shall issue a license, upon payment of the fees required in this chapter, to an applicant who has satisfactorily met all the requirements of this chapter.

§ 2626. LICENSE RENEWAL

(a) A license shall be renewed every two years upon application and payment of the required fee. Failure to comply with the provisions of this

section shall result in suspension of all privileges granted to the licensee, beginning on the expiration date of the license. A license which has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The director may adopt rules necessary for the protection of the public to assure the director that an applicant whose license has lapsed or who has not worked for more than three years is professionally qualified. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- (1) Application for licensure: \$150.00
- (2) Initial license issuance: \$40.00
- (3) Biennial license renewal: \$250.00

§ 2628. SEAL

Each licensed landscape architect shall obtain a seal of a design as the director shall authorize and direct. Plans and specifications prepared by or under the direct supervision of a licensed landscape architect shall be stamped with the licensed landscape architect's seal.

§ 2629. UNPROFESSIONAL CONDUCT

Unprofessional conduct means the following conduct and the conduct by a licensee or applicant for licensure as set forth in section 129a of Title 3:

(1) Accepting and performing responsibilities which the licensed landscape architect knows or has reason to know that he or she is not competent to perform, or undertaking to perform professional services in specific technical areas in which the licensed landscape architect is not qualified by education, training, and experience;

(2) Failing to practice with reasonable care and competence and to apply the technical knowledge and skill ordinarily applied by licensed landscape architects practicing in the same locality;

(3) Assisting in the application for licensure of a person known by the licensed landscape architect to be unqualified in respect to education, training, or experience;

(4) Accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all interested parties;

(5) Failing to disclose fully in writing to a client or employer the nature of any business association or direct or indirect financial interest substantial enough to influence the licensed landscape architects judgment in the performance of professional services;

(6) Soliciting or accepting compensation from material or equipment suppliers in return for specifying or endorsing their products;

(7) Failing to disclose compensation for making public statements on landscape architectural questions;

(8) Offering or making a payment or gift to an elected or appointed government official with the intent to influence the official's judgment in connection with a prospective or existing project in which the licensed landscape architect is interested;

(9) Offering or making a gift of other than nominal value, including reasonable entertainment and hospitality, with the intent to influence the judgment of an existing or prospective client in connection with a project in which the licensed landscape architect is interested;

(10) Knowingly designing a project in violation of applicable state and local laws and regulations;

(11) Making a willful material misrepresentation with respect to the qualifications or experience of an applicant or otherwise in the practice of the profession, whether by commission or omission;

(12) Acting, while serving as a advisor to the director, in any way to contravene willfully the provisions of this chapter and thereby artificially restricting the entry of qualified persons into the profession;

(13) Using the licensed landscape architect's seal on drawings prepared by others not in the his or her employ, or using the seal of another;

(14) Inaccurately representing to a prospective or existing client or employer the licensed landscape architect's qualifications and scope of responsibility for work for which he or she claims credit;

(15) Signing or sealing technical submissions unless they were prepared by or under the responsible control of the licensed landscape architect, except that the licensed landscape architect may sign or seal those portions of the technical submissions that were prepared by or under the responsible control of persons who are licensed under this chapter if the licensed landscape architect

has reviewed and adopted in whole or in part those portions and has either coordinated their preparation or integrated them into his or her work; and

(16) In each office maintained for preparation of drawings, specifications, reports, or other professional work, failing to have a licensed landscape architect with direct knowledge and supervisory control of such work resident and regularly employed in that office.

Sec. 2. TRANSITIONAL PROVISIONS

The director shall establish a procedure so that residents of Vermont who have been engaged in the practice of landscape architecture in Vermont, and who are not licensed as landscape architects in other states prior to the effective date of this act, may become licensed without examination. To accomplish this, the director shall establish that these candidates shall provide evidence to the director and a special temporary panel, consisting of five Vermont landscape architects licensed under the provisions of chapter 46 of Title 26, to review the evidence regarding the qualifications for licensure without examination of candidates under this procedure. Only those applicants who can establish a record of landscape architectural practice for nine or more years shall be eligible for licensure under this section. A degree from an accredited landscape architecture program may substitute for years of the experience requirement under this section at the rate of two years of accredited school work for one year of landscape architectural work experience.

Sec. 3. REPEAL

Sec. 2 of this act shall be repealed on July 1, 2014.

And that when so amended the bill ought to pass.

Senator Ayer, for the Committee on Finance, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto::

In Sec. 1, by striking out 26 V.S.A. § 2627 in its entirety and inserting in lieu thereof a new 26 V.S.A. § 2627 to read:

§ 2627. FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in subsection 125(b) of Title 3.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Government Operations was amended as recommended by the Committee on Finance.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

House Concurrent Resolutions

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence:

By Representative Myers and others,

H.C.R. 83.

House concurrent resolution congratulating the 2009 Essex High School Hornets Division I championship girls' ice hockey team.

By Representative Myers and others,

H.C.R. 84.

House concurrent resolution congratulating the 2009 Essex High School Hornets state gymnastics championship team.

By Representative Myers and others,

H.C.R. 85.

House concurrent resolution congratulating Essex High School gymnast Mary Krug on winning four consecutive all-around state championship competitions.

By Representative Potter and others,

H.C.R. 86.

House concurrent resolution congratulating the 2009 Proctor High School Phantoms' Division IV championship boys' basketball team.

By Representative Cheney and others,

By Senators Campbell, McCormack and Nitka,

H.C.R. 87.

House concurrent resolution honoring Olympic runner and model sportsman Andrew Wheating of Norwich.

By Representative Mrowicki and others,

H.C.R. 88.

House concurrent resolution celebrating the success of the education-based after-school programs in Vermont.

By Representative Cheney and others,

By Senators Campbell, McCormack, Nitka, Shumlin and White,

H.C.R. 89.

House concurrent resolution commending the leadership of Green Mountain Power Corporation and other electric companies and state offices in restoring electric power in southern Vermont following the December 2008 ice storm.

Consideration Interrupted by Adjournment

S. 77.

Senator MacDonald, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to the disposal of electronic waste.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

The general assembly finds:

(1) According to the U.S. Environmental Protection Agency, discarded computers, computer monitors, televisions, and other consumer electronics—collectively referred to as e-waste—are the fastest growing portion of the waste stream growing by approximately eight percent from 2004 to 2005.

(2) Televisions and computers are prevalent in modern society and contribute significantly to the waste generated in Vermont.

(3) Televisions, computers, laptop computers, and computer monitors contain lead, mercury, and other hazardous substances that pose a threat to human health and the environment if improperly disposed of at the end of the useful life of these products.

(4) The state of Vermont has committed to providing its citizens with a safe and healthy environment and has actively undertaken efforts such as mercury reduction programs to reduce the potential for contamination.

(5) The appropriate recycling of televisions and computers protects public health and the environment by reducing the potential for the release of

heavy metals and mercury from landfills into the environment, consistent with other state initiatives, and also conserving valuable landfill space.

(6) The establishment of a system to provide for the collection and recycling of electronic devices in Vermont is consistent with the state's duty to protect the health, safety, and welfare of its citizens; maintain and enhance the quality of the environment; conserve natural resources; prevent pollution of air, water, and land; and stimulate economic growth.

Sec. 2. 10 V.S.A. chapter 166 is added to read:

CHAPTER 166. DISPOSAL OF ELECTRONIC DEVICES

§ 7301. DEFINITIONS

For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Agency" means the agency of natural resources.

(2) "Cathode-ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

(3) "Collection" means the aggregation of covered electronic devices from covered entities and includes all the activities up to the time the covered electronic devices are delivered to a recycler.

(4) "Collector" means a public or private entity that receives covered electronic devices from covered entities and arranges for the delivery of the devices to a recycler on behalf of a manufacturer for the purpose of fulfilling a manufacturer's responsibilities under this chapter.

(5) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, but does not include an automated typewriter or typesetter, a portable handheld calculator, or other similar device.

(6) "Computer monitor" means a display device without a tuner that can display pictures and sound and is used with a computer. "Computer monitor" includes a laptop computer.

(7) "Covered electronic device" means computers; peripherals; video display devices; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; cell phones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (as used to charge electronic devices) that are sold to a consumer.

(8) “Covered entity” means any household, charity, or school district in the state, business that employs ten or fewer individuals, or any person giving seven or fewer covered electronic devices to a collector at any one time.

(9) “Manufacturer” means a person who:

(A) Has a physical presence and legal assets in the United States of America, and:

(i) Manufactures or manufactured a video display device under its own brand or label;

(ii) Sells under its own brand or label a video display device produced by another supplier; or

(iii) Owns a brand that it licenses or licensed to another person for use on a video display device; or

(B) Imports or imported a video display device into the United States that is manufactured by a person without a presence in the United States.

(10) “Peripheral” means a keyboard, printer, or any other device sold exclusively for external use with a computer that provides input or output into or from a computer.

(11) “Printer” means desktop printers, multifunction printer copiers, and printer ax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and “multi-function” or “all-in-one” devices that perform different tasks, including without limitation copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with optional floor stand, point of sale (POS) receipt printers, household printers such as a calculator with printing capabilities or label makers, or nonstand-alone printers that are embedded into products that are not covered electronic products.

(12) “Program year” means the period from July 1 through June 30.

(13) “Recycler” means a person who accepts covered electronic devices from covered entities and collectors for the purpose of recycling. A person who takes products solely for refurbishment or repair is not a recycler.

(14) “Recycling” means the process of collecting and preparing video display devices or covered electronic devices for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration, waste-to-energy incineration, or other such processes; land disposal; or reuse,

repair, or any other process through which video display devices or covered electronic devices are returned to use in their original form.

(15) “Recycling credits” means the number of pounds of covered electronic devices recycled by a manufacturer during a program year, less the product of the number of pounds of video display devices sold during the same program year, multiplied by the proportion of sales a manufacturer is required to recycle. The calculation and uses of recycling credits are as specified in section 7307 of this title.

(16) “Retailer” means a person who sells, rents, or leases to a household, through sales outlets, catalogues, or the Internet a video display device that is not for resale in any form.

(17) “Sell” or “sale” means any transfer for consideration of title or of the right to use by lease or sales contract of a video display device to a consumer in the state. “Sell” or “sale” does not include a manufacturer’s or distributor’s wholesale transaction with a distributor or a retailer.

(18) “Television” means any telecommunications system or device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(19) “Transporter” means a person or entity that moves covered electronic devices from a collector to a recycler.

(20) “Video display device” means a printer or a unit capable of presenting images electronically on a screen, with a video display greater than four inches when measured diagonally, that are viewed by the user, and includes televisions, computer monitors, laptop computers, cathode ray tubes, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that may be developed. “Video display device” does not include any of the following:

(A) a video display device that is part of a motor vehicle or any component of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(B) a video display device, including a touch-screen display, that is functionally or physically part of a larger piece of equipment or is designed and intended for use in an industrial, commercial, or retail setting;

(C) a video display device that is contained within a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or

(D) a telephone of any type unless it contains a video display greater than nine inches when measured diagonally.

§ 7302. PROHIBITIONS; REQUIREMENTS FOR THE SALE OF COVERED ELECTRONIC DEVICES; RETAILER OBLIGATIONS

(a) Sale prohibited. No manufacturer shall sell or offer for sale or deliver to retailers for subsequent sale a new video display device unless:

(1) the video display device is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration with the agency, as specified in section 7303 of this title.

(b) Retailer obligations.

(1) A retailer who sells or offers for sale a new video display device to a household shall, before the initial offer of sale, review the agency website specified in section 7303(7) of this title to determine that all new video display devices that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the agency.

(2) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked, the retailer took possession of the video display device prior to the expiration or revocation of the manufacturer's registration, and the unlawful sale occurred within six months after the expiration or revocation.

(3) A retailer who sells new video display devices shall provide information to customers describing where and how they may recycle video display devices and advising them of opportunities and locations for the convenient collection of video display devices for the purpose of recycling. This requirement may be met by providing the agency's toll-free number and website address. Retailers selling through catalogues or the Internet may meet this requirement by including the information in a prominent location on the retailer's website.

§ 7303. MANUFACTURER'S PROGRAM RESPONSIBILITY

(a) Manufacturer registration and reporting requirements.

(1)(A) No manufacturer shall sell or offer for sale a video display device in this state without first submitting a registration to the agency on a form provided by the agency. The form shall include:

(i) a list of the manufacturer's brands of video display devices offered for sale by the manufacturer in this state;

(ii) the name, address, and contact information of a person responsible for ensuring compliance with this chapter; and

(iii) a certification that the manufacturer has complied and will continue to comply with the requirements of this chapter.

(B) A renewal of a registration without changes may be accomplished through notifying the agency on a form provided by the agency.

(2)(A) Beginning July 1, 2011, each manufacturer shall report by July 1 of each year to the agency the aggregate total weight of video display devices sold during the previous program year. This information may be provided by one of the following:

(i) the aggregate total weight of its video display devices sold during the previous program year; or

(ii) an estimate of the aggregate total weight of its video display devices sold during the previous program year based on national sales data. A manufacturer shall submit with the report required under this subsection a description of how the information or estimate was calculated.

(B) By July 1 of each year, beginning July 1, 2011, each manufacturer shall report to the agency the aggregate total weight of covered electronic devices the manufacturer recycled during the preceding program year.

(3) A manufacturer who begins to sell or offer for sale video display devices to households and has not filed a registration under this subsection shall submit a registration to the agency within ten days of beginning to sell or offer for sale video display devices.

(4) A registration shall be amended within ten days after a change to any information included in the registration submitted by the manufacturer under this section.

(5) A registration is effective upon receipt by the agency and is valid for a period of five years.

(6) The agency shall notify the manufacturer of any information required by this title that is omitted from the registration. Upon receipt of a notification from the agency, the manufacturer shall submit a revised registration providing the information noted by the agency.

(7) The agency shall maintain on its website the names of manufacturers and the manufacturers' brands listed in registrations filed with the agency. The agency shall update the website information within 10 days of receipt of a complete registration.

(b) Manufacturer's program responsibilities. Manufacturers shall comply with the following:

(1) A manufacturer shall annually recycle or arrange and pay for the collection and recycling of an amount of covered electronic devices equal to the total weight of its video display devices sold during the preceding program year, multiplied by the proportion of sales of video display devices required to be recycled as established by the agency under section 7307(a)(3)(B) of this title. Manufacturers or entities with whom they contract may not charge fees at the time of collecting the unwanted covered electronic devices if those devices will be counted toward the manufacturer's recycling requirement.

(2) Manufacturers may only count covered electronic devices received from covered entities toward their recycling requirements listed under section 7307(a)(3)(B) of this title.

(3) A manufacturer shall certify that a facility recycling covered electronic devices in order to meet the manufacturer's obligation under subdivision (1) of this subsection complies with the recycling standards contained in section 7306(9) of this title. A manufacturer is responsible for maintaining, for a period of three years, documentation of the information relied upon as the basis for the certification under this subdivision.

(4) A manufacturer registered under this section or a collector operating on behalf of a manufacturer under this section shall not charge a fee to covered entities for the collection, transportation, or recycling of covered electronic devices.

§ 7304. RECYCLER PROGRAM RESPONSIBILITY

(a)(1) Recycler registration. No person may recycle a covered electronic device unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics recycling facility registered under this section is not required to obtain a solid waste certification pursuant to chapter 159 of this title. Registration information shall include:

(A) the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive covered electronic devices;

(B) evidence that the financial assurance requirements of section 6611 of this title have been satisfied.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the recycler under this section.

(b) Recycler's reporting requirements. By July 1 of each year, beginning July 1, 2011, a recycler of covered electronic devices shall report to the agency the total weight of covered electronic devices recycled during the preceding program year and shall certify that the recycler has complied with section 7306(8) of this title.

(c) Approved vendors. A recycler of covered electronic devices shall only contract for transport, transport to, or dispose of covered electronic devices through a manufacturer mail back or take back program or with a vendor listed by the agency of natural resources on its approved vendor list.

§ 7305. COLLECTOR AND TRANSPORTER PROGRAM RESPONSIBILITY

(a)(1) Collector and transporter registration. No person may operate as a collector or transporter of covered electronic devices unless that person has submitted a registration with the agency on a form prescribed by the secretary. A registration is effective upon receipt by the agency and is valid for a period not to exceed five years. An electronics collector or transporter registered under this section shall not be required to obtain a solid waste certification or a solid waste hauler permit pursuant to chapter 159 of this title.

(2) A registration shall be amended within ten days after a change to any information included in the registration submitted by the collector under this section.

(b) Transporter's reporting requirements. By July 1 of each year, beginning July 1, 2011, a transporter of covered electronic devices not destined for recycling in Vermont shall report to the agency the total pounds of covered electronic devices collected and the manufacturer who received credits from the covered electronic devices.

§ 7306. AGENCY PROGRAM RESPONSIBILITIES

The agency shall:

(1) Administer this chapter.

(2) Establish procedures for:

(A) the registration statements and certifications filed with the agency under this chapter; and

(B) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(3) Collect the data submitted annually by each manufacturer on the total aggregate weight of video display devices sold and the total aggregate weight of covered electronic devices collected which are recycled.

(4) Annually review the value of the variables used to calculate a manufacturer's variable recycling fee under section 7307(a)(3) of this title. If the agency determines that any of these values shall be changed in order to improve the efficiency or effectiveness of the activities regulated under this chapter or if the revenues in the account exceed the amount that the agency determines is necessary, the agency shall submit recommended changes to the senate and house committees on natural resources and energy.

(5) Based on the data provided by a manufacturer regarding the sales of video display devices, estimate by July 1 of each year each registered manufacturer's sales of video display devices during the previous year.

(6) Beginning December 1, 2011, report to the senate and house committees on natural resources and energy regarding the implementation of this chapter. For each program year, the report shall provide the total weight of covered electronic devices recycled and a summary of information in the reports submitted by manufacturers, collectors, and recyclers under this chapter. The report shall also discuss the various collection programs used by manufacturers to collect covered electronic devices; information regarding covered electronic devices that are being collected by persons other than registered manufacturers, collectors, and recyclers; and information about covered electronic devices, if any, being disposed of in landfills in this state. The report shall include a description of enforcement actions under this chapter. The agency may include in its report other information received by the agency regarding the implementation of this chapter.

(7) Promote public participation in the activities regulated under this chapter through public education and outreach efforts.

(8) Post on its website the contact information provided by each manufacturer under section 7303(a)(1)(A)(ii) of this title.

(9) In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics, including specific requirements for collectors, transporters, and recyclers.

(10) Identify approved transporters, collectors, recyclers, and other downstream vendors of covered electronic devices and list such entities on its website.

§ 7307. MANUFACTURER'S REGISTRATION FEE; CREATION OF ACCOUNT

(a) Registration fee.

(1) By July 1 of each year, all manufacturers who register under section 7303(a) of this title shall pay to the agency an annual registration fee as established under this section. The secretary shall deposit the fee into the account established by this section.

(2) The annual registration fee for a manufacturer who sells video display devices in the state is \$5,000.00 for the initial program year. In years following the initial program year, the annual registration fee for a manufacturer who sells video display devices in the state is \$5,000.00 plus the variable recycling fee calculated according to the formula in subdivision (3) of this subsection. The annual registration fee for a manufacturer who produces fewer than 100 video display devices for sale is \$1,250.00.

(3) Using quantities from the preceding program year, the variable recycling fee shall be calculated according to the formula—variable recycling fee = $(A \times B) - (C + D) \times E$, where:

(A) A = the number of pounds of a manufacturer's video display device sold during the previous program year, as reported to the agency under section 7303 of this title;

(B) B = the proportion of sales of video display devices required to be recycled, set at 0.6 for the first program year and at 0.8 for the second program year and every year thereafter;

(C) C = the number of pounds of covered electronic devices recycled by a manufacturer during the previous program year, as reported to the agency under section 7303 of this title;

(D) D = the number of recycling credits a manufacturer elects to use during the current program year to calculate the variable recycling fee, as reported to the agency under section 7303 of this section;

(E) E = the estimated per-pound cost of recycling used to calculate the variable recycling fee initially set at \$0.50 per pound for manufacturers who recycle less than 50 percent of the product required to be recycled under this chapter $(A \times B)$; \$0.40 per pound for manufacturers who recycle at least 50 percent but less than 90 percent of the product required to be recycled under this chapter $(A \times B)$; and \$0.30 per pound for manufacturers who recycle at least 90 percent of the product required to be recycled under this chapter $(A \times B)$.

(4) For the purpose of calculating a manufacturer's variable recycling fee for a given year, a manufacturer may carry recycling credits forward from any of the three preceding program years to be added, in whole or in part, to the number of pounds reported recycled. Recycling credits are created when the number of pounds reported recycled exceeds the number of pounds required to have been recycled under this chapter according to the formula: credit = C-(A × B), where A, B, and C are defined in subdivision (3) of this subsection. A manufacturer may sell any portion of its recycling credits to another manufacturer, at a price negotiated by the parties, who may use the credits in the same manner and may carry recycling credits forward from any of the three preceding program years.

(b) Creation of electronic waste management fund. The electronic waste management fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32. The fund shall be administered by the department of environmental conservation to administer and implement the programs authorized by this chapter. This shall include funding administrative costs to the agency, and may include as funding allows providing grants to entities recycling electronics waste and education and outreach costs. The fund shall consist of the fees collected under subsection (a) of this section and any gifts, donations, and appropriations by the general assembly. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund.

§ 7308. OTHER RECYCLING PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to recycle their covered electronic devices to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program recycling covered electronic devices in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling covered electronic devices, provided that those persons are registered under section 7303 of this title.

§ 7309. ANTICOMPETITIVE CONDUCT

Manufacturers or industry trade groups may work together and pool resources and collection activities to meet the requirements of this chapter.

§ 7310. MULTISTATE IMPLEMENTATION

The agency is authorized to participate in the establishment of a regional multistate organization or compact to assist in carrying out the requirements of this chapter.

§ 7311. LIMITATIONS

If a federal law or combination of federal laws takes effect that is applicable to all video display devices sold in the United States and establishes a program for the collection and recycling or reuse of video display devices that is applicable to all discarded video display devices, the agency will evaluate whether the laws provide a solution that is equal to or better than the program established under this chapter. The agency shall report its findings to the general assembly.

§ 7312. BAN ON PRISON LABOR

No facility that recycles covered electronic products, including downstream recycling operations, shall use prison labor in the state of Vermont to recycle covered electronic products.

Sec. 3. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following solid waste in landfills:

* * *

(8) Covered electronic devices, as defined in chapter 166 of this title, after July 1, 2011.

Sec. 4. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; ~~and~~

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management;

(19) 10 V.S.A. chapter 166, relating to disposal of covered electronic devices.