

By Reps. Higley and others,

**H.C.R. 117.**

House concurrent resolution celebrating the unique attributes of Green River Reservoir State Park.

By Rep. Donovan,

**H.C.R. 118.**

House concurrent resolution congratulating the 2019 Boys & Girls Clubs of Vermont Youth of the Year Award honorees.

By Reps. Noyes and others,

**H.C.R. 119.**

House concurrent resolution observing April 2, 2019 as National Service Recognition Day in Vermont.

By Rep. Brownell,

**H.C.R. 120.**

House concurrent resolution honoring U.S. Navy Chief Petty Officers' century and a quarter of outstanding service to our nation.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned, to reconvene on Tuesday, April 2, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 20.

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**TUESDAY, APRIL 2, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Kenzan of East Calais.

**Pledge of Allegiance**

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

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**Joint Senate Resolution Adopted on the Part of the Senate****J.R.S. 22.**

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

By Senator Ashe,

**J.R.S. 22.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, April 5, 2019, it be to meet again no later than Tuesday, April 9, 2019.

**Bills Introduced**

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

**S. 174.**

By Senators Pearson, Perchlik and Pollina,

An act relating to ranked choice voting.

To the Committee on Government Operations.

**S. 175.**

By Senator Collamore,

An act relating to approval of the dissolution of Rutland Fire District No. 10.

To the Committee on Government Operations.

**Third Readings Ordered****H. 58.**

Senator Pollina, for the Committee on Government Operations, to which was referred House bill entitled:

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

Reported that the bill ought to pass in concurrence.

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

**H. 73.**

Senator Pollina, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to approval of amendments to the charter of the City of Barre.

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.

**Bill Passed****S. 96.**

Senate bill of the following title was read the third time and passed:

An act relating to establishing a Clean Water Assessment to fund State water quality programs.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 3, 2019.

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**WEDNESDAY, APRIL 3, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Jennifer Mihok of Underhill.

**Message from the House No. 37**

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, 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. 524.** An act relating to health insurance and the individual mandate.

**H. 541.** An act relating to changes that affect the revenue of the State.

**H. 542.** An act relating to making appropriations for the support of government.

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

The House has considered a bill originating in the Senate of the following title:

**S. 14.** An act relating to extending the moratorium on home health agency certificates of need.

And has passed the same in concurrence.

The Governor has informed the House that on March 29, 2019, he approved and signed a bill originating in the House of the following title:

**H. 3.** An act relating to ethnic and social equity studies standards for public schools.

### **Message from the Governor Appointment Referred**

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointment, which was referred to a committee as indicated:

The nomination of

Broughton, Jason, of Barre - State Librarian of the Department of Libraries - April 1, 2019 for an indefinite term.

To the Committee on Education.

### **Bills Referred**

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

#### **H. 524.**

An act relating to health insurance and the individual mandate.

To the Committee on Finance.

#### **H. 541.**

An act relating to changes that affect the revenue of the State.

To the Committee on Finance.

#### **H. 542.**

An act relating to making appropriations for the support of government.

To the Committee on Appropriations.

**Bill Amended; Third Reading Ordered****S. 131.**

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

An act relating to insurance and securities.

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

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

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

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

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

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

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

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

(4) the waiver is in the public interest.

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

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

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

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

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

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

(6) any additional information required by the Commissioner.

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

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

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

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

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

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

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

(4) any additional disclosures required by the Commissioner.

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

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

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

(2) chapter 107, 112, 129, or 131 of this title or any regulations or bulletins directly relating thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Sec. 2. 8 V.S.A. § 3304 is amended to read:

§ 3304. CAPITAL AND SURPLUS REQUIREMENTS

(a)(1) To qualify for authority to transact the business of insurance, a stock insurer seeking such authorization shall possess and thereafter maintain unimpaired paid-in capital of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. Such

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

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

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

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

§ 3366. ASSETS OF COMPANIES

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

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

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

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

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

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

§ 5022. DEFINITIONS

\* \* \*

(b) As used in this chapter:

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

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

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

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

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

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

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

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

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

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

\* \* \*

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

§ 5026. SOLVENT INSURERS REQUIRED

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

\* \* \*

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon

such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

\* \* \*

Sec. 8. 8 V.S.A. § 5027 is amended to read:

§ 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

(a) Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, either domestic or foreign, shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

\* \* \*

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

§ 5028. INFORMATION REQUIRED ON CONTRACT

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

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

§ 5029. SURPLUS LINES INSURANCE VALID

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

and enforceable to the same extent as insurance contracts procured from admitted insurers.

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

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

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

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

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

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

§ 5035. SURPLUS LINES TAX

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

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

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

\* \* \*

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

§ 5036. DIRECT PLACEMENT OF INSURANCE

\* \* \*

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

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

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

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

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

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

\* \* \*

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

\* \* \*

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

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

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

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

\* \* \*

(7) Unfair discrimination; arbitrary underwriting action.

\* \* \*

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

\* \* \*

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

\* \* \*

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

\* \* \*

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



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

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

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

\* \* \*

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

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

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

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

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

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

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

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

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

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

\* \* \*

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

\* \* \*

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

§ 501b. CERTIFICATION OF LABORATORIES

\* \* \*

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

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HIV laboratory (insurance) alternate approval	\$300.00
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HIV laboratory (insurance) approval renewal	\$300.00
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\* \* \*

\* \* \* Victim Restitution Fund \* \* \*

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

§ 5616. VERMONT VICTIM RESTITUTION FUND

(a) Purpose. The purpose of this section is to provide restitution assistance to victims of securities violations who:

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

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

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

(b) Definitions. As used in this section,

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

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

(3) "Fund" means the Victim Restitution Special Fund created by this section.

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

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

(6) "Vulnerable person" means:

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

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

(c) Eligibility.

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

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

(A) to more than one claimant per victim;

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

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

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

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

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

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

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

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

(3) is related to the person who committed the securities violation.

(e) Application for Restitution Assistance and Maximum Amount of Restitution Assistance Award.

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

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

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

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

(f) Victim Restitution Fund. The Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for

the purposes specified in this section. All monies received by the State by reason of grant or donation for use in providing uncompensated victims restitution shall be deposited into the Victim Restitution Special Fund. Interest earned on the fund shall be retained in the Fund.

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

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

(i) Subrogation of Rights of State.

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

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

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

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

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

§ 5305. SECURITIES REGISTRATION FILINGS

\* \* \*

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

\* \* \*

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

Sec. 19. REPEAL

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

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

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

§ 4791. DEFINITIONS

As used in this chapter:

\* \* \*

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

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

\* \* \*

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

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the recommendation of the Committee of Finance be amended by striking out Sec. 17 (establishing a Victim Restitution Fund) in its entirety.

And by renumbering the remaining sections to be numerically correct.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 4, and pending the question, Shall the recommendation of the amendment of the Committee on Finance be amended as recommended by the Committee on Appropriations?, Senator Sears requested and was granted leave to withdraw the recommendation of amendment of the Committee on Appropriations.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Finance?, Senator Cummings moved to amend the recommendation of the Committee on Finance as follows:

First: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (g) in its entirety and by inserting in lieu thereof a new subsection (g) to read as follows:

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

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

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

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

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

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

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

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

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

Second: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (k) in its entirety and by inserting in lieu thereof a new subsection (k) to read as follows:

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct



permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

Third: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (n) in its entirety and by inserting in lieu thereof a new subsection (n) to read as follows:

(n)(1) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

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

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

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

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

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

(2) In the report submitted to the General Assembly on or before January 15, 2020, the Commissioner shall include a recommendation on whether there are any opportunities for the State to monetize its role in developing innovative insurance products and services that are subsequently offered in other jurisdictions. The Commissioner's recommendation shall ensure that any regulatory financial incentives under a monetization proposal would not conflict with the best interests of Vermont policyholders or the public good of the State.

Which was agreed to.

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

Thereupon, Senator Baruth moved that the bill be amended by striking out Sec. 1 of the bill in its entirety and inserting in lieu thereof the following:

Sec. 1. [Deleted.]

Which was disagreed to on a roll call, Yeas 7, Nays 22.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Baruth, Hardy, McCormack, Pearson, Perchlik, Pollina, Sirotkin.

**Those Senators who voted in the negative were:** Balint, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McNeil, Nitka, Parent, Rodgers, Sears, Starr, Westman, White.

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

Thereupon, third reading of the bill was ordered.

### **Bill Amended; Bill Passed**

#### **S. 106.**

Senate bill entitled:

An act relating to establishing the Municipal Self-Governance Program.

Was taken up.

Thereupon, pending third reading of the bill, Senator Rodgers moved to amend the bill in Sec. 1, 24 V.S.A. § 5805(c)(4), subparagraph (B), after the following: “the environment, conservation and development,” by inserting the following: forestry,

Which was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senator Sirotkin moved to amend the bill as follows:

First: In Sec. 1, 24 V.S.A. chapter 140, § 5805, subdivision (c)(4)(Q), by striking out the word “or” immediately after the semicolon

Second: In Sec. 1, 24 V.S.A. chapter 140, § 5805, subdivision (c)(4)(R), immediately following the word “railroads” by inserting the following before the period:

; or

(S) housing

Which was disagreed to.

Thereupon, the bill was read the third time and passed on a roll call, Yeas 21, Nays 8.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Benning, Bray, Campion, Clarkson, Collamore, Cummings, Hooker, Ingram, Kitchel, Lyons, Mazza, McCormack, Nitka, Perchlik, Pollina, Rodgers, Sears, Starr, Westman, White.

**Those Senators who voted in the negative were:** Baruth, Brock, Hardy, MacDonald, McNeil, Parent, Pearson, Sirotkin.

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

#### **Third Reading Ordered**

##### **H. 59.**

Senator Collamore, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to the codification of the charter of the Rutland County Solid Waste District.

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.

#### **Proposal of Amendment; Third Reading Ordered**

##### **H. 394.**

Senator Collamore, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to the disposition of the remains of veterans.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 3, Effective Date, by striking out the following: "July 1, 2019" and inserting in lieu thereof the word passage

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

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

**Bill Amended; Bill Passed**

**S. 113.**

Senate bill entitled:

An act relating to the prohibition of plastic carryout bags, expanded polystyrene, and single-use plastic straws.

Was taken up.

Thereupon, pending third reading of the bill, Senators Sirotkin, Balint, Benning, Brock, Perchlik and Sears moved to amend the bill in Sec. 1, 10 V.S.A. § 6693(a), by striking out “\$0.10” where it appears and inserting in lieu thereof \$0.05

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Bray, Campion, MacDonald, Parent and Rodgers moved to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 6691, subdivision (7)(B), by striking out the word “or”

And, in subparagraph (C), by striking out the period and inserting in lieu thereof ; or

And by inserting a new subparagraph (D) to read as follows:

(D) made of paper or other material that is not plastic, has handles, and has a thickness of 2.25 mils or more.

Second: In Sec. 1, 10 V.S.A. § 6691, subsection (10), by striking out the word “grocery” where it appears and inserting in lieu thereof the word carryout

Third: In Sec. 1, 10 V.S.A. § 6693, subsection (a), by striking out the words “at a cost” and inserting in lieu thereof the words for a charge

Which was agreed to.

Thereupon, the bill was read the third time and passed on a roll call Yeas 30, Nays 0.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Consideration Resumed; Bill Amended; Third Reading Ordered****S. 163.**

Consideration was resumed on Senate bill entitled:

An act relating to housing safety and rehabilitation.

Thereupon, pending the question, Shall the bill be read the third time?, Senators Sirotkin, Balint, Brock, Clarkson and Hooker moved to amend the bill as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

Sec. 4. [Deleted.]

Second: In Sec 9, in 26 V.S.A. chapter 105, subchapter 1, by striking out section 5401 in its entirety and inserting in lieu thereof a new section 5401 to read:

§ 5401. REGISTRATION REQUIRED

A person shall register with the Office of Professional Regulation prior to offering or contracting with a homeowner to perform construction, remodeling, or home improvement work on a residential dwelling unit or on a building or premises with four or fewer residential dwelling units, in exchange for consideration of more than \$2,000.00, including labor and materials.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Sirotkin, Balint, Brock, Clarkson and Hooker?, Senator Sears moved to divide the question.

Thereupon, the *first* recommendation of amendment was agreed to.

Thereupon, the *second* recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the bill be read the third time?, Senator Rodgers moved to amend the bill as follows:

By striking out Sec. 9 of the bill in its entirety and inserting in lieu thereof the following:

Sec. 9. [Deleted.]

Which was disagreed to on a roll call, Yeas 13, Nays 16.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Benning, Collamore, Kitchel, Mazza, McCormack, McNeil, Nitka, Pearson, Pollina, Rodgers, Sears, Starr, Westman.

**Those Senators who voted in the negative were:** Balint, Baruth, Bray, Brock, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Lyons, MacDonald, Parent, Perchlik, Sirotkin, White.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears, moved that the bill be committed to the Committee on Government Operations.

Which was disagreed to on a roll call, Yeas 15, Nays 15.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Benning, Collamore, Cummings, Kitchel, Mazza, McCormack, McNeil, Nitka, Parent, Pollina, Rodgers, Sears, Starr, Westman, White.

**Those Senators who voted in the negative were:** Ashe, Balint, Baruth, Bray, Brock, Campion, Clarkson, Hardy, Hooker, Ingram, Lyons, MacDonald, Pearson, Perchlik, Sirotkin.

There being a tie, the Secretary took the casting vote of the President, who voted "Nay".

Thereupon, third reading of the bill was ordered on a roll call, Yeas 19, Nays 11.

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

#### **Roll Call**

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

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

**Bills Passed in Concurrence**

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

**H. 58.** An act relating to approval of amendments to the charter of the Town of Barre.

**H. 73.** An act relating to approval of amendments to the charter of the City of Barre.

**Proposal of Amendment; Third Reading Ordered**

**H. 146.**

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

An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 2, effective dates; implementation, by deleting the underlining of the section title, and in subsection (b) after the word “appoint” by inserting the word the and after the word “two” by inserting the word new

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

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

**Message from the House No. 38**

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 543.** An act relating to capital construction and State bonding.

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

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

**J.R.S. 22.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, April 4, 2019.

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**THURSDAY, APRIL 4, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Paul Sangree of Randolph.

**Bill Introduced**

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

**S. 176.**

By Senator White,

An act relating to privatization contracts.

To the Committee on Government Operations.

**Bill Referred**

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

**H. 543.**

An act relating to capital construction and State bonding.

To the Committee on Institutions.

**Bill Passed**

**S. 131.**

Senate bill of the following title was read the third time and passed:

An act relating to insurance and securities.

**Bill Amended; Bill Passed**

**S. 163.**

Senate bill entitled:

An act relating to housing safety and rehabilitation.



Was taken up.

Thereupon, pending third reading of the bill, Senators Sirotkin and Cummings moved to amend the bill by adding a new section to be numbered Sec. 13 to read as follows:

\* \* \* Affordable Housing \* \* \*

Sec. 13. STATE TREASURER RECOMMENDATION FOR FINANCING  
OF AFFORDABLE HOUSING INITIATIVE

(a) Evaluation. On or before January 15, 2020, the State Treasurer shall evaluate options for financing affordable housing in the State. The evaluation shall include:

(1) a plan, formed in consultation with interested stakeholders, for the creation of 1,000 housing units over five years for Vermonters with incomes up to 120 percent of the area median income as determined by the U.S. Department of Housing and Urban Development;

(2) alternatives for financing the plan that take into consideration the use of appropriations, general obligation bonds, revenue bonds, investments, new revenues, and other financing mechanisms, including initiatives undertaken by other states;

(3) an assumption that the 1,000 units shall be in addition to what would otherwise have been produced through projected base appropriations available to the Vermont Housing and Conservation Board over five years commencing with FY 2021; and

(4) provision for meeting housing needs in the following areas:

(A) creating new multifamily and single-family homes;

(B) addressing blighted properties and other existing housing stock requiring reinvestment, including in mobile home parks; and

(C) providing service-supported housing in coordination with the Agency of Human Services, including for those who are elderly, homeless, in recovery, experiencing severe mental illness, or leaving incarceration.

(b) Cooperation. In conducting the evaluation described in subsection (a) of this section, the State Treasurer shall have the cooperation of the Agency on Commerce and Community Development and the Department of Taxes.

(c) Report. The State Treasurer shall submit a report with recommendations based on the evaluation described in subsection (a) of this section to the Senate Committees on Economic Development, Housing and General Affairs, on Appropriations, and on Finance and the House Committees

on General, Housing, and Military Affairs, on Appropriations, and on Ways and Means. The report shall also include a legislative proposal to implement the recommendations proposed in the report.

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

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

#### **Bill Passed in Concurrence**

##### **H. 59.**

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

An act relating to the codification of the charter of the Rutland County Solid Waste District.

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

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

**H. 146.** An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members.

**H. 394.** An act relating to the disposition of the remains of veterans.

#### **Third Reading Ordered**

##### **H. 218.**

Senator Ingram, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to lead poisoning prevention.

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.

#### **Bill Amended; Third Reading Ordered**

##### **S. 111.**

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

An act relating to the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry.

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

Sec. 1. FINDINGS

The General Assembly finds that:

(1) According to the U.S. Department of Veterans Affairs (VA), “burn pits were a common way to get rid of waste at military sites in Iraq and Afghanistan.”

(2) At present, the U.S. Department of Veterans Affairs provides contradictory information about the health impacts on soldiers of exposure to burn pits.

(3) On the one hand, the Department’s website says, “At this time, research does not show evidence of long-term health problems from exposure to burn pits. VA continues to study the health of deployed Veterans.”

(4) On the other hand, under the heading “Health effects from burn pit smoke” the VA states that “Toxins in burn pit smoke may affect the skin, eyes, respiratory and cardiovascular systems, gastrointestinal tract and internal organs. Veterans who were closer to burn pit smoke or exposed for longer periods may be at greater risk. Health effects depend on a number of other factors, such as the kind of waste being burned and wind direction. Most of the irritation is temporary and resolves once the exposure is gone. This includes eye irritation and burning, coughing and throat irritation, breathing difficulties, and skin itching and rashes. The high level of fine dust and pollution common in Iraq and Afghanistan may pose a greater danger for respiratory illnesses than exposure to burn pits, according to a 2011 Institute of Medicine report.”

(5) According to the VA, the waste products in burn pits include “chemicals, paint, medical and human waste, metal/aluminum cans, munitions and other unexploded ordnance, petroleum and lubricant products, plastics, rubber, wood, and discarded food.”

(6) In the past, the U.S. Armed Forces have been slow to acknowledge the physical injuries associated with environmental exposure during service members’ active duty. Notable examples of this include exposure to Agent Orange during the Vietnam War and the condition known as Gulf War Veterans’ Medically Unexplained Illness.

(7) After a period of equivocation, the U.S. government has usually acknowledged what veterans know too well—that their illnesses and suffering are real, that it is connected to their military service, and that the U.S. government must treat and compensate the veterans.

(8) Exposure to burn pits should be addressed proactively, and the State of Vermont and the U.S. government should prioritize the health of service members and veterans and not repeat past patterns of denial.

(9) A registry called the Airborne Hazards and Open Burn Pit Registry has been created to track service members who may have been exposed to burn pits. Between June 2014 and December 2018, 394 Vermonters joined the Registry.

(10) It is important that every Vermonter who was or may have been exposed to burn pits should participate in the Registry.

## Sec. 2. DEPARTMENT OF HEALTH; EDUCATIONAL MATERIALS

(a)(1) On or before July 1, 2019, the Commissioner of Health, in consultation with the Adjutant and Inspector General and the U.S. Department of Veterans Affairs, shall develop written educational materials that provide information about health effects that are associated with chemicals identified at open burn pits during overseas military deployments, including:

(A) information regarding how to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry and resources that can provide assistance with the registration process;

(B) information regarding the eligibility requirements for participation in the Registry, including deployment locations and dates;

(C) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(D) contact information for the Vermont Environmental Health Coordinator at the White River Junction VA facility.

(2)(A) On or before July 1, 2019, the information shall be made available on the Department of Health and the Office of Veterans Affairs websites.

(B) The Department of Health, in cooperation with appropriate professional licensing boards and professional membership associations, shall ensure the information is made available to all licensed health care providers in Vermont on or before July 1, 2019.

(b) On or before July 1, 2019, the Commissioner of Health and the Adjutant and Inspector General, in coordination with any available and interested federal or State agency, shall develop a pamphlet or other written informational material regarding the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry, including:

(1) information regarding the eligibility requirements for participation in the Registry, including deployment locations and dates;

(2) information regarding how to participate in the Registry and resources that can provide assistance with the registration process;

(3) the symptoms associated with exposure to open burn pits during overseas military deployments;

(4) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(5) contact information for the Vermont Environmental Health Coordinator at the White River Junction VA facility.

Sec. 3. COMMUNICATION TO SERVICE MEMBERS AND VETERANS;  
NATIONAL GUARD; OFFICE OF VETERANS AFFAIRS

(a) Beginning on or before July 1, 2019, the Adjutant and Inspector General and the Executive Director of the Vermont Office of Veterans Affairs, in consultation with any available and interested federal or State agency, shall collaborate to contact all members of the Vermont National Guard and all known veterans and members of the U.S. Armed Forces residing in Vermont who may be eligible to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry. In particular, the Adjutant and Inspector General and the Executive Director of the Vermont Office of Veterans Affairs shall contact all members of the Vermont National Guard and any veteran or member of the U.S. Armed Forces residing in Vermont who may have served in any of the following:

(1) Operation Enduring Freedom, Operation Iraqi Freedom, or Operation New Dawn;

(2) Djibouti, Africa, on or after September 11, 2001;

(3) Afghanistan, on or after September 11, 2001;

(4) Operation Desert Shield or Operation Desert Storm; or

(5) in the Southwest Asia theater of operations on or after August 2, 1990.

(b) Each veteran or service member contacted shall be encouraged to join the Registry and shall be provided with:

(1) contact information for the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry; and

(2) a copy of the pamphlet created by the Commissioner of Health and the Adjutant and Inspector General pursuant to Sec. 2 of this Act.

Sec. 4. ADJUTANT AND INSPECTOR GENERAL; COORDINATION  
WITH U.S. DEPARTMENT OF VETERANS AFFAIRS

(a) On or before July 1, 2019, the Adjutant and Inspector General shall encourage the U.S. Department of Veterans Affairs to enhance and simplify the registration process for the Airborne Hazards and Open Burn Pit Registry by providing for:

(1) identification verification for DS Logon Level 2 access to be made available at U.S. Department of Veterans Affairs' community-based outpatient clinics throughout Vermont;

(2) the creation of a paper registration option; and

(3) the creation of a process for deceased veteran's family members to participate in the Registry on behalf of a deceased veteran.

(b)(1) On or before July 1, 2019, the Adjutant and Inspector General shall request that the Periodic Health Assessment for members of the Vermont National Guard determine whether the Guard member was deployed to a location that would make him or her eligible to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry, and whether the Guard member was exposed to open burn pits during his or her deployment to that location.

(2) On or before July 1, 2019, the Adjutant and Inspector General shall request that any member of the Vermont National Guard who during his or her Periodic Health Assessment is identified as having been potentially exposed to open burn pits during a deployment is automatically registered to participate in the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry.

Sec. 5. EFFECTIVE DATE

This act shall take effect on 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, the recommendation of amendment was agreed to, and third reading of the bill was ordered, on a roll call, Yeas, 30, Nays 0.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy,

Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Proposal of Amendment; Third Reading Ordered**

**H. 7.**

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

An act relating to second degree aggravated domestic assault.

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

Sec. 1. 13 V.S.A. § 1044 is amended to read:

§ 1044. SECOND DEGREE AGGRAVATED DOMESTIC ASSAULT

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

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

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

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

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

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

(2) Commits the crime of domestic assault; and

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

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

(3) For the purpose of this subsection, ~~the term:~~

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

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

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

\* \* \*

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

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

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 19.**

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

An act relating to sexual exploitation of a person in law enforcement officer custody.

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

Sec. 1. 13 V.S.A. § 3251 is amended to read:

#### § 3251. DEFINITIONS

As used in this chapter:

\* \* \*

(9) “Law enforcement officer” means a person certified as a law enforcement officer under the provisions of 20 V.S.A. chapter 151.



Sec. 2. 13 V.S.A. § 3259 is added to read:

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

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

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

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

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

**Proposed Amendment to the Constitution Amended; Proposed  
Amendment to the Constitution Adopted**

The report of the Committee on Health and Welfare on Proposed Amendment to the Constitution designated as Proposal 5.

Was taken up.

Senator Lyons, for the Committee on Health and Welfare, to which was referred the proposed amendment, reported that the committee had considered Proposal 5 which is printed in full below:

Thereupon, Proposal 5, having appeared on the Calendar for five legislative days pursuant to Rule 77, was read the second time in full pursuant to Rule 77.

**PROPOSAL 5**

Sec. 1. PURPOSE

(a) This proposal would amend the Constitution of the State of Vermont to ensure that every Vermonter is afforded personal reproductive liberty. The Constitution is our founding legal document stating the overarching values of our society. This amendment is in keeping with the values espoused by the current Vermont Constitution. Chapter I, Article 1 declares "That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights." Chapter I, Article 7 states "That government is, or ought to be, instituted for the common benefit, protection, and security of the

people.” The core value reflected in Article 7 is that all people should be afforded all the benefits and protections bestowed by the government, and that the government should not confer special advantages upon the privileged. This amendment would reassert the principles of equality and personal liberty reflected in Articles 1 and 7 and ensure that government does not create or perpetuate the legal, social, or economic inferiority of any class of people. This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution.

(b) The right to reproductive liberty is central to the exercise of personal autonomy and involves decisions people should be able to make free from compulsion of the State. Enshrining this right in the Constitution is critical to ensuring equal protection and treatment under the law and upholding the right of all people to health, dignity, independence, and freedom.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That the people are guaranteed the liberty and dignity to determine their own life’s course. The right to personal reproductive autonomy is central to the liberty protected by this Constitution and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Senator Lyons, for the Committee Health and Welfare, to which was referred Proposal 5, reported that Proposal 5 to the Constitution of the State of Vermont be amended by striking Sec. 2 in its entirety and inserting in lieu thereof the following:

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course as protected by this Constitution, and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Thereupon, pending the question, Shall the Proposed Amendment to the Constitution designated as Proposal 5 be amended as recommended by the Committee on Health and Welfare?, Senators Lyons, Cummings, Ingram, McCormack and Westman moved that the recommendation of the Committee on Health and Welfare be amended in Sec. 2 (Article 22) by striking out the following: “as protected by this Constitution,”

Which was decided in the affirmative on a roll call pursuant to Rule 77, Yeas 29, Nays 1 ( the necessary majority vote having been attained.)

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** McNeil.

Thereupon, the pending question, Shall the Proposed Amendment to the Constitution designated as Proposal 5 be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative on a roll call pursuant to Rule 77, Yeas 28, Nays 2 (the necessary majority vote having been attained).

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** Collamore, McNeil.

\*\*\*\*During debate of the measure, Senator Lyons addressed the Chair in proposing the amendment of the Committee on Health and Welfare to the Proposed Amendment to the Constitution, and on a rules suspension made by Senator McCormack, her remarks were ordered enter in the Journal, and are as follows:

“Thank you Mr. President I will speak today to the Proposal and the amendments of Article 22 introduced by all members the Senate Health and Welfare Committee. I will present information that addresses why Prop 5 is important –why this Constitutional amendment should go to the voters. I will present some of the information the committee heard as we developed the proposal, and how the committee worked to develop it. I will talk about how Prop 5 reflects our state values, and what is included in prop 5. Finally I will briefly present the process for approving this Constitutional Amendment.

“When approved by the voters Proposition 5 will provide a fundamental right – ensuring personal reproductive autonomy for Vermonters. Consistent with other rights in our Constitution we intend it to be an umbrella. In this case an umbrella that covers the most personal decisions we make about our lives.

“Much of what I say to present this Constitutional Amendment proposal to you will be about women, specifically about women’s right to choose. But Article 22 includes more than abortion rights. If approved it will ensure reproductive liberty for family planning, contraception, and decisions important to both men and women. These are the personal decisions of when to have children that can be based on one’s economic or family stability.

“Ultimately, if the Senate and House concur on Prop 5 during this and the next biennium, the proposal will go to the voters to decide yea or nay. That will be a vote on the fundamental right of reproductive liberty – personal reproductive autonomy- It will affirm the right to abortion as it currently exists in our state – unless regulation is justified by a compelling state interest achieved by the least restrictive means. This is consistent with the standard of strict scrutiny. The standard of strict scrutiny is how the U.S. Supreme Court interprets whether laws are constitutional, when fundamental rights are involved.

“As recommended by your Senate Health and Welfare Committee, Proposal 5 includes a purpose section which helps set a Constitutional context for the new article. Historically, proposals of constitutional amendment have not always contained a purpose section. Because of the shifting jurisprudence on reproductive liberties at the federal level, our committee felt it was important to include a purpose section to provide context and direct guidance to the courts in their interpretation of Article 22. The purpose section roots the newly enumerated right to reproductive freedom in existing constitutional principles of equality and liberty. The purpose section will not be voted on by the voters, nor will it become part of the constitution. Only Article 22 will be added if we and then the voters approve. You will see in the purpose a reference to Article 1 of Vermont’s Constitution. Article 1 states that “all persons are *born* equally free and independent, and have certain...rights, amongst which are...enjoying life and liberty...and pursuing and obtaining happiness and safety”. Article 7 is our common benefits clause. It affirms that the public health of Vermont citizens is ensured equally, and not for any one group or individual over another. As we heard when the purpose section was read, Prop 5 is in keeping with the principles of liberty and equality reflected in Articles 1 and 7, but will not limit the scope of rights afforded by any provision in the Constitution.

“Personal reproductive decisions implicate many freedoms of opportunity, including the opportunity to pursue education and work, to plan a family, and to choose how to live one’s life. Without the autonomy to decide for oneself about when to have a family, many women and men become stuck in a lifelong struggle for success.

“Most of you do not remember the tenuous and sometimes tortuous times before 1973 and *Roe vs. Wade*. Not only was abortion a back room activity but also contraception was not readily available. In 1965 and ’72 Supreme Court cases struck down limitations to contraceptive access and affirmed that married and single persons should have access to contraception. These decisions were based on an interpretation of the US Constitution (14<sup>th</sup> amendment due process and equal protection clause) declaring a right to privacy. (*GRISWOLD VS CT 1965 AND EISENSTADT VS BARID 1972*) It was a year later in 1973 that the Supreme Court *Roe v Wade* decision was handed down. Personal Privacy was cited for protecting a women’s decision whether to carry a pregnancy to term. In *Roe v Wade* the Court limited its interpretation of privacy as a fundamental right to the realm of contraception, procreation, and related topics of child rearing and education, family relationships, and marriage. *Roe v Wade* has informed Vermont’s legal relationship with abortion until the present day.

“In 1972 the Vermont Supreme Court in *Leahy vs. Beechman* declared a 1947 law unconstitutional (Jeffords AG). The law made it a crime for doctors to provide abortions but did not criminalize the act of obtaining an abortion. VT’s Supreme Court determined that women’s health was not protected under that VT law (since they couldn’t access appropriate care for the abortion procedure) and struck it down.

“Since 1972 we have seen the results of allowing men and women to make their own decisions about family planning, contraception, and abortion. Senate Health and Welfare heard from the Commission on Women that access to reproductive health care – to contraception and family planning has resulted in ‘an increase in women’s wages, participation in the labor force, and in completion rates of college. Children born after access to reproductive services like family planning were 12% less likely to be in households receiving public assistance, 7% less likely to live in poverty, and more likely to go to college. Being able to determine when to have a family / how to determine one’s life course can have an effect on social and economic success. Barriers to family planning – to reproductive rights - can be a barrier to equal opportunity. This is supported by national data from the Human Rights commission where black, Hispanic, and women with lower socioeconomic backgrounds are less likely to have insurance coverage for contraception and family planning. The ACLU brought similar information about how government intrusion into the right to

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reproductive liberty is a roadblock to social, educational, and economic success.

“Vermont’s medical community provides ethical medical treatment for men and women seeking access to contraception. Since *Roe v Wade*, Vermont trusts women and their doctors to make appropriate decisions about abortion. Vermont’s medical community shared with our committee the process that a doctor and a woman go through to determine if an abortion after viability is indicated to protect her life or health. Ethical guidelines are robust. Unlike other states Vermont does not require women to jump through government imposed regulatory hoops or encounter barriers to access health care. We learned that 91.7% of all (1298- 2016) abortions occur within the first trimester (12 weeks) most for women between 25-29 years/ 17 post 21 weeks (1.3%)

“Since 1992, U.S. Supreme Court decisions have begun to dismantle *Roe v Wade*. This began by changing the standard of scrutiny used by the Court to analyze state laws imposing restrictions on women’s right to choose. Since 2011, states have passed more than 400 new abortion restrictions imposing barriers to reproductive health care and inflicting shame on women seeking help. Since 2018, 37 states have introduced over 300 abortion restrictions, (26 in 11 states). 20 states are ready to ban abortion when *Roe v Wade* is overturned. (Over 1/3 of all women in country- 25million)

“Maine, Nevada, Washington, Maryland, Hawaii, Oregon, California, NY, Connecticut and Delaware have laws protecting freedom of Choice – some consistent with *Roe v Wade*. VT does not have such a law. Some states have constitutional amendments or laws that rely on privacy as the basis for reproductive liberty. (Alaska, Calif., Fla, Montana)When *Roe v Wade* falls, those provisions may be called into question. This is one reason the Senate Health and Welfare committee did not use privacy as a basis for our proposal.

“The Health and Welfare Committee developed Prop 5 based on our constitution for a narrowly crafted proposal. Article 22 will require courts to evaluate restrictions on the right to reproductive liberty using a strict scrutiny analysis. Personal reproductive autonomy shall not be denied or infringed upon unless justified by a compelling state interest achieved by the least restrictive means. (Meaning that Vermont can regulate the right if it has a compelling interest in doing so, and the regulation is narrowly crafted to achieve that compelling interest)

“Health and Welfare reviewed Prop 5 after taking testimony and listening to our Senate colleagues. I can’t say enough about the thoughtfulness and deliberation that each member of the committee gave to this issue. The

Committee made some key decisions to build the language in the latest amendment before you.

“We took Testimony to understand how to build a legally defensible protection for reproductive liberty that is not too broad or too narrow.

“We have reduced the proposal to one sentence. We believe this offers clarity. The first sentence in the original Prop 5 offered confusion about what right was being protected. We restructured the proposal to keep the protections offered narrow. The phrase “as protected by this Constitution” was also confusing and it is removed in the amendment that appears in the calendar.

“We recommend to the Senate that the amendment being offered receive a “yes” vote.

“The final proposal is based on Supreme Court jurisprudence. Legislative Council ensured that it clearly articulates a fundamental right to personal reproductive autonomy. As with other fundamental rights, any restriction on the right must survive strict scrutiny analysis to be deemed constitutional.

“The proposal for Article 22 of the Constitution is deliberately narrow in scope to articulate a fundamental right to personal reproductive autonomy, a right that is central to the liberty to determine one’s own life course, and one that cannot be denied or infringed unless justified by a compelling state interest achieved by the least restrictive means.

“This is the same standard of review the U.S. Supreme Court used in the Roe v Wade decision. It also reflects Vermont’s history and values. Vermonters value the liberty and dignity to determine our own life’s course. We encourage educational, economic, and social mobility for women and men. Having reproductive liberty without government intrusion is fundamental to achieving one’s goals. Determining when one has a family is key to determining the outcome of one’s life.

“Reproductive liberty was and continues to be a lightning rod for attention.

“Reproductive liberty is currently recognized as a fundamental right at the federal level but only through court cases / decisions. It is time to put the question to the voters. The lack of a definitive enumeration of reproductive liberty in VT’s Constitution, the threat of Roe v Wade being overturned by a very conservative US Supreme Court, and the cloud of a multi state initiative to pass restrictive /punitive laws all build a strong case for Prop 5 to go to the voters.

“For nearly 50 years Vermonters have relied on the protections offered by Supreme Court case law to support how we value personal autonomy in

reproductive health decisions. If Vermonters affirm those values by voting yes, Proposition 5 will place those values into the VT Constitution.

“The substitute amendment I am presenting on behalf of the Committee requires a majority vote of the Senate.

“The Committee asks that you vote yes on this and on the final proposal.

“As you can see in the calendar on page 1034, Process for a Constitutional Amendment, the vote for the Proposal once amended requires 2/3 of the Senate to vote yes to approve sending the proposal to the House. After the House votes by a majority of its members, the proposal will wait until the next biennium to be acted on again in both the House and Senate. Your vote today sends Prop 5 to the House and ultimately to the voters in Nov. 2022.

“I’d like to thank the Health and Welfare Committee, who deliberated carefully and paid thoughtful attention to the proposal. The Committee built the language in the proposal so as to be legally defensible – to establish a fundamental Constitutional right of reproductive liberty.

“Brynn – We are fortunate to have a Constitutional scholar who provided guidance and support as we developed this important proposal. She listened to the committee as we pondered the health and welfare of people and the right to reproductive liberty in our Constitution.

“I’d like to thank many of my fellow Senators for the help and information they provided during the process. I’d like to especially thank Senator Benning and Senator Sirotkin.”

Thereupon, the pending question, Shall the Senate adopt the Proposal of Amendment to the Constitution of Vermont (as amended) as recommended by the Committee on Health and Welfare and request the concurrence of the House? was decided in the affirmative on a roll call, pursuant to the Vermont Constitution and Rule 80, Yeas 28, Nays 2 (the necessary two-thirds vote having been attained).

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** Collamore, McNeil.

### **Adjournment**

On motion of Senator Ashe, the Senate adjourned until eleven o’clock and thirty minutes in the morning.



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**FRIDAY, APRIL 5, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Peter Plagge of Waterbury.

**Message from the House No. 39**

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

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposal of amendment to House bill entitled:

**H. 39.** An act relating to the extension of the deadline of school district mergers required by the State Board of Education.

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

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

Rep. Conlon of Cornwall  
Rep. Cupoli of Rutland City  
Rep. Giambatista of Essex

**Pages Honored**

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with letters of appreciation.

Isabella Bevins of Plainfield  
Ella Byers of Shelburne  
Jazmyn Dix of Whitingham  
Maya Elliot of Middlesex  
Eli Ferro of Tunbridge  
Maximmilian Fontana of South Burlington  
Gabriel Hall of Montpelier  
Hannah Keith of Kirby  
Maverick Murphy of Woodbury  
Jessica Pierce of Chester

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**Bill Passed****S. 111.**

Senate bill of the following title was read the third time and passed:

An act relating to the U.S. Department of Veterans Affairs' Airborne Hazards and Open Burn Pit Registry.

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

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

**H. 7.** An act relating to second degree aggravated domestic assault.

**H. 19.** An act relating to sexual exploitation of a person in law enforcement officer custody.

**Bill Passed in Concurrence****H. 218.**

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

An act relating to lead poisoning prevention.

**Committee of Conference Appointed****H. 39.**

An act relating to the extension of the deadline of school district mergers required by the State Board of Education.

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

Senator Baruth  
Senator Perchlik  
Senator Parent

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

**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, were severally adopted on the part of the Senate:

By Senator Lyons,

By Rep. Pugh,

**S.C.R. 9.**

Senate concurrent resolution in memory of former University of Vermont Dean of the College of Education and Social Services and Associate Provost Jill Mattuck Tarule of Essex.

By Senator Lyons,

**S.C.R. 10.**

Senate concurrent resolution in memory of creative mathematics educator and passionate Celtic folk musician Timothy James Whiteford.

**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, were severally adopted in concurrence:

By Reps. Ancel and others,

By Senators Ashe, Benning, Cummings, Kitchel, Mazza, McNeil, Perchlik and Pollina,

**H.C.R. 121.**

House concurrent resolution commemorating the placement of the third statue of Agriculture atop the State House dome and honoring its creators, sculptors Chris Miller and Jerry Williams.

By Reps. Austin and others,

**H.C.R. 122.**

House concurrent resolution congratulating Gloria Kigonya on winning the 2019 Vermont Debate and Forensics League State Forensics Tournament's performance poetry category.

By Reps. Stevens and others,

**H.C.R. 123.**

House concurrent resolution honoring Sarah E. Carpenter for her outstanding leadership as Vermont Housing Finance Agency Executive Director.

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By Reps. Masland and Briglin,

**H.C.R. 124.**

House concurrent resolution congratulating the 2018 Thetford Academy Panthers girls' soccer team on winning a second consecutive Division III championship.

By Reps. Myers and others,

**H.C.R. 125.**

House concurrent resolution congratulating Henry Farrington on being named the 2018 Vermont Gatorade Boys' Cross-Country Runner of the Year.

By Reps. Myers and others,

**H.C.R. 126.**

House concurrent resolution congratulating the 2019 Essex High School Hornets State championship gymnastics team.

By Reps. Myers and others,

**H.C.R. 127.**

House concurrent resolution congratulating the 2019 Essex High School Vermont Treasury Cup Challenge championship team.

By Reps. Myers and others,

**H.C.R. 128.**

House concurrent resolution congratulating the 2019 Essex High School Hornets Division I girls' ice hockey championship team.

By Reps. Myers and others,

**H.C.R. 129.**

House concurrent resolution congratulating the 2019 Essex High School Hornets boys' ice hockey team on winning the school's second-consecutive Division I championship.

By Reps. Myers and others,

**H.C.R. 130.**

House concurrent resolution congratulating the 2019 Essex High School Hornets Division I indoor track and field championship team.

By Reps. McCarthy and others,

**H.C.R. 131.**

House concurrent resolution congratulating Steve Gagner on his selection as the 2019 U.S. Small Business Administration's Vermont Small Business Person of the Year.

By Reps. Fagan and others,

By Senators Collamore, Hooker and McNeil,

**H.C.R. 132.**

House concurrent resolution congratulating Rutland High School for earning placement on the first ESPN Honor Roll, in recognition of the school's outstanding Special Olympics Unified Sports program.

By Reps. Brumsted and others,

By Senators Ingram and Lyons,

**H.C.R. 133.**

House concurrent resolution congratulating Champlain Valley Union High School Principal Adam Bunting on being named the 2018 Vermont Principal of the Year.

By Reps. Sabilia and others,

**H.C.R. 134.**

House concurrent resolution congratulating the 2019 Junior Iron Chefs championship teams.

By Reps. Morrissey and others,

By Senators Campion and Sears,

**H.C.R. 135.**

House concurrent resolution saluting the Vermonters who served in the Vietnam War and honoring the memory of those who died in this conflict.

By Reps. Till and others,

**H.C.R. 136.**

House concurrent resolution congratulating Katherine Suzanne Bove on winning one gold medal and one bronze medal at the 2019 Special Olympics World Games in Abu Dhabi, United Arab Emirates.

By Reps. Morrissey and others,

By Senators Campion and Sears,

**H.C.R. 137.**

House concurrent resolution congratulating American Legion Post 13 in Bennington on its 100th anniversary.

**Message from the House No. 40**

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

Mr. President:

I am directed to inform the Senate that:

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

**H.C.R. 121.** House concurrent resolution commemorating the placement of the third statue of Agriculture atop the State House dome and honoring its creators, sculptors Chris Miller and Jerry Williams.

**H.C.R. 122.** House concurrent resolution congratulating Gloria Kigonya on winning the 2019 Vermont Debate and Forensics League State Forensics Tournament's performance poetry category.

**H.C.R. 123.** House concurrent resolution honoring Sarah E. Carpenter for her outstanding leadership as Vermont Housing Finance Agency Executive Director.

**H.C.R. 124.** House concurrent resolution congratulating the 2018 Thetford Academy Panthers girls' soccer team on winning a second consecutive Division III championship.

**H.C.R. 125.** House concurrent resolution congratulating Henry Farrington on being named the 2018 Vermont Gatorade Boys' Cross-Country Runner of the Year.

**H.C.R. 126.** House concurrent resolution congratulating the 2019 Essex High School Hornets State championship gymnastics team.

**H.C.R. 127.** House concurrent resolution congratulating the 2019 Essex High School Vermont Treasury Cup Challenge championship team.

**H.C.R. 128.** House concurrent resolution congratulating the 2019 Essex High School Hornets Division I girls' ice hockey championship team.

**H.C.R. 129.** House concurrent resolution congratulating the 2019 Essex High School Hornets boys' ice hockey team on winning the school's second-consecutive Division I championship.

**H.C.R. 130.** House concurrent resolution congratulating the 2019 Essex High School Hornets Division I indoor track and field championship team.

**H.C.R. 131.** House concurrent resolution congratulating Steve Gagner on his selection as the 2019 U.S. Small Business Administration's Vermont Small Business Person of the Year.

**H.C.R. 132.** House concurrent resolution congratulating Rutland High School for earning placement on the first ESPN Honor Roll, in recognition of the school's outstanding Special Olympics Unified Sports program.

**H.C.R. 133.** House concurrent resolution congratulating Champlain Valley Union High School Principal Adam Bunting on being named the 2018 Vermont Principal of the Year.

**H.C.R. 134.** House concurrent resolution congratulating the 2019 Junior Iron Chefs championship teams.

**H.C.R. 135.** House concurrent resolution saluting the Vermonters who served in the Vietnam War and honoring the memory of those who died in this conflict.

**H.C.R. 136.** House concurrent resolution congratulating Katherine Suzanne Bove on winning one gold medal and one bronze medal at the 2019 Special Olympics World Games in Abu Dhabi, United Arab Emirates.

**H.C.R. 137.** House concurrent resolution congratulating American Legion Post 13 in Bennington on its 100th anniversary.

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. 9.** Senate concurrent resolution in memory of former University of Vermont Dean of the College of Education and Social Services and Associate Provost Jill Mattuck Tarule of Essex.

**S.C.R. 10.** Senate concurrent resolution in memory of creative mathematics educator and passionate Celtic folk musician Timothy James Whiteford.

And has adopted the same in concurrence.

### **Adjournment**

On motion of Senator Ashe, the Senate adjourned, to reconvene on Tuesday, April 9, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 22.

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**TUESDAY, APRIL 9, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Rabbi Tobie M. Weisman of Montpelier.

**Pledge of Allegiance**

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

**Joint Senate Resolution Adopted on the Part of the Senate**

**J.R.S. 23.**

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

By Senator Ashe,

**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, April 12, 2019, it be to meet again no later than Tuesday, April 16, 2019.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 10, 2019.

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**WEDNESDAY, APRIL 10, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Message from the House No. 41**

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

Mr. President:

I am directed to inform the Senate that:



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

**H. 107.** An act relating to paid family and medical leave.

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. 3.** Joint resolution authorizing the Green Mountain Boys State educational program to use the State House.

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

### **Message from the Governor**

A message was received from His Excellency, the Governor, by Ms. Brittney L. Wilson, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the ninth day of April, 2019 he approved and signed a bill originating in the Senate of the following title:

**S. 11.** An act relating to limiting senatorial districts to a maximum of three members.

### **Message from the Governor Appointments Referred**

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

The nomination of

Harritt, Susan of Jericho - Member of the Human Services Board - from April 1, 2019 to February 28, 2023.

To the Committee on Health and Welfare.

The nomination of

Donegan, Roger of Hinesburg - Member of the State Labor Relations Board - from April 1, 2019 to June 30, 2020.

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

The nomination of

Fiske, John of Rutland - Member of the Electricians' Licensing Board - from April 1, 2019 to June 30, 2021.

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

The nomination of

Foster, Ted of Middlebury - Member of the Vermont Economic Development Authority - from April 1, 2019 to June 30, 2024.

To the Committee on Finance.

The nomination of

Collier, Anthony of Colchester - Member of the Vermont Economic Development Authority - from April 1, 2019 to June 30, 2020.

To the Committee on Finance.

The nomination of

Phillips, Leigh of Burlington - Chair of the Occupational Safety and Health Review Board - from April 1, 2019 to February 28, 2025.

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

### **Bill Referred to Committee on Appropriations**

#### **H. 523.**

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

An act relating to miscellaneous changes to the State's retirement systems.

### **Joint Resolution Placed on Calendar**

#### **J.R.H. 3.**

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

Joint resolution authorizing the Green Mountain Boys State educational program to use the State House.

Whereas, the American Legion Department of Vermont sponsors the Green Mountain Boys State educational program, providing a group of boys entering the 12th grade a special opportunity to study the workings of State government in Montpelier, and

Whereas, as part of their visit to the State's capital city, the boys conduct a mock legislative session in the State House, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers and committee rooms of the State House for the Green Mountain Boys State educational program on Thursday, June 20, 2019, from 8:00 a.m. to 4:15 p.m., and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the American Legion Department of Vermont in Montpelier.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action tomorrow.

**Bill Referred**

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

**H. 107.**

An act relating to paid family and medical leave.

To the Committee on Rules.

**Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

The nominations of

Minoli, Wanda L. of Montpelier - Commissioner, Department of Motor Vehicles - October 2, 2018 to February 28, 2019.

Minoli, Wanda L. of Montpelier - Commissioner, Department of Motor Vehicles - March 1, 2019 to February 28, 2021.

Were collectively confirmed by the Senate.

The nomination of

Flynn, Joseph of South Hero - Secretary, Agency of Transportation - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nominations of

Touchette, Michael P. of Colchester - Commissioner, Department of Corrections - December 22, 2018 to February 28, 2019.

Touchette, Michael P. of Colchester - Commissioner, Corrections, Department of - March 1, 2019, to February 28, 2021.

Were collectively confirmed by the Senate.

The nomination of

Sansom, Kaj of Montpelier - Commissioner, Department of Taxes - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Young, Susanne R. of Northfield - Secretary, Agency of Administration - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Anderson, Thomas D. of Stowe - Commissioner, Public Safety Department - March 1, 2019, to February 28, 2023.

Was confirmed by the Senate.

The nomination of

Quinn, John J. of Northfield - Secretary, Agency of Digital Services - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

#### **Appointment Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointment was confirmed by the Senate, without a report given by the Committee to which it was referred and without debate:

The nomination of

Olsen, Oliver K. of South Londonderry - Member, State Board of Education - March 1, 2018 to February 28, 2024.

Was confirmed by the Senate.

#### **Message from the House No. 42**

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, 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.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, April 11, 2019.

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**THURSDAY, APRIL 11, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Tom Harty of Bethel.

**Third Readings Ordered****H. 358.**

Senator Collamore, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to technical corrections.

Reported that the bill ought to pass in concurrence.

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

**H. 427.**

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to a uniform process for foreign credential verification in the Office of Professional Regulation.

Reported that the bill ought to pass in concurrence.

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

**H. 436.**

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

An act relating to international wills.

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.

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**Joint Resolution Adopted in Concurrence****J.R.H. 3.**

Joint House resolution entitled:

Joint resolution authorizing the Green Mountain Boys State educational program to use the State House.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

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**FRIDAY, APRIL 12, 2019**

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Stannard Baker of Burlington.

**Message from the House No. 43**

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

**S. 118.** An act relating to the time frame for the adoption of administrative rules.

And has passed the same in concurrence.

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

**H. 146.** An act relating to increasing the number of examiners on the Board of Bar Examiners from nine to 11 members.

And has severally concurred therein.

**Message from the House No. 44**

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 7.** An act relating to second degree aggravated domestic assault.

**H. 19.** An act relating to sexual exploitation of a person in law enforcement officer custody.

**H. 394.** An act relating to the disposition of the remains of veterans.

And has severally concurred therein.

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

**H.C.R. 138.** House concurrent resolution congratulating the 2019 Missisquoi Valley Union High School Thunderbirds Division II girls' ice hockey championship team.

**H.C.R. 139.** House concurrent resolution congratulating the 2019 Rutland High School Raiders Vermont Division I and New England Division II cheerleading championship team.

**H.C.R. 140.** House concurrent resolution honoring William Eugene Griffin on the completion of an extraordinary career as the Vermont Chief Assistant Attorney General.

**H.C.R. 141.** House concurrent resolution congratulating the Capitol Police on the department's 20th anniversary.

**H.C.R. 142.** House concurrent resolution recognizing the second full week in May as Women's Lung Health Week in Vermont.

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

**Bills Referred**

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

**H. 107.**

An act relating to paid family and medical leave.

---

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

**H. 460.**

An act relating to sealing and expungement of criminal history records.

To the Committee on Judiciary.

**H. 536.**

An act relating to education finance.

To the Committee on Finance.

**Bill Referred to Committee on Finance**

**H. 526.**

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

An act relating to town clerk recording fees and town restoration and preservation reserve funds.

**Bills Passed in Concurrence**

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

**H. 358.** An act relating to technical corrections.

**H. 427.** An act relating to a uniform process for foreign credential verification in the Office of Professional Regulation.

**H. 436.** An act relating to international wills.

**Bill Amended; Third Reading Ordered**

**S. 162.**

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

An act relating to promoting economic development.

Reported recommending that the bill be amended by striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

**Sec. 3. DUTIES CONTINGENT UPON FUNDING**

The duties imposed on the Agency of Commerce and Community Development in Sec. 1 of this act are contingent upon the appropriation of funds in fiscal year 2020 for the purposes specified.



And that when so amended the bill ought to pass.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Appropriations?, Senator McCormack, requested and was granted leave to withdraw the recommendation of amendment of Committee on Appropriations.

Senator Brock, for the Committee on Finance, to which the committee bill was referred, reported that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Recruitment and Relocation \* \* \*

Sec. 1. 3 V.S.A. § 2476 is amended to read:

§ 2476. DEPARTMENT OF TOURISM AND MARKETING

\* \* \*

(c) Economic development marketing. The Department shall be responsible for the promotion of Vermont as great place to live, work, and do business in order to increase the benefits of economic development marketing, including:

- (1) attracting additional private investment in Vermont businesses;
- (2) recruiting new businesses;
- (3) attracting more innovators and entrepreneurs to locate in Vermont;
- (4) attracting, recruiting, and growing the workforce to fill existing vacancies in growing businesses and to retain workers and their families; and
- (5) promoting and supporting Vermont businesses, goods, and services.

\* \* \*

Sec. 2. NEW WORKER RELOCATION INCENTIVE PROGRAM

(a) The Agency of Commerce and Community Development shall design and implement the New Worker Relocation Incentive Program, which shall include a simple certification process to certify new workers and certify qualifying expenses for a grant under this section.

(b) A new worker may be eligible for a grant under the Program for qualifying expenses in the amount of not more than \$7,500.00, consistent with the following limitations, and subject to available funding and procedures the Agency adopts to implement the program:

- (1) A base grant for relocation to any area in Vermont shall be \$5,000.00.

(2) A grant for relocation to a designated labor market area may be enhanced, not to exceed \$7,500.00.

(3) The Agency shall assess applications on a rolling basis and give first priority, at any point in the application process, to workers in identified priority sectors, which may include health care, early child care and learning, lodging and restaurant industry, manufacturing, technology, and construction trades.

(4) A new worker may apply for a grant beginning January 1, 2020 and shall be paid when proof of residency and income tax liability reaches the equivalent of the amount claimed.

(5) A remote worker may apply for a grant under the Program when all funds from the New Remote Worker Grant Program created in 2018 Acts and Resolves No. 197, Sec. 1 are encumbered.

(c) The Agency shall:

(1) adopt procedures for implementing the Program;

(2) promote awareness of the Program, including through coordination with relevant trade groups and by integration into the Agency's economic development marketing campaigns; and

(3) adopt measurable goals, performance measures, and an audit strategy to assess the utilization and performance of the Program.

(d) As used in this section:

(1) "New worker" means an individual who:

(A)(i) is a full-time employee of a business with its domicile or primary place of business outside Vermont and performs the majority of his or her employment duties remotely from a home office or a coworking space located in this State; or

(ii) is a full-time employee of a business located in Vermont and

(B) becomes a full-time resident of this State on or after January 1, 2020.

(2) "Qualifying expenses" mean actual costs that a new worker incurs for:

(A) moving expenses;

(B) repayment of student loan debt;

(C) down payment assistance; and

(D) initial rental deposits.

(e) On or before October 1, 2020, the Agency shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs concerning the implementation of this section, including:

- (1) a description of the procedures adopted to implement the Program;
- (2) the promotion and marketing of the Program;
- (3) any additional recommendations for qualifying new worker expenses or qualifying workers that should be eligible under the Program, and
- (4) any recommendations for the maximum amount of the grant.

### Sec. 3. DUTIES CONTINGENT UPON FUNDING

The duties imposed on the Agency of Commerce and Community Development in Sec. 2 of this act are contingent upon the appropriation of funds in fiscal year 2020 for the purposes specified.

\* \* \* Vermont Employment Growth Incentive Program \* \* \*

### Sec. 4. REPEAL

32 V.S.A. § 3336 (enhanced incentive for workforce training) is repealed.

### Sec. 5. ENHANCED INCENTIVES; BACKGROUND GROWTH; SMALL BUSINESS PARTICIPATION

On or before December 15, 2020, the Vermont Economic Progress Council shall submit to the Senate Committee on Economic Development, Housing and General Affairs and to the House Committee on Commerce and Economic Development a report addressing:

- (1) the use of the enhanced incentive for environmental technology businesses in the Vermont Employment Growth Incentive Program and shall specifically address the effectiveness, costs, and benefits of modifying the background growth rate when calculating the value of the enhanced incentives; and
- (2) specific recommendations for reducing the administrative burdens and other barriers to participation in the Program for small businesses.

### Sec. 6. VERMONT EMPLOYMENT GROWTH INCENTIVE; STUDY

On or before January 15, 2020, the Agency of Commerce and Community Development, in consultation with the State Auditor, shall study and report to the House Committees on Commerce and Economic Development and on Ways and Means and to the Senate Committees on Economic Development, Housing and General Affairs and on Finance concerning the Vermont Employment Growth Incentive Program, specifically addressing the following:

(1) the internal controls and methods used to evaluate whether the program is working as intended;

(2) the procedures used to select, vet, and approve participants and projects;

(3) the controls and due diligence surrounding the application of the “but for” test;

(4) the specific outcomes of the Program in each year, including the net revenue gain to the State and the net increase in jobs, payroll, and capital investment; and

(5) the procedures and controls for measuring and verifying those Program outcomes.

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

#### Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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.

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

Thereupon, third reading of the bill was ordered on a roll call, Yeas 27, Nays 2.

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:** Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Perchlik, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** Pearson, Pollina.

**The Senator absent or not voting was:** Ashe (presiding).

#### **House Concurrent Resolution Adopted in Concurrence with Proposal of Amendment**

#### **H.C.R. 141**

House Concurrent resolution of the following title:

House concurrent resolution congratulating the Capitol Police on the department's 20th anniversary.

Was taken up.

Thereupon, Senators Sears and Ashe moved that the Senate propose to the House to amend the House concurrent resolution by striking out the *first* Whereas clause in its entirety and inserting in lieu thereof the following:

Whereas, the first State House Security Officer was Raymond H. Quero, a U.S. Marine veteran of the Korean War and an 8 year veteran of the Montpelier City Police Force who served the General Assembly for 24 years, from 1972 until his death in 1995 and whose service was so exemplary that he was honored in J.R.H. 58 (1996 R-88) and in Act No. 185 (1996) in Sec. 1(a)(6), and

Which was agreed to.

Thereupon, the question, Shall the Senate adopt the House concurrent resolution in concurrence with proposal of amendment?, was decided in the affirmative.

#### **Committee Relieved of Further Consideration; Bill Committed**

##### **H. 83.**

On motion of Senator Sears, the Committee on Judiciary was relieved of further consideration of House bill entitled:

An act relating to female genital cutting,

and the bill was committed to the Committee on Health and Welfare.

#### **Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

The nomination of

Fastiggi, Mary E. of Burlington - Commissioner, Department of Human Resources - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Greshin, Adam of Warren - Commissioner, Department of Finance and Management - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Pieciak, Michael of Winooski - Commissioner, Department of Financial Regulation - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Tierney, June of Randolph - Commissioner, Department of Public Service - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Tebbetts, Anson B. of Marshfield - Secretary, Agency of Agriculture, Food and Markets - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

#### **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, were severally adopted in concurrence:

By Reps. Savage and others,

By Senators Brock and Parent,

#### **H.C.R. 138.**

House concurrent resolution congratulating the 2019 Missisquoi Valley Union High School Thunderbirds Division II girls' ice hockey championship team.

By Reps. Fagan and others,

By Senators Hooker, Collamore and McNeil,

#### **H.C.R. 139.**

House concurrent resolution congratulating the 2019 Rutland High School Raiders Vermont Division I and New England Division II cheerleading championship team.

By Reps. Grad and Ancel,

By Senator Sears,

**H.C.R. 140.**

House concurrent resolution honoring William Eugene Griffin on the completion of an extraordinary career as the Vermont Chief Assistant Attorney General.

By Reps. Burke and others,

By Senators Balint, Clarkson, Hooker, Lyons, Nitka and Pollina,

**H.C.R. 142.**

House concurrent resolution recognizing the second full week in May as Women's Lung Health Week in Vermont.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, April 16, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 23.

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**TUESDAY, APRIL 16, 2019**

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Pledge of Allegiance**

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

**Message from the Governor  
Appointments Referred**

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

The nomination of

Saarnijoki, Linda of Weston - Member of the Board of Libraries - from April 1, 2019 to February 29, 2020.

To the Committee on Education.

The nomination of

Ewins, Regine of Charlotte - Member of the Board of Libraries, - from April 1, 2019 to February 28, 2023.

To the Committee on Education.

**Joint Senate Resolution Adopted on the Part of the Senate**

**J.R.S. 24.**

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

By Senator Ashe,

**J.R.S. 24.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, April 19, 2019, it be to meet again no later than Tuesday, April 23, 2019.

**Bill Amended; Bill Passed**

**S. 162.**

Senate committee bill entitled:

An act relating to promoting economic development.

Was taken up.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill in Sec. 2 in subdivision (b)(4) by striking out the word “income” and in subdivision (d)(2)(B) by striking out the word “repayment” and inserting in lieu thereof the word payment

Which was agreed to.

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

**Third Reading Ordered**

**H. 204.**

Senator Cummings, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to miscellaneous provisions affecting navigators, Medicaid records, and the Department of Vermont Health Access.

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.

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 17, 2019.

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### **WEDNESDAY, APRIL 17, 2019**

The Senate was called to order by the President.

### **Devotional Exercises**

Devotional exercises were conducted by the Reverend Bruce Wilkinson of Williston.

### **Message from the House No. 45**

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 540.** An act relating to approval of the amendments to the charter of the Town of Williston.

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

The House has considered a bill originating in the Senate of the following title:

**S. 154.** An act relating to miscellaneous banking provisions.

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

### **Bill Referred**

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

**H. 540.** An act relating to approval of the amendments to the charter of the Town of Williston.

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

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**Bill Passed in Concurrence****H. 204.**

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

An act relating to miscellaneous provisions affecting navigators, Medicaid records, and the Department of Vermont Health Access.

**Point of Order; Third Reading Ordered****H. 321.**

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

An act relating to aggravated murder for killing a firefighter or an emergency medical provider.

Reported that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be read a third time? Senator Ashe raised a *point of order* whether the reporter of the Committee Report could be questioned regarding the reasons and/or motives for the Committee member who voted no.

Thereupon, the President *sustained* the point of order and ruled that it is not appropriate to question the reporter for the Committee on the reasons and the motives of a Committee member who voted no.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, April 18, 2019.

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**THURSDAY, APRIL 18, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Ed Sunday-Winters of Greensboro.

**Message from the House No. 46**

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 539.** An act relating to approval of amendments to the charter of the Town of Stowe and to the merger of the Town and the Stowe Fire District No. 3.

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

The House has considered a bill originating in the Senate of the following title:

**S. 89.** An act relating to allowing reflective health benefit plans at all metal levels.

And has passed the same in concurrence.

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

**H.C.R. 141.** House concurrent resolution congratulating the Capitol Police on the department's 20th anniversary.

And has severally concurred therein.

**Bill Referred to Committee on Finance****H. 82.**

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

An act relating to the taxation of timber harvesting equipment.

**Bill Referred to Committee on Appropriations****H. 133.**

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

An act relating to miscellaneous energy subjects.

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**Bill Introduced**

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

**S. 177.**

By Senator Rodgers,

An act relating to nonmotorized vessel licensing.

To the Committee on Natural Resources and Energy.

**Bill Referred**

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

**H. 539.**

An act relating to approval of amendments to the charter of the Town of Stowe and to the merger of the Town and the Stowe Fire District No. 3.

To the Committee on Rules.

**Bill Passed in Concurrence****H. 321.**

House bill of the following title:

An act relating to aggravated murder for killing a firefighter or an emergency medical provider.

Was read the third time and passed in concurrence on a roll call, Yeas 20, Nays 8.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Benning, Bray, Brock, Campion, Collamore, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Perchlik, Pollina, Rodgers, Starr, Westman, White.

**Those Senators who voted in the negative were:** Balint, Baruth, Clarkson, Cummings, Hardy, Hooker, Ingram, Sirotkin.

**Those Senators absent and not voting were:** Pearson, Sears.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned until eleven o'clock and thirty minutes in the morning.

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**FRIDAY, APRIL 19, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

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

**Message from the House No. 47**

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

Mr. President:

I am directed to inform the Senate that:

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

**S. 53.** An act relating to determining the proportion of health care spending allocated to primary care.

**S. 68.** An act relating to Indigenous Peoples' Day.

And has passed the same in concurrence.

The House has considered a bill originating in the Senate of the following title:

**S. 49.** An act relating to the regulation of polyfluoroalkyl substances in drinking and surface waters.

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

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

**J.R.S. 24.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

**Message from the House No. 48**

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

Mr. President:

I am directed to inform the Senate that:

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The House has adopted joint resolution of the following title:

**J.R.H. 5.** Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

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

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

**H.C.R. 143.** House concurrent resolution congratulating Olivia Shively on qualifying for the 2019 Snowboarding Junior World Championships.

**H.C.R. 145.** House concurrent resolution honoring the 26th President of the University of Vermont, E. Thomas Sullivan, for his leadership accomplishments.

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

### **Bill Referred to Committee on Appropriations**

#### **H. 521.**

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

An act relating to amending the special education laws.

### **Message from the Governor Appointments Referred**

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

The nomination of

O'Farrell, Jenna of Essex Junction - Member of the State Board of Education - from April 15, 2019 to February 28, 2025.

To the Committee on Education.

The nomination of

Gleason, Kimberly of Essex Junction - Member of the State Board of Education - from April 15, 2019 to February 28, 2025.

To the Committee on Education.

The nomination of

Nagy, Joan of Cambridge - Member of the Human Rights Commission - from April 22, 2019 to February 28, 2024.

To the Committee on Judiciary.

**Message from the Governor**

A message was received from His Excellency, the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the eighteenth day of April, 2019 he approved and signed a bill originating in the Senate of the following title:

**S. 109.** An act relating to captive insurance companies and risk retention groups.

**Joint Resolution Placed on Calendar**

**J.R.H. 5.**

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

Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

Whereas, the American Legion Auxiliary of Vermont sponsors the Green Mountain Girls State educational program, providing a group of girls entering the 12th grade a special opportunity to study the workings of State government in Montpelier, and

Whereas, the Green Mountain Girls State educational program serves as an outstanding leadership-training forum for future civic leaders in Vermont, and

Whereas, as part of their visit to the State's capital city, the girls conduct a mock legislative session in the State House, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers and committee rooms of the State House for the Green Mountain Girls State educational program on Wednesday, June 19, 2019, from 8:00 a.m. to 4:15 p.m., and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the American Legion Auxiliary of Vermont in Montpelier.

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

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**Proposal of Amendment; Consideration Postponed****H. 278.**

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

An act relating to acknowledgment or denial of parentage.

Reported recommending that the Senate propose to the House to amend the bill by adding a new section to be numbered Sec. 6 to read as follows:

Sec. 6. 33 V.S.A. § 5111(a) is amended to read:

(a) If a child is placed in the legal custody of the Department and the identity of a parent has not been legally established at the time the petition is filed, the Court may order that ~~the mother~~, the child, and the alleged child's father genetic parents submit to genetic testing and may issue an order establishing parentage pursuant to ~~15 V.S.A. chapter 5, subchapter 3A~~ 15C V.S.A. chapters 1 – 8 (parentage proceedings). A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

And by renumbering the remaining section to be numerically correct.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended the Committee on Judiciary?, Senator Sears moved that consideration of the bill be postponed until Wednesday, April 24, 2019, which was agreed to.

**Appointments Confirmed**

Under suspension of the rules (and particularly, Senate Rule 93), as moved by Senator White, the following Gubernatorial appointments were confirmed together as a group by the Senate, without reports given by the Committees to which they were referred and without debate:

The nomination of

Hutchins, Donn of Dorset - Member, Children and Family Council for Prevention Programs - May 4, 2018 to February 28, 2021.

Was confirmed by the Senate.



The nomination of

Davenport, Amy of Montpelier - Member, Children and Family Council for Prevention Programs - May 4, 2018 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Broughton, Jason of Barre - State Librarian, Department of Libraries - for an indefinite term beginning April 1, 2019.

Was confirmed by the Senate.

The nomination of

Rosenstreich, Judy P. of Shelburne - Member, Board of Medical Practice - February 18, 2019 to December 31, 2023.

Was confirmed by the Senate.

The nomination of

Osman, Adan of Burlington - Member, Children and Family Council for Prevention Programs - October 25, 2018 to February 28, 2021.

Was confirmed by the Senate.

### **Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

The nomination of

Hutt, Monica C. of Williston - Commissioner, Department of Disabilities, Aging and Independent Living - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Cole, Christopher J. of Richmond - Commissioner, Department of Buildings and General Services - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Gustafson, Cory G. of Montpelier - Commissioner, Department of Vermont Health Access - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

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**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, were severally adopted in concurrence:

By Rep. Rogers,

By Senator Westman,

**H.C.R. 143.**

House concurrent resolution congratulating Olivia Shively on qualifying for the 2019 Snowboarding Junior World Championships.

By Reps. Rachelson and others,

**H.C.R. 145.**

House concurrent resolution honoring the 26th President of the University of Vermont, E. Thomas Sullivan, for his leadership accomplishments.

**Adjournment**

On motion of Senator Ashe, the Senate adjourned, to reconvene on Tuesday, April 23, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 24.

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**TUESDAY, APRIL 23, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Marisa Laviola of Morrisville.

**Pledge of Allegiance**

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

**Message from the Governor**

A message was received from His Excellency, the Governor, by Ms. Brittney L. Wilson, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the nineteenth day of April, 2019 he approved and signed a bill originating in the Senate of the following title:

**S. 14.** An act relating to extending the moratorium on home health agency certificates of need.

#### **Message from the House No. 49**

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on April 19, 2019, he approved and signed bills originating in the House of the following titles:

**H. 58.** An act relating to approval of amendments to the charter of the Town of Barre.

**H. 59.** An act relating to the codification of the charter of the Rutland County Solid Waste District.

**H. 73.** An act relating to approval of amendments to the charter of the City of Barre.

**H. 218.** An act relating to lead poisoning prevention.

The Governor has informed the House that on April 22, 2019, he approved and signed a bill originating in the House of the following title:

**H. 532.** An act relating to fiscal year 2019 budget adjustments.

#### **Bills Referred to Committee on Finance**

House 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:

**H. 205.** An act relating to the regulation of neonicotinoid pesticides.

**H. 249.** An act related to the Reach Up and Reach Ahead pilot program.

#### **Joint Senate Resolution Adopted on the Part of the Senate**

##### **J.R.S. 25.**

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

By Senator Ashe,

**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, April 26, 2019, it be to meet again no later than Tuesday, April 30, 2019.

**Proposals of Amendment; Third Reading Ordered**

**H. 514.**

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

An act relating to miscellaneous tax provisions.

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

First: In Sec. 10, in subdivision (10)(D)(ii)(I), after the following: “as defined in 24 V.S.A. § 1951,” by inserting the following: or provides emergency medical services or first responder services, as defined under 24 V.S.A. § 2651,

Second: By inserting a new section to be numbered Sec. 12a to read as follows:

Sec. 12a. TAX DATA ANALYSIS

(a) The Department of Taxes, with the cooperation of other executive agencies, shall analyze how existing federal and State tax data could be used to identify opportunities for State executive agencies to maximize the eligibility of Vermonters for federal and State programs. For each opportunity, the Department shall identify:

(1) how existing tax data could be used to streamline eligibility criteria and application processes;

(2) any current restrictions on the use of federal and State tax data in the context of the opportunity; and

(3) any changes to current law or to current data practices that would be required to maximize the benefit to the Vermont beneficiary while ensuring taxpayer confidentiality.

(b) The Department of Taxes shall submit its analysis in the form of a report to the Senate Committee on Finance and the House Committee on Ways and Means no later than December 1, 2019.

Third: In Sec. 17 after the section heading “REPORT ON NONPOSTSECONDARY USE OF HIGHER EDUCATION INVESTMENT PLAN FUNDS” by striking out the word “The” and inserting in lieu thereof the following: As far as practicable, the

Fourth: By inserting a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. REPEAL

Sec. 17 (report) of this act shall be repealed on July 1, 2021.

Fifth: In Sec. 32, land use change tax, in subsection (a), by striking out the following: “In the instance where a parcel is withdrawn and value established, and then a portion of the withdrawn parcel is developed, the land use change tax on the entire originally withdrawn parcel is due.”

Sixth: By inserting a new section to be numbered Sec. 32a to read as follows:

Sec. 32a. LAND USE CHANGE TAX

No later than October 15, 2019, the Department of Taxes shall make recommendations to the Current Use Advisory Board for rulemaking to address the application of the land use change tax when land is withdrawn from current use and subsequently only a portion of the land is developed.

Seventh: By inserting a new section to be numbered Sec. 36b to read as follows:

Sec. 36b. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(3) Agriculture feeds, seed, plants, baler twine, silage bags, agricultural wrap, sheets of plastic for bunker covers, liming materials, breeding and other livestock, semen breeding fees, baby chicks, turkey poults, agriculture chemicals other than pesticides, ~~veterinary supplies~~, and bedding; and fertilizers and pesticides for use and consumption directly in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit and truck farms, orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale.

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\* \* \*

(53) Prescription drugs intended for animal use, and durable medical equipment and prosthetics intended for animal use, and veterinary supplies intended for animal use. As used in this subdivision, “prescription drugs intended for animal use” means a drug dispensed only by or upon the lawful written order of a licensed veterinarian, and “veterinary supplies” mean tangible personal property therapeutic in nature, not normally used absent illness or injury, and not intended for repeated usage.

Eighth: In Sec. 38, effective dates, in subdivision (3), by striking out “and” and inserting in lieu thereof , and after “36a (automotive parts)” by inserting and 36b (veterinary supplies)

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.

### **Joint Resolution Adopted in Concurrence**

#### **J.R.H. 5.**

Joint House resolution entitled:

Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

### **Adjournment**

On motion of Senator Ashe, the Senate adjourned until two o'clock in the afternoon on Wednesday, April 24, 2019.

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### **WEDNESDAY, APRIL 24, 2019**

The Senate was called to order by the President.

#### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

#### **Message from the House No. 50**

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

Mr. President:

I am directed to inform the Senate that:

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

**H. 207.** An act relating to approval of an amendment to the charter of the City of Montpelier regarding non-citizen voting in City elections.

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

**Message from the House No. 51**

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on April 23, 2019, he approved and signed bills originating in the House of the following titles:

**H. 7.** An act relating to second degree aggravated domestic assault.

**H. 19.** An act relating to sexual exploitation of a person in law enforcement officer custody.

**H. 394.** An act relating to the disposition of the remains of veterans.

**Bill Referred to Committee on Appropriations**

**H. 104.**

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

An act relating to professions and occupations regulated by the Office of Professional Regulation.

**Bill Referred**

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

**H. 207.**

An act relating to approval of an amendment to the charter of the City of Montpelier regarding non-citizen voting in City elections.

To the Committee on Rules.

**Consideration Resumed; Bill Amended; Third Reading Ordered****H. 278.**

Consideration was resumed on Senate bill entitled:

An act relating to acknowledgment or denial of parentage.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary? Senators Nitka, Baruth, Benning, Sears and White moved to amend the report of the Committee on Judiciary as follows:

By striking out Sec. 6 in its entirety and inserting in lieu thereof the following:

Sec. 6. 33 V.S.A. § 5111(a) is amended to read:

(a) If a child is placed in the legal custody of the Department and the identity of a parent has not been legally established at the time the petition is filed, the ~~Court~~ court may order that ~~the mother,~~ the child, and the ~~alleged father~~ child's alleged genetic parents submit to genetic testing and may issue an order establishing parentage pursuant to ~~15 V.S.A. chapter 5, subchapter 3A~~ 15C V.S.A. chapters 1–8 (parentage proceedings). A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

Which was agreed to.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Judiciary?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

**House Proposals of Amendment Concurred In****S. 154.**

House proposals of amendment to Senate bill entitled:

An act relating to miscellaneous banking provisions.

Were taken up.

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

First: In Sec. 2, in 8 V.S.A. § 2108(c), following the words “business days” by inserting the words after the licensee has reason to know

Second: In Sec. 40, in 8 V.S.A. § 2500(12), after the following: “digital electronic format,” by inserting the following: including virtual currency,



Third: In Sec. 40, in 8 V.S.A. § 2500(13), by striking out the words “prepaid access” and inserting in lieu thereof the words a digital representation of value

Fourth: In Sec. 53, in 8 V.S.A. § 2534, by striking out the second sentence in its entirety and inserting in lieu thereof the following: A licensee shall maintain its records ~~the following~~ for at least five years, which records shall include:

- (1) a record of each payment instrument or ~~stored-value~~ prepaid access obligation sold;
- (2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
- (3) bank statements and bank reconciliation records;
- (4) records of outstanding payment instruments and ~~stored-value~~ prepaid access obligations;
- (5) records of each payment instrument and ~~stored-value~~ prepaid access obligation paid within the five-year period;
- (6) a list of the last known names and addresses of all of the licensee’s authorized delegates; and
- (7) any other records the Commissioner requires by rule.

Fifth: In Sec. 56, in 8 V.S.A. § 2546, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

- (a) Section 2110 of this title applies to authorized delegates.

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

### **Third Reading Ordered**

#### **H. 523.**

Senator Bray, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to miscellaneous changes to the State’s retirement systems.

Reported that the bill ought to pass in concurrence.

Senator McCormack, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended in Sec. 4, Law Enforcement Retirement Benefits Study Committee; Recommendations; Report, by striking out subsection (e) in

its entirety and by relettering the remaining subsections in Sec. 4 to be alphabetically correct.

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 proposal of amendment was agreed to, and third reading of the bill was ordered.

**Proposed Amendment to the Constitution Amended; Proposed  
Amendment to the Constitution Adopted**

The report of the Committee on Government Operations on Proposed Amendment to the Constitution designated as Proposal 2.

Was taken up.

Senator White, for the Committee on Government Operations, to which was referred the proposed amendment, reported that the committee had considered Proposal 2 which is printed in full below:

Thereupon, Proposal 2, having appeared on the Calendar for five legislative days pursuant to Rule 77, was read the second time in full pursuant to Rule 77.

**PROPOSAL 2**

Sec. 1. HISTORY; PURPOSE

(a) History. While Vermont was the first state to include a prohibition on slavery in its Constitution in 1777, it was only a partial prohibition, applicable to adults reaching a certain age, “unless bound by the person’s own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.” The 13th Amendment to the U.S. Constitution, ratified in 1865, prohibited slavery within the United States “except as a punishment for crime whereof the party shall have been duly convicted[.]” Despite subsequent revisions to it, the Vermont Constitution continues to contain only a partial prohibition on slavery.

(b) Purpose. This proposal would amend the Constitution of the State of Vermont to eliminate reference to slavery. Eliminating reference to slavery in the Vermont Constitution will serve as a foundation for addressing systemic racism in our State’s laws and institutions.

Sec. 2. Article 1 of Chapter I of the Vermont Constitution is amended to read:

Article 1. [All persons born free; their natural rights; ~~slavery prohibited~~]

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and

~~pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.~~

### Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Senator White, for the Committee on Government Operations, to which was referred Proposal 2, reported that Proposal 2 to the Constitution of the State of Vermont be amended by striking out the proposal in its entirety and inserting in lieu thereof the following:

## PROPOSAL 2

### Sec. 1. PURPOSE

This proposal would amend the Constitution of the State of Vermont to clarify that slavery and indentured servitude in any form are prohibited.

Sec. 2. Article 1 of Chapter I of the Vermont Constitution is amended to read:

Article 1. [All persons born free; their natural rights; slavery and indentured servitude prohibited]

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; ~~therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like~~ slavery and indentured servitude in any form are prohibited.

### Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

Thereupon, the pending question, Shall the Proposed Amendment to the Constitution designated as Proposal 2 be amended as recommended by the

Committee on Health and Welfare? was decided in the affirmative on a roll call pursuant to Rule 77, Yeas 28, Nays 1 (the necessary majority vote having been attained).

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** McCormack.

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

Thereupon, the pending question, Shall the Senate adopt the Proposal of Amendment to the Constitution of Vermont (as amended) as recommended by the Committee on Government Operations and request the concurrence of the House? was decided in the affirmative on a roll call, pursuant to the Vermont Constitution and Rule 80, Yeas 28, Nays 1 (the necessary two-thirds vote having been attained).

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** McCormack.

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

#### **Committee Relieved of Further Consideration; Bill Committed**

##### **H. 351.**

On motion of Senator Cummings, the Committee on Finance was relieved of further consideration of House bill entitled:

An act relating to workers' compensation, unemployment insurance, and ski tramway amendments,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

#### **Adjournment**

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Thursday, April 25, 2019.

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**THURSDAY, APRIL 25, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Senate Resolution Referred****S.R. 5.**

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

By Senators Pollina, Baruth, Clarkson, Hooker, Ingram, McCormack, Pearson, and Perchlik,

**S.R. 5.** Senate resolution relating to strongly opposing the basing of any nuclear weapon delivery system in the State of Vermont.

*Whereas*, the F-35 fighter jet, scheduled for deployment in Vermont, was designed with a requirement to carry a nuclear payload, and

*Whereas*, former U.S. Secretary of Defense James Mattis has spoken of the importance of the nuclear-armed F-35 as part of the nation's deterrence equation, and

*Whereas*, the 2018 Nuclear Posture Review states that "a nuclear-armed F-35 is fundamental to deterring Russia," and

*Whereas*, the Pentagon has awarded funding to Lockheed Martin to develop a nuclear-armed F-35 Lightning II Joint Strike Fighter as part of a new nuclear strategy, and

*Whereas*, the U.S. Air Force plans to mount the B-61-12 nuclear gravity bomb on the F-35, thus integrating it into the air-delivered leg of the nuclear triad that also includes sea- and land-based missiles, and

*Whereas*, in 2017, the then Director of the F-35 Program Integration Office stated that the F-35 Joint Strike Fighter is slated to be armed with the B-61-12 nuclear gravity bomb "sometime between 2020 and 2022 but could carry the weapon sooner," and

*Whereas*, the U.S. Air Force has also awarded Lockheed Martin \$83.1 million to develop and test equipment for F-35A nuclear capability, and

*Whereas*, U.S. Senator Patrick Leahy has written that throughout his time in the Senate he has "always fought to reduce the number of nuclear armaments, and to halt the testing, production, and proliferation of nuclear arsenals" and

that he has “long believed that simply upgrading the entirety of the U.S. nuclear arsenal is an unaffordable course of action,” and

*Whereas*, U.S. Senator Bernie Sanders has written of the nation’s “already bloated nuclear arsenal” and has cosponsored the Smarter Approach to Nuclear Expenditures Act, which would reduce the size of the country’s nuclear arsenal, and that he “strongly oppose(s) the basing of nuclear weapons in Vermont,” and

*Whereas*, U.S. Air Force documentation discussing the type of ordnance that might be deployed on the F-35 stated that “The F-35A would train for and deploy all the types of ordnance it is capable of carrying,” *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly expresses its strong opposition to the basing of any nuclear weapon delivery system in the State of Vermont, *and be it further*

***Resolved:*** That the General Assembly requests that the Governor and the members of the Vermont Congressional Delegation inform the Acting U.S. Secretary of Defense Patrick Shanahan that the State of Vermont will not support a nuclear weapon delivery system to be based in this State, *and be it further*

***Resolved:*** That the Secretary of State be directed to send a copy of this resolution to the Governor, to Acting U.S. Secretary of Defense Patrick Shanahan, and to the Vermont Congressional Delegation.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Government Operations.

**Bill Referred to Committee on Appropriations**

**H. 79.**

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

An act relating to eligibility for farm-to-school grant assistance.

**Bills Referred to Committee on Finance**

House 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:

**H. 13.** An act relating to miscellaneous amendments to alcoholic beverage and tobacco laws.

**H. 529.** An act relating to the Transportation Program and miscellaneous changes to laws related to transportation.

**Proposal of Amendment; Bill Passed in Concurrence with Proposals of Amendment**

**H. 514.**

House bill entitled:

An act relating to miscellaneous tax provisions.

Was taken up.

Thereupon, pending third reading of the bill, Senator Pearson moved to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec 10 to read as follows:

Sec. 10. 32 V.S.A. § 9202(10)(D)(iii) is added to read:

(iii) Food or beverage purchased for resale, provided that at the time of sale the purchaser provides the seller an exemption certificate in a form approved by the Commissioner. However, when the food or beverage purchased for resale is subsequently resold, the subsequent purchase does not come within this exemption unless the subsequent purchase is also for resale and an exemption certificate is provided.

Second: In Sec. 20, § 6061(4)(B)(i), after the following: “former spouse of the claimant,” by inserting the following: for any period that the spouse or former spouse is not a member of the household,

Which were severally agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

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

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

**H. 278.** An act relating to acknowledgment or denial of parentage.

**H. 523.** An act relating to miscellaneous changes to the State’s retirement systems.

---

**Proposal of Amendment; Third Reading Ordered****H. 133.**

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

An act relating to miscellaneous energy subjects.

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

\* \* \* Report Consolidation \* \* \*

Sec. 1. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

\* \* \*

~~(c) Report. On or before January 15, 2010, and annually thereafter, the Department of Public Service shall report to the General Assembly on the expenditure of funds from the Fuel Efficiency Fund to meet the public's needs for energy efficiency services. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. [Repealed.]~~

\* \* \*

Sec. 2. 2012 Act and Resolves No. 165, Sec. 2 is amended to read:

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL  
HYDROELECTRIC PROJECTS

\* \* \*

~~(e) No later than January 15, 2014 and annually by each second January 15 thereafter, the commissioner shall submit a written report to the general assembly detailing the progress of the MOU program, including an identification of each hydroelectric project participating in the program. After five hydroelectric projects participating in the program are approved and commence operation, reports filed under this subsection shall evaluate and provide lessons learned from the program, including recommendations, if any, on how to improve procedures for obtaining approval of micro hydroelectric projects (100 kilowatts capacity or less). The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection. [Repealed.]~~

\* \* \*



Sec. 3. 30 V.S.A. § 8105 is amended to read:

§ 8105. REPORTING

~~(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the Commission and the Commissioner of Public Service by December 31 of each year following certification. The report shall contain such information as is required by the Commission and the Commissioner. The report shall include at a minimum sufficient information for the Commissioner of Public Service to submit the report required by subsection (b) of this section.~~

~~(b) Beginning on March 1, 2010, and annually thereafter, the Commissioner of Public Service shall submit a report to the Senate Committees on Economic Development, Housing and General Affairs, on Finance, and on Natural Resources and Energy, and the House Committees on Ways and Means, on Commerce and Economic Development, and on Energy and Technology, and the Governor, which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. [Repealed.]~~

Sec. 4. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

\* \* \*

(e) The Commissioner of Public Service (Commissioner) shall file an annual report on progress in meeting the goals of the Plan. The report shall address each of the following sectors of energy consumption in the State: electricity, nonelectric fuels for thermal purposes, and transportation. In preparing the report, the Commissioner shall consult with the Secretaries of Administration, of Agriculture, Food and Markets, of Natural Resources, and of Transportation and the Commissioner of Buildings and General Services.

\* \* \*

(7) The report shall include any activity that occurs under the Vermont Small Hydropower Assistance Program, the Vermont Village Green Program, and the Fuel Efficiency Fund.

Sec. 5. 30 V.S.A. § 8005b is amended to read:

§ 8005b. RENEWABLE ENERGY PROGRAMS; REPORTS

(a) The Department shall file reports with the General Assembly in accordance with this section.

\* \* \*

(2) The Department shall ~~file the report under~~ include the components of subsection (b) of this section annually each January 15 in its Annual Energy Report required under subsection 202b(e) of this title commencing in 2018 2020 through 2033.

(3) The Department shall ~~file the report under~~ include the components of subsection (c) of this section biennially each March 1 in its Annual Energy Report required under subsection 202b(e) of this title biennially commencing in 2017 2020 through 2033.

\* \* \*

(c) The biennial report under this section shall include at least each of the following:

\* \* \*

(2) Commencing with the report to be filed in 2019, each retail electricity provider's required amount of renewable energy during the two preceding ~~calendar~~ years using the most recent available data for each category of the RES as set forth in section 8005 of this title.

\* \* \*

Sec. 6. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

\* \* \*

(d) ~~On or before January 15, 2020 and every third January 15 thereafter Commencing in 2021 and biennially thereafter,~~ the Department shall submit to the Commission a report that evaluates its evaluation of the current state of net metering in Vermont, which shall be included within the Department's Annual Energy Report required under subsection 202b(e) of this title and shall also be submitted to the Committees listed under subdivision 202b(e)(2) of this title. ~~The Department shall make this report publicly available. The report evaluation shall:~~

\* \* \*

\* \* \* Connectivity Fund \* \* \*

Sec. 7. 30 V.S.A. § 202f is amended to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY BOARD

(a) There is created the Telecommunications and Connectivity Advisory Board for the purpose of making recommendations to the Commissioner of Public Service regarding his or her telecommunications responsibilities and duties as provided in this section. The Connectivity Advisory Board shall consist of eight members, ~~seven voting and one nonvoting~~, selected as follows:

- (1) the State Treasurer or designee;
- (2) the Secretary of Commerce and Community Development or designee;
- (3) five at-large members appointed by the Governor, who shall not be employees or officers of the State at the time of appointment; and
- (4) the Secretary of Transportation or designee, ~~who shall be a nonvoting member.~~

\* \* \*

(h) On ~~September 15, 2015~~ November 15, 2019, and annually thereafter, the Commissioner shall submit to the Connectivity Advisory Board an accounting of monies in the Connectivity Fund and anticipated revenue for the next year. ~~On or before January 1 of each year, the Commissioner, after consulting with the Connectivity Advisory Board, shall recommend to the relevant legislative committees of jurisdiction a plan for apportioning such funds to the High-Cost Program and the Connectivity Initiative.~~

\* \* \*

Sec. 8. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before ~~September~~ November 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

\* \* \* Dig Safe \* \* \*

Sec. 9. 30 V.S.A. § 7001 is amended to read:

§ 7001. DEFINITIONS

In this chapter:

(1) “Commission” means the Public Utility Commission under section 3 of this title.

(2) “Company” means any public utility ~~company which~~, municipality, or person that supplies gas, electricity, hot water, steam, or telecommunications service and ~~which that~~ maintains underground utility facilities, and any cable television company operating a cable television system as defined in section 501 of this title ~~and which that~~ maintains underground utility facilities.

(3) “Damage” includes the substantial weakening of structural or lateral support of an underground utility facility; penetration or destruction of any underground utility facility’s protective coating, housing, or device; or the partial or complete severance of any underground utility facility.

(4) “Excavation activities” means any activities involving that will disturb the subsurface of the earth or could damage underground utility facilities and that may involve the removal of earth, rock, or other materials in the ground, ~~disturbing the subsurface of the earth,~~ or the demolition of any structure, by the discharge of explosives or the use of powered or mechanized equipment, including digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, ~~or~~ tunneling, or pavement or concrete slab removal within 100 feet of an underground utility facility. Excavation activities shall not include the tilling of the soil for agricultural purposes, routine home gardening with hand tools outside easement areas and public rights-of-way, activities relating to routine public highway maintenance, or the use of hand tools by a company, or the company’s agent or a contractor working under the agent’s direction, to locate or service the company’s facilities, provided the company has a written damage prevention program.

(5) “Person” means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of the ~~state~~ State, or any interstate body.

(6) “Public agency” means the State or any political subdivision thereof, including any governmental agency.

(7) “Approximate location of underground utility facilities” means a strip of land extending not more than 18 inches on either side of the underground utility facilities.

(8) “System” means the public utility underground facility damage prevention system referred to in section 7002 of this title.

(9) “Underground utility facility” or “facility” means any pipe, conduit, wire, or cable located beneath the surface of the earth and maintained by a company, including the protective covering of the pipe, conduit, wire, or cable, as well as any manhole, vault, ~~or~~ pedestal, or component maintained by a company.

(10) “Premark” means to identify the general scope of excavation activities using white paint, stakes, or other suitable white markings, in a manner that will enable the operators of the underground utility facilities to know the boundaries of the proposed excavation activities.

(11) “Powered or mechanized equipment” means equipment that is powered or energized by any motor, engine, or hydraulic or pneumatic device and that is used for excavation or demolition work.

(12) “Hand tools” means tools powered solely by human energy.

(13) “Verified” means the location and depth have been ~~physically determined by hand digging~~ visually determined using careful and prudent excavating techniques such as hand digging, water excavation, or other safe means.

(14) “Damage prevention program” means a program established to ensure employees involved in excavation activities are aware of and utilize appropriate and safe excavating practices.

Sec. 10. 30 V.S.A. § 7003 is amended to read:

§ 7003. RULEMAKING

The Commission shall adopt rules, pursuant to 3 V.S.A. chapter 25 relative to:

(1) minimum requirements for the operation of the System, including notification procedures and the reporting of underground utility facility locations;

(2) procedures for the investigation of complaints;

(3) emergency situations ~~for which notice of excavation activities is not required;~~

- 
- (4) uniform standards for the marking of the approximate location of underground utility facilities;
- (5) uniform standards for the future installation of underground utility facilities, including the following:
- (A) color coding of facilities;
  - (B) depth requirements for the laying of facilities;
  - (C) subsurface marking of facilities;
  - (D) surface marking of facilities;
  - (E) the filing of as-built plans of facilities with municipalities; and
  - (F) capability for location of facilities by sensors; and
- (6) standards for the granting of exemptions under section 7002 of this title; and
- (7) situations where the premarks cannot be found.

Sec. 11. 30 V.S.A. § 7004 is amended to read:

§ 7004. NOTICE OF EXCAVATION ACTIVITIES

(a) No person or company shall engage in excavation activities, except in an emergency situation as defined by the Commission, without premarking the proposed area of excavation activities and giving notice as required by this section.

(b) Prior to notifying the System, the person shall premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities.

(c) At least 48 hours, excluding Saturdays, Sundays, and legal holidays, but not more than 30 days before commencing excavation activities, each person required to give notice of excavation activities shall notify the System referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities and the premarks.

(e)(d) Notice to the System may be in writing or by telephone. For purposes of this section, the System shall provide a toll-free telephone number.

~~(d) Prior to notifying the System, the person must premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation~~

~~activities. Premarking is not required if the actual excavation will be continuous and will exceed 500 feet in length.~~

(e) Notice of excavation activities shall be valid for an excavation site until one of the following occurs:

(1) the excavation is not completed within 30 days of the notification;

(2) the markings become faded, illegible, or destroyed; or

(3) the company installs new underground facilities in a marked area still under excavation.

Sec. 12. 30 V.S.A. § 7006b is amended to read:

§ 7006b. EXCAVATION AREA PRECAUTIONS

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including any substantial weakening of the structural or lateral support of such facilities or penetration, severance, or destruction of such facilities. ~~When excavation activities involve horizontal or directional boring, the~~ The person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work will cross a facility and at reasonable intervals when paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified.

Sec. 13. 30 V.S.A. § 7007 is amended to read:

§ 7007. NOTICE OF DAMAGE

When any underground utility facility is damaged during excavation activities, the excavator shall immediately notify the affected company. Under no circumstances shall the excavator backfill or conceal the damaged area until the company inspects and repairs the damage, provided that the excavator shall take reasonable and prudent actions to protect the public from serious injury from the damaged facilities until the company or emergency response personnel arrive at the damaged area. An excavator who causes damage to a pipeline that results in a release of natural or other gas or hazardous liquid shall promptly report the release to emergency responders by calling 911.

\* \* \* Thermal Energy Funds \* \* \*

Sec. 14. 30 V.S.A. § 209(e) is amended to read:

(e) Thermal energy and process fuel efficiency funding.

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels. In addition, the Commission may authorize an entity appointed to deliver such services under subdivision (d)(2)(B) of this section to use monies subject to this subsection for the engineering, design, and construction of facilities for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district's energy is from biomass sources, the district's distribution system is highly energy efficient, and such conversion is cost effective.

\* \* \*

\* \* \* Standard Offer Program Small Hydroelectric Power \* \* \*

Sec. 15. 30 V.S.A. § 8005a(p) is amended to read:

(p) Existing hydroelectric plants. Notwithstanding any contrary requirement of this section, no later than January 15, 2013, the Commission shall make a standard offer contract available to existing hydroelectric plants in accordance with this subsection.

(1) In this subsection:

(A) "Existing hydroelectric plant" means a hydroelectric plant of five MW plant capacity or less that is located in the State, that was in service as of January 1, 2009, that is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, and that does not have an agreement with the Commission's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and Commission rules adopted under subdivision (8). The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement has expired, ~~provided that the expiration date is prior to December 31, 2015.~~

(B) "LIHI" means the Low-Impact Hydropower Institute.

(2) The term of a standard offer contract under this subsection shall be 10 or 20 years, at the election of the plant owner.

(3) Unless inconsistent with applicable federal law, the price of a standard offer contract shall be ~~the lesser of the following~~ the sum of the following elements:

~~(A) \$0.08 per kWh, adjusted for inflation annually commencing January 15, 2013 using the CPI; or~~

~~(B) The sum of the following elements:~~



~~(i)(A)~~ a two-year rolling average of the ISO New England Inc. (ISO-NE) Vermont zone hourly locational marginal price for energy;

~~(ii)(B)~~ a two-year rolling average of the value of the plant's capacity in the ISO-NE forward capacity market;

~~(iii)(C)~~ the value of avoided line losses due to the plant as a fixed increment of the energy and capacity values;

~~(iv)(D)~~ a two-year rolling average of the market value of environmental attributes, including renewable energy credits; and

~~(v)(E)~~ the value of a 10- or 20-year contract.

(4) The Commission shall determine the price to be paid under this subsection (p) ~~no~~ not later than January 15, 2013.

(A)(i) Annually by January 15 commencing in 2014, the Commission shall recalculate and adjust the energy, and capacity, and environmental attribute elements of the price under ~~subdivisions (3)(B)(i) and (ii)~~ subdivision (3) of this subsection (p). The recalculated and adjusted energy, and capacity, and environmental attribute elements shall apply to all contracts executed under this subdivision, whether or not the contracts were executed prior to the adjustments.

(ii) the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.

(B) With respect to the price elements specified in subdivisions ~~(3)(B)(iii)(3)(C)~~ (avoided line losses), ~~(iv) (environmental attributes)~~, and ~~(v)(E)~~ (value of long-term contract) of this subsection (p):

(i) These elements shall remain fixed at their values at the time a contract is signed for the duration of the contract, ~~except that the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.~~

(ii) The Commission annually may adjust these elements for inclusion in contracts that are executed after the date any such adjustments are made.

~~(5) In addition to the limits specified in subdivision (3) of this subsection (p), in no event shall an existing hydroelectric plant receive a price in one year higher than its price in the previous year, adjusted for inflation using the CPI, except that if a plant becomes certified by LIHI, the~~

~~Commission may add to the price any incremental increase in the value of the plant's environmental attributes resulting from such certification.~~

(6) Once a plant owner has executed a contract for a standard offer under this subsection (p), the plant owner shall continue to receive the pricing terms agreed on in that contract regardless of whether the Commission subsequently changes any pricing terms under this subsection.

~~(7)~~(6) Capacity of existing hydroelectric plants executing a standard offer contract under this subsection shall not count toward the cumulative capacity amount of subsection (c) of this section.

\* \* \* Public Records Exemption \* \* \*

Sec. 16. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

\* \* \*

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

\* \* \*

\* \* \* Certificate of Public Good Hearings \* \* \*

Sec. 17. 30 V.S.A. § 248 is amended to read:

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

\* \* \*

(4)(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a ~~nontechnical~~ nonevidentiary public hearing on ~~each~~ a petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at ~~the~~ a public hearing, the Commission shall derive areas of

inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

(B) The Public Utility Commission shall hold ~~technical~~ evidentiary hearings at locations that it selects in any case conducted under this section in which contested issues remain or when any party to a case requests that an evidentiary hearing be held. In the event a case is fully resolved and no party requests a hearing, the Commission may exercise its discretion and determine that an evidentiary hearing is not necessary to protect the interests of the parties or the public, or for the Commission to reach its decision on the matter.

\* \* \*

(i)(1) No company, as defined in sections 201 and 203 of this title, without approval by the Commission, after giving notice of such investment, or filing a copy of that contract, with the Commission and the Department at least 30 days prior to the proposed effective date of that contract or investment:

\* \* \*

(3) The Commission, upon its own motion, or upon the recommendation of the Department, may determine to initiate an investigation. If the Commission does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Commission determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the Department, and such other persons as the Commission determines are appropriate. The Commission shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Commission may hold informal, public, or ~~technical~~ evidentiary hearings on the proposed investment or contract.

\* \* \*

\* \* \* Rate Change Hearings \* \* \*

Sec. 18. 30 V.S.A. § 225 is amended to read:

§ 225. RATE SCHEDULES

\* \* \*

(b) Immediately upon receipt of notice of a change in a rate schedule filed by a company, the Department shall investigate the justness and reasonableness of that change. ~~At least 15 days prior to the date on which the change is to become effective~~ Within 30 days of receipt of this notice, the Department shall either report to the Commission the results of its investigations together with its recommendation for acceptance of the change, or it shall notify the Commission and other parties that it opposes the change. If the Department of Public Service reports its acceptance of the change in rates, the Commission may accept the change, or it may on its own motion conduct an investigation into the justness and reasonableness of the change, or it may order the Department to appear before it to justify its recommendation to accept the change. In no event shall a change go into effect without the approval of the Commission, except when a rate change is suspended and temporary or permanent rates are allowed to go into effect pursuant to subsection 226(a) or 227(a) of this title. The Commission shall consider the Department's recommendation and take action pursuant to sections 226 and 227 of this title ~~before the date on which the changed rate is to become effective~~ within 45 days of receipt of notice of a change in a rate schedule. In the event that the Department opposes the change, the Commission shall hear evidence on the matter and make such orders as justice and law require. In any hearing on a change in rates, whether or not opposed by the Department, the Commission may request the appearance of the Attorney General or appoint a member of the Vermont bar to represent the public or the State.

Sec. 19. 30 V.S.A. § 226 is amended to read:

§ 226. RATES, HEARINGS, BOND

\* \* \*

(c) If the Department does not oppose the change as provided in section 225 of this title, five persons adversely affected by the change, or, if the change adversely affects ~~less~~ fewer than five persons, any one person so affected may apply at their own expense to the Commission by petition alleging why the change is unreasonable and unjust and asking that the Commission investigate the matter and make such orders as justice and law require. The petition shall be filed ~~at least seven days before the date the rates become effective~~ within 38 days of the date of the notice of rate change that was filed pursuant to section 225 of this title. The Commission may suspend the rates as a result of the petition. The Commission may hold a hearing on the petition. Whether or not a hearing is held, the Commission shall make such orders as justice and law require.

Sec. 20. 30 V.S.A. § 227 is amended to read:

§ 227. SUSPENSION, REFUND

(a) If the Commission orders that a change shall not go into effect until final determination of the proceedings, it shall proceed to hear the matter as promptly as possible and shall make its determination within seven months from the date that ~~the change otherwise would have gone into effect~~ it orders the investigation. If a company files for a change in rate design among classes of ratepayers, and the company has a rate case pending before the Commission, the Commission shall make its determination on the rate design change within seven months after the rate case is decided by the Commission. If the Commission fails to make its determination within the time periods set by this subsection, the changed rate schedules filed by the company shall become effective and final.

\* \* \*

Sec. 21. 30 V.S.A. § 11 is amended to read:

§ 11. PLEADINGS; RULES OF PRACTICE; HEARINGS; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules ~~which~~ that include, among other things, provisions that:

\* \* \*

(2) A ~~prehearing~~ scheduling conference shall be ordered in every contested rate case. At such conference the Commission may require the State or any person opposing such rate increase to specify what items shown by the filed exhibits are conceded. Further proof of conceded items shall not be required.

\* \* \*

Sec. 22. 30 V.S.A. § 10 is amended to read:

§ 10. SERVICE OF PROCESS; NOTICE OF HEARINGS; TEMPORARY RESTRAINING ORDERS

\* \* \*

(c) A ~~prehearing~~ scheduling or procedural conference may be held upon any reasonable notice.

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Sec. 23. POSITION TITLE CHANGE

Notwithstanding any provision to the contrary, the General Assembly authorizes the conversion of the permanent exempt position of Executive Assistant (#377021) within the Public Utility Commission to the permanent exempt position of "Deputy Clerk."

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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

Senator Ashe, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Finance with the following amendment thereto:

By striking out Sec. 23 in its entirety and inserting a new Sec. 23 to read as follows:

Sec. 23. PUBLIC UTILITY COMMISSION; POSITION

Establishment of a new permanent exempt position of one Deputy Clerk within the Public Utility Commission is authorized in fiscal year 2020.

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

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

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

**Proposals of Amendment; Third Reading Ordered**

**H. 275.**

Senator Pearson, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to the Farm-to-Plate Investment Program.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 10 V.S.A. § 330, in subdivision (c)(1), by striking out the words “~~agricultural-economic~~” and inserting in lieu thereof the following: agricultural economic and

Second: By striking out Sec. 2 (repeal; Farm-to-Plate Investment Program) in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

**Sec. 2. FARM-TO-PLATE INVESTMENT PROGRAM; REPORT**

On or before January 1, 2031, the Sustainable Jobs Fund shall report to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry a recommendation of whether the Farm-to-Plate Investment Program should continue to operate as authorized under 10 V.S.A. § 330 or whether the Program should be repealed. The Sustainable Jobs Fund shall provide a rationale for its recommendation and any proposed legislative action to implement the recommendation.

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.

**Proposal of Amendment; Third Reading Ordered**

**H. 511.**

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

An act relating to criminal statutes of limitations.

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

Sec. 1. 13 V.S.A. § 44501 is amended to read:

**§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES**

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, sexual assault, human trafficking, aggravated human trafficking, murder, manslaughter, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for ~~manslaughter~~, lewd and lascivious conduct, sexual abuse of a vulnerable adult under subsection 1379(a) of this title, maiming, first degree aggravated domestic assault, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under 33 V.S.A.

§ 141(d), and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for any of the following offenses shall be commenced within 40 years after the commission of the offense, and not after:

(1) lewd and lascivious conduct alleged to have been committed against a child under 18 years of age;

(2) sexual exploitation of a minor as defined in subsection 3258(c) of this title;

(3) lewd or lascivious conduct with a child;

(4) sexual exploitation of children under chapter 64 of this title; ~~and~~

(5) manslaughter alleged to have been committed against a child under 18 years of age; and

(6) sexual abuse of a vulnerable adult under subsection 1379(b) of this title.

(d) Prosecutions for arson shall be commenced within 11 years after the commission of the offense, and not after.

(e) Prosecutions for other felonies and for misdemeanors shall be commenced within three years after the commission of the offense, and not after.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

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

### **Proposals of Amendment; Third Reading Ordered**

#### **H. 526.**

Senator Pollina, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to town clerk recording fees and town restoration and preservation reserve funds.

Reported recommending that the Senate propose to the House to amend the bill as follows:



First: In Sec. 9, 24 V.S.A. § 1159, subdivision (a)(2), immediately following the words “certificate of the date” by inserting the words and time

Second: In Sec. 9, 24 V.S.A. § 1159, subsection (b), immediately following the words “and the date” by inserting the words and time

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

Senator Campion, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

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.

#### **Message from the House No. 52**

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

**S. 86.** An act relating to increasing the legal age for buying and using cigarettes, electronic cigarettes, and other tobacco products from 18 to 21 years of age.

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

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

**J.R.S. 25.** Joint resolution regarding weekend adjournment.

And has adopted the same in concurrence.

#### **Adjournment**

On motion of Senator Ashe, the Senate adjourned until twelve o'clock and fifteen minutes in the afternoon on Friday, April 26, 2019.

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**FRIDAY, APRIL 26, 2019**

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

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Message from the House No. 53**

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

**S. 95.** An act relating to municipal utility capital investment.

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

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

**H.C.R. 144.** House concurrent resolution honoring the tenth bishop of the Episcopal Diocese of Vermont, the Right Reverend Thomas Clark Ely, for his visionary leadership.

**H.C.R. 146.** House concurrent resolution honoring Joseph L. Choquette III on his multiple career and avocational accomplishments.

**H.C.R. 147.** House concurrent resolution congratulating Essex High School on winning the first Academic WorldQuest Vermont championship.

**H.C.R. 148.** House concurrent resolution honoring Vaughn Altemus for his career achievements in academia and Vermont State government.

**H.C.R. 149.** House concurrent resolution congratulating the Rutland County Humane Society on its 60th anniversary.

**H.C.R. 150.** House concurrent resolution congratulating the Harwood Union High School Highlanders on winning a second consecutive Division II boys' golf championship.

**H.C.R. 151.** House concurrent resolution congratulating the 2019 Enosburg Falls High School Hornets State snowboarding championship team.

**H.C.R. 152.** House concurrent resolution congratulating Nicholas John Blaney of Berkshire on his outstanding snowboarding accomplishments.

**H.C.R. 153.** House concurrent resolution congratulating the 2019 Vermont Shamrocks USA Hockey girls' Tier II 16U national championship team.

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. 11.** Senate concurrent resolution congratulating Katherine Womeldorf Paterson of Montpelier on winning the 2019 E.B. White Award for her achievement in children's literature.

**S.C.R. 12.** Senate concurrent resolution honoring former Representative and Senator Seth B. Bongartz for his impressive leadership as President of Hildene.

And has adopted the same in concurrence.

### **Rules Suspended; Bill Committed**

#### **H. 460.**

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

An act relating to sealing and expungement of criminal history records.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Judiciary, Senator Sears 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.

### **Bill Referred to Committee on Appropriations**

#### **H. 16.**

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

An act relating to boards and commissions.

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**House Proposal of Amendment Concurred In****S. 49.**

House proposal of amendment to Senate bill entitled:

An act relating to the regulation of polyfluoroalkyl substances in drinking and surface waters.

Was taken up.

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

**Sec. 1. FINDINGS**

The General Assembly finds that:

(1) Perfluoroalkyl, polyfluoroalkyl substances (PFAS), and other perfluorochemicals are a large group of human-made chemicals that have been used in industry and consumer products worldwide since the 1950s.

(2) PFAS may enter the environment from numerous industrial or commercial sources, including when emitted during a manufacturing process, from the disposal of goods containing PFAS, or from leachate from landfills.

(3) Many PFAS do not readily break down and persist in the environment for a very long time, especially in water, and, consequently, PFAS can be found in many bodies of water and in the blood of humans and wildlife.

(4) The Vermont Department of Health has adopted a health advisory level for certain PFAS of 20 parts per trillion.

(5) The Vermont Water Supply Rule provides that the Secretary of Natural Resources may adopt a Vermont Department of Health advisory level as a maximum contaminant level for a substance.

(6) The Agency of Natural Resources (ANR) has adopted the 20 parts per trillion level as part of ANR's Remediation of Contaminated Properties Rule and Groundwater Protection Rule and Strategy, but not as part of the Vermont Water Supply Rule or the Vermont Water Quality Standards.

(7) To prevent further contamination of State water, and to reduce the potential harmful effects of PFAS on human health and the environment, the State of Vermont should:

(A) require the Agency of Natural Resources to adopt by rule maximum contaminant level or levels for PFAS under the Vermont Water Supply Rule;

(B) prior to adoption by rule of maximum contaminant level or levels for PFAS, require public water systems to monitor for certain PFAS chemicals and respond appropriately when results indicate levels of PFAS in excess of the Vermont Department of Health advisory level;

(C) require the Agency of Natural Resource to adopt surface water quality standards for certain PFAS chemicals; and

(D) authorize the Agency of Natural Resources to require any permitted facility to monitor for any release of a chemical that exceeds a health advisory issued by the Vermont Department of Health.

Sec. 2. INTERIM DRINKING WATER STANDARD; TESTING; PER AND POLYFLUOROALKYL SUBSTANCES

(a) As used in this section:

(1) “Perfluoroalkyl, polyfluoroalkyl substances” or “PFAS substances” means perfluoroalkyl substances and polyfluoroalkyl substances that are detectable using standard analytical methods established by the U.S. Environmental Protection Agency, including regulated PFAS contaminants.

(2) “Regulated PFAS contaminants” means perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluoroheptanoic acid.

(b) On or before December 1, 2019, all public community water systems and all nontransient, noncommunity water systems shall conduct monitoring for the maximum number of PFAS substances detectable from standard laboratory methods.

(c) After completion of initial monitoring under subsection (b), a public community water system or a nontransient, noncommunity water system shall conduct continued monitoring for the presence of regulated PFAS contaminants in drinking water supplied by the system as follows until adoption of the rules required under subsection 3(a) of this act:

(1) If initial monitoring results detect the presence of any regulated PFAS contaminants individually or in combination at or above the Vermont Department of Health advisory level of 20 parts per trillion, the public water system shall conduct continued quarterly monitoring.

(2) If initial monitoring results detect the presence of any regulated PFAS contaminants individually or in combination at or above the reporting level of two parts per trillion but below the Vermont Department of Health advisory level of 20 parts per trillion, the public water system shall conduct continued monitoring annually.

(3) If initial monitoring results detect the presence of any regulated PFAS contaminants below the reporting level of two parts per trillion, the public water system shall conduct continued monitoring every three years.

(d) If monitoring results under subsections (b) or (c) of this section confirm the presence of any regulated PFAS contaminants individually or in combination in excess of the Vermont Department of Health advisory level of 20 parts per trillion, the Agency of Natural Resources shall:

(1) direct the public water system to implement treatment or other remedy to reduce the levels of regulated PFAS contaminants in the drinking water of the public water system below the Vermont Department of Health advisory level; and

(2) direct the public water system to issue a “do not drink” notice to all users of the public water system until the treatment under subdivision (1) of this subsection is completed.

(e) The Secretary may enforce the requirements of this section under 10 V.S.A. chapter 201. A person may appeal the acts or decisions of the Secretary of Natural Resources under this section under 10 V.S.A. chapter 220.

Sec. 3. DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WATER SUPPLY RULE; MAXIMUM CONTAMINANT LEVEL  
FOR PER AND POLYFLUOROALKYL SUBSTANCES;  
STANDARD FOR PER AND POLYFLUOROALKYL  
SUBSTANCES; CLASS OR SUBCLASSES

(a) On or before February 1, 2020, the Secretary of Natural Resources shall file under 3 V.S.A. § 841 a final proposed rule with the Secretary of State and the Legislative Committee on Administrative Rules establishing under the Department of Environmental Conservation’s Water Supply Rule a maximum contaminant level (MCL) for perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluoroheptanoic acid. The Secretary shall use the Vermont Department of Health’s health advisory level for perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluoroheptanoic acid as the initial basis for developing the MCL under this subsection and may propose adjustments or variances from the advisory level based on scientific evidence, industry standards, or public input.

(b) On or before August 1, 2020, the Secretary of Natural Resources shall initiate a public notice and comment process by publishing an advance notice of proposed rulemaking regarding the regulation under the Department of Environmental Conservation’s Water Supply Rule of per and polyfluoroalkyl (PFAS) compounds as a class or subclasses.

(c) On or before March 1, 2021, the Secretary of Natural Resources shall either:

(1) file a proposed rule with the Secretary of State regarding the regulation of PFAS compounds under the Department of Environmental Conservation's Water Supply Rule as a class or subclasses; or

(2) publish a notice of decision not to regulate PFAS compounds as a class or subclasses under the Department of Environmental Conservation's Water Supply Rule that includes, at a minimum, an identification of all legal, technical, or other impediments to regulating PFAS compounds as a class or subclasses and a detailed response to all public comments received.

(d) If the Secretary of Natural Resources proposes a rule pursuant to subsection (c), on or before December 31, 2021, the Secretary of Natural Resources shall file a final rule with the Secretary of State regarding the regulation of PFAS compounds as a class or subclasses under the Department of Environmental Conservation's Water Supply Rule.

#### Sec. 4. REPEAL; INTERIM DRINKING WATER MONITORING; PFAS CONTAMINANTS

Sec. 2 (interim drinking water monitoring; PFAS contaminants) shall be repealed on the effective date of the rules required under Sec. 3(a) of this act.

#### Sec. 5. VERMONT WATER QUALITY STANDARDS; PER AND POLYFLUOROALKYL SUBSTANCES

(a) On or before January 15, 2020, the Secretary of Natural Resources shall publish a plan for public review and comment for adoption of surface water quality standards for per and polyfluoroalkyl substances (PFAS) that shall include, at a minimum, a proposal for standards for:

(1) perfluorooctanoic acid; perfluorooctane sulfonic acid; perfluorohexane sulfonic acid; perfluorononanoic acid; and perfluoroheptanoic acid; and

(2) the PFAS class of compounds or subgroups of the PFAS class of compounds.

(b) On or before January 1, 2024, the Secretary of Natural Resources shall file a final rule with the Secretary of State to adopt surface water quality standards for, at a minimum, perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorohexane sulfonic acid, perfluorononanoic acid, and perfluoroheptanoic acid.

Sec. 6. INVESTIGATION OF POTENTIAL SOURCES OF PER AND POLYFLUOROALKYL SUBSTANCES CONTAMINATION

On or before June 1, 2019, the Secretary of Natural Resources shall publish a plan for public review and comment to complete a statewide investigation of potential sources of per and polyfluoroalkyl substances (PFAS) contamination. As part of this investigation, the Secretary shall conduct a pilot project at public water systems to evaluate PFAS that are not quantified by standard laboratory methods using a total oxidizable precursor assay or other applicable analytical method to evaluate total PFAS. The Secretary of Natural Resources shall initiate implementation of the plan not later than July 1, 2019.

Sec. 7. 3 V.S.A. § 2810 is added to read:

§ 2810. INTERIM ENVIRONMENTAL MEDIA STANDARDS

The Secretary of Natural Resources may require any entity permitted by the Agency of Natural Resources to monitor the operation of a facility, discharge, emission, or release for any constituent for which the Department of Health has established a health advisory. The Secretary may impose conditions on a permitted entity based on the health advisory if the Secretary determines that the operation of the facility, discharge, emission, or release may result in an imminent and substantial endangerment to human health or the natural environment. The authority granted to the Secretary under this section shall last not longer than two years from the date the health advisory was adopted.

Sec. 8. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

\* \* \*

(28) 30 V.S.A. § 255, relating to regional coordination to reduce greenhouse gases; ~~and~~

(29) 10 V.S.A. § 1420, relating to abandoned vessels; ~~and~~

(30) 3 V.S.A. § 2810, relating to interim environmental media standards.

\* \* \*



Sec. 9. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

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

\* \* \*

- (2) 29 V.S.A. chapter 11 (management of lakes and ponds).
- (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).
- (4) 3 V.S.A. § 2810 (interim environmental media standards).

\* \* \*

Sec. 10. ENVIRONMENTAL MEDIA STANDARDS; GUIDANCE; PLAN

(a) On or before January 1, 2020, the Secretary of Natural Resources shall publish a guidance document for public review and comment that sets forth detailed practices for implementation by the Secretary of Natural Resources of interim environmental media standards authority under 3 V.S.A. § 2810.

(b) On or before January 1, 2020, the Secretary of Natural Resources shall publish for public review and comment a plan to collect data for contaminants in drinking water from public community water systems and all nontransient noncommunity water systems for which a health advisory has been established but no maximum contaminant level has been adopted.

Sec. 11. AGENCY OF NATURAL RESOURCES CONTAMINANTS OF EMERGING CONCERN PILOT PROJECT

On or before January 15, 2020, the Agency of Natural Resources shall submit to the House Committees on Natural Resources, Fish, and Wildlife and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs a report regarding the management at landfills of leachate containing contaminants of emerging concern (CECs). The report shall include:

- (1) the findings of the leachate treatment evaluation conducted at any landfill in Vermont;
- (2) the Agency of Natural Resources' assessment of the results of landfill leachate evaluations; and
- (3) the Agency of Natural Resources' recommendations for treatment of CECs in leachate from landfills, including whether the State should establish a pilot project to test methods for testing or managing CECs in landfill leachate.

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Sec. 12. EFFECTIVE DATE

This act shall take effect on passage.

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

**Bill Passed in Concurrence with Proposal of Amendment**

**H. 133.**

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

An act relating to miscellaneous energy subjects.

**Consideration Postponed**

House bill entitled:

**H. 275.**

An act relating to the Farm-to-Plate Investment Program.

Was taken up.

Thereupon, pending third reading of the bill, Senator Starr moved that consideration of the bill be postponed until Wednesday, May 1, 2019, which was agreed to.

**Consideration Postponed**

House bill entitled:

**H. 511.**

An act relating to criminal statutes of limitations.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved that consideration of the bill be postponed until Wednesday, May 1, 2019, which was agreed to.

**Bill Passed in Concurrence with Proposals of Amendment**

**H. 526.**

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

An act relating to town clerk recording fees and town restoration and preservation reserve funds.

**Appointments Confirmed**

The following Gubernatorial appointments were confirmed separately by the Senate, upon full reports given by the Committees to which they were referred:

The nomination of

Mullin, Kevin J. of Rutland - Chair, Green Mountain Care Board - August 17, 2018 to February 29, 2024.

Was confirmed by the Senate.

The nomination of

Goldstein, Joan of Royalton - Commissioner, Department of Economic Development - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Levine, Mark A. of Shelburne - Commissioner, Department of Health - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

The nomination of

Gobeille, Alfred J. of Shelburne - Secretary, Agency of Human Services - March 1, 2019 to February 28, 2021.

Was confirmed by the Senate.

**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, were severally adopted on the part of the Senate:

By Senators Cummings, Perchlik and Pollina,

**S.C.R. 11.**

Senate concurrent resolution congratulating Katherine Womeldorf Paterson of Montpelier on winning the 2019 E.B. White Award for her achievement in children's literature.

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By Senators Campion and Sears,

By Reps. Bates and others,

**S.C.R. 12.**

Senate concurrent resolution honoring former Representative and Senator Seth B. Bongartz for his impressive leadership as President of Hildene.

**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, were severally adopted in concurrence:

By Reps. Ancel and others,

By Senators Clarkson and Ingram,

**H.C.R. 144.**

House concurrent resolution honoring the tenth bishop of the Episcopal Diocese of Vermont, the Right Reverend Thomas Clark Ely, for his visionary leadership.

By Reps. Marcotte and others,

By Senator McNeil,

**H.C.R. 146.**

House concurrent resolution honoring Joseph L. Choquette III on his multiple career and avocational accomplishments.

By Reps. Myers and others,

**H.C.R. 147.**

House concurrent resolution congratulating Essex High School on winning the first Academic WorldQuest Vermont championship.

By Reps. Hooper and others,

**H.C.R. 148.**

House concurrent resolution honoring Vaughn Altemus for his career achievements in academia and Vermont State government.

By Reps. Shaw and others,

By Senators Collamore, Hooker and McNeil,

**H.C.R. 149.**

House concurrent resolution congratulating the Rutland County Humane Society on its 60th anniversary.

By Reps. Stevens and others,

**H.C.R. 150.**

House concurrent resolution congratulating the Harwood Union High School Highlanders on winning a second consecutive Division II boys' golf championship.

By Reps. Leffler and others,

**H.C.R. 151.**

House concurrent resolution congratulating the 2019 Enosburg Falls High School Hornets State snowboarding championship team.

By Reps. Fegard and others,

**H.C.R. 152.**

House concurrent resolution congratulating Nicholas John Blaney of Berkshire on his outstanding snowboarding accomplishments.

By Reps. Till and others,

**H.C.R. 153.**

House concurrent resolution congratulating the 2019 Vermont Shamrocks USA Hockey girls' Tier II 16U national championship team.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, April 30, 2019, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 25.

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**TUESDAY, APRIL 30, 2019**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Taihaku of East Calais.

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**Pledge of Allegiance**

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

**Committee of Conference Discharged Request For New Committee of Conference****H. 39.**

An act relating to the extension of the deadline of school district mergers required by the State Board of Education.

Was taken up.

Senator Baruth, pursuant to Mason's Rule 771 reported to the Senate the Committee of Conference was unable to agree and moved:

First: The Senate reaffirm its position with regard to the Senate Proposal of Amendment to H. 39; and

Second: The Senate Conference Committee be discharged; and

Third: A new Senate Conference Committee be appointed with instructions to pursue a compromise between – not outside – the limits represented by the House and Senate positions.

Which was agreed to.

**Bill Referred to Committee on Appropriations****H. 543.**

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

An act relating to capital construction and State bonding.

**Joint Senate Resolution Adopted on the Part of the Senate****J.R.S. 26.**

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

By Senator Ashe,

**J.R.S. 26.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, May 3, 2019, it be to meet again no later than Tuesday, May 7, 2019.

**Third Reading Ordered****H. 26.**

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

An act relating to restricting retail and Internet sales of electronic cigarettes, liquid nicotine, and tobacco paraphernalia in Vermont.

Reported that the bill ought to pass in concurrence.

**Senator Balint Assumes the Chair****President Assumes the Chair**

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a roll call, Yeas 30, 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, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Proposal of Amendment; Third Reading Ordered****H. 79.**

Senator Hardy, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to eligibility for farm-to-school grant assistance.

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

Sec. 1. 6 V.S.A. § 4721 is amended to read:

**§ 4721. LOCAL FOODS GRANT PROGRAM**

(a) There is created in the Agency of Agriculture, Food and Markets the Rozo McLaughlin Farm-to-School Program to execute, administer, and award local grants for the purpose of helping Vermont schools develop farm-to-

school programs that will sustain relationships with local farmers and producers, enrich the educational experience of students, improve the health of Vermont children, and enhance Vermont's agricultural economy.

(b) A school, a school district, a consortium of schools, a consortium of school districts, ~~or a registered or licensed child care providers~~ provider, or an organization administering or assisting the development of farm-to-school programs may apply to the Secretary of Agriculture, Food and Markets for a grant award to:

(1) fund equipment, resources, training, and materials that will help to increase use of local foods in child nutrition programs;

(2) fund items, including local food products, gardening supplies, field trips to farms, gleaning on farms, and stipends to visiting farmers, that will help educators to use hands-on educational techniques to teach children about nutrition and farm-to-school connections;

(3) fund professional development and technical assistance, in partnership with the Agency of Education and farm-to-school technical service providers, to help teachers, child nutrition personnel, organizations administering or assisting the development of farm-to-school programs, and members of the farm-to-school community educate students about nutrition and farm-to-school connections and assist schools and licensed or registered child care providers in developing a farm-to-school program; and

(4) fund technical assistance or support strategies to increase participation in federal child nutrition programs that increase the viability of sustainable meal programs.

(c) The Secretaries of Agriculture, Food and Markets and of Education and the Commissioner of Health, in consultation with farmers, child nutrition staff, educators, organizations administering or assisting the development of farm-to-school programs, and farm-to-school technical service providers jointly shall adopt procedures relating to the content of the grant application and the criteria for making awards.

(d) The Secretary shall determine that there is significant interest in the school community before making an award and shall give priority consideration to schools, school districts, and registered or licensed child care providers that are developing farm-to-school connections and education, that indicate a willingness to make changes to their child nutrition programs to increase student access and participation, and that are making progress toward the implementation of the Vermont School Wellness Policy Guidelines developed by the Agency of Agriculture, Food and Markets, the Agency of



Education, and the Department of Health, updated in June 2015 or of the successor of these guidelines.

(e) No award shall be greater than ~~\$15,000.00~~ 20 percent of the total annual amount available for granting except that a grant award to the following entities may, at the discretion of the Secretary of Agriculture, Food and Markets, exceed the cap:

(1) Farm-to-School service providers; or

(2) school districts or consortiums of school districts that completed merger under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46 on or before July 1, 2019, provided that the grant is used for the purpose of expanding Farm-to-School projects to additional schools within the new school district.

Sec. 2. 6 V.S.A. § 4722 is amended to read:

§ 4722. FARM ASSISTANCE; SECRETARY OF AGRICULTURE, FOOD AND MARKETS

(a) The Secretary of Agriculture, Food and Markets shall work with existing programs and organizations to develop and implement educational opportunities for farmers to help them increase their markets through selling their products to schools, registered or licensed child care providers, and State government agencies that operate or participate in child nutrition programs.

(b) The Secretary of Agriculture, Food and Markets shall work with distributors that sell products to schools, registered or licensed child care providers, and State government agencies to increase the availability of local products. The Secretary of Agriculture, Food and Markets shall consult and cooperate with the Secretary of Education when working with distributors to schools under this subsection.

Sec. 3. 6 V.S.A. § 4724(b) is amended to read:

(b) The duties of the Food Systems Administrator shall include:

(1) working with institutions, schools, the Agency of Education, registered or licensed child care providers, distributors, producers, commercial markets, and others to create matchmaking opportunities that increase the number of Vermont institutions that purchase foods grown or produced in Vermont;

\* \* \*

Sec. 4. 16 V.S.A. § 1264 is amended to read:

§ 1264. FOOD PROGRAM

(a)(1) Each school board operating a public school shall cause to operate within the school district a food program that makes available a school lunch, as provided in the National School Lunch Act as amended, and a school breakfast, as provided in the National Child Nutrition Act as amended, to each attending student every school day.

(2) Each school board operating a public school shall offer a summer snack or meals program funded by the Summer Food Service program or the National School Lunch Program for participants in a summer educational or recreational program or camp if:

(A) at least 50 percent of the students in a school in the district were eligible for free or reduced-price meals under subdivision (1) of this subsection for at least one month in the preceding academic year;

(B) the district operates or funds the summer educational or recreational program or camp; and

(C) the summer educational or recreational program or camp is offered 15 or more hours per week.

(b) In the event of an emergency, the school board may apply to the Secretary for a temporary waiver of the requirements in subsection (a) of this section. The Secretary shall grant the requested waiver if he or she finds that it is unduly difficult for the school district to provide a school lunch, breakfast, or summer meals program, or any combination of the three, and if he or she finds that the school district and supervisory union have exercised due diligence to avoid the emergency situation that gives rise to the need for the requested waiver. In no event shall the waiver extend for a period to exceed 20 school days or, in the case of a summer meals program, the remainder of the summer vacation.

(c) The State shall be responsible for the student share of the cost of breakfasts provided to all students eligible for a reduced-price breakfast under the federal school breakfast program and for the student share of the cost of lunches provided to all students eligible for a reduced-price lunch under the federal school lunch program.

(d) It is a goal of the State that by the year 2022 school boards operating a school lunch, breakfast, or summer meals program shall purchase at least 20 percent of all food for those programs from local producers.

(e)(1) On or before December 31, 2020, and annually thereafter, a school board operating a school lunch, breakfast, or summer meals program shall

submit to the Agency of Education an estimate of the percentage of foods that were produced locally that are purchased for those programs and a summary of how the school board defined food purchased locally for the purposes of these purchases.

(2) On or before January 31, 2021, and annually thereafter, the Agency of Education shall submit to the Senate Committees on Agriculture and on Education and the House Committees on Agriculture and Forestry and on Education in an aggregated form the information received from school boards regarding the percentage of foods produced within the State that are purchased as part of a school lunch, breakfast, or summer meals program. The provisions of 2 V.S.A. § 20(d) regarding expiration of required reports shall not apply to the report required by this subdivision.

Sec. 5. 16 V.S.A. § 559 is amended to read:

§ 559. PUBLIC BIDS

(a) When the cost exceeds \$15,000.00. A school board or supervisory union board shall publicly advertise or invite three or more bids from persons deemed capable of providing items or services if costs are in excess of \$15,000.00 for any of the following:

- (1) the construction, purchase, lease, or improvement of any school building;
- (2) the purchase or lease of any item or items required for supply, equipment, maintenance, repair, or transportation of students; or
- (3) a contract for transportation, maintenance, or repair services.

\* \* \*

(c) Contract award.

(1) A contract for any such item or service to be obtained pursuant to subsection (a) of this section shall be awarded to one of the three lowest responsible bids conforming to specifications, with consideration being given to quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory service. A board shall have the right to reject any or all bids.

\* \* \*

(e) Application of this section. Any contract entered into or purchase made in violation of the provisions of this section shall be void; provided, however, that:

\* \* \*

(4) Nothing in this section shall be construed to prohibit a school board from awarding a school nutrition contract after using any method of bidding or requests for proposals permitted under federal law for award of the contract. Notwithstanding the monetary amount in subsection (a) of this section for which a school board is required to advertise publicly or invite three or more bids or requests for proposal, a school board is required to publicly advertise or invite three or more bids or requests for proposal for purchases made from the nonprofit school food service account for purchases in excess of the federal simplified acquisition threshold when purchasing food or in excess of \$25,000.00 when purchasing nonfood items, unless a municipality sets a lower threshold for purchases from the nonprofit school food service account.

\* \* \*

Sec. 6. NATIONAL SCHOOL LUNCH PROGRAM; FREE AND REDUCED LUNCH; INCREASED QUALIFIED PARTICIPANTS

(a) It is the goal of the General Assembly that the State attempt to identify as many families as possible in the State who are qualified to receive free and reduced lunches under the National School Lunch Program.

(b)(1) The Department of Taxes shall consult with the Agency of Education and the Department for Children and Families regarding whether existing tax data in the possession of the Department, including earned income tax credit data, can be used to:

(A) maximize enrollment in State and federal assistance programs;  
and

(B) increase enrollment in State and federal assistance programs that may be used to directly certify families in the State as qualified to receive free and reduced lunches under the National School Lunch Program.

(2) If the Department of Taxes determines that tax data may be used to directly certify families as qualified to receive free and reduced lunches, the Agency of Education shall apply to the U.S. Department of Agriculture for a waiver to use the relevant tax data to directly certify qualified families in the State.

(3) On or before January 15, 2020, the Department of Taxes shall submit to the Senate Committees on Agriculture and on Education and the House Committees on Agriculture and Forestry and on Education a report regarding the status of State efforts under subdivision (1) of this subsection to directly certify families as qualified to receive free and reduced lunches.

## Sec. 7. APPROPRIATIONS; SCHOOL NUTRITION PROGRAMS

In addition to any other funds appropriated to the Agency of Education in fiscal year 2020, there is appropriated from the General Fund to the Agency of Education:

(1) \$45,000.00 for the purpose of increasing the State match payment to schools participating in the National School Lunch Program;

(2) \$15,000.00 for the purpose of increasing the State match payment to schools participating in the National School Breakfast Program; and

(3) \$15,000.00 for the purpose of increasing the State match payments to schools participating in the National Summer Food Service Program.

## Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture with the following amendment thereto:

By striking out Sec. 7 in its entirety.

And by renumbering the remaining section to be numerically correct.

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

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

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture, as amended?, Senators Hardy, Collamore, Pearson, Pollina and Starr moved to amend the proposal of amendment of the Committee on Agriculture, as amended as follows:

First: In Sec. 4, 16 V.S.A. § 1264, subdivision (e)(1), by striking out the words “foods that were produced locally that are purchased for those programs and a summary of how the school board defined food purchased locally for the purposes of these purchases” and inserting in lieu thereof the words locally produced foods that were purchased by the school board for those programs

Second: In Sec. 4, 16 V.S.A. § 1264, subdivision (e)(2), by striking out the words “foods produced within the State” and inserting in lieu thereof the words locally produced foods

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 104.**

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to professions and occupations regulated by the Office of Professional Regulation.

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

\* \* \* Office of Professional Regulation \* \* \*

Sec. 1. 3 V.S.A. § 121 is amended to read:

#### § 121. DEFINITIONS

As used in this subchapter:

(1) “Director” means the Director of the Office of Professional Regulation.

(2) “Licensing board” or “board” refers to the boards, commissions, and professions listed in section 122 of this ~~title~~ subchapter and, in the case of disciplinary matters or denials of licensure, either an administrative law officer appointed under subsection 129(j) of this ~~title~~ subchapter or the Director in advisor professions. Notwithstanding statutory language to the contrary, this subchapter shall apply to all those boards.

(3)(A) “License” includes any certification or, registration or a, permit, commission, or other official authorization to undertake a regulated activity.

(B) “Licensee” includes ~~registrants and holders of certificates or permits~~ any person to whom a license has been issued by a board or the Director.

(4) “Office” means the Office of Professional Regulation.

Sec. 2. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

The Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

\* \* \*

(17) ~~Board of Radiologic Technology~~

\* \* \*

(29) ~~Board of Real Estate Appraisers~~

\* \* \*

(48) Notaries Public

Sec. 3. 3 V.S.A. § 127 is amended to read:

§ 127. UNAUTHORIZED PRACTICE

(a) When the Office receives a complaint of unauthorized practice, the Director shall refer the complaint to Office investigators and prosecutors.

(b)(1) A person practicing a regulated profession without authority or an employer permitting such practice may, upon the complaint of the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation, be enjoined therefrom by the Superior Court where the violation occurred or the Washington County Superior Court and may be assessed a civil penalty of not more than ~~\$1,000.00~~ \$5,000.00.

(2)(A) The Attorney General or an attorney assigned by the Office of Professional Regulation may elect to bring an action seeking only a civil penalty of not more than ~~\$1,000.00~~ \$2,500.00 for practicing or permitting the practice of a regulated profession without authority before the board having regulatory authority over the profession or before an administrative law officer.

(B) Hearings shall be conducted in the same manner as disciplinary hearings.

(3)(A) A civil penalty imposed by a board or administrative law officer under this subsection (b) shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from these civil penalties.

(c) In addition to other provisions of law, unauthorized practice shall be punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation under this section and shall not act as a bar to civil or administrative proceedings involving the same conduct.

\* \* \*

Sec. 4. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

\* \* \*

(26) Sexually harassing or exploiting a patient, client, or consumer, or doing so to a coworker in a manner that threatens the health, safety, or welfare of patients, clients, or consumers; failing to maintain professional boundaries; or violating a patient, client, or consumer's reasonable expectation of privacy.

\* \* \*

(d)(1) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed \$1,000.00 \$5,000.00 for each unprofessional conduct violation.

(2)(A) Any money received under this subsection shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this title chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from money received under this subsection.

\* \* \*



Sec. 5. 3 V.S.A. § 129b is amended to read:

§ 129b. BOARD MEMBER AND ADVISOR APPOINTMENTS

\* \* \*

(g) For advisor professions, ~~advisors~~:

(1) Advisors shall be appointed by the Secretary of State and shall serve at the pleasure of the Secretary of State. Advisor appointments shall be subject to the same conditions as those for board members under this section.

(2) The Office shall warn and conduct an open meeting including advisors, program staff, and interested members of the public:

(A) at least once per year for each profession with 500 or fewer active licensees; and

(B) at least twice per year for each profession with more than 500 active licensees.

Sec. 6. 3 V.S.A. § 135 is amended to read:

§ 135. UNIFORM STANDARD FOR RENEWAL FOLLOWING  
EXTENDED ABSENCE

(a) Notwithstanding any provision of law to the contrary, when an applicant seeks to renew an expired or lapsed license after fewer than five years of absence from practice, readiness to practice shall be inferred from completion of any continuing education that would have been required if the applicant had maintained continuous licensure, or by any less burdensome showing set forth in administrative rules specific to the profession or permitted by the Director.

\* \* \*

Sec. 7. PROFESSIONAL REGULATION; ANALYSIS OF STATE  
REGULATORY STRUCTURES

(a) Findings.

(1) The General Assembly finds that multiple State agencies regulate a variety of professions and occupations, resulting in professional regulatory structures that vary throughout the State.

(2) The General Assembly further finds that the State should review whether transferring the regulation of certain professions and occupations to a different State agency would enhance the effectiveness of those professional regulatory structures, including by improving public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in the staffing, information technology, and other necessary costs associated with professional regulation.

(b) Office of Professional Regulation, Agency of Administration, and other specified agencies; analysis and report.

(1) The Office of Professional Regulation and the Agency of Education, the Agency of Human Services, the Agency of Natural Resources, the Department of Public Safety, and the Department of Health shall collaborate in analyzing the professions and occupations that each of those agencies regulate in order to determine whether the effectiveness of those professional regulatory structures, including the elements of effectiveness described in subdivision (a)(2) of this section, would be enhanced by transferring an agency's professional regulation to a different agency.

(2) In conducting their analysis, the agencies shall consider the professional regulation reports and other information gathered as a result of 2016 Acts and Resolves No. 156, Secs. 20 and 21.

(3) The Office of Professional Regulation and the Agency of Administration shall lead this collaboration among all the agencies named in subdivision (1) of this subsection, but are encouraged to seek any available grants from outside resources that may enable the agencies to contract with an independent entity to conduct this analysis.

(4) On or before January 15, 2020, the independent entity or, if a contract with such an entity was not executed, the Office of Professional Regulation and the Agency of Administration shall report to the House Committees on Government Operations, on Education, on Human Services, on Health, on Natural Resources, Fish, and Wildlife, and on Commerce and Economic Development and the Senate Committees on Government Operations, on Education, on Health and Welfare, on Natural Resources and Energy, and on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action.

#### Sec. 8. CREATION OF POSITION WITHIN THE OFFICE OF PROFESSIONAL REGULATION; LICENSING

(a) There is created within the Secretary of State's Office of Professional Regulation one new permanent classified Licensing Administrator position.

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund Dollars.

\* \* \* Accountants \* \* \*

Sec. 9. 26 V.S.A. chapter 1 is amended to read:

CHAPTER 1. ACCOUNTANTS

Subchapter 1. General Provisions

\* \* \*

§ 13. DEFINITIONS

As used in this chapter:

\* \* \*

(4) ~~“Disciplinary action” or “disciplinary cases” includes any action taken by a board against a licensee, registrant, or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, excluding obtaining injunctions, but including issuing warnings, other similar sanctions, and ordering restitution. [Repealed.]~~

(5) “Firm” means a sole proprietorship, a corporation, a partnership, association, or any other entity that practices public accountancy.

(6) ~~“Foreign firm” means a firm not located in the United States, its territories, or possessions. [Repealed.]~~

\* \* \*

(14) “Sole proprietorship,” when used for the specific purpose of describing the fee category applicable to a firm under this chapter, means a firm that employs only one certified public accountant.

(15) “State” includes the states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and other jurisdictions recognized by the National Association of State Boards of Accountancy (NASBA).

\* \* \*

§ 17. PENALTY

Any person who violates any provision of section 14 of this ~~title~~ chapter shall be subject to the penalties set forth in 3 V.S.A. § 127(e).

\* \* \*

Subchapter 3. Licenses

\* \* \*

§ 74a. FOREIGN REGISTRATION

~~(a) A foreign firm licensed or registered in another country seeking to practice temporarily in the state shall register with the board and pay the required fee. The board shall adopt rules prescribing the procedure to be followed in carrying out the registrations. Registrations under this section shall expire three months after issuance. "Firm" is as defined in subdivision 13(5) of this title.~~

~~(b) A foreign firm providing public accounting services in the state of Vermont shall be registered and obtain a firm registration number.~~

~~(c) An accountant qualified for the practice of public accountancy in a foreign country may:~~

~~(1) use a title granted by that country, together with any suitable translation into English of that title, and the name of that country;~~

~~(2) temporarily practice public accounting after registering with the board under section 74a of this title. [Repealed.]~~

\* \* \*

§ 81. OWNERSHIP OF ACCOUNTANT'S WORKING PAPERS

\* \* \*

(d) An accountant or accountancy firm shall have in place a plan for responsible disposition of client records in case of unexpected incapacity or firm dissolution.

\* \* \*

\* \* \* Dental Hygienists \* \* \*

Sec. 10. 26 V.S.A. chapter 12 is amended to read:

CHAPTER 12. DENTISTS, DENTAL THERAPISTS,  
DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

\* \* \*

Subchapter 2. Board of Dental Examiners

\* \* \*

§ 582. AUTHORITY OF THE BOARD

In addition to any other provisions of law, the ~~board~~ Board shall have the authority to:

\* \* \*

(3) adopt rules pursuant to the Vermont Administrative Procedure Act as set forth in ~~3 V.S.A. chapter 25:~~

\* \* \*

(H) ~~setting guidelines for general supervision of dental hygienists with no less than three years of experience by dentists with no less than three years of experience to, to be known as “public-health hygienists,” who may perform tasks in public or private schools or institutions~~ the settings set forth in section 624 of this chapter; and

\* \* \*

#### Subchapter 4. Dental Hygienists

\* \* \*

#### § 624. PRACTICE

(a) A dental hygienist may perform duties for which the dental hygienist has been qualified by successful completion of the normal curriculum offered by programs of dental hygiene accredited by the American Dental Association or in continuing education courses approved by the Board. A dental hygienist may perform tasks in the office of any licensed dentist consistent with ~~the~~ rules adopted by the Board.

(b) ~~In public or private schools or institutions, a dental~~ A public-health hygienist, who shall be a dental hygienist with no less fewer than three years of experience, may perform tasks under the general supervision of a licensed dentist with no less than three years of experience as prescribed in out-of-office settings, including residences, schools, nursing home and long-term care facilities, clinics, hospitals, medical facilities, community health centers licensed or approved by the Department of Health, Head Start programs, and any other facilities or programs deemed appropriate by the Department of Health in a manner consistent with guidelines adopted by the Board by rule.

\* \* \*

\* \* \* Nursing \* \* \*

Sec. 11. 26 V.S.A. chapter 28 is amended to read:

#### CHAPTER 28. NURSING

##### Subchapter 1. General Provisions

\* \* \*

---

 § 1574. POWERS AND DUTIES

(a) In addition to the powers granted by 3 V.S.A. § 129, the Board shall:

\* \* \*

(3) Adopt rules setting standards for approval of medication nursing assistant and nursing education programs in Vermont, including all clinical facilities. The Board may require reimbursement for actual and necessary costs incurred for site surveys.

(4) ~~Adopt rules for medication nursing assistant education and competency evaluation programs and survey and approve those programs that meet the rules. [Repealed.]~~

\* \* \*

Subchapter 2. Advanced Practice Registered Nurses

\* \* \*

## § 1613. TRANSITION TO PRACTICE

(a)(1) ~~Graduates~~ An APRN with fewer than 24 months and 2,400 hours of licensed active advanced nursing practice in an initial role and population focus or fewer than 12 months and 1,600 hours for any additional role and population focus shall have a formal agreement with a collaborating provider as required by ~~board~~ Board rule.

(2) ~~APRNs~~ An APRN shall have and maintain signed and dated copies of all required collaborative provider agreements as ~~part of the practice guidelines.~~

(3) An APRN required to practice with a collaborative provider agreement may not engage in solo practice, except with regard to a role and population focus in which the APRN has met the requirements of this subsection.

(b) An APRN who satisfies the requirements to engage in solo practice pursuant to subsection (a) of this section shall notify the ~~board~~ Board that these requirements have been met.

\* \* \*

\* \* \* Optometrists \* \* \*

Sec. 12. 26 V.S.A. chapter 30 is amended to read:

CHAPTER 30. OPTOMETRY

\* \* \*

## § 1703. DEFINITIONS

As used in this chapter:

\* \* \*

(2) The “practice of optometry” means any one or combination of the following practices:

(A) ~~The examination of~~ Examining the human eyes and visual system for purposes of:

(i) diagnosing refractive and functional ability; or

(ii) diagnosing the presence of eye and adnexa disease or injury, treating the disease or injury with the appropriate pharmaceutical agents and procedures in accordance with this chapter, and making referrals to the appropriate health care provider when warranted.

(B) ~~The diagnosis and correction of~~ Diagnosing and correcting anomalies of the refractive and functional ability of the visual system and the enhancement of visual performance including, ~~but not limited to,~~ the following:

(i) ~~the prescribing and employment of~~ using ophthalmic lenses, prisms, autorefractor or other automatic testing devices, frames, ophthalmic aids, and prosthetic materials as consistent with the health of the eye;

(ii) ~~the prescribing and employment of~~ employing contact lenses;  
and

(iii) administering visual training, vision therapy, orthoptics, and pleoptics.

(C) Prescribing appropriate pharmaceutical agents for the diagnosis, management, and treatment of the eye and adnexa.

(D) Removing superficial foreign bodies from the eye and adnexa; epilating the eyelashes, including by electrolysis; and punctal dilation, lacrimal irrigation, and punctal plugs insertion.

(E) Managing the following types of glaucoma in patients who are 16 years of age or older:

(i) adult primary open angle glaucoma;

(ii) exfoliative glaucoma;

(iii) pigmentary glaucoma;

(iv) low tension glaucoma;

(v) inflammatory (uveitic) glaucoma; and

(vi) emergency treatment of angle closure glaucoma.

(3) ~~“Disciplinary action” or “disciplinary cases” includes any action taken by a board against a licensee or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, including obtaining injunctions, issuing warnings, reprimands, suspensions, or revocations of licenses, and other similar sanctions and ordering restitution.~~ “Director” means the Director of the Office of Professional Regulation.

(4) “Financial interest” means being:

(A) a licensed practitioner of optometry; or

(B) a person who deals in goods and services ~~which~~ that are uniquely related to the practice of optometry; or

(C) a person who has invested anything of value in a business ~~which~~ that provides optometric services.

(5) “Contact lenses” means those lenses that are worn for cosmetic, therapeutic, or refractive purposes.

#### § 1704. PENALTIES

A person who obtains a license by fraud or misrepresentation or who practices or attempts to practice optometry or hold himself or herself out as being able to do so in this state State without first having obtained the license required by this chapter shall be subject to the penalties provided in 3 V.S.A. § 127(e).

#### Subchapter 2. State Board of Optometry Board

#### § 1707. QUALIFICATIONS; TERM OF OFFICE; REMOVAL

(a) ~~A state board of optometry~~ The State Board of Optometry is created ~~which shall be the continuation of and successor to the state board of examiners in optometry heretofore established by chapter 29 of this title.~~

(b) The ~~board~~ Board shall consist of five members, three of whom shall be residents of the state, State who have had at least five years’ experience in the practice of optometry in the state, State and are in the active practice of optometry at the time of their appointment; and two members who shall be representatives of the public, who shall be residents of the state State for five years and who shall have no financial interest in the profession other than as a consumer or potential consumer of its services.

\* \* \*



## § 1708. POWERS AND DUTIES

(a) The ~~board~~ Board shall:

(1) Adopt rules under ~~3 V.S.A. chapter 25~~ the Vermont Administrative Procedure Act necessary for the performance of its duties, ensuring that at least the following are established by statute or rule:

(A) ~~A~~ a definition of the behavior for which a license is required;

(B) ~~Explanations~~ explanations of appeal and other significant rights given by law to licensees, applicants, and the public; and

(C) standards for acceptance of continuing education, which may identify mandatory content specific to pharmacology, and management of adverse drug reactions.

(b) The ~~board~~ may:

(1) ~~exercise authority granted under 3 V.S.A. chapter 5;~~

(2) ~~use the administrative services provided by the office of professional regulation under 3 V.S.A. chapter 5;~~

(3) ~~Receive legal assistance from the attorney general of the state and from the legal counsel for the director of the office of professional regulation. [Repealed.]~~

(c) The ~~board~~ Board shall not limit the:

(1) ~~limit~~ the ownership of optometric practices to licensed optometrists;

(2) ~~limit~~ the number of offices or sites at which an optometrist may practice; or

(3) ~~limit~~ the right of optometrists to practice in an association, partnership, corporation, or other lawful entity with anyone.

\* \* \*

### Subchapter 3. Examinations and Licenses

\* \* \*

## § 1715. LICENSURE BY EXAMINATION

(a) The ~~board~~ Board may grant a license to an applicant who:

(1) has attained the age of majority;

(2) is a graduate of an optometric school or college accredited by a regional or professional accreditation organization approved by the ~~board~~ Board;

(3) holds a current cardiopulmonary resuscitation certification from the American Red Cross, the Vermont Heart Association, or a comparable source recognized by the Director;

(4) has successfully completed an examination approved by the board Board; and

~~(4)(5)~~ has paid the fee required by section 1718 of this title chapter.

~~(b) A failed examination may be retaken once free of charge and each examination thereafter shall be subject to payment of a fee. [Repealed.]~~

\* \* \*

#### § 1716a. RENEWAL

Licenses shall be renewed every two years upon payment of the required fee, provided that the person applying for renewal completes at least ~~20~~ 40 hours of continuing education, approved by the ~~board~~ Board, during the preceding two-year period and holds a current cardiopulmonary resuscitation certification. ~~If the applicant has a special endorsement for the use of pharmaceutical agents as provided in section 1729 of this title, the applicant shall, during the preceding two-year period, complete at least 40 hours of continuing education, approved by the board, of which at least 20 hours shall be related to the use of therapeutic pharmaceutical agents. The board may specify particular areas of study which must be completed to satisfy the requirements of this section. The board may, by rule, adopt continuing education requirements for those who renew their licenses after less than a full two-year period.~~

\* \* \*

#### Subchapter 4. Unprofessional Conduct and Discipline

##### § 1719. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a, ~~whether or not taken by a license holder~~ committed by a licensee, an applicant, or a person who later becomes an applicant.

(b) Unprofessional conduct means:

(1) Conduct ~~which~~ that evidences moral unfitness to practice the occupation.

(2) Any of the following ~~except when reasonably undertaken in an emergency situation in order to protect life, health, or property:~~

(A) Practicing or offering to practice beyond the scope permitted by law.

(B) Performing treatments or providing services ~~which that~~ a licensee is not qualified to perform or ~~which that~~ are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

(C) Performing occupational services ~~which that~~ have not been authorized by the consumer or his or her legal representative.

\* \* \*

#### Subchapter 5. Diagnostic Pharmaceutical Agents

\* \* \*

#### § 1727. EXPIRATION DATE

(a) An optometrist shall state the expiration date on the face of every prescription written by that optometrist for contact lenses. The expiration date shall be one year after the examination date unless a medical or refractive problem affecting vision requires an earlier expiration date.

(b) An optometrist ~~may~~ shall not refuse to give the buyer a copy of the buyer's prescription after the expiration date; however, the copy shall be clearly marked to indicate that it is an expired prescription.

#### Subchapter 6. Therapeutic Pharmaceutical Agents

#### § 1728. USE OF THERAPEUTIC PHARMACEUTICAL AGENTS

~~(a) An optometrist licensed under this chapter who possesses the endorsement required under section 1729 of this title, may:~~

~~(1) use and prescribe appropriate pharmaceutical agents for the diagnosis, management, and treatment of the eye and adnexa.~~

~~(2) remove superficial foreign bodies from the eye and adnexa, perform epilation of the eyelashes including electrolysis, punctal dilation, and lacrimal irrigation, and insert punctal plugs.~~

~~(b) Nothing in this subchapter shall be construed to permit:~~

~~(1) the use of therapeutic ultrasound, the use of injections except for the appropriate emergency stabilization of a patient, or the performance of surgery. "Surgery" means any procedure in which human tissue is cut, penetrated, thermally or electrically cauterized except when performing electrolysis, or otherwise infiltrated by mechanical or laser means in a manner not specifically authorized by this act;~~

~~(2) the use of lasers for any procedure other than diagnostic testing; or~~

~~(3) a licensee to perform indocyanine green angiography, removal of benign skin lesions involving subcutaneous injections, sub-tenons injections,~~

~~retrobulbar injections, intraocular injections, ketamine (IM) for an infant's examination under anesthesia, management of skin and conjunctival neoplasms, and botox injections.~~

(a)(1) A licensee who employs an oral therapeutic pharmaceutical agent that might prove to have significant systemic adverse reactions or systemic side effects shall, in a manner consistent with Vermont law, ascertain the risk of systemic side effects through either a case history or by communicating with the patient's primary care provider.

(2) The licensee shall also communicate with the patient's primary care provider, or with a physician skilled in diseases of the eye, when, in the professional judgment of the licensee, it is medically appropriate.

(3) Any communication shall be noted in the patient's permanent record. The methodology of communication shall be determined by the licensee.

(b)(1) If a glaucoma patient does not respond to up to three topically administered pharmaceutical agents within a reasonable time, the licensee shall refer the patient to a licensed ophthalmologist.

(2) A glaucoma patient shall not be treated by an optometrist with more than three topically administered agents at any given time.

(3) If an oral medication is required to obtain an adequate clinical response in a glaucoma patient, the licensee shall consult with a licensed ophthalmologist as soon as clinically prudent following initiation of the oral medication.

(4) This subsection shall not require that the licensee transfer care of the patient to the consulting ophthalmologist, but does require that the patient be seen by the consulting ophthalmologist.

~~§ 1728a. PERMISSIBLE TREATMENTS; GLAUCOMA TYPES~~

~~(a) A licensee may treat the following types of glaucoma on patients who are 16 years of age or older:~~

- ~~(1) adult primary open angle glaucoma;~~
- ~~(2) exfoliative glaucoma;~~
- ~~(3) pigmentary glaucoma;~~
- ~~(4) low tension glaucoma;~~
- ~~(5) inflammatory (uveitic) glaucoma; and~~
- ~~(6) emergency treatment of angle closure glaucoma.~~

~~(b) This section shall not prohibit a licensee from administering appropriate emergency stabilization treatment to a patient. [Repealed.]~~

~~\* \* \*~~

~~§ 1728c. USE OF ORAL THERAPEUTIC PHARMACEUTICAL AGENT;  
COMMUNICATION WITH PRIMARY CARE PROVIDER~~

~~A licensee who employs an oral therapeutic pharmaceutical agent that might prove to have significant systemic adverse reactions or systemic side-effects shall, in a manner consistent with Vermont law, ascertain the risk of systemic side effects through either a case history or by communicating with the patient's primary care provider. The licensee shall also communicate with the patient's primary care provider, or with a physician skilled in diseases of the eye, when in the professional judgment of the licensee, it is medically appropriate. The communication shall be noted in the patient's permanent record. The methodology of communication shall be determined by the licensee. [Repealed.]~~

~~§ 1728d. DURATION OF GLAUCOMA TREATMENT WITHOUT  
REFERRAL~~

~~(a) If a glaucoma patient does not respond to up to three topically administered pharmaceutical agents within a reasonable time, the licensee shall refer the patient to a licensed ophthalmologist. No glaucoma patient shall be treated by an optometrist with more than three topically administered agents at any given time.~~

~~(b) If an oral medication is required to obtain an adequate clinical response, the licensee shall consult with a licensed ophthalmologist as soon as clinically prudent following initiation of the oral medication. This section shall not require that the licensee transfer care of the patient to the consulting ophthalmologist, but does require that the patient be seen by the consulting ophthalmologist. [Repealed.]~~

~~§ 1729. ENDORSEMENTS AND REQUIREMENTS~~

~~(a) Upon application, the board shall certify eligible licensees to use and prescribe therapeutic drugs and to perform those procedures authorized by subdivision 1728(a)(2) of this title, if the applicant meets the requirements of section 1715 of this chapter for licensure by examination or meets the requirements of section 1716 of this chapter for licensure by endorsement, and is authorized under the license of another jurisdiction to use therapeutic pharmaceutical agents.~~

~~(b) A licensee certified under this section shall affix current documentation of certification to the license in the manner provided by the board.~~

~~(c) A licensee who is certified to use therapeutic pharmaceutical agents shall demonstrate proof of current cardiopulmonary resuscitation certification as a condition of initial certification and of license renewal. Acceptable courses shall include:~~

~~(1) courses in external cardiopulmonary resuscitation which are approved by the Vermont Heart Association or the American Red Cross; and~~

~~(2) courses which include a review of diseases or conditions which might produce emergencies such as anaphylactic shock, diabetes, heart condition, or epilepsy.~~

~~(d) A licensee certified to use therapeutic pharmaceutical agents shall, as part of required continuing education, receive not less than 50 percent of his or her continuing education in the use of pharmaceuticals, including treating possible complications arising from their use, and the treatment of glaucoma. [Repealed.]~~

#### § 1729a. PREREQUISITES TO TREATING GLAUCOMA

~~A licensee who is already certified to use therapeutic pharmaceutical agents and who graduated from a school of optometry prior to 2003 and is not certified in another jurisdiction having substantially similar prerequisites to treating glaucoma shall, in addition to being certified to use therapeutic pharmaceutical agents, provide to the board verification of successful completion of an 18-hour course and examination offered by the State University of New York State College of Optometry or similar accredited institution. Successful completion shall include passing an examination substantially equivalent to the relevant portions on glaucoma and orals of the examination given to current graduates of optometry school and shall require the same passing grade. The course shall cover the diagnosis and treatment of glaucoma and the use of oral medications and shall be taught by both optometrists and ophthalmologists. In addition, the licensee shall collaborate with an optometrist who has been licensed to treat glaucoma for at least two years or an ophthalmologist regarding his or her current glaucoma patients for six months and at least five new glaucoma patients before treating glaucoma patients independently. These five new glaucoma patients shall be seen at least once by the collaborating glaucoma-licensed optometrist or ophthalmologist. [Repealed.]~~

#### Sec. 13. OFFICE OF PROFESSIONAL REGULATION; STUDY OF OPTOMETRIC ADVANCED PROCEDURES

(a) The Office of Professional Regulation shall conduct a study to evaluate the safety and public health needs of enlarging the scope of practice of optometrists to include advanced procedures. In conducting this study, the

Office shall consult with relevant stakeholders, including the Vermont Board of Optometry, the Vermont Optometric Association, the Vermont Board of Medical Practice, the Vermont Department of Health, and the Vermont Ophthalmological Society.

(b) The study shall evaluate, among other considerations, approaches to advanced procedures in jurisdictions outside Vermont, patient need for access to additional practitioners, effects on patient access to care, effects on patient safety, costs to the health care system, and the existing education and training for optometrists, including the degree to which it addresses training in advanced procedures. The Office shall inquire into the specific clinical training for both optometrists and ophthalmologists for specific procedures.

(c) On or before January 15, 2020, the Office shall report its findings, including any recommendations for legislative action, to the House Committees on Government Operations and on Health Care and to the Senate Committees on Government Operations and on Health and Welfare.

\* \* \* Pharmacy \* \* \*

Sec. 14. 26 V.S.A. chapter 36 is amended to read:

#### CHAPTER 36. PHARMACY

##### Subchapter 1. General Provisions

\* \* \*

#### § 2022. DEFINITIONS

As used in this chapter:

\* \* \*

(7) “Drug outlet” means all pharmacies, wholesalers, manufacturers, and other entities that are engaged in the manufacture, dispensing, delivery, or distribution of prescription drugs.

\* \* \*

(11)(A) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(B) “Manufacturing” includes the packaging or repackaging of a drug or device or; the labeling or relabeling of the container of a drug or device for resale by a pharmacy, practitioner, or other person; and virtual manufacturing by an entity that sells its own prescription drug or device without physically possessing the product.

\* \* \*

(19)(A) “Wholesale distributor” means any person who is engaged in wholesale distribution of prescription drugs, ~~but~~ including virtual distribution by an entity that sells a prescription drug or device without physically possessing the product.

(B) “Wholesale distributor” does not include any for-hire carrier or person hired solely to transport prescription drugs.

\* \* \*

## Subchapter 2. Board of Pharmacy

### § 2031. CREATION; APPOINTMENT; TERMS; ORGANIZATION

(a)(1) There is hereby created the Board of Pharmacy to enforce the provisions of this chapter.

(2) The Board shall consist of ~~seven~~ eight members, five of whom shall be pharmacists licensed under this chapter with five years of experience in the practice of pharmacy in this State. One member shall be a pharmacy technician registered under this chapter. Two members shall be members of the public having no financial interest in the practice of pharmacy.

(b) Members of the Board shall be appointed by the Governor pursuant to 3 V.S.A. §§ 129b and 2004.

### § 2032. POWERS; DUTIES; LIMITATIONS

(a) The Board shall adopt rules necessary for the performance of its duties, including:

- (1) scope of the practice of pharmacy;
- (2) qualifications for obtaining licensure;
- (3) explanations of appeal and other rights given to licensees, applicants, and the public; ~~and~~
- (4) rules regulating pharmacy technicians; and
- (5) provisions for the inspection of any regulated entity or commercial location where legend drugs are manufactured or kept.

\* \* \*

(c) The Board of Pharmacy shall also have the following responsibilities in regard to medications, drugs, legend devices, and other materials used in this State in the diagnosis, mitigation, and treatment or prevention of injury, illness, and disease:



(1) ~~The~~ the regulation of the sale ~~at retail and the, compounding, administration, and~~ dispensing of medications, drugs, legend devices, and other materials, including the right to seize any such drugs, legend devices, and other materials found to be detrimental to the public health and welfare by the Board pursuant to an appropriate hearing as required under the Administrative Procedure Act;

(2) ~~The~~ the specifications of minimum professional and technical equipment, environment, supplies, and procedures for the compounding or dispensing of such medications, drugs, legend devices, and other materials within the practice of pharmacy;

(3) ~~The~~ the control of the purity and quality of such medications, drugs, legend devices, and other materials within the practice of pharmacy; and

(4) ~~The~~ the issuance of certificates of registration and licenses of drug outlets; and

(5) ~~The development of criteria for a standardized tamper-resistant prescription pad that can be used by all health care providers who prescribe drugs. Such criteria shall be developed in consultation with pharmacists, hospitals, nursing homes, physicians and other prescribers, and other affected parties.~~

\* \* \*

### Subchapter 3. Licensing

\* \* \*

#### § 2042b. ~~PHARMACY TECHNICIANS; NONDISCRETIONARY TASKS; SUPERVISION~~

(a) ~~Notwithstanding any other provision of law, a registered pharmacy technician may perform packaging or other nondiscretionary tasks only while assisting and under the supervision and control of a pharmacist.~~

(b) ~~This section does not authorize a pharmacy technician to perform packaging or other nondiscretionary tasks without a pharmacist on duty, and without being under the supervision and control of a pharmacist.~~

(c) ~~This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.~~

(d) ~~The Board may adopt rules to specify tasks that a pharmacy technician may perform under the supervision and control of a pharmacist pursuant to subsection (a) of this section. A pharmacy or pharmacist that employs a pharmacy technician to perform tasks specified in subsection (a) shall do so in conformity with the rules adopted by the Board pursuant to this section.~~

~~(e) [Repealed.]~~

~~(f)(1) A pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician.~~

~~(2) A pharmacist responsible for a pharmacy technician shall be on the premises at all times, or in the case of a remote pharmacy approved by the Board, immediately available by a functioning videoconference link.~~

~~(3) A pharmacist shall verify a prescription before medication is provided to the patient. [Repealed.]~~

\* \* \*

#### Subchapter 5. Registration of Facilities

#### § 2061. REGISTRATION AND LICENSURE

(a) All drug outlets shall biennially register with the Board of Pharmacy.

(b) Each drug outlet shall apply for a license in one or more of the following classifications:

- (1) Retail.
- (2) Institutional.
- (3) Manufacturer.
- (4) Wholesale distributor.
- (5) Investigative and research projects.
- (6) Compounding.
- (7) Outsourcing.
- (8) Home infusion.
- (9) Nuclear.
- (10) Third-party logistics provider.

\* \* \*

#### Subchapter 6. Wholesale Distributors and Manufacturers

#### § 2067. WHOLESALE DISTRIBUTOR DISTRIBUTORS AND MANUFACTURERS; LICENSURE REQUIRED

(a) A person who is not licensed under this subchapter shall not engage in wholesale distribution or manufacturing in this State.

\* \* \*

(c) The Board may require a separate license for each facility directly or indirectly owned or operated by the same business entity ~~within this State~~, or for a parent entity with divisions, subsidiaries, or affiliate companies ~~within this State~~ when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(d) An agent or employee of any licensed wholesale distributor or manufacturer shall not be required to obtain a license under this subchapter and may lawfully possess pharmaceutical drugs when that agent or employee is acting in the usual course of business or employment.

#### § 2068. REQUIREMENTS; APPLICANTS; LICENSES

An applicant shall satisfy the ~~board~~ Board that it has, and licensees shall maintain, the following:

(1) Acceptable storage and handling conditions plus facilities standards.

(2) Minimum liability and other insurance as may be required under any applicable federal or state law.

(3) A security system ~~which~~ that includes after hours, central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening, and safeguards against employee theft.

(4) An electronic, manual, or any other reasonable system of records, describing ~~all wholesale distributor~~ activities governed by this subchapter for the two-year period following disposition of each product, which shall be reasonably accessible, as defined by the ~~board~~ Board by rule, during any inspection authorized by the ~~board~~ Board.

(5) Officers, directors, managers, and other persons in charge of wholesale drug distribution, manufacture, storage, and handling, who shall at all times demonstrate and maintain their capability to conduct business according to sound financial practices as well as state and federal law.

\* \* \*

(9) Operations in compliance with all federal requirements ~~applicable to wholesale drug distribution~~.

(10)(A) Compliance with standards and procedures ~~which~~ that the ~~board~~ Board shall adopt by rule concerning provisions for initial and periodic on-site inspections, criminal and financial background checks, ongoing monitoring, reciprocity for out-of-state ~~wholesale drug distributors~~ entities inspected by a third party organization recognized by the ~~board~~ Board or inspected and licensed by a ~~state~~ State licensing authority with legal standards for licensure

that are comparable to the standards adopted by the ~~board~~ Board pursuant to this subdivision (10), protection of a ~~wholesale drug distributor's~~ proprietary information, and any other requirements consistent with the purposes of this subdivision (10).

(B) The ~~board~~ Board rules may recognize third party accreditation in satisfaction of some or all of the requirements of this subdivision (10).

\* \* \*

§ 2076. INSPECTION POWERS; ACCESS TO WHOLESALE  
DISTRIBUTOR AND MANUFACTURER RECORDS

(a) A person authorized by the Board may enter, during normal business hours, all open premises purporting or appearing to be used by a wholesale distributor or manufacturer for purposes of inspection.

(b)(1) Wholesale distributors and manufacturers may keep records regarding purchase and sales transactions at a central location apart from the principal office of the wholesale distributor or the location at which the drugs were stored and from which they were shipped, provided that such records shall be made available for inspection within two working days of a request by the Board.

(2) Records may be kept in any form permissible under federal law applicable to prescription drugs record keeping.

\* \* \*

Sec. 15. OFFICE OF PROFESSIONAL REGULATION; EVALUATION  
OF PHARMACIST PRESCRIBING AUTHORITY

(a) The Office of Professional Regulation shall evaluate the costs and benefits of incorporating prescribing authority into the scope of practice of licensed pharmacists. This evaluation shall be conducted in consultation with relevant stakeholders and shall include consideration of:

- (1) approaches to clinical pharmacy in jurisdictions outside Vermont;
- (2) potential impacts on patient safety and on primary and preventive care delivered by other health care professionals;
- (3) effects on patient access to care; and
- (4) the appropriate extent, if any, of the prescribing authority.

(b) On or before January 15, 2020, the Office shall report its findings and any recommendations for legislative action to the House and Senate Committees on Government Operations, the House Committee on Health Care, and the Senate Committee on Health and Welfare.

\* \* \* Real Estate Brokers and Salespersons \* \* \*

Sec. 16. 26 V.S.A. chapter 41 is amended to read:

CHAPTER 41. REAL ESTATE BROKERS AND SALESPERSONS

Subchapter 1. General Provisions

\* \* \*

§ 2213. PENALTIES

A person who shall violate any provision of this chapter shall be subject to the penalties provided in 3 V.S.A. § 127(e).

\* \* \*

Subchapter 3. Licenses

\* \* \*

§ 2292. ELIGIBILITY

\* \* \*

(b)(1) A license as a real estate salesperson shall be granted to a person who satisfies all of the following:

(A)(1) has passed an examination as required by the Commission;

(B)(2) is at least 18 years of age;

(C)(3) has been employed by or become associated with a brokerage firm and that firm's principal broker; and

(D)(4) has completed a course of instruction, approved by the Commission, of at least 40 hours.

~~(2)(A) An initial salesperson license shall expire 90 days from issuance.~~

~~(B) The license of a salesperson who has provided documentation to the Commission showing successful completion of eight hours of instruction addressing topics specified by the Commission relating to the salesperson's postlicensure practice of the profession shall be renewed without application or fee and remain valid until the end of the biennial licensing period.~~

~~(3) Has been employed by or become associated with a brokerage firm and that firm's principal broker.~~

~~(4) Has completed a course of instruction, approved by the Commission, of at least 40 hours.~~

\* \* \*

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 § 2293. RENEWAL OF LICENSE; EXPIRED LICENSE

(a) Licenses shall be renewed every two years without examination and on payment of the required fees, provided that the person applying for renewal completes at least 24 hours of instruction for brokers and 16 hours of instruction for salespersons, approved by the Commission, during the preceding two-year period. Four hours of this continuing education instruction shall address legislation and other topics specified by the Commission for each renewal period.

~~(b)(1) A broker or salesperson applying for reinstatement of a license that has expired shall be assessed both the renewal fee and late renewal penalty established by the Director of the Office of Professional Regulation and shall not be assessed renewal fees for the years during which the license was expired.~~

~~(2) Reinstatement shall not take place until the applicant completes the continuing education required for the previous renewal period.~~

~~(c)(1) If a broker or salesperson's license has expired for greater than five consecutive years, the broker or salesperson shall apply for reinstatement in accordance with the initial licensure requirements as set forth in section 2292 of this chapter, including a course of instruction and examination.~~

~~(2) The Commission may waive the reinstatement requirements based upon licensed practice in another state.~~

~~(d) The Commission may waive or postpone compliance with the instructional requirements of this section in cases of extreme hardship on the part of the licensee. No licensee, however, may receive a postponement or waiver for two successive two-year periods of licensure. The Commission may accept fewer hours of continuing education instruction for renewal of a license on a prorated basis following an initial licensing period of less than two years.~~

~~(e) [Repealed.]~~

\* \* \*

## § 2296. UNPROFESSIONAL CONDUCT

~~Unprofessional conduct means the following conduct and In addition to the conduct set forth in 3 V.S.A. § 129a, the following conduct by those regulated under this chapter constitutes unprofessional conduct:~~

~~(1) makes a material misstatement in the application for his or her license;~~

~~(2) uses dishonest or misleading advertising;~~

~~(3) demonstrates incompetency to act as a real estate broker or salesperson;~~

~~(4) is found by the Commission to be guilty of fraud or fraudulent practices; or is convicted for violating this chapter; or is convicted of forgery, embezzlement, obtaining money under false pretenses, or conspiring to defraud;~~

~~(5) commingles commingling money or other property to which the licensee's clients or other persons are entitled with the licensee's own, except to the extent nominal sums of the licensee's funds may be required to maintain an open trust account;~~

~~(6)(2) fails failing to inform clients, establish trust and escrow accounts, maintain records, and otherwise act in accordance with the provisions of section 2214 of this chapter with respect to all monies received by the licensee as a real estate broker, or as escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction;~~

~~(7)(3) fails failing promptly to segregate any properties received that are to be held for the benefit of others;~~

~~(8) is found by the Commission to have engaged in any act or conduct, whether of the same or different character as that described in this section, that contributes to or demonstrates incompetency or dishonest fraudulent dealings;~~

~~(9)(4) fails failing to fully disclose to a buyer all material facts within the licensee's knowledge concerning the property being sold;~~

~~(10)(5) fails failing to fully disclose to a buyer the existence of an agency relationship between the licensee and the seller.~~

\* \* \*

\* \* \* Opticians \* \* \*

Sec. 17. 26 V.S.A. chapter 47 is amended to read:

#### CHAPTER 47. OPTICIANS

\* \* \*

##### Subchapter 2. Administration

#### § 2661. POWERS AND DUTIES OF THE DIRECTOR; ~~DUTIES~~

(a) The ~~director~~ Director shall:

(1) provide general information to applicants for licensure as opticians;

(2) explain appeal procedures to opticians and applicants and complaint procedures to the public;

(3) administer fees established by law;

(4) receive applications for licensure, issue licenses, to applicants qualified under this chapter, deny or renew licenses and issue, revoke, suspend, condition, and reinstate licenses as ordered by an administrative law officer;

(5) refer ~~complaints and disciplinary matters to~~ for adjudication by an administrative law officer;

(6) conduct or specify examinations and pass upon the qualifications of applicants for reciprocal registration;

(7) conduct hearings as necessary for the issuance, renewal, or discipline of a license; and

(8) establish by rule standards of education required of applicants, as well as minimum standards for any school presenting a course for present or future opticians.

(b) ~~The director~~ Director may, after consultation with the advisor appointees, adopt rules necessary to perform the director's duties under this chapter, including rules governing apprenticeship and continuing education. Rules adopted under this section shall not prohibit lawful advertising, the display of ophthalmic materials or merchandise, limit the place or location where opticians may practice, nor be designed to limit the number of opticians in the State.

\* \* \*

#### § 2665. ~~POWERS AND DUTIES OF THE DIRECTOR~~

~~(a) The Director shall:~~

~~(1) adopt only those rules necessary for the full and efficient performance of its duties;~~

~~(2) conduct examinations and pass upon the qualifications of applicants for reciprocal registration;~~

~~(3) establish standards of education required of applicants for licensing and establish, by appropriate rules, the minimum standards for any school presenting a course for present or future opticians;~~

~~(4) conduct any necessary hearings in connection with the issuance, renewal, suspension, or revocation of a license;~~

~~(5) [Repealed.]~~

~~(6) adopt rules establishing continuing education requirements and approve continuing education programs to assist a licensee in meeting these requirements.~~



~~(b) The Director shall not:~~

~~(1) adopt any rules prohibiting lawful advertising, the display of ophthalmic materials or merchandise, or limiting the place or location where opticians may practice; or~~

~~(2) adopt any rules specifically designed to limit the number of opticians in this State. [Repealed.]~~

\* \* \*

### Subchapter 3. Licenses

#### § 2671. APPLICATIONS

~~Any person who desires to practice as an optician~~ be licensed under this chapter shall file a written submit an application for a license and the application as specified by the Director, accompanied by payment of the required fee with the office on forms provided by the office. An applicant shall submit satisfactory proof that he or she meets the qualifications under section 2672 of this title chapter.

#### § 2672. QUALIFICATIONS

~~No A person may shall not be examined or licensed under this chapter, except as otherwise provided in this chapter, unless the applicant has attained the age of majority he or she has obtained a high school education or its equivalent and possesses the following qualifications:~~

(1) Education. Has completed:

~~(A) Has obtained a high school education or its equivalent and has completed at least a two-year course of study in a school of ophthalmic dispensing approved by the board Director or a school which that is a candidate for accreditation by an accreditation agency approved by the United States Department of Education and by the director Director; or~~

~~(2)(B) Has completed three at least two years of practical training and experience, approved by the director Director, under the supervision of a licensed optician, ophthalmologist, or optometrist; or~~

~~(C) the National Academy of Opticianry Ophthalmic Career Progression Program, including at least one year of practical training and experience, approved by the Director, under the supervision of a licensed optician, ophthalmologist, or optometrist; and~~

~~(2) Examination. Has passed an examination recognized by the Director that shall include assessment of competency in ophthalmic materials; laboratory, practical, and physiological optics; prescription interpretation;~~

dispensing preparation; adjustment of lenses, spectacles, eyeglasses, prisms, tinted lenses, and appurtenances; the use of lensometers or equivalent instruments; adjusting instruments; and pupillary and facial measurements.

§ 2673. ~~EXAMINATION; LICENSES~~

~~(a) Examinations for licenses shall be conducted at least once each year and shall be devised in form and substance to evaluate fairly the applicant's qualifications to practice as a licensed optician. The examination shall include, but not be limited to, ophthalmic materials, laboratory, practical and physiological optics, prescription interpretation, dispensing preparation, adjustment of lenses, spectacles, eyeglasses, prisms, tinted lenses, and appurtenances, the use of lensometers or equivalent instruments, adjusting instruments, and pupillary and facial measurements.~~

~~(b) Any applicant passing the examination and meeting the requirements established by the director shall be issued a license under this chapter. [Repealed.]~~

\* \* \*

\* \* \* Radiology \* \* \*

Sec. 18. 26 V.S.A. chapter 51 is amended to read:

CHAPTER 51. RADIOLOGY

Subchapter 1. General Provisions

§ 2801. DEFINITIONS

As used in this chapter:

(1) ~~“Board”~~ “Director” means the ~~board of radiologic technology~~ Director of the Office of Professional Regulation.

(2) “Practice of radiologic technology” means the practice of:

- (A) radiography; ~~or~~
- (B) nuclear medicine technology; or
- (C) radiation therapy.

(3) “Practice of radiography” means the direct application of ionizing radiation to human beings.

(4) “Practice of nuclear medicine technology” means the act of giving a radioactive substance to a human being or the act of performing associated imaging procedures, or both.

(5) “Practice of radiation therapy” means the direct application of ionizing radiation to human beings for therapeutic purposes or the act of performing associated imaging procedures, or both.

(6) “Licensed practitioner” means a person licensed under this title to practice medicine, osteopathy, advanced practice registered nursing, dentistry, podiatry, naturopathic medicine, or chiropractic.

(7) “Financial interest” means being:

(A) a licensed practitioner of radiologic technology; ~~or~~

(B) a person who deals in goods and services ~~which~~ that are uniquely related to the practice of radiologic technology; or

(C) a person who has invested anything of value in a business ~~which~~ that provides radiologic technology services.

(8) “Unauthorized practice” means conduct prohibited by section 2802 of this ~~title~~ chapter and not exempted by section 2803 of this ~~title~~ chapter.

(9) “Direct ~~personal~~ supervision” means that the person being supervised remains in the physical presence of the supervisor at all times.

(10) “General supervision” means that the supervisor is readily available for consultation or intervention on the premises where radiologic technology services are being provided.

(11) “ARRT” means the American Registry of Radiologic Technologists.

(12) “NMTCB” means the Nuclear Medicine Technologist Certification Board.

(13) “Office” means the Office of Professional Regulation.

#### § 2802. PROHIBITIONS

(a) [Repealed.]

(b) ~~No~~ A person shall not practice radiologic technology unless he or she is licensed in accordance with the provisions of this chapter.

(c) ~~No~~ A person shall not practice radiography without a license for radiography ~~from the board~~ unless exempt under section 2803 of this ~~title~~ chapter.

(d) [Repealed.]

(e) ~~No~~ A person shall not practice nuclear medicine technology without a license for that purpose ~~from the board~~ unless exempt under section 2803 of this ~~title~~ chapter.

(f) ~~No~~ A person shall not practice radiation therapy technology without a license for that purpose ~~from the board~~ unless exempt under section 2803 of this title chapter.

§ 2803. EXEMPTIONS

The prohibitions in section 2802 of this chapter shall not apply to dentists licensed under chapter 12 of this title and actions within their scope of practice nor to:

(1) Licensed practitioners acting within the scope of practice for their licensed field, provided that their practice acts and rules adopted thereunder ~~make provisions for~~ have been expressly found by the Director, in consultation with advisors appointed under this chapter, to match or surpass the training in radiation safety and proper radiation practices determined in consultation with the Board required by this chapter and rules adopted under this chapter.

\* \* \*

(5) Any of the following when operating dental radiographic equipment to conduct intraoral radiographic examinations under the general supervision of a licensed practitioner; and any of the following when operating dental radiographic equipment to conduct specialized radiographic examinations, including tomographic, cephalometric, or temporomandibular joint examinations, if the person has completed a course in radiography approved by the Board of Dental Examiners and practices under the general supervision of a licensed practitioner:

\* \* \*

(D) a student of dental therapy, dental hygiene, or dental assisting as part of the training program when ~~directly supervised by~~ under the direct supervision of a licensed dentist, licensed dental therapist, licensed dental hygienist, or registered dental assistant.

\* \* \*

(7) Researchers operating bone densitometry equipment for body composition upon successful completion of courses on body composition and radiation safety approved by the ~~Board~~ Director. The ~~Board~~ Director shall not require this coursework to exceed eight hours. The ~~Board~~ Director may consider other exemptions from licensure for bona fide research projects subject to course and examination requirements as deemed necessary for public protection.

§ 2804. COMPETENCY REQUIREMENT OF CERTAIN LICENSED PRACTITIONERS

(a) Unless the requirements of subdivision 2803(1) of this chapter have been satisfied, a ~~physician, as defined in chapter 23 of this title; podiatrist, as defined in chapter 7 of this title; chiropractic physician, as defined in chapter 10 of this title; osteopathic physician, as defined in chapter 33 of this title; or naturopathic physician, as defined in chapter 81 of this title,~~ licensed practitioner shall not apply ionizing radiation to human beings without first having satisfied the ~~Board~~ Director of his or her competency to do so.

(b) The ~~Board~~ Director shall:

(1) consult with the appropriate licensing boards concerning suitable performance standards; and

(2) by rule, provide for periodic recertification of competency.

(c) A person subject to the provisions of this section shall be subject to the fees established under subdivisions 2814(4) and (5) of this chapter.

(d) This section does not apply to radiologists who are certified or eligible for certification by the American Board of Radiology, nuclear cardiologists who are certified or eligible for certification by the Certification Board of Nuclear Cardiology, or interventional cardiologists and electrophysiologists who are certified or eligible for certification by the American Board of Internal Medicine.

§ 2805. PENALTY AND ENFORCEMENT

A person found guilty of violating section 2802 or 2804 of this title ~~chapter~~ shall be subject to the penalties provided in 3 V.S.A. § 127(e).

Subchapter 2. ~~Board of Radiologic Technology~~ Administration

§ 2811. ~~BOARD REGULATION OF RADIOLOGIC TECHNOLOGY;~~ DIRECTOR; ADVISOR APPOINTEES

~~(a)(1) A board of radiologic technology is created, consisting of six members. The board shall be attached to the office of professional regulation. The Director shall administer the provisions of this chapter.~~

(2)(A) The Secretary of State shall appoint six persons of suitable qualifications in accordance with this section to advise the Director in matters concerning radiologic technology, radiologic safety, and the optimal administration of this chapter.

(B) The Secretary shall appoint the advisors for five-year staggered terms. Four of the initial appointments shall be for four-, three-, two-, and one-year terms.

(3) The Director shall consult the appointed advisors prior to exercising interpretive discretion, adopting or amending rules, and determining any substantial regulatory question presented in the course of administering this chapter.

(b) ~~One member of the board~~ advisor shall be a member of the public who has no financial interest in radiologic technology other than as a consumer or possible consumer of its services. The public member shall have no financial interest personally or through a spouse.

(c) ~~One member of the board~~ advisor shall be a radiologist certified by the American Board of Radiology.

(d) ~~Three members of the board~~ advisors shall be licensed under this chapter, one representing each of the three following primary modalities: radiography; nuclear medicine technology; and radiation therapy.

(e) ~~One member of the board~~ advisor shall be a representative from the radiological health program of the Vermont ~~department of health~~ Department of Health.

(f) ~~Board members shall be appointed by the governor.~~ [Repealed.]

#### § 2812. DIRECTOR; POWERS AND DUTIES

(a) The ~~Board~~ Director shall adopt rules necessary for the ~~performance effective administration of its duties~~ this chapter, including:

(1) a definition of the practice of radiologic technology, interpreting section 2801 of this ~~title~~ chapter;

(2) qualifications for obtaining licensure, interpreting sections 2821a and 2821b of this chapter;

(3) explanations of appeal and other significant rights given to applicants and the public;

(4) procedures for disciplinary and reinstatement cases;

(5) [Repealed.]

(6) procedures for mandatory reporting of unsafe radiologic conditions or practices;

(7) procedures for continued competency evaluation;

(8) procedures for radiation safety;

(9) procedures for competency standards for license applications and renewals.

(b) The ~~Board~~ Director shall:

(1) [Repealed.]

(2) ~~use the administrative and legal services provided by the Office of Professional Regulation under 3 V.S.A. chapter 5; [Repealed.]~~

(3) investigate suspected unprofessional conduct;

(4) periodically determine whether a sufficient supply of good quality radiologic technology services is available in Vermont at a competitive and reasonable price and take suitable action, within the scope of ~~its~~ the Office's powers, to solve or bring public and professional attention to any problem that it finds in this area; and

(5) as a condition of renewal require that a licensee establish that he or she has completed a minimum of 24 hours of continuing education as ~~approved by the Board,~~ the specific requirements of which may be specified by rule.

(c) The ~~Board~~ Director may:

(1) Refer cases of apparent improper radiologic technology practice to any occupational board with authority over the person concerned.

(2) Investigate suspected cases of unauthorized practice of radiologic technology, and refer any such case to the Office's State prosecuting attorney, the Attorney General, or a State's Attorney for possible prosecution and injunctive relief.

\* \* \*

(8)(A) Conduct a competency evaluation where radiographic services are performed by licensees and licensed practitioners required to demonstrate competency under section 2804 of this title chapter to ensure that optimum radiologic technology practices are used to minimize patient and occupational radiation dose. ~~The fee required under section 2814 of this title shall not be assessed more than once in any two-year period against any licensed practitioner evaluated under this subdivision.~~

(B) ~~The Director of the Office of Professional Regulation may contract with the Department of Health or others to perform evaluations under this subsection~~ subdivision (8).

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§ 2813. ~~BOARD PROCEDURES~~

- (a) ~~Annually, the board shall meet to elect a chairperson and a secretary.~~
- (b) ~~Meetings may be called by the chairperson and shall be called upon the request of any other two members.~~
- (c) ~~Meetings shall be warned and conducted in accordance with 1 V.S.A. chapter 5.~~
- (d) ~~A majority of the members of the board shall be a quorum for transacting business.~~
- (e) ~~All action shall be taken upon a majority vote of the members present and voting, unless otherwise provided in 1 V.S.A. chapter 5.~~
- (f) ~~The provisions of the Vermont Administrative Procedure Act relating to contested cases shall apply to proceedings under this chapter.~~
- (g) ~~Fees for the service of process and attendance before the board shall be the same as the fees paid sheriffs and witnesses in superior court. [Repealed.]~~

\* \* \*

Subchapter 3. Licensing

\* \* \*

§ 2821a. LICENSE FOR PRIMARY MODALITIES; COMMON REQUIREMENTS

The ~~board~~ Director shall recognize and follow the ARRT and the NMTCB primary certification process. The ~~board~~ Director shall issue a license to practice in one of the following three primary modalities to any person who in addition to the other requirements of this section, has reached the age of majority and has completed preliminary education equivalent to at least four years of high school:

(1) Radiography. The ~~board~~ Director shall issue a radiography license to any person who, in addition to meeting the general requirements of this section:

\* \* \*

(2) Nuclear medicine technology. The ~~board~~ Director shall issue a nuclear medicine technology license to any person who, in addition to meeting the general requirements of this section:

\* \* \*



(3) Radiation therapy. The ~~board~~ Director shall issue a radiation therapy license to any person who, in addition to meeting the general requirements of this section:

\* \* \*

#### § 2821b. LICENSE FOR POSTPRIMARY MODALITIES

(a) ~~The Board recognizes and follows~~ Director shall recognize and follow the ARRT and NMTCB postprimary certification process ~~for~~ in the following postprimary practice categories: mammography, computed tomography (CT), cardiac-interventional radiography, vascular-interventional radiography, and positron emission tomography (PET).

\* \* \*

#### § 2822. PROCEDURE FOR DENIAL OF LICENSE

~~When the board intends to deny an application for license, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that a license should be issued. After the hearing, the board shall affirm or reverse its preliminary denial. [Repealed.]~~

#### § 2823. RENEWAL AND PROCEDURE FOR NONRENEWAL

(a) ~~Each radiographer, nuclear medicine technologist, and radiation therapist licensed to practice by the board shall apply biennially for the renewal of a license. One month prior to the renewal date, the office of professional regulation shall send to each of those licensees a license renewal application form and a notice of the date on which the existing license will expire. The licensee shall file the application for license renewal and pay a renewal fee. In order to be eligible for renewal, an applicant shall document completion of no fewer than 24 hours of board-approved continuing education. Required accumulation of continuing education hours shall begin on the first day of the first full biennial licensing period following initial licensure.~~

(b) ~~A person who practices radiography, nuclear medicine technology, or radiation therapy and who fails to renew a license or registration or fails to pay the fees required by this chapter shall be an illegal practitioner and shall forfeit the right to practice until reinstated by the board.~~

(c) ~~The board shall adopt rules setting forth qualifications for reinstating lapsed licenses. [Repealed.]~~

\* \* \*

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§ 2825a. LICENSURE BY ENDORSEMENT

The ~~board~~ Director may grant a license to an applicant who possesses a license in good standing in another state and possesses the applicable ARRT or NMTCB primary and postprimary certifications as set forth in sections 2821a and 2821b of this subchapter, respectively.

~~Subchapter 4. Discipline [Repealed.]~~

§ 2831. UNPROFESSIONAL CONDUCT

~~(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a, whether or not taken by a license holder.~~

~~(b) Conduct by a radiologic technologist which evidences moral unfitness to practice the profession constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license.~~

~~(c) Unprofessional conduct includes the following actions by a licensee:~~

~~(1) practicing or offering to practice beyond the scope permitted by law;~~

~~(2) accepting and performing responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;~~

~~(3) making any material misrepresentation in the practice of the profession, whether by commission or omission;~~

~~(4) agreeing with any other person or organization, or subscribing to any code of ethics or organizational bylaws, when the intent or primary effect of that agreement, code, or bylaw is to restrict or limit the flow of information concerning alleged or suspected unprofessional conduct to the board. [Repealed.]~~

§ 2832. DISCIPLINE OF LICENSEES

~~(a) The board shall accept oral and written complaints from any member of the public, any licensee, any state or federal agency, or the attorney general. The board may initiate disciplinary action in any complaint against a licensee and may act without having received a complaint.~~

~~(b) The burden of proof shall be on the state to show by a preponderance of the evidence that the licensee has engaged in unprofessional conduct.~~

~~(c) After hearing and upon a finding of unprofessional conduct, the board may:~~

~~(1) revoke a license;~~

~~(2) suspend a license; or~~

~~(3) issue a warning to a licensee.~~

~~(d) Before or after hearing, the board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include, without limitation, any of the following conditions or restrictions which may be in addition to or in lieu of suspension:~~

~~(1) a requirement that a licensee submit to care or counseling;~~

~~(2) a restriction that a licensee practice only under supervision of a named person or a person with specified credentials;~~

~~(3) a requirement that a licensee participate in continuing education in order to overcome specified practical deficiencies;~~

~~(4) a requirement that the scope of practice permitted be restricted to a specified extent. Such an agreement may be modified by the parties after obtaining the approval of the board.~~

~~(e) An interested party may petition the board for modification of the terms of an order under this section.~~

~~(f) Where a license has been revoked, the board may reinstate the license on terms and conditions it deems proper. [Repealed.]~~

\* \* \*

#### Sec. 19. TRANSITIONAL PROVISION; RADIOLOGIC TECHNOLOGY RULES

On the effective date of Sec. 18 of this act (amending 26 V.S.A. chapter 51 (radiology)), the rules of the Board of Radiologic Technology shall constitute the rules of the Director of the Office of Professional Regulation for the practice of radiologic technology.

\* \* \* Alcohol and Drug Abuse Counselors \* \* \*

Sec. 20. 26 V.S.A. § 3231 is amended to read:

#### § 3231. DEFINITIONS

As used in this chapter:

\* \* \*

(5) “Practice of alcohol and drug abuse counseling” means the application of methods, including psychotherapy, that assist an individual or group to develop an understanding of alcohol and drug abuse dependency problems or process disorders, and to define goals and plan actions reflecting the individual’s or group’s interests, abilities, and needs as affected by alcohol and drug abuse dependency problems and comorbid conditions.

\* \* \*

\* \* \* Real Estate Appraisers \* \* \*

Sec. 21. 26 V.S.A. chapter 69 is amended to read:

CHAPTER 69. REAL ESTATE APPRAISERS

Subchapter 1. General Provisions

§ 3311. DEFINITIONS

As used in this chapter:

\* \* \*

(7) ~~“Board” “Director” means the Board of Real Estate Appraisers established under this chapter~~ Director of the Office of Professional Regulation.

(8)(A) ~~“Disciplinary action” means any action taken by the Board any regulatory or certifying authority against a licensed real estate appraiser or applicant premised on upon a finding that the person has engaged in unprofessional conduct.~~

(B)(i) The term includes all sanctions of any kind, including obtaining injunctions, refusing to grant or renew a license, suspending, revoking, or restricting a license, and issuing warnings.

(ii) The term does not include monetary civil penalties imposed by a hearing officer in relation to an express finding under 3 V.S.A. § 129(a)(3) that the subject matter does not constitute unprofessional conduct.

(9) “Office” means the Office of Professional Regulation.

§ 3312. PROHIBITIONS; PENALTY; EXEMPTION

(a) Unless licensed in accordance with the provisions of this chapter, ~~no a~~ person may shall not:

(1) ~~Perform perform~~ perform an appraisal in a federally related transaction when a licensed or certified appraiser is required by the Act; or

(2) ~~Use use~~ use in connection with his or her name any letters, words, or insignia indicating that he or she is a ~~state~~ State certified or licensed real estate appraiser.

(b) An individual who violates a provision of subsection (a) of this section shall be subject to the penalties provided in 3 V.S.A. § 127(~~e~~).

(c) A registered appraisal management company shall not be required to be licensed in order to acquire and provide finished appraisals to third parties.

Subchapter 2. Administration§ 3313. BOARD REGULATION OF REAL ESTATE APPRAISERS;  
DIRECTOR; ADVISOR APPOINTEES

(a)(1) A board of real estate appraisers is established. The board shall consist of six members appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004. The Director shall administer the provisions of this chapter.

(2)(A) The Secretary of State shall appoint six persons of suitable qualifications in accordance with this section to advise the Director in matters concerning real estate appraisal.

(B) The Secretary shall appoint the advisors for five-year staggered terms. Four of the initial appointments shall be for four-, three-, two-, and one-year terms.

(3) The Director shall consult the appointed advisors prior to exercising interpretive discretion, adopting or amending rules, and determining any substantial regulatory question presented in the course of administering this chapter.

(b) Three members advisors shall be real estate appraisers licensed under this chapter who have been actively engaged in the full-time practice of real estate appraising for five years preceding appointment and have been practicing in Vermont for the two-year period immediately preceding appointment.

(c) Two members advisors shall be public members who shall have no direct financial interest personally or through a spouse, parent, child, brother, or sister in real estate appraising.

(d) One member advisor shall be a public member actively engaged in the business of banking, including lending for the purpose of buying real property, or shall be a person who is a consumer of appraisal services in the regular course of his or her business.

§ 3314. BOARD DIRECTOR; POWERS AND DUTIES

(a) The Board Director shall administer the provisions of this chapter in a manner that conforms in all respects with the requirements of the Act.

(b) In addition to its the Director's other powers and duties under this chapter, the Board Director shall:

- (1) Receive and review applications.

(2) Collect the registry fee as required by the Act and transmit that fee to the ASC. The registry fee shall be in addition to State licensing and registration fees.

(3) Annually publish a roster of all licensees and transmit the roster to the ASC as required by the Act.

(4) Register appraisal management companies.

(5) ~~The Board may make~~ Make inquiries ~~it he or she~~ deems necessary into the character, integrity, and reputation of the applicant.

(6) Perform other functions and duties as may be necessary to carry out the provisions of this chapter and to comply with the requirements of the Act, including by adopting rules defining and regulating appraisal management companies in a manner consistent with the Act.

#### § 3315. RULES

(a) The ~~Board~~ Director may adopt rules necessary to implement the provisions of this chapter.

(b) The ~~Board~~ Director shall adopt rules relating to procedures for processing applications, issuing licenses, registering trainees, inspecting records, and instituting and conducting disciplinary proceedings.

#### Subchapter 3. Licenses, Certifications, and Registrations

#### § 3316. LICENSING AND REGISTRATION FEES

\* \* \*

#### § 3317. APPLICATION

An individual who desires to be licensed under this chapter shall ~~apply to submit an application as specified by the board in writing on a form furnished by the board.~~ The application shall be Director, accompanied by payment of the required fee.

#### § 3318. EXAMINATION

The ~~Board~~ Director shall examine applicants ~~for~~ using an AQB-approved qualifying examination ~~for~~ applicable to the credential sought by the applicant.

#### § 3319. TEMPORARY PRACTICE

The ~~board~~ Director shall issue a temporary license to an individual, after filing of an application and fee, who is a certified or licensed real estate appraiser in another jurisdiction if all of the following apply:

(1) ~~The~~ the property to be appraised is part of a federally related transaction for which a licensed or certified appraiser is required by the Act;<sub>2</sub>

(2) ~~The~~ the applicant's business is of a temporary nature; and

(3) ~~The~~ the applicant registers with the ~~board~~ Office.

#### § 3319a. APPRAISER TRAINEE REGISTRATION

(a)(1)(A) A person who has completed a course of instruction approved by the AQB may work as a certified residential or certified general appraiser trainee provided the person is registered with the ~~Board~~ Office.

(B) An appraiser trainee shall work under the direct supervision of an appraiser who holds either a certified residential or a certified general license in good standing and has held the certified residential or certified general license for at least the minimum number of years required by the AQB.

(2)(A) An appraiser trainee may perform activities within the scope of practice of the license sought, provided that the supervising appraiser reviews and signs all resulting appraisals.

(B) The supervising appraiser shall be professionally responsible for such activities performed by the trainee.

(3) As used in this ~~section~~ subsection, "good standing" means that the appraiser supervisor holds a current, unrestricted license.

(b) [Repealed.]

(c) The ~~Board Director~~ may, ~~in its discretion~~, give credit for training hours, not exceeding 10 percent of the total hourly experience requirement, for hours worked or training given that does not include or is unrelated to a site inspection.

(d) Appraiser trainees registered with the Board as of July 1, 2013 and who continue on to satisfy the requirements specified by the AQB may become State licensed appraisers, notwithstanding the elimination of that license category.

#### § 3320. LICENSURE BY RECIPROCITY

The ~~Board Director~~ shall waive all licensing requirements for an appraiser applicant holding a valid certification from another state if:

(1) the appraiser licensing and certification program of the other state is in compliance with the provisions of the Act; and

(2) the appraiser applicant holds the valid certification from a state whose requirements for certification or licensing meet or exceed the licensure standards established by this chapter.

\* \* \*

## § 3321. RENEWALS

\* \* \*

(c) The ~~Board~~ Director may reactivate the license of an individual whose license has lapsed for more than 30 days upon payment of the renewal fee, the reactivation fee, and the late renewal penalty, provided the individual has satisfied all requirements of AQB for reactivation.

(d) The ~~Board~~ Director may require, by rule, as a condition of reactivation, that an applicant undergo review of one or more aspects of the applicant's professional work in the practice of real estate appraising, provided that the manner and performance results of the review be specified by the ~~Board~~ Director. Such a review requirement shall:

\* \* \*

## § 3322. USE OF LICENSE NUMBER; CONSUMER FEE DISCLOSURE

(a)(1) Each licensee or registrant shall be assigned a license or registration number ~~which~~ that shall be used in a report, a contract, engagement letter, or other instrument used by the licensee or registrant in connection with the licensee's or registrant's activities under this chapter. The license number shall be placed adjacent to or immediately below the title the licensee is entitled to use under this chapter.

(2) ~~The~~ Each licensed appraiser shall ensure that the registration number and the appraiser's fee for appraisal services shall appear adjacent to or immediately below the appraisal management company's registered name on documents supplied to clients or customers in this ~~state~~ State.

(b) ~~The~~ Each licensed appraiser shall include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

## § 3323. UNPROFESSIONAL CONDUCT

(a) The following conduct by a licensee and the conduct set forth in 3 V.S.A. § 129a constitute unprofessional conduct. When that conduct is by an applicant or a person who later becomes an applicant, it may constitute grounds for denial of a license:

\* \* \*

(8) Violating any term or condition of a license restricted by the ~~board~~ Office.

(9) Failing to comply with practice standards adopted by the ~~board~~ Director.

\* \* \*



~~(d) After hearing, and upon a finding of unprofessional conduct, the board may take disciplinary action against a licensee, applicant, or registrant. Without limitation, disciplinary action may include any of the following:~~

- ~~(1) suspending or conditioning a license or registration;~~
- ~~(2) requiring a licensee to submit to care or counseling;~~
- ~~(3) requiring that a licensee practice only under supervision of a named person or a person with specified credentials;~~
- ~~(4) requiring a licensee to participate in continuing education in order to overcome specified practical deficiencies;~~
- ~~(5) limiting the scope of the licensee's practice. [Repealed.]~~

~~(e) Appeals from decisions of the board disciplinary orders and final license denials shall be governed by the provisions of 3 V.S.A. § 130a.~~

#### § 3324. RECORD RETENTION

(a) A licensee or registrant shall retain all records related to an appraisal, review, or consulting assignment for no less fewer than five years after preparation.

(b) A licensee or registrant shall retain records under this section that relate to a matter in litigation for two years after the litigation concludes or in conformance with the "Uniform Standards of Professional Appraisal Practice," as promulgated by the Appraisal Standards Board of the Appraisal Foundation, whichever period is longer.

~~(c) With Upon reasonable notice, a licensee or registrant shall produce provide to the Director for inspection and copying any records governed by this section for inspection and copying by the board or its authorized agent.~~

#### § 3325. REPORTING

An appraiser who reports to the ~~board~~ Director appraisal work ~~being performed which~~ that does not comply with the provisions of this chapter shall not be considered to have violated the ethics provision of the uniform standards of professional practice.

#### Sec. 22. TRANSITIONAL PROVISION; REAL ESTATE APPRAISER RULES

On the effective date of Sec. 21 of this act (amending 26 V.S.A. chapter 69 (real estate appraisers)), the rules of the Board of Real Estate Appraisers shall constitute the rules of the Director of the Office of Professional Regulation for the practice of real estate appraisal.

\* \* \* Acupuncturists \* \* \*

Sec. 23. 26 V.S.A. chapter 75 is amended to read:

## CHAPTER 75. ACUPUNCTURISTS

### Subchapter 1. General Provisions

#### § 3401. DEFINITIONS

As used in this chapter:

(1) “Acupuncture” or the “practice of acupuncture” means the insertion of fine needles through the skin at certain points on the body, with or without the application of electric current or the application of heat to the needles or skin, or both, for the purpose of promoting health and ~~balance as defined by traditional and modern Oriental theories. Acupuncture involves the use of traditional and modern Oriental diagnostic techniques, acupuncture therapy, and adjunctive therapies, including but not limited to: nonprescription remedies, exercise, nutritional and herbal therapies, therapeutic massage, and lifestyle counselling~~ well-being or to prevent or alleviate pain or unease.

\* \* \*

(4) ~~“Disciplinary action” includes any action taken by an administrative law officer appointed pursuant to 3 V.S.A. § 129(j) against a licensed acupuncturist or applicant premised on a finding of unprofessional conduct. Disciplinary action includes all appropriate remedies, including denial of or renewal of a license, suspension, revocation, limiting, or conditioning of the license, issuing reprimands or warnings, and adopting consent orders.~~

(5) ~~“Secretary” means the secretary of state.~~

#### § 3401a. SCOPE OF PRACTICE

(a) A licensed acupuncturist may, in addition to the practice of acupuncture employing fine needles, in a manner consistent with acupuncture theory, employ electrical, magnetic, thermal, and mechanical skin stimulation techniques; nonlaboratory diagnostic techniques; nutritional, herbal, and manual therapies; exercise and lifestyle counseling; acupressure; and massage.

(b) A licensed acupuncturist shall not offer diagnosis of any human pathology except for a functional diagnosis, based upon the physical complaint of a patient or acupuncture theory, for purposes of developing and managing a plan of acupuncture care, or as necessary to document to insurers and other payers the reason a patient sought care.

§ 3402. PROHIBITIONS; OFFENSES; EXEMPTIONS; EVALUATING  
NONACUPUNCTURISTS

(a) Except as provided in subsections (d) through (g) of this section 3412 of this title, a person shall not practice acupuncture unless he or she is licensed in accordance with the provisions of this chapter.

\* \* \*

(d) Nothing in subsection (a) of this section shall prevent a student from performing acupuncture under the supervision of a competent licensed acupuncturist instructor:

(1) within a school or a college or an acupuncture department of a college or university that is licensed by the Vermont Agency of Education or certified by the Accreditation Commission for Acupuncture and Oriental Medicine;

(2) as a student in a Director-approved apprenticeship; or

(3) as an intern in any hospital.

(e) Nothing in subsection (a) of this section shall prevent a person who is licensed or certified as an acupuncturist in another state or Canadian province from practicing acupuncture for no more than five days in a calendar year as part of a health care professional educational seminar or program in Vermont, if the educational seminar or program is directly supervised by a Vermont-licensed health care professional whose scope of practice includes acupuncture.

(f) This chapter shall not be construed to limit or restrict in any way the right of a licensed practitioner of a health care profession regulated under this title from performing services within the scope of his or her professional practice.

(g) Nothing in subsection (a) of this section shall prevent an unlicensed person from engaging in auriculotherapy, an unregulated practice wherein needles are inserted into the external human ear, provided such person:

(1) has appropriate training in clean needle technique;

(2) employs sterile, single-use needles, without reuse;

(3) does not purport to treat any disease, disorder, infirmity, or affliction;

(4) does not use any letters, words, or insignia indicating or implying that the person is an acupuncturist; and

(5) makes no statement implying that his or her practice of auriculotherapy is licensed, certified, or otherwise overseen by the State.

(h) The Director, with cooperation of the relevant professional regulatory boards, shall monitor and evaluate whether nonacupuncturists employing acupuncture as a therapeutic modality are doing so safely, within their scopes of practice, and in a manner consistent with the public health, safety, and welfare.

\* \* \*

### Subchapter 2. Administration

#### § 3403. DIRECTOR; FUNCTIONS

\* \* \*

#### § 3404. ADVISOR APPOINTEES

(a)(1) The secretary of state Secretary of State shall appoint two licensed acupuncturists to serve as advisors in matters relating to acupuncture as set forth in 3 V.S.A. § 129b.

(2) Appointees shall have at least three years' experience as an acupuncturist immediately preceding appointment and shall be actively engaged in the practice of acupuncture in Vermont during incumbency.

(b) The director Director shall seek the advice of the acupuncturist advisors in carrying out the provisions of this chapter. They shall be entitled to compensation and necessary expenses in the amount provided in 32 V.S.A. § 1010 for attendance at any meeting called by the director for that purpose.

### Subchapter 3. Licenses

#### § 3405. ELIGIBILITY FOR LICENSURE

To be eligible for licensure as an acupuncturist, an applicant shall be at least 18 years of age and shall furnish satisfactory proof that he or she ~~has~~:

(1)(A) completed a program in acupuncture and Oriental medicine and has received holds a degree or diploma from an educational institution in candidacy or accredited by the Accreditation Commission for Acupuncture and Oriental Medicine or an a substantially equivalent or successor accrediting organization approved by the U.S. Department of Education and the Director. The training received in the program shall be for a period of not less than three academic years, and, which shall include at least two academic years and a minimum of 800 400 hours of supervised clinical practice; or

(B) completed a training program no later than December 31, 2010 with a preceptor approved by the Director where the training program is

approved by the Director and begun prior to December 31, 2007 and which shall include earning a minimum of 40 points earned in any one of the following categories or combination of categories:

(i) ~~self-directed study-10 points for study equivalent to one year of full-time academic work in acupuncture and Oriental medicine, for a maximum of two years or 20 points;~~

(ii) ~~apprenticeship-10 points for each 1,000 documented contact hours, up to a maximum of 13.5 points per year;~~

(iii) ~~completed academic work in an accredited acupuncture program as described in subdivision (1) of this section-five points for each six-month period of completed academic study in the field of acupuncture and Oriental medicine, up to a maximum of four periods or 20 points;~~

(iv) ~~preceptors shall be licensed and in good standing and meet the standards of the National Certification Commission for Acupuncture and Oriental Medicine in order to be approved, with no preceptor having more than two apprentices at any one time; and~~

(2) ~~passed the examination described in section 3406 of this title chapter.~~

#### § 3406. EXAMINATION

(a) ~~The director~~ Director shall examine applicants for licensure and may use a standardized national examination. The examination shall include the following subjects:

(1) Anatomy and physiology.

(2) ~~Traditional Oriental~~ Acupuncture pathology.

(3) ~~Traditional Oriental~~ Acupuncture diagnosis.

(4) Hygiene, sanitation, and sterilization techniques.

(5) The principles, practices, and techniques of acupuncture ~~and Oriental medicine.~~

(6) Clean needle techniques.

(7) Chinese herbology for those licensed after January 1, 2007 who intend to employ nonprescription remedies and herbal therapies.

(b) ~~The director~~ Director may adopt rules necessary to perform his or her duties under this section.

---

 § 3407. LICENSURE WITHOUT EXAMINATION

(a) The ~~director~~ Director may waive the examination requirement under subdivision ~~3405(3)~~ 3405(2) of this title ~~chapter~~ if the applicant is an acupuncturist regulated under the laws of another state who is in good standing to practice acupuncture in that state and, in the opinion of the ~~director~~ Director, the standards and qualifications required for regulation of acupuncturists in that state are substantially equivalent to those required by this chapter.

(b) The ~~director~~ Director may waive the examination requirement under subdivision ~~3405(3)~~ 3405(2) of this title ~~chapter~~ for an applicant who has furnished evidence of having passed the examination administered by the National Certification Commission for the Certification of Acupuncturists Acupuncture and Oriental Medicine.

\* \* \*

## § 3408. RENEWALS

(a) Licenses shall be renewed every two years upon payment of the required fee and furnishing satisfactory evidence of having completed 30 hours of continuing education credit during the preceding two years. The ~~director~~ Director may adopt rules for the approval of continuing education programs and the awarding of credit.

~~(b) Biennially, the director shall forward a renewal form to each licensed acupuncturist. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) A license that has expired for three years or less shall be renewed upon meeting the renewal requirements and paying a late renewal penalty. A license that has expired for more than three years shall not be renewed; the applicant shall be required to apply for reinstatement. The director may adopt rules relating to reinstatement to assure that the applicant is professionally qualified.~~

\* \* \*

## § 3410. UNPROFESSIONAL CONDUCT

~~(a) A licensed acupuncturist or applicant shall not engage in unprofessional conduct.~~

~~(b) Unprofessional conduct means any of the conduct listed in this section and 3 V.S.A. § 129a, whether committed by a licensed acupuncturist or an applicant:~~

~~(1) Using dishonest or misleading advertising.~~

~~(2) — Addiction to narcotics, habitual drunkenness, or rendering professional services to a patient if the acupuncturist is intoxicated or under the influence of drugs.~~

~~(3) — Sexual harassment of a patient.~~

~~(4) — Engaging in sexual intercourse or other sexual conduct with a patient with whom the licensed acupuncturist has had a professional relationship within the previous two years.~~

~~(e) — After hearing and upon a finding of unprofessional conduct, an administrative law officer appointed under 3 V.S.A. § 129(j) may take disciplinary action against a licensed acupuncturist or applicant. [Repealed.]~~

\* \* \*

#### § 3412. ACUPUNCTURE DETOXIFICATION; SPECIALIZED CERTIFICATION

~~(a) — A person not licensed under this chapter may obtain a specialized certification as an acupuncture detoxification technician to practice auricular acupuncture according to the National Acupuncture Detoxification Association protocol from the board for the purpose of the treatment of alcoholism, substance abuse, or chemical dependency if he or she provides documentation of successful completion of a board-approved training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency which meets or exceeds standards of training established by the National Acupuncture Detoxification Association.~~

~~(b) — Treatment permitted under this section may only take place in a state, federal, or board-approved site under the supervision of an individual licensed under this chapter and certified by the National Acupuncture Detoxification Association.~~

~~(c) — A person practicing under this section shall be subject to the requirements of section 3410 of this title.~~

~~(d) — Nothing in this section shall be construed to modify any of the requirements for licensure of acupuncturists contained in this chapter, nor shall it grant any rights to practice acupuncture which exceed the scope of this section.~~

~~(e) — The fee for obtaining a specialized certification or renewal of a specialized certification under this section shall be that established in 3 V.S.A. § 125(b).~~

~~(f) — Anyone certified under this section, while practicing the National Acupuncture Detoxification Association protocol, shall be referred to as an acupuncture detoxification technician. [Repealed.]~~

## \* \* \* Athletic Trainers \* \* \*

Sec. 24. 26 V.S.A. chapter 83 is amended to read:

## CHAPTER 83. ATHLETIC TRAINERS

## § 4151. DEFINITIONS

As used in this chapter:

\* \* \*

(3) “Athletic training” means the application of principles and methods of conditioning, the prevention, immediate care, recognition, evaluation, assessment, and treatment of athletic and orthopedic injuries within the scope of education and training, the organization and administration of an athletic training program, and the education and counseling of athletes, coaches, family members, medical personnel, ~~and communities, and groups~~ in the area of care and prevention of athletic and orthopedic injuries. ~~Athletic training may only be applied in the “traditional setting” and the “clinical setting”:~~

~~(A) Without further referral, to athletes participating in organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level.~~

~~(B) With a referral from a physician, osteopathic physician, advanced practice registered nurse, physician assistant, dentist, or chiropractor, to athletes or the physically active who have an athletic or orthopedic injury and have been determined, by a physician’s examination, to be free of an underlying pathology that would affect treatment.~~

\* \* \*

(10) “Referral” means sending a patient for treatment determination, recorded in writing, by an allopathic or osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, physical therapist, naturopath, dentist, or chiropractor, that an athlete or physically active individual should be treated by an athletic trainer, and that such person is free of an underlying pathology that would affect treatment.

(11) “Settings” means ~~any areas in which an athletic trainer may practice athletic training. These areas include:~~

~~(A) “Traditional setting” means working with any organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level.~~

~~(B) “Clinical setting” means an outpatient orthopaedic or sports medicine clinic that employs one of the following: physician, osteopathic physician, chiropractor, or physical therapist. [Repealed.]~~



(12) “Underlying pathology” means any disease process, including neuromuscular disease, diabetes, spinal cord injuries, and systemic diseases.

§ 4151a. PRACTICE CONTEXTS; REFERRAL REQUIRED FOR CLINICAL CARE

(a) A person licensed under this chapter may provide athletic training:

(1) by formal engagement with a team, school, college, university, league, or other sporting organization, to affiliated athletes participating in organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level;

(2) upon referral of an athlete or physically active individual to an athletic training clinic;

(3) by engagement with an employer or organization for the purpose of educating groups on the care and prevention of athletic and orthopedic injuries or conditioning appropriate to physical demands upon employees or members; or

(4) in a bona fide emergency necessitating response care of an injured athlete.

(b) Practice outside the settings set forth in subsection (a) of this section, including clinical practice without referral, exceeds an athletic trainer’s scope of practice. Such practice is not entitled to the protections of § 4160 of this chapter and may be sanctioned as unprofessional conduct.

§ 4152. PROHIBITION; OFFENSES

(a) No A person may shall not use in connection with the person’s name any letters, words, or insignia indicating or implying that the person is a licensed athletic trainer unless the person is licensed in accordance with this chapter.

(b) A person who violates any of the provisions of subsection (a) of this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

§ 4153. EXEMPTIONS

The provisions of this chapter shall not apply to:

\* \* \*

~~(2) a person who assists or provides response care to an injured athlete and who does not attempt to assess the injury, provide follow-up treatment, or otherwise practice athletic training as defined in this chapter; [Repealed.]~~

(3) a person duly licensed under the laws of this state State who is practicing within the scope of the profession for which the person is licensed; or

(4) the practice of athletic training ~~which that~~ is incidental to a program of study by a person enrolled in an athletic training education program approved by the ~~director~~ Director, or graduates of an approved athletic training education program ~~pending the results of the first licensing examination scheduled by the director following graduation.~~ Graduates shall practice under the supervision of a licensed athletic trainer and shall have an application for licensure by examination on file working under the direct supervision of a person licensed under this chapter within 90 days following graduation from that program.

\* \* \*

#### § 4157a. ~~TEMPORARY LICENSURE~~

~~An applicant who is currently certified by and in good standing with the National Athletic Trainers Association Board of Certification, or who is currently licensed or certified and in good standing in another state, shall be eligible for a 60-day temporary license. Applicants under this section shall meet the requirements of section 4158 of this title. Temporary practice shall not exceed 60 days in any calendar year. [Repealed.]~~

#### § 4158. ~~APPLICATION~~

~~A person who desires to be licensed as an athletic trainer shall apply to the director in writing, on a form furnished by the director, accompanied by payment of a fee required pursuant to 3 V.S.A. § 125 and evidence that the applicant meets the requirements set forth in section 4156 or 4157 of this title. [Repealed.]~~

#### § 4158a. ~~RENEWALS~~

~~(a) Licenses shall be renewed every two years upon payment of the required fee.~~

~~(b) Biennially, the director shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) Any application for renewal of a license which has expired shall be accompanied by the renewal fee and late fee. A person shall not be required to pay renewal fees for years during which the license was lapsed.~~

~~(d) The director may, after notice and opportunity for a hearing, revoke a person's right to renew licensure if the license has lapsed for five or more years. [Repealed.]~~

~~§ 4159. UNPROFESSIONAL CONDUCT~~

~~(a) A licensed athletic trainer shall not engage in unprofessional conduct. When such conduct is committed by an applicant, it shall be grounds for denial of the application or other disciplinary action.~~

~~(b) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a:~~

~~(1) Failing to make available to a person using athletic training services, upon that person's request, copies of documents in the possession or under the control of the practitioner, when those documents have been prepared for the user of services.~~

~~(2) Conduct which evidences unfitness to practice athletic training.~~

~~(3) Sexual harassment of a person using athletic training services.~~

~~(4) Engaging in a sexual act as defined in 13 V.S.A. § 3251 with a person using athletic training services.~~

~~(5) Any of the following except when reasonably undertaken in an emergency in order to protect life, health, or property:~~

~~(A) Practicing or offering to practice beyond the scope permitted by law.~~

~~(B) Performing athletic training services which have not been authorized by the consumer or his or her legal representative.~~

~~(6) Conduct prohibited under any other laws relating to athletic training.~~

~~(c) After notice and an opportunity for hearing, and upon a finding of unprofessional conduct, an administrative law officer may take disciplinary action against a licensed athletic trainer or applicant. [Repealed.]~~

\* \* \*

\* \* \* Applied Behavior Analysts \* \* \*

Sec. 25. 26 V.S.A. chapter 95 is amended to read:

CHAPTER 95. APPLIED BEHAVIOR ANALYSTS

\* \* \*

Subchapter 3. Licenses

\* \* \*

§ 4925. RENEWALS

\* \* \*

(b) Biennially, the Director shall provide notice to each licensee of license expiration and renewal requirements. Upon receipt of ~~the completed form and the a complete and satisfactory renewal application and fee~~, the Director shall issue a new license.

\* \* \*

~~(d)(1) The Director may reinstate the license of an individual whose license has expired upon payment of the required fee and reinstatement penalty, provided the individual has satisfied all the requirements for renewal, including continuing education.~~

~~(2) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has expired or who has not worked for more than three years as an applied behavior analyst or an assistant behavior analyst is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the other requirements of this section. [Repealed.]~~

\* \* \*

#### § 4927. APPLICATIONS

~~Applications for licensure and license renewal shall be on forms provided by the The Director shall promulgate applications for licensure and license renewal. 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.~~

\* \* \*

\* \* \* Notaries Public \* \* \*

Sec. 26. 24 V.S.A. § 1160 is amended to read:

#### § 1160. ACKNOWLEDGEMENTS; OATH

(a) A town clerk, commissioned as a notary public pursuant to 26 V.S.A. chapter 103, may take acknowledgements of deeds and other instruments throughout his or her county.

(b) In his or her county, he or she may administer oaths in all cases where an oath is required, without being commissioned as a notary public pursuant to 26 V.S.A. chapter 103.

(c)(1) Each town clerk may designate from among the members of his or her staff at least one notary public to be available to perform notarial acts for the public in the town clerk's office during normal business hours free of charge.

(2) Each individual designated by the town clerk under this subsection shall be commissioned as a notary public pursuant to 26 V.S.A. chapter 103 and shall be exempt from the notary public application fee under that chapter.

Sec. 27. 26 V.S.A. § 5304 is amended to read:

§ 5304. DEFINITIONS

As used in this chapter:

\* \* \*

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

\* \* \*

Sec. 28. 26 V.S.A. § 5305 is amended to read:

§ 5305. EXEMPTIONS

(a) Generally.

(1) The persons set forth in subdivision (2) of this subsection, shall be commissioned as a notary public authorized to perform a notarial act as a matter of law and are exempt from all of the requirements of this chapter, including the requirement to pay a fee, when acting within the scope of their official duties, are exempt from all of the requirements of this chapter, except for the requirements:

~~(A) to apply for a commission as set forth in section 5341(a), (b)(1)-(3), (c), (d), and (e) of this chapter; and~~

~~(B) unless exempted under subsection (c) of this section, to pay the fee set forth in section 5324 of this chapter.~~

(2)(A) Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, assistant judges, county clerks, and after-hours relief from abuse contract employees.

(B) Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Department of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and

Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(3) As used in subdivision (1) of this subsection, "acting within the scope of official duties" means that a person is notarizing a document that:

(A) he or she believes is related to the execution of his or her duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment;

(B) is useful or of assistance to any person or entity identified in subdivision (2) of this subsection (a);

(C) is required, requested, created, used, submitted, or relied upon by any person or entity identified in subdivision (2) of this subsection (a);

(D) is necessary in order to assist in the representation, care, or protection of a person or the State;

(E) is necessary in order to protect the public or property;

(F) is necessary to represent or assist crime victims in receiving restitution or other services;

(G) relates to a Vermont or federal court rule or statute governing any criminal, postconviction, mental health, family, juvenile, civil, probate, Judicial Bureau, Environmental Division, or Supreme Court matter; or

(H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33 of the Vermont Statutes Annotated.

(4)(A) A notarial act that identifies the notary public as a person who is exempt under this subsection shall establish as a matter of law that the person is commissioned as a notary public for the purpose of acting within the scope of his or her official duties under this subsection.

(B) Nothing in this subsection is intended to prohibit prosecution of a person under 3 V.S.A. § 127 (unauthorized practice).

(b) Attorneys.

(1) Attorneys licensed and in good standing in this State are exempt from:

(A) the examination requirement set forth in subsection 5341(b) of this chapter; and

(B) the continuing education requirement set forth in section 5343 of this chapter.

(2) If a complaint of a violation of this chapter is filed in regard to a Vermont licensed attorney, the Office shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

(c) ~~Fees Towns clerks, assistants, and justices of the peace. The following persons are exempt from the fee set forth in section 5324 of this chapter:~~

~~(1) a judge, clerk, or other court staff, as designated by the Court Administrator; A town clerk and his or her assistants may perform notarial acts as a notary public throughout the town clerk's county, provided that they shall comply with all of the requirements of this chapter.~~

~~(2) State's Attorneys and their deputies and Assistant Attorneys General, public defenders, and their staff; Subject to the provisions of subdivision (1) of this subsection, performing notarial acts as a notary public shall be considered within the scope of the official duties of a town clerk and his or her assistants.~~

~~(3) justices Justices of the peace and town clerks and their assistants; and~~

~~(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families are exempt from the fee set forth in section 5324 of this chapter.~~

Sec. 29. 26 V.S.A. § 5361 is amended to read:

§ 5361. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

(a) A notarial act, as defined in subdivision 5304(7)(A) of this chapter, may only be performed in this State by a notary public commissioned under this chapter.

(b) The signature and title of an individual performing a notarial act in this State are prima facie evidence that the signature is genuine and that the individual holds the designated title.

\* \* \* Massage Services \* \* \*

Sec. 30. OFFICE OF PROFESSIONAL REGULATION; ADDENDUM TO PRELIMINARY SUNRISE ASSESSMENT ON MASSAGE THERAPY

(a) On or before January 15, 2020, the Office of Professional Regulation shall prepare and submit to the Senate and House Committees on Government Operations an Addendum to its 2015-2016 Preliminary Sunrise Assessment on Massage Therapy, dated January 5, 2016. The Addendum shall apply the

criteria set forth in 26 V.S.A. chapter 57 (review of regulatory laws) to assess whether new regulation of businesses or individuals offering massage services will serve the interests of public safety pertaining to sexual misconduct and human trafficking. Development of the Addendum shall not require the Office to repeat its 2010 and 2016 analyses of proposals by applicants for sunrise review.

(b) In preparing the Addendum, the Office shall consult with the Vermont Center for Crime Victim Services, the Vermont Network Against Domestic and Sexual Violence, the Vermont Department of Public Safety, the Vermont Police Association, the Vermont Association of Chiefs of Police, the Vermont Human Trafficking Task Force, representatives of massage therapists, and such other advocacy organizations, researchers, State and federal agencies, and law enforcement authorities as the Office may deem appropriate.

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

#### Sec. 31. EFFECTIVE DATE

This act shall take effect on July, 1, 2019.

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

Senator Ashe, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto:

In Sec. 8 (creation of position within the Office of Professional Regulation; licensing) by striking out in its entirety subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived entirely from the Office's Professional Regulatory Fee Fund.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, Senators Clarkson, Bray, Collamore, Pollina and



White moved to amend the proposal of amendment of the Committee on Government Operations, as amended as follows:

By striking out Sec. 28 in its entirety and inserting in lieu thereof the following:

Sec. 28. 26 V.S.A. § 5305 is amended to read:

§ 5305. EXEMPTIONS

(a) Generally Judiciary- and law enforcement-related employees.

(1) Employee exemptions.

(A) Judiciary-related.

(i) The persons set forth in subdivision (2)(A) of this subsection, when acting within the scope of their official duties, are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter, except for the requirements:

(A) requirement to apply for a commission as set forth in section 5341(a), (b)(1)–(3), (c), (d), and (e) of this chapter; and

(B) unless exempted under subsection (c) of this section, to pay the fee set forth in section 5324 of this chapter.

(ii) A commission issued to a person under this subdivision (A) shall not be considered a license.

(B) Law enforcement-related.

(i) The persons set forth in subdivision (2)(B) of this subsection, when acting within the scope of their official duties, shall be commissioned as notaries public authorized to perform a notarial act as a matter of law and are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter.

(ii) A notarial act that identifies the notary public as a person who is exempt under this subdivision (B) shall establish as a matter of law that the person is commissioned as a notary public for the purpose of acting within the scope of official duties under this subsection.

(2) Employees, defined.

(A) Judiciary-related. Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, assistant judges, county clerks, and after-hours relief from abuse contract employees.

(B) Law enforcement-related. Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Department of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(3) Official duties, defined. As used in subdivision (1) of this subsection, "acting within the scope of official duties" means that a person is notarizing a document that:

(A) he or she believes is related to the execution of his or her duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment;

(B) is useful or of assistance to any person or entity identified in subdivision (2) of this subsection (a);

(C) is required, requested, created, used, submitted, or relied upon by any person or entity identified in subdivision (2) of this subsection (a);

(D) is necessary in order to assist in the representation, care, or protection of a person or the State;

(E) is necessary in order to protect the public or property;

(F) is necessary to represent or assist crime victims in receiving restitution or other services;

(G) relates to a Vermont or federal court rule or statute governing any criminal, postconviction, mental health, family, juvenile, civil, probate, Judicial Bureau, Environmental Division, or Supreme Court matter; or

(H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33 of the Vermont Statutes Annotated.

(b) Attorneys.

(1) Attorneys licensed and in good standing in this State are exempt from:

(A) the examination requirement set forth in subsection 5341(b) of this chapter; and

(B) the continuing education requirement set forth in section 5343 of this chapter.

(2) If a complaint of a violation of this chapter is filed in regard to a Vermont licensed attorney, the Office shall refer the complaint to the

Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

(c) ~~Fees Town clerks, assistants, and justices of the peace. The following persons are exempt from the fee set forth in section 5324 of this chapter:~~

~~(1)(A) a judge, clerk, or other court staff, as designated by the Court Administrator; A town clerk and his or her assistants may perform notarial acts as notaries public throughout the town clerk's county, provided that they shall comply with all of the requirements of this chapter, except as provided in subdivision (2) of this subsection.~~

~~(B) Subject to the provisions of subdivision (A) of this subdivision (1), performing notarial acts as a notary public shall be considered within the scope of the official duties of a town clerk and his or her assistants.~~

~~(2) State's Attorneys and their deputies and Assistant Attorneys General, public defenders, and their staff;~~

~~(3) justices Justices of the peace and town clerks and their assistants; and~~

~~(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families are exempt from the fee set forth in section 5324 of this chapter.~~

~~(d) Unauthorized practice. Nothing in this section is intended to prohibit prosecution of a person under 3 V.S.A. § 127 (unauthorized practice).~~

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that 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.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 521.**

Senator Perchlik, for the Committee on Education, to which was referred House bill entitled:

An act relating to amending the special education laws.

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

\* \* \* Act 173 amendments \* \* \*

Sec. 1. PURPOSE

(a) 2018 Acts and Resolves No. 173 made substantial changes to the funding of special education services and directed the Agency of Education to assist supervisory unions in adopting best practices for the delivery of special education services. This act makes certain minor amendments to the special education laws that are proposed by the Agency of Education to clarify some of the changes made in Act 173.

(b) This act also amends certain dates in Act 173 to provide an additional year to prepare for the changes in the funding and delivery of special education services required by Act 173.

Sec. 2. 2018 Acts and Resolves No. 173, Sec. 2 is amended to read:

Sec. 2. GOALS

\* \* \*

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal year ~~2021~~ 2022, for school year ~~2020-2021~~ 2021-2022, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

\* \* \*

Sec. 3. 16 V.S.A. § 2961 is amended to read:

§ 2961. CENSUS GRANT

(a) As used in this section:

\* \* \*

(3) "Long-term membership" of a supervisory union in any school year means the average of the supervisory union's average daily membership over the most recent three school years for which data are available.

(4) "Uniform base amount" means an amount determined by:

(A) dividing an amount:

(i) equal to the average State appropriation for fiscal years ~~2018, 2019, and 2020~~ 2019, 2020, and 2021 for special education under sections 2961 (standard mainstream block grants), 2963 (special education

expenditures reimbursement), and 2963a (exceptional circumstances) of this title; and

(ii) increased by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis; by

(B) the statewide ~~average daily membership for prekindergarten through grade 12 for the 2019–2020 school year~~ long-term membership.

\* \* \*

(d)(1)(A) For fiscal year ~~2021~~ 2022, the amount of the census grant for a supervisory union shall be:

(i) the average amount it received for fiscal years ~~2017, 2018, and 2019~~ 2018, 2019, and 2020 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (1) shall be divided by the supervisory union's long-term membership, to determine the base amount of the census grant, which is the amount of the census grant calculated on a per student basis.

(2) For fiscal year ~~2025~~ 2026 and subsequent fiscal years, the amount of the census grant for a supervisory union shall be the uniform base amount multiplied by the supervisory union's long-term membership.

(3) For fiscal years ~~2022, 2023, and 2024~~ 2023, 2024, and 2025, the amount of the census grant for a supervisory union shall be determined by multiplying the supervisory union's long-term membership by a base amount established under this subdivision. The base amounts for each supervisory union for fiscal years ~~2022, 2023, 2024~~ 2023, 2024, and 2025 shall move gradually the supervisory union's fiscal year ~~2021~~ 2022 base amount to the fiscal year ~~2025~~ 2026 uniform base amount by prorating the change between the supervisory union's fiscal year ~~2021~~ 2022 base amount and the fiscal year ~~2025~~ 2026 uniform base amount over this three-fiscal-year period.

Sec. 4. 16 V.S.A. § 2967 is amended to read:

§ 2967. AID PROJECTION

(a) On or before December 15, the Secretary shall publish an estimate, by each supervisory union, of its anticipated State special education expenditures funding under this chapter for the ensuing school year.

(b) As used in this section, State special education expenditures funding shall include:

(1) ~~costs~~ funds eligible for grants and reimbursements under sections 2961 and 2962 of this title;

(2) ~~costs~~ funds for services for persons who are visually impaired;

(3) ~~costs~~ funds for persons who are deaf or hard of hearing;

(4) ~~costs~~ funds for the interdisciplinary team program;

(5) funds expended for training and programs to meet the needs of students with emotional or behavioral challenges under subsection 2969(c) of this title; and

(6) funds expended for training under subsection 2969(d) of this title.

Sec. 5. 16 V.S.A. § 2975 is amended to read:

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL ASSISTANCE

~~The Secretary may use up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature.~~ funds for allowable special education expenditures, as defined in State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature. These funds shall be appropriated in the amount of two percent times the Census Grant as defined in section 2961 of this title. The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

Sec. 6. 2018 Acts and Resolves No. 173, Sec. 12 is amended to read:

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018–2019, 2019–2020, ~~and 2020–2021, and 2021–2022~~ school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled “Expanding and Strengthening

Best-Practice Supports for Students who Struggle” delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance with the goal of embedding the following best practices for the delivery of special education services:

- (1) ensuring core instruction meets most needs of most students;
- (2) providing additional instructional time outside core subjects to students who require additional support, rather than providing interventions instead of core instruction;
- (3) ensuring students who require additional support receive all instruction from highly skilled teachers;
- (4) creating or strengthening a systems-wide approach to supporting positive student behaviors based on expert support; and
- (5) providing specialized instruction from skilled and trained experts to students with more intensive needs.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 and 2021, and 2022 the amount of \$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, and 2021, and 2022 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

Sec. 7. 2018 Acts and Resolves No. 173, Sec. 16 is amended to read:

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, 2019 2020, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules

shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

Sec. 8. 2018 Acts and Resolves No. 173, Sec. 17 is amended to read:

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year ~~2021~~ 2022.

(b) On or before November 1, ~~2019~~ 2020, a supervisory union shall submit to the Secretary such information as required:

(1) by the Secretary to estimate the supervisory union's projected fiscal year ~~2021~~ 2022 extraordinary special education reimbursement under Sec. 5 of this act; and

(2) for IDEA reporting in a format specified by the Secretary.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

Sec. 9. 2018 Acts and Resolves No. 173, Sec. 18 is amended to read:

Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION COSTS

\* \* \*

(b) This section is repealed on July 1, ~~2020~~ 2021.

Sec. 10. 2018 Acts and Resolves No. 173, Sec. 23 is amended to read:

Sec. 23. EFFECTIVE DATES

\* \* \*

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, ~~2020~~ 2021.

\* \* \*



\* \* \* State Advisory Panel on Special Education \* \* \*

Sec. 11. 16 V.S.A. § 2945 is amended to read:

§ 2945. STATE ADVISORY COUNCIL PANEL ON SPECIAL EDUCATION

~~(a) There is created the Advisory Council on Special Education that shall consist of 19 members. All members of the Council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either individuals with disabilities or parents of children with disabilities.~~

~~(1) Seventeen of the members shall be appointed by the Governor with the advice of the Secretary. Among the gubernatorial appointees shall be:~~

~~(A) teachers;~~

~~(B) representatives of State agencies involved in the financing or delivery of related services to children with disabilities;~~

~~(C) a representative of independent schools;~~

~~(D) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;~~

~~(E) a representative from the State juvenile and adult corrections agency;~~

~~(F) individuals with disabilities;~~

~~(G) parents of children with disabilities, provided the child shall be younger than 26 years old at the time his or her parent is appointed to the Council;~~

~~(H) State and local education officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;~~

~~(I) a representative of higher education who prepares special education and related services personnel;~~

~~(J) a representative from the State child welfare department responsible for foster care;~~

~~(K) special education administrators; and~~

~~(L) two at-large members.~~

~~(2) In addition, two members of the General Assembly shall be appointed, one from the House of Representatives and one from the Senate.~~

~~The Speaker shall appoint the House member and the Committee on Committees shall appoint the Senate member.~~

~~(b) The Council shall elect its own chair from among its membership. The Council shall meet annually at the call of the Chair, and other meetings may be called by the Chair at such times and places as he or she may determine to be necessary.~~

~~(c) The members of the Council who are employees of the State shall receive no additional compensation for their services, but actual and necessary expenses shall be allowed State employees, and shall be charged to their departments or institutions. The members of the Council who are not employees of the State shall receive a per diem compensation as provided under 32 V.S.A. § 1010 for each day of official business and reimbursement for actual and necessary expenses at the rate allowed State employees.~~

~~(d) The Council shall:~~

~~(1) assume all responsibilities required of the State advisory panel by federal law;~~

~~(2) review periodically the rules, regulations, standards, and guidelines pertaining to special education and recommend to the State Board any changes it finds necessary;~~

~~(3) comment on any new or revised rules, regulations, standards, and guidelines proposed for issuance; and~~

~~(4) advise the State Board in the development of any State plan for provision of special education.~~

(a) The State Advisory Panel on Special Education (Panel) is created to provide guidance with respect to special education and related services for children with disabilities in the State. Members of the Panel shall be appointed by the Governor, with the advice of the Secretary of Education. The Panel shall perform the duties, and members of the Panel shall be appointed, in accordance with federal law. In addition to members appointed to the Panel to satisfy the requirements under federal law, the members of the Panel shall include a representative of each body designated by the State under federal law as the Parent Training and Information Center and the Protection and Advocacy System.

(b) The Panel shall elect an executive committee from among its members. The executive committee shall be composed of seven members of the Panel, one of whom shall be the chair of the Panel. A majority of the members of the executive committee shall be individuals with disabilities or parents of children with disabilities (ages birth through 26 years of age). The executive

committee shall call meetings of the Panel and shall direct the work of the Panel.

(c) The Panel shall advise both the Agency of Education and the State Board of Education on those matters upon which the Panel is required, under federal law, to advise the State Education Agency.

#### Sec. 12. TRANSITION

(a) On or before August 1, 2019, members shall be appointed to the State Advisory Panel on Special Education under 16 V.S.A. § 2945 to ensure that the membership of the Panel complies with federal law, including the appointment of members who fulfill the requirement that a majority of the members be individuals with disabilities or parents of children with disabilities.

(b) On or before December 1, 2019, the Panel shall, in consultation with the Agency of Education, review and update its bylaws, and shall include in its bylaws term limits for all or certain of its members, as the Panel deems appropriate.

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

#### Sec. 13. EFFECTIVE DATES

Secs. 1, 2, 6–12 and this section shall take effect on passage. Secs. 3–5 shall take effect on July 1, 2021.

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

Senator McCormack, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Education with the following amendments thereto:

First: In Sec. 11, amending 16 V.S.A. § 2945, by adding a sentence to the end of subsection (a) to read as follows: The total number of members on the Panel shall not exceed 37 members.

Second: In Sec. 11, amending 16 V.S.A. § 2945, by adding a new subsection (d) to read as follows:

(d) Members of the Panel shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010.

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, and the recommendation of proposal of amendment of the Committee on Education was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education, as amended?, Senator Baruth moved to amend the proposal of amendment of the Committee on Education, as amended by striking out Sec. 13 and its reader assistance heading in their entirety and inserting in lieu thereof the following:

\* \* \* Act 46 \* \* \*

Sec. 13. SCHOOL DISTRICT MERGERS; STATE BOARD OF  
EDUCATION ORDER

(a) Statement of intent.

(1) 2017 Acts and Resolves No. 49 made “useful changes to the merger time lines” contained in 2015 Acts and Resolves No. 46 “without weakening or eliminating the Act’s fundamental phased merger and incentive structures and requirements.” Act 49 reemphasized this point by noting that “[n]othing in this act should be interpreted to suggest that it is acceptable for a school district to fail to take reasonable and robust action to seek to meet the goals of Act 46.”

(2) Similarly, nothing in this act, which permits a final extension of the deadline for mergers required by the State Board of Education, should be interpreted to weaken or undermine in any way the State Board’s final merger order of November 28, 2018 or to encourage delay for school districts that want to merge on July 1, 2019. Except as modified by this act, school districts remain under all obligations under Acts 46 and 49, whether or not they choose to delay the operational date of their merger.

(b) Definitions. As used in this section:

(1) “Default Articles” means the Default Articles of Agreement issued with the State Board Report.

(2) “Existing district” means a union school district created by vote of the electorate on or after July 1, 2014 into which a merging district is ordered by the State Board Order to merge.

(3) “Forming district” means a school district that is ordered by the State Board Order to merge with other forming districts to create a newly formed district.

(4) “Initial members” mean the initial members of the board of a newly formed district elected under Article 10 of the default articles.

(5) “Merging district” means a school district that is ordered by the State Board Order to merge into an existing district.

(6) “Newly formed district” means a union school district that is formed by the State Board Order by merging forming districts.

(7) “State Board Order” means the section of the State Board Report entitled “State Board of Education’s ‘order merging and realigning districts and supervisory unions where necessary pursuant to Act 46, Sec. 10(b).’”

(8) “State Board Report” means the “Final Report of the Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10” issued by the State Board of Education dated November 28, 2018.

(c) Notwithstanding any provision of law to the contrary:

(1) Merger deadline extension.

(A) Except as provided in subdivisions (1)(B) and (C) of this subsection, the operational deadline for school district mergers under the State Board Order shall be on July 1, 2019 or July 1, 2020.

(i) For the mergers of forming districts into a newly formed district, the school board of the newly formed district, operating in accordance with the default articles, shall, on or before June 30, 2019, determine, by majority vote of the initial members representing a quorum, the operational date of merger.

(ii) For the merger of a merging district into an existing district, the school board of the existing district shall, on or before June 30, 2019, determine, by majority vote of members representing a quorum, the operational date of merger.

(B) The operational deadline for school district mergers under the State Board Order shall be on July 1, 2019 if the relevant board does not, on or before June 30, 2019, determine the operational date of the merger under subdivision (1)(A) of this subsection.

(C) The deadline for mergers that, in the State Board Order, are conditioned upon approval of voters of the existing district shall be as specified in the State Board Order.

(2) Default Articles. The Default Articles for each newly formed district that has an operational deadline of July 1, 2020 are amended as follows:

(A) by striking out the date “June 30, 2019” wherever it appears and inserting in lieu thereof the date “June 30, 2020”;

(B) by striking out the date “July 1, 2019” wherever it appears and inserting in lieu thereof the date “July 1, 2020”; provided, however, the date “July 1, 2019” shall not be changed in Article 9;

(C) by striking out the date “December 31, 2019” wherever it appears and inserting in lieu thereof the date “December 31, 2020”;

(D) by striking out the date “July 1, 2020” wherever it appears and inserting in lieu thereof the date “July 1, 2021”;

(E) by striking out the academic year “2019–2020” wherever it appears and inserting in lieu thereof the academic year “2020–2021”;

(F) by striking out the academic year “2020–2021” wherever it appears and inserting in lieu thereof the academic year “2021–2022”;

(G) by striking out the academic year “2021–2022” wherever it appears and inserting in lieu thereof the academic year “2022–2023”; and

(H) by striking out the fiscal year “2020” wherever it appears and inserting in lieu thereof the fiscal year “2021”.

(3) Small schools grant.

(A) If a forming district or merging district that merges under the State Board Order has an operational merger date of July 1, 2019, and that district was an “eligible school district” as defined in 16 V.S.A. § 4015, as in effect on June 30, 2019, that received a small schools support grant under that section in the fiscal year two years prior to the first fiscal year of merger, then the newly formed district or existing district, as applicable, shall receive an annual small schools support grant in an amount equal to the small schools support grant received by the forming district or merging district, as applicable, in the fiscal year two years prior to the first fiscal year of merger. If more than one forming district or merging district was an eligible school district and merged into the same newly formed district or existing district, as applicable, then the small schools support grant for the newly formed district or existing district, as applicable, shall be in an amount equal to the total combined small schools support grants the forming districts or the merging districts, as applicable, received in the fiscal year two years prior to the first fiscal year of merger.

(B) Payment of the grant under subdivision (3)(A) of this subsection shall continue annually unless explicitly repealed by the General Assembly; provided, however, that the Secretary shall discontinue payment of the grant in the fiscal year following closure by the school district of a school that qualified

the district for the grant; and further provided that if a school building that housed a school that qualified the district for the grant is closed in order to consolidate with another school into a renovated or new school building, then the Secretary shall continue to pay the grant during the repayment term of any bonded indebtedness incurred in connection with the consolidation-related renovation or construction.

(4) Union school district budget.

(A) If the first budget of a newly formed district has not been approved by voters on or before June 30 for the 2020 or 2021 fiscal year, the Agency of Education shall authorize an amount of education spending for that newly formed district equal to:

(i) the cumulative education spending amount authorized by the most recently voter approved school budgets of the forming districts; multiplied by

(ii) the percentage that represents the average statewide increase from the prior fiscal year to the current fiscal year in school district education spending authorized by voter approved school district budgets, based on data received by the Agency of Education on or before June 14 of the prior fiscal year. As used in this subdivision (ii), for mergers under the State Board Order that are operational on July 1, 2019, the prior fiscal year shall be fiscal year 2019 and the current fiscal year shall be fiscal year 2020, and for mergers under the State Board Order that are operational on July 1, 2020, the prior fiscal year shall be fiscal year 2020 and the current fiscal year shall be fiscal year 2021.

(B) The amount authorized by the Agency of Education under subdivision (4)(A) of this subsection shall be the “education spending” of the newly formed district for the relevant fiscal year under 16 V.S.A. chapter 133.

(C) The school board of the newly formed district, operating in accordance with the default articles, shall determine how funds shall be expended in the relevant fiscal year under this subdivision (4). In addition, the school board of the newly formed district shall have the authority to expend any other funds received from other sources in the relevant fiscal year under this subdivision (4), including endowments, parental fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under 16 V.S.A. chapter 101.

Sec. 14. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

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\* \* \*

(2) “Enrollment” means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student. Students enrolled in prekindergarten programs shall not be counted.

\* \* \*

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

#### Sec. 15. EFFECTIVE DATES

Secs. 1, 2, 6–13 and this section shall take effect on passage. Secs. 3–5 shall take effect on July 1, 2021. Sec. 14 (small school support) shall take effect on July 1, 2019.

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

An act relating to amending special education laws and Act 46.

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

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

#### **S. 86.**

House proposal of amendment to Senate bill entitled:

An act relating to increasing the legal age for buying and using cigarettes, electronic cigarettes, and other tobacco products from 18 to 21 years of age.

Was taken up.

The House proposes to the Senate to amend the bill by striking out Sec. 8, effective date, in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

#### Sec. 8. EFFECTIVE DATE

This act shall take effect on September 1, 2019.

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