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And Special Session**



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Compiled and Edited by:

Donald G. Milne, Clerk of the House and Cathleen M. Cameron, Journal Clerk

S. 42

Senate bill, entitled

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration

Adjournment

At two o'clock and thirty-five minutes in the afternoon, on motion of **Rep. McDonald of Berlin**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

Friday, May 1, 2009

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Pastor David Neulun of Morningstar Fellowship, Barre, VT.

Memorial Service

The Speaker placed before the House the following name of member of past sessions of the Vermont General Assembly who had passed away recently:

Joseph T. Steventon of Rochester

Member of the House from District 65

Sessions 1969, 1971 and 1973

Member from District Addison/Rutland/Windsor

Sessions 1975, 1977 and 1979

Message from Governor

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

Mr. Speaker:

I am directed by the Governor to inform the House that on the twenty-ninth day of April, 2008, he approved and signed bills originating in the House of the following titles:

H. 160 An act relating to the charter of the town of Hartford

H. 186 An act relating to authorizing the Department of Fish and Wildlife to administer polygraph examinations to applicants for law enforcement positions

Message from Governor

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

Mr. Speaker:

I am directed by the Governor to inform the House that on the thirtieth day of April, 2009, he approved and signed a bill originating in the House of the following title:

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

Message from the Senate No. 49

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

H. 69. An act relating to approval of amendments to the charter of the city of Rutland.

H. 205. An act relating to reporting to the Vermont criminal justice training council.

H. 430. An act relating to approval of an amendment to the charter of the town of St. Johnsbury .

H. 433. An act relating to approval of amendments to the charter of the town of Berlin.

And has passed the same in concurrence.

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

H. 6. An act relating to the sale of engine coolants and antifreeze.

H. 249. An act relating to volunteer nonprofit service organizations and casino nights.

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

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

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

S. 94. An act relating to licensing state forestland for maple sugar production.

And has concurred therein with an amendment in the passage of which the concurrence of the House is requested.

Bill Referred to Committee on Ways and Means

H. 243

House bill, entitled

An act relating to the creation of an apprentice hunting license

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Bills Referred to Committee on Appropriations

Senate bills of the following titles, appearing on the Calendar, carrying appropriations, under the rule, were referred to the committee on Appropriations:

S. 48

Senate bill, entitled

An act relating to marketing of prescription drugs;

S. 51

Senate bill, entitled

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

Joint Resolution Referred to Committee

J.R.H. 28

Joint resolution relating to payments made by the Independent System Operator--New England (ISO-NE) on behalf of Vermont and other states to nonproducing generators and to the legal authority of the ISO-NE

Offered by: Representative Obuchowski of Rockingham

Whereas, in 1971, the New England Power Pool (NEPOOL) was established “to assure that the bulk electric power supply of the New England region is provided reliably and economically through central dispatch of virtually all of the generation and transmission facilities,” and

Whereas, in 1996, the Federal Energy Regulatory Commission (FERC) issued Order No. 888 (61 Fed. Reg. 21540) requiring that all “tight power pools,” including NEPOOL, be organized to “establish open, nondiscriminatory membership provisions,” and

Whereas, in 1997, FERC, in accordance with Order No. 888 and Section 203 of the Federal Power Act, 16 U.S.C. § 824(b) (1994), which requires FERC to approve a public utility’s disposition of equipment under its jurisdiction that is valued at greater than \$50,000.00, conditionally authorized the establishment of the Independent System Operator – New England (ISO-NE), a nonprofit corporation, as the successor owner of NEPOOL’s electric generation transmission facilities, and

Whereas, as NEPOOL stated in its FERC filings related to the establishment of ISO-NE, the new entity would “provide a more open, competitive market for wholesale sales and purchases of electric energy in the New England region,” and

Whereas, ISO-NE administers a pool-wide open access transmission tariff, and has a board of directors that, after initial NEPOOL and state regulatory authority input, is now self-sustaining, and

Whereas, the administration of ISO-NE is now under new and critical scrutiny, and

Whereas, Connecticut Attorney General Richard Blumenthal has announced the launching of an antitrust investigation into ISO-New England, alleging that the region’s consumers were swindled out of \$85.8 million, and

Whereas, the allegations are premised on the grounds that electric power generators under ISO-NE’s jurisdiction “failed to provide a watt of power,” notwithstanding a federal rule requiring them to provide power on ISO-NE’s request, and

Whereas, specifically, the Connecticut attorney general is alleging that since 2006, ISO-NE submitted 108 separate requests, mostly during peak demand periods, for power transmission that were all ignored, and that the power ultimately was purchased from alternative generators, causing consumers to pay twice, and

Whereas, ISO-NE has paid the allegedly nonproducing generators' owners a total of \$85.8 million during this period of time, and

Whereas, at least 3 to 4 million dollars of the \$85.8 million is estimated by utility regulators to be from Vermont consumers, and

Whereas, ISO-NE is now claiming that it erred in testimony before FERC and that the generators, which ISO-NE is currently refusing to identify, were never actually requested to supply power because their bids were so high, and

Whereas, it is imperative that the truth of these allegations be determined, appropriate legal actions be taken if proven warranted, and any funds that were improperly paid to generators be restored to consumers, and

Whereas, Vermonters are capable of developing their own electric power solutions, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly requests that:

- 1) FERC investigate the testimony that ISO-NE gave to the commission regarding payments made to, and requests made of, electric power generators.
- 2) Vermont Attorney General William Sorrell join Connecticut Attorney General Richard Blumenthal's anti-trust investigation of ISO-NE.
- 3) The public service department and public service board work cooperatively with their New England counterparts on any investigative activities that may arise as a result of the Connecticut Attorney General's allegations.
- 4) The public service department, in consultation with the public service board, develop a proposal for FERC consideration that will terminate all jurisdiction and responsibility of ISO-NE for the transmission or distribution of electric energy either to or within Vermont, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to FERC Chair Joe Wellinohoff, Public Service Department Commissioner David O'Brien, Public Service Board Chair James Volz, Attorney General William Sorrell, and Connecticut Attorney General Richard Blumenthal.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the committee on Commerce and Economic Development.

**Third Reading; Bill Passed in Concurrence
With Proposals of Amendment**

S. 129

Senate bill, entitled

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

Was taken up and pending third reading of the bill, **Rep. Donahue of Northfield** moved to amend the recommendation of proposal of amendment by the committee on Health Care, as follows:

By striking Sec. 11 and inserting a new Sec. 11 to read:

Sec. 11. 18 V.S.A. § 9440(c)(2) is amended to read:

(c) The application process shall be as follows:

* * *

(2)(A) Prior to filing an application for a certificate of need, an applicant shall file an adequate letter of intent with the commissioner no less than 30 days or, in the case of review cycle applications under section 9439 of this title, no less than 45 days prior to the date on which the application is to be filed. The letter of intent shall form the basis for determining the applicability of this subchapter to the proposed expenditure or action. A letter of intent shall become invalid if an application is not filed within six months of the date that the letter of intent is received or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule. Except for requests for expedited review under subdivision (5) of this subsection, public notice of such letters of intent shall be provided in newspapers having general circulation in the region of the state affected by the letter of intent. The notice shall identify the applicant, the proposed new health care project, and the date by which a competing application or petition to intervene must be filed. In addition, a copy of the public notice shall be sent to the clerk of the municipality in which the health care facility is located. Upon receipt, the clerk shall post the notice in or near the clerk's office and in at least two other public places in the municipality.

(B) Applicants who agree that their proposals are subject to jurisdiction pursuant to section 9434 of this title shall not be required to file a letter of intent pursuant to subdivision (A) of this subdivision (2) and may file an application without further process. Public notice of the application shall be provided upon filing as provided for in subdivision (A) of this subdivision (2) for letters on intent.

Which was agreed to.

Pending third reading of the bill, **Rep. Koch of Barre Town** moved to amend the recommendation of proposal of amendment of the committee on Health Care as follows:

In Sec. 8, subdivisions 9401(b)(2) and (4) of Title 18, by striking "Promote planning" preceding "mechanisms" in both subdivisions and inserting in lieu thereof "Utilize planning, market, and other"

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Bill Amended, Read Third Time and Passed

H. 125

House bill, entitled

An act relating to farm-fresh milk

Was taken up and pending third reading of the bill, **Rep. Bray of New Haven** moved to amend the bill as follows:

First: In Sec. 2, 6 V.S.A. § 2777(c)(1), after the words "unpasteurized milk" by striking the word "should" and inserting in lieu thereof the word "shall"

Second: In Sec. 2, 6 V.S.A. § 2778, by striking subsection (a) and inserting in lieu thereof a new subsection (a) to read:

(a) Delivery of unpasteurized milk is permitted only within the state of Vermont and only of milk produced by those producers meeting the requirements of subsection 2777(f) of this chapter.

Third: In Sec. 2, 6 V.S.A. § 2778(b), by striking subdivision (2) and inserting in lieu thereof with a new subdivision (2) to read:

(2) Delivery shall be directly to the customer at the customer's home or into a refrigerated unit at the customer's home if such unit is capable of maintaining the unpasteurized milk at 40 degrees Fahrenheit until obtained by the customer.

Fourth: In Sec. 2, 6 V.S.A. § 2778, by striking subsection (c) and inserting in lieu thereof a new subsection (c) to read:

(c) A producer may contract with another individual to deliver the milk in accordance with this section. The producer shall be jointly and severally liable for the delivery of the milk in accordance with this section.

Fifth: In Sec. 3, 6 V.S.A. § 2723(3) by striking: "A person producing unpasteurized milk under section 2777 of this title." and inserting in lieu thereof: "A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only."

Sixth: In Sec. 2, 6 V.S.A. § 2777(e), in the second sentence, after: "A producer selling" by striking: "fewer than 12.5 gallons" and inserting in lieu thereof: "12.5 or fewer gallons"

Which was agreed to.

Pending third reading of the bill, **Rep. Hubert of Milton** moved to amend the bill as follows:

In Sec. 2, 6 V.S.A. § 2777(d), by adding a subdivision (6) to read as follows:

(6) Insurance. Each producer intending to sell unpasteurized milk pursuant to this chapter shall have liability insurance that covers liability arising from the sale of unpasteurized milk and shall post a proof of such insurance on the farm in a prominent place that is easily visible to customers.

Which was disagreed to.

Pending third reading of the bill, **Rep. Till of Jericho** moved to amend the bill as follows:

In Sec. 2, 6 V.S.A. § 2777(f)(3)(A) after subdivision (ii) by adding a new subdivision (iii) and a subdivision (iv) to read as follows:

(iii) E. coli HO157:H7: No tolerance (cattle and goats);

(iv) Listeria monocytogenes: No tolerance (cattle and goats);

and by renumbering the existing subdivision (iii) to be subdivision (v)

Which was disagreed to.

Pending third reading of the bill, **Reps. Branagan of Georgia and Dickinson of St. Albans Town** moved to amend the bill as follows:

First: In Sec. 2, 6 V.S.A. § 2777(f) by striking subdivision (3) in its entirety and by renumbering the current § 2777(f)(4) to be § 2777(f)(3)

Second: In Sec. 2, 6 V.S.A. § 2777(d) by adding a subdivision (6) to read:

(6) Testing.

(A) A producer shall have unpasteurized milk tested twice per month by a U.S. Food and Drug Administration accredited laboratory. Milk shall be tested for the following and the results shall be below these limits:

(i) Total bacterial (aerobic) count: 15,000 cfu/ml (cattle and goats);

(ii) Total coliform count: 10 cfu/ml (cattle and goats);

(iii) Somatic cell count: 225,000/ml (cattle); 500,000/ml (goats).

(B) If any test results exceed these limits, it is recommended that the laboratory notify the agency of the results, and the producer shall notify the agency within five days of receiving the results.

(C) Test results shall be kept on file for one year and shall be posted on the farm in a prominent place and be easily visible to customers. The producer shall provide test results to the farm's customers or the agency if requested.

Pending the question, Shall the bill be amended as offered by Rep. Branagan of Georgia and Dickinson of St. Albans Town? **Rep. Nease of Johnson** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as offered by Rep. Branagan of Georgia and Dickinson of St. Albans Town? was decided in the negative. Yeas, 53. Nays, 73.

Those who voted in the affirmative are:

Ainsworth of Royalton	Higley of Lowell	Mitchell of Barnard
Andrews of Rutland City	Hube of Londonderry	Mook of Bennington
Bohi of Hartford	Hubert of Milton	Morrissey of Bennington
Branagan of Georgia	Keenan of St. Albans City	Myers of Essex
Brennan of Colchester	Kilmartin of Newport City	O'Brien of Richmond
Canfield of Fair Haven	Koch of Barre Town	O'Donnell of Vernon
Cheney of Norwich	Komline of Dorset	Pearce of Richford
Clerkin of Hartford	Krawczyk of Bennington	Perley of Enosburg
Condon of Colchester	Larocque of Barnet	Potter of Clarendon
Consejo of Sheldon	Lewis of Derby	Pugh of South Burlington
Corcoran of Bennington	Malcolm of Pawlet	Savage of Swanton
Devereux of Mount Holly	Manwaring of Wilmington	Scheuermann of Stowe
Dickinson of St. Albans Town	Marcotte of Coventry	Till of Jericho
Donaghy of Poultney	McAllister of Highgate	Turner of Milton
Fagan of Rutland City	McDonald of Berlin	Wheeler of Derby
Frank of Underhill	McFaun of Barre Town	Winters of Williamstown
Gilbert of Fairfax	McNeil of Rutland Town	Wright of Burlington
	Miller of Shaftsbury	Young of St. Albans City

Those who voted in the negative are:

Acinapura of Brandon	Head of South Burlington	Pellett of Chester
Ancel of Calais	Howard of Rutland City	Peltz of Woodbury
Aswad of Burlington	Howrigan of Fairfield	Poirier of Barre City
Atkins of Winooski	Jerman of Essex	Ram of Burlington
Bissonnette of Winooski	Johnson of South Hero	Reis of St. Johnsbury
Botzow of Pownal	Kitzmiller of Montpelier	Rodgers of Glover
Bray of New Haven	Klein of East Montpelier	Shand of Weathersfield
Browning of Arlington	Lanpher of Vergennes	Sharpe of Bristol
Burke of Brattleboro	Lawrence of Lyndon	Smith of Mendon
Clarkson of Woodstock	Leriche of Hardwick	South of St. Johnsbury
Conquest of Newbury	Lippert of Hinesburg	Spengler of Colchester
Copeland-Hanzas of	Lorber of Burlington	Stevens of Waterbury
Bradford	Macaig of Williston	Stevens of Shoreham
Davis of Washington	Maier of Middlebury	Sweeney of Windsor
Deen of Westminster	Marek of Newfane	Taylor of Barre City
Donahue of Northfield	Martin of Springfield	Toll of Danville
Edwards of Brattleboro	Masland of Thetford	Townsend of Randolph
Emmons of Springfield	McCullough of Williston	Waite-Simpson of Essex
Evans of Essex	Minter of Waterbury	Webb of Shelburne
Fisher of Lincoln	Moran of Wardsboro	Weston of Burlington
French of Shrewsbury	Mrowicki of Putney	Wilson of Manchester
French of Randolph	Nease of Johnson	Wizowaty of Burlington
Geier of South Burlington	Nuovo of Middlebury	Zenie of Colchester
Greshin of Warren	Obuchowski of Rockingham	Zuckerman of Burlington
Haas of Rochester	Peaslee of Guildhall	

Those members absent with leave of the House and not voting are:

Adams of Hartland	Grad of Moretown	Milkey of Brattleboro
Audette of South Burlington	Heath of Westford	Morley of Barton
Baker of West Rutland	Helm of Castleton	Orr of Charlotte
Clark of Vergennes	Hooper of Montpelier	Partridge of Windham
Courcelle of Rutland City	Johnson of Canaan	Smith of Morristown
Crawford of Burke	Larson of Burlington	Trombley of Grand Isle
Donovan of Burlington	Lenes of Shelburne	Westman of Cambridge
Flory of Pittsford	Martin of Wolcott	

Pending third reading of the bill, **Reps. Branagan of Georgia and Dickinson of St. Albans Town** moved to amend the bill as follows:

First: In Sec. 2, 6 V.S.A. § 2777(f), by striking subdivision (1) and renumbering the remaining subdivisions to be numerically correct

Second: In Sec. 2, 6 V.S.A. § 2777(d), by adding a subdivision (6) to read as follows:

(6) Inspection. The agency shall annually inspect the producer's facility to determine whether the producer is in compliance with the sanitary standards listed in subsection (c) of this section.

Which was disagreed to.

Pending third reading of the bill, **Rep. Savage of Swanton** moved to amend the bill as follows:

In Sec. 2, 6 V.S.A. § 2775, by designating the existing paragraph to be subsection (a) and adding a subsection (b) to read:

(b) The agency shall not affix the Vermont seal of quality to unpasteurized milk produced under this chapter.

Pending the question, Shall the bill be amended as offered by Rep. Savage of Swanton? **Rep. Morrissey of Bennington** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as offered by Rep. Savage of Swanton? was decided in the negative. Yeas, 56. Nays, 67.

Those who voted in the affirmative are:

Acinapura of Brandon	Greshin of Warren	O'Donnell of Vernon
Ainsworth of Royalton	Higley of Lowell	Pearce of Richford
Andrews of Rutland City	Hube of Londonderry	Peaslee of Guildhall
Branagan of Georgia	Hubert of Milton	Perley of Enosburg
Brennan of Colchester	Keenan of St. Albans City	Reis of St. Johnsbury
Canfield of Fair Haven	Kilmartin of Newport City	Savage of Swanton
Clarkson of Woodstock	Komline of Dorset	Scheuermann of Stowe
Clerkin of Hartford	Krawczyk of Bennington	South of St. Johnsbury
Condon of Colchester	Larocque of Barnet	Till of Jericho
Consejo of Sheldon	Lawrence of Lyndon	Toll of Danville
Corcoran of Bennington	Lewis of Derby	Townsend of Randolph
Devereux of Mount Holly	Marcotte of Coventry	Turner of Milton
Dickinson of St. Albans Town	McAllister of Highgate	Westman of Cambridge
Donaghy of Poultney	McDonald of Berlin	Wheeler of Derby
Donahue of Northfield	McNeil of Rutland Town	Wilson of Manchester
Evans of Essex	Miller of Shaftsbury	Winters of Williamstown
Fagan of Rutland City	Mook of Bennington	Wright of Burlington
Gilbert of Fairfax	Morrissey of Bennington	Young of St. Albans City
	Myers of Essex	Zenie of Colchester

Those who voted in the negative are:

Aswad of Burlington	Bray of New Haven	Copeland-Hanzas of
Atkins of Winooski	Browning of Arlington	Bradford
Bissonnette of Winooski	Burke of Brattleboro	Davis of Washington
Bohi of Hartford	Cheney of Norwich	Deen of Westminster
Botzow of Pownal	Conquest of Newbury	Donovan of Burlington

Edwards of Brattleboro	Macaig of Williston	Poirier of Barre City
Emmons of Springfield	Maier of Middlebury	Potter of Clarendon
Frank of Underhill	Malcolm of Pawlet	Ram of Burlington
French of Shrewsbury	Manwaring of Wilmington	Rodgers of Glover
French of Randolph	Marek of Newfane	Shand of Weathersfield
Geier of South Burlington	Martin of Springfield	Sharpe of Bristol
Haas of Rochester	Masland of Thetford	Smith of Mendon
Head of South Burlington	McCullough of Williston	Spengler of Colchester
Howard of Rutland City	Milkey of Brattleboro	Stevens of Waterbury
Howrigan of Fairfield	Minter of Waterbury	Stevens of Shoreham
Jerman of Essex	Mitchell of Barnard	Sweaney of Windsor
Johnson of South Hero	Moran of Wardsboro	Taylor of Barre City
Kitzmiller of Montpelier	Mrowicki of Putney	Waite-Simpson of Essex
Klein of East Montpelier	Nease of Johnson	Webb of Shelburne
Lanpher of Vergennes	Nuovo of Middlebury	Weston of Burlington
Lerich of Hardwick	O'Brien of Richmond	Wizowaty of Burlington
Lippert of Hinesburg	Pellett of Chester	Zuckerman of Burlington
Lorber of Burlington	Peltz of Woodbury	

Those members absent with leave of the House and not voting are:

Adams of Hartland	Grad of Moretown	McFaun of Barre Town
Ancel of Calais	Heath of Westford	Morley of Barton
Audette of South Burlington	Helm of Castleton	Obuchowski of Rockingham
Baker of West Rutland	Hooper of Montpelier	Orr of Charlotte
Clark of Vergennes	Johnson of Canaan	Partridge of Windham
Courcelle of Rutland City	Koch of Barre Town	Pugh of South Burlington
Crawford of Burke	Larson of Burlington	Smith of Morristown
Fisher of Lincoln	Lenes of Shelburne	Trombley of Grand Isle
Flory of Pittsford	Martin of Wolcott	

Rep. Webb of Shelburne explained her vote as follows:

"Mr. Speaker:

While I agree that raw milk should not receive the Vermont Seal of Quality at this point, I believe this amendment is unnecessary.

The Agency of Agriculture is the appropriate agency and already has criteria in place as to the standards required to receive our precious, guarded Vermont Seal of Quality. In addition, suppliers will not be advertising their product."

Pending third reading of the bill, **Rep. Stevens of Shoreham** moved to amend the bill as follows:

In Sec. 2, 6 V.S.A. §2777(d)(3)(E) and (d)(5)(b) after: "This product has not been pasteurized and therefore may contain harmful bacteria that can cause illness particularly in children, the elderly, and persons with weakened immune

systems”” by adding: “and in pregnant women can cause illness, miscarriage or fetal death, or death of a newborn”

Which was agreed to.

Thereupon, the bill was read the third time and passed with a title amendment to read as follows:

An act relating to the sale of unpasteurized (raw) milk

Joint Resolution Adopted

J.R.H. 27

Joint resolution, entitled

Joint house resolution urging Congress to enact H.R. 676, the National Health Insurance Act (or the Expanded and Improved Medicare for All Act)

Was taken up and adopted on the part of the House.

House Resolution Adopted

H.R. 18

House resolution, entitled

House resolution relating to high mortgage fees

Was taken up and adopted on the part of the House.

Rules Suspended; Proposal of Amendment Agreed to; Third Reading Ordered; Rules Suspended; Bill Read Third Time and Passed in Concurrence with Proposal of Amendment; Rules Suspended and Bill Ordered Messaged to the Senate Forthwith

S. 2

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

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

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Hooper of Montpelier, for the committee on Corrections and Institutions, to which had been the bill, reported in favor of its passage in concurrence with proposal of amendment as follows:

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

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

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

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

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

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

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

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

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

of the committee, the director shall also provide information about the nature of the functional impairments of inmates placed in segregation or services provided to these inmates. In addition, at least annually, the department shall provide a report on all inmates placed in segregation who were receiving mental health services.

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

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

§ 906. DEFINITIONS

As used in this subchapter:

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

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

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

(2) “Mental ~~Qualified mental~~ health professional” means a person with professional training, experience, and demonstrated competence in the treatment of mental illness or serious functional impairments who is a physician, psychiatrist, psychologist, social worker, nurse, or other qualified person determined by the commissioner of mental health.

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

(4) “Screening” means an initial survey, which shall be trauma-informed, to identify whether an inmate has immediate treatment needs or is in need of further evaluation.

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

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

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

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

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

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

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

(3) The development and implementation of an individual treatment plan, when a clinical diagnosis by a qualified mental health professional indicates an inmate is suffering from ~~serious~~ mental illness or disorder or from serious functional impairment. The treatment plan shall be developed in accordance with best practices and explained to the inmate by a qualified mental health professional.

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

(A) Follow-up evaluations.

(B) Crisis intervention.

(C) Crisis beds.

(D) Residential care within a correctional institution.

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

(F) Services provided in designated special needs units.

(G) As a joint responsibility with the department of mental health and the department of disabilities, aging, and independent living, and working with community mental health centers designated agencies, the implementation of discharge planning for community services which coordinates access to services for which the offender is eligible, developed in a manner that is guided by best practices and consistent with the reentry case plan developed under subsection 1(b) of this title.

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

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

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

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

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

(C) Recognition of adverse reactions to psychotropic medication.

(D) Recognition of improvement in the general condition of the inmate.

(E) Recognition of mental retardation.

(F) Recognition of mental health emergencies and specific instructions on contacting the appropriate professional care provider and taking other appropriate action.

(G) Suicide potential and prevention.

(H) Precise instructions on procedures for mental health referrals.

(I) Any other training determined to be appropriate.

* * *

Sec. 3. REPORT

The agency of human services shall convene a working group which shall report quarterly to the corrections oversight committee on the analysis and implementation of systemwide changes for enhanced integration of services for seriously functionally impaired persons provided by the judiciary, agency human services, and community agencies.

Sec. 4. SUNSET

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

Rep. Haas of Rochester, for the committee on Human Services, recommended the proposal of amendment of the committee on Corrections and Institutions be amended as follows:

In Sec. 2, 28 V.S.A. § 907, in the first line, following the words “administer a program of” by inserting the word “trauma-informed”

The bill, having appeared on the Calendar one day for notice, was taken up, read the second and the report of the committees on Corrections and Institutions and Human Services agreed to and third reading ordered.

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill placed on all remaining stages of passage. The bill was read the third time and passed and, on motion of **Rep. McDonald of Berlin** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Recess

At twelve o'clock and twenty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At one o'clock and thirty-five minutes in the afternoon, the Speaker called the House to order.

Committee Relieved of Consideration and Bill Committed to Other Committee

S. 121

Rep. Deen of Westminster moved that the committee on Rules be relieved of House bill, entitled

An act relating to miscellaneous election laws

And that the bill be committed to the committee on Government Operations, which was agreed to.

Rules Suspended; Bill Amended; Third Reading Ordered

H. 222

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to senior protection and financial services

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Bissonnette of Winooski, for the committee on Commerce and Economic Development, to which had been referred the bill, reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

*** * * Life Settlements * * ***

Sec. 1. 8 V.S.A. chapter 103, subchapter 5B is added to read:

Subchapter 5B. Life Settlements

§ 3835. DEFINITIONS

As used in this subchapter:

(1) "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or that is transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, that are published, disseminated, circulated, or placed directly before the public in this state for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a life settlement contract.

(2) "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, financing, monitoring, tracking, administering, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a life settlement contract.

(3) "Chronically ill" means:

(A) being unable to perform at least two activities of daily living, including eating, toileting, transferring, bathing, dressing, or continence;

(B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(C) having a level of disability similar to that described in subdivision (A) of this subdivision (3) as determined by the appropriate administrator of a state or federal public disability insurance or benefit program.

(4) "Commissioner" means the commissioner of the department of banking, insurance, securities, and health care administration.

(5)(A) "Financing entity" means an insurance underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(i) whose principal activity related to the transaction is providing funds to effect the life settlement or purchase of one or more policies subject to a life settlement contract; and

(ii) who has an agreement with one or more licensed life settlement providers to finance the acquisition of life settlement contracts.

(B) "Financing entity" does not include a life settlement purchaser.

(C) "Financing entity" includes an accredited investor as defined by Rule 501 as promulgated under the Federal Securities Act of 1933, as amended.

(6) "Fraudulent life settlement act" includes:

(A) acts or omissions committed by any person who knowingly or who reasonably should know and, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts, including:

(i) presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, financing entity, insurer, insurance producer, or any other person false material information or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(I) an application for the issuance of a life settlement contract or insurance policy;

(II) the underwriting of a life settlement contract or insurance policy;

(III) a claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(IV) premiums paid on an insurance policy;

(V) payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or insurance policy;

(VI) the reinstatement or conversion of an insurance policy;

(VII) the solicitation, offer, effectuation, or sale of a life settlement contract or insurance policy;

(VIII) the issuance of written evidence of a life settlement contract or insurance; or

(IX) a financing transaction; and

(ii) employing any plan, financial structure, device, scheme, or artifice to defraud related to policies subject to a life settlement contract.

(B) any person in the furtherance of a fraudulent settlement act or to prevent the detection of a fraudulent settlement act committing or permitting its employees or its agents to:

(i) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;

(ii) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(iii) transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements; or

(iv) file with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document that contains false information or that otherwise conceals information about a material fact from the commissioner;

(C) embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits, or other property of a life settlement provider, insurer, insured, policy owner, insurance policy owner, or any other person engaged in the business of life settlements or insurance;

(D) recklessly entering into, negotiating, brokering, or otherwise dealing in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to commit a fraudulent settlement act with respect to the policy's issuer, the life settlement provider, or the owner;

(E) facilitating the change of state of ownership of a policy or certificate or the state of residency of a policy owner to a state or jurisdiction that does not have a law similar to this subchapter for the express purposes of evading or avoiding the provisions of this subchapter;

(F) attempting to commit, assisting, aiding, or abetting in the commission of or conspiracy to commit the acts or omissions specified in this subdivision (6).

(7) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification to sell life insurance coverage or a life line of coverage pursuant to chapter 131 of this title.

(8) "Life settlement broker" means a natural person who is working exclusively on behalf of a policy owner and, for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and one or more life settlement providers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the policy owner and not the insurer or the life settlement provider and to owe a fiduciary duty to the policy owner to act according to the policy owner's instructions and in the best interest of the policy owner. The term does not include an attorney or a certified public accountant who is retained to represent the policy owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser.

(9)(A) "Life settlement contract" means a written agreement between a policy owner and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the policy owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(B) "Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a policy owner on, before, or after the date of issuance of the policy where:

(i) The policy owner or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or

(ii) The policy owner or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(C) "Life settlement contract" does not include:

(i) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(ii) loan proceeds that are used solely to pay:

(I) premiums for the policy;

(II) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(iii) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that the default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this subchapter;

(iv) a loan made by a lender that does not violate chapter 143 of this title, provided that the premium finance loan is not described in subdivision (B) of this subdivision (9);

(v) an agreement where all the parties are closely related to the insured by blood or law; or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

(vi) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) a bona fide business succession planning arrangement;

(I) between two or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(II) between two or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(III) between two or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) an agreement entered into by a service recipient, or a trust established by the service recipient and a service provider, or a trust established by the service provider who performs significant services for the service recipient's trade or business; or

(ix) any other contract, transaction, or arrangement exempted from the definition of life settlement contract by the commissioner by rule or order based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this subchapter.

(10) "Life settlement investment agent" means a person who is an appointed or contracted agent of a licensed life settlement provider who solicits or arranges the funding for the purchase of a life settlement by a life settlement purchaser and who is acting on behalf of a life settlement provider.

(11)(A) "Life settlement provider" means a person other than a policy owner that solicits, enters into, or effectuates a life settlement contract with a policy owner resident in this state.

(B) "Life settlement provider" does not include:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) a premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;

(iii) the issuer of the life insurance policy;

(iv) an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a life settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(v) a financing entity;

(vi) a special purpose entity;

(vii) a related provider trust;

(viii) a life settlement purchaser; or

(ix) any other person that the commissioner determines by rule or order is not the type of person intended to be covered by the definition of life settlement provider.

(12)(A) "Life settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract, for the purpose of deriving an economic benefit.

(B) "Life settlement purchaser" does not include:

(i) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(ii) a financing entity;

(iii) a special purpose entity; or

(iv) a related provider trust.

(13) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(14)(A) "Policy owner" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of this subchapter, a policy owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition. If there is more than one policy owner on a single policy and the policy owners are residents of different states, the transaction shall be governed by the law of the state in which the policy owner having the largest percentage ownership resides or, if the policy owners hold equal ownership, the state of residence of one policy owner agreed upon in writing by all the policy owners.

(B) "Policy owner" does not include:

(i) Qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended.

(ii) A financing entity.

(iii) A special purpose entity.

(iv) A related provider trust.

(v) A purchaser of a purchased policy.

(15) "Purchased policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

(16) "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed life settlement provider.

(17) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

(A) for a financing entity or licensed life settlement provider; or

(B)(i) in connection with a transaction in which the securities in the special purposes entity are acquired by the owner or by "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder; or

(ii) in connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets and in which the securities are sold in compliance with chapter 150 of Title 9 (the Vermont Uniform Securities Act) and the orders and rules adopted or issued thereunder.

(18) "Stranger-originated life insurance," or "STOLI," means an act or acts, practice or an arrangement to initiate a life insurance policy in the name

of a resident of this state for the benefit of a third party who, at the time of policy origination, has no insurable interest under the laws of this state in the life of the insured. STOLI practices include cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in subdivision (9)(C) of this section.

(19) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(20) "Viator" means any person who owns, controls, or has rights to the benefits or values of a life insurance policy or who owns, is covered by, controls, or has rights to the benefits or values of a group policy, either of which insures the life of a person who is terminally or chronically ill or has a life-threatening illness or condition and who enters into an agreement under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the life settlement provider.

§ 3836. LICENSE AND BOND REQUIREMENTS

(a) Life settlement providers.

(1) No person shall operate as a life settlement provider without first obtaining a license from the commissioner.

(2) Application for a life settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by an application fee of \$50.00 and a license fee of \$400.00.

(3) Licenses may be renewed from year to year on a date prescribed by the commissioner of the odd-numbered year next following the date of issuance upon payment of a biennial renewal fee of \$400.00. Failure to pay the fee by the renewal date shall result in expiration of the license.

(4) The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority at any time to require

the applicant to disclose fully the identity of all stockholders, partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this subchapter.

(5) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(A) has provided a detailed and sound plan of operation;

(B) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(C) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for;

(D) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement provider. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$1,000,000.00, a bond or letter of credit not less than \$50,000.00;

(ii) \$1,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$100,000.00;

(iii) \$15,000,000.00 or more, a bond or letter of credit not less than \$150,000.00; and

(E) has provided an anti-fraud plan that meets the requirements of section 3847 of this subchapter.

(6) The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the secretary of state or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the secretary of state, in accordance with section 1633 of Title 11.

(7) A life settlement provider shall provide to the commissioner new or revised information about officers, stockholders holding ten percent or more, partners, directors, members, or designated employees within 30 days of the change.

(b) Life settlement broker.

(1) A person shall not operate as a life settlement broker without first obtaining a license from the commissioner.

(2) A person licensed as an attorney or certified public accountant who is retained to represent the policy owner and whose compensation is not paid directly or indirectly by the life settlement provider may negotiate life settlement contracts on behalf of the policy owner without having to obtain a license as a life settlement broker.

(3) Application for a life settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by an application fee of \$30.00 and a license fee of \$100.00.

(4) Licenses may be renewed by the commissioner on the even-numbered year next following the date of issuance upon payment of a biennial renewal fee of \$100.00. Failure to pay the fee by the renewal date shall result in expiration of the license.

(5) The applicant shall provide information on forms required by the commissioner.

(6) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(A) is competent and trustworthy.

(B) has a good business reputation and has had at least two years' prior experience as a licensed life insurance producer;

(C) has demonstrated evidence of financial responsibility in a format and in substance as prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount set forth below, or a letter of credit in the amount set forth below on a form and in a manner approved by the commissioner, or such other amount as the commissioner may require. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond or letter of credit issued pursuant to this subdivision shall be solely in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the life settlement broker. The minimum amount of the bond or letter of credit shall be based on the annual aggregate life settlement payments attributable to the licensee to policy owners in Vermont, as follows. The commissioner may adjust by rule the ranges established below if necessary to be consistent with the aggregate payment data filed in annual statements pursuant to section 3839 of this title:

(i) \$0.00 to \$2,000,000.00, a bond or letter of credit not less than \$25,000.00;

(ii) \$2,000,000.01 to \$5,000,000.00, a bond or letter of credit not less than \$50,000.00;

(iii) \$5,000,000.01 to \$15,000,000.00, a bond or letter of credit not less than \$75,000.00; and

(iv) \$15,000,000.01 and more, a bond or letter of credit not less than \$100,000.00; and

(7) The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the secretary of state, in accordance with section 1633 of Title 11.

(8) An individual licensed as a life settlement broker shall complete on a biennial basis an additional 15 hours of life insurance producer training related to life settlements and life settlement transactions as determined by the commissioner. Such additional training requirements shall be approved for education under section 4800a of this title. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

(9) No life settlement broker may charge or receive a fee, a commission, or other valuable consideration in excess of two percent of the amount paid by the life settlement company to the policy owner on a policy that is the subject of the life settlement broker's services. Upon the written request of the life settlement broker and after conferring with the policy owner, the commissioner may approve another rate of compensation as reasonable and appropriate under highly unusual circumstances.

(c) The insurer that issued the policy subject to a life settlement shall not be responsible for any act or omission of a life settlement broker or life settlement provider arising out of or in connection with the life settlement transaction unless the insurer receives compensation for the placement of a life settlement contract from the life settlement provider or life settlement broker in connection with the life settlement contract.

§ 3837. LICENSE REVOCATION AND DENIAL

(a) Life settlement providers. The commissioner may suspend or revoke and may refuse to issue or renew the license of a life settlement provider if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member, or key management personnel have been convicted of fraudulent or dishonest practices or are subject to a civil judicial adjudication under federal, foreign, or state law or to an administrative action issued by any jurisdiction showing the licensee or any officer, partner, member, or key management personnel to be untrustworthy or incompetent;

(3) The licensee demonstrates a pattern of unreasonable payments to policy owners;

(4) The licensee or any officer, partner, member, or key management personnel have been found guilty of or have pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) The licensee has entered into any life settlement contract that has not been approved pursuant to this subchapter;

(6) The licensee has failed to honor contractual obligations set out in a life settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The licensee has assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust;

(9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this subchapter or a rule adopted or order issued under this subchapter;

(10) The licensee or any officer, partner, member, or key management personnel have violated any provision of chapter 150 of Title 9 (the Vermont Uniform Securities Act); or

(11) The licensee has, in the conduct of his or her affairs, used fraudulent, coercive, or dishonest practices or has shown himself or herself to be incompetent, untrustworthy or financially irresponsible.

(b) Life settlement brokers. The commissioner may refuse to issue or renew or may suspend or revoke the license of a life settlement broker if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee has been convicted of fraudulent or dishonest practices or is subject to a civil judicial adjudication under federal, foreign, or state law or to an administrative action issued by any jurisdiction showing the licensee or any officer, partner, member, or key management personnel to be untrustworthy or incompetent;

(3) The licensee has been found guilty of or has pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud, dishonesty, breach of trust, or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(4) The licensee no longer meets the requirements for initial licensure;

(5) The licensee has engaged in any one or more of the acts or conditions set forth in subsection 4804(a) of this title;

(6) The licensee has violated any provision of this subchapter or a rule adopted or order issued under this subchapter;

(7) The licensee or any officer, partner, member, or key management personnel have violated any provision of chapter 150 of Title 9 (the Vermont Uniform Securities Act); or

(8) The licensee has otherwise engaged in bad-faith conduct with one or more policy owners.

§ 3838. APPROVAL OF LIFE SETTLEMENT CONTRACTS,

DISCLOSURE STATEMENTS, AND RELATED FORMS

(a) A person shall not use a life settlement contract form or related form or provide to a policy owner in this state any of the disclosure statement forms required by subsections 3841(a), (b), and (c) of this title unless such forms are first filed with and approved by the commissioner. Related forms include the statement of attending physician required by subdivision 3843(a)(1)(A) of this title; the medical records release form required by subdivision 3843(a)(1)(B) of this title; the policy owner's statement of understanding form required by subdivision 3843(a)(5) of this title; any application form to be used by the policy owner to request a life settlement; any advertising material that the commissioner, in his or her discretion, requires to be filed; and such other forms as the commissioner may prescribe by rule or order.

(b) The commissioner shall disapprove a life settlement contract form, disclosure statement form, or related form if, in the commissioner's judgment, the contract or provisions contained therein fail to meet the requirements of sections 3841, 3843, 3846, and subsection 3847(b) of this title or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner. Any notice of disapproval of such form shall state the grounds therefore and shall state that a hearing will be granted within 20 days upon request of the filer who requests a hearing within 30 days of the date of the notice of disapproval.

(c) Any life settlement contract form, disclosure statement form, or related form filed with the commissioner shall be deemed approved if it has not been disapproved within 60 days of the filing. The commissioner may extend by not more than 30 additional days the period within which affirmative approval or disapproval of any such form may be given by notifying the life settlement provider or life settlement broker of such extension before expiration of the initial 60-day period.

(d) The commissioner may at any time, after notice and for cause shown, withdraw approval of a previously approved contract form, disclosure statement form, or related form. Any order of the commissioner withdrawing a previous approval shall state the grounds therefor in such detail as reasonably to inform the filer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period not less than 30 days after the giving of notice of withdrawal as the commissioner shall in such notice prescribe. Any demand for a hearing relative to the commissioner's

withdrawal of approval of a form which has been received by the commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.

(e) The forms required to be filed by this section shall be filed in a manner prescribed by the commissioner. Filings shall be accompanied by payment to the commissioner of a nonrefundable fee of \$50.00 for each form submitted.

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

(a) Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule or order. Information relating to life settlement transactions shall be limited to only those transactions where the policy owner is a resident of this state. Upon proper request by the filer, the commissioner shall maintain the confidentiality of trade secret information. The annual statement shall not contain individually-identifiable life settlement transaction information, but such information shall be provided to the commissioner pursuant to section 3840 of this title. If available to the provider because of the provider's business relationship or affiliation with one or more life settlement purchasers, the annual statement shall also include such information as the commissioner may prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this state.

(b) A life settlement provider, life settlement broker, insurance company, life insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's or a policy owner's identity shall be subject to the department's Regulation No. IH-2001-I "Privacy of Consumer Financial and Health Information," as amended.

§ 3840. INVESTIGATIONS AND EXAMINATIONS

(a) The commissioner, in addition to all powers granted pursuant to chapter 1 of this title, may examine the business and affairs of any licensee or applicant for a license whenever he or she deems it to be prudent for the protection of policyholders or the public. The commissioner shall have the authority to examine any person and to order the production of any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(b) A person required to be licensed by this subchapter shall for five years following the death of the insured retain copies of all:

(1) proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;

(2) all checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(3) all other records and documents related to the requirements of this subchapter.

(c) Except as otherwise provided in this subchapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination or investigation made under this subchapter or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to disclosure as a public record under section 317 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(d) The expense incurred in conducting any examination shall be paid by the licensee or applicant.

§ 3841. DISCLOSURE TO POLICY OWNER

(a) With each application for a life settlement, a life settlement provider or a life settlement broker shall provide the policy owner with at least the following disclosures not less than 10 days prior to the time the application for the life settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the policy owner and the life settlement provider or life settlement broker and shall include the following information:

(1) There are possible alternatives to life settlement contracts, including any accelerated death benefits or policy loans offered under the policy owner's life insurance policy.

(2) That a life settlement broker represents exclusively the policy owner and not the insurer or the life settlement provider and owes a fiduciary duty to the policy owner, including a duty to act according to the policy owner's instructions and in the best interest of the policy owner.

(3) Some or all of the proceeds of the life settlement may be taxable under federal income tax and state franchise and income tax laws, and assistance should be sought from a professional tax advisor.

(4) Proceeds of the life settlement could be subject to the claims of creditors.

(5) Receipt of the proceeds of a life settlement may adversely affect the policy owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(6) The policy owner has the right to rescind a life settlement contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties. Rescission, if exercised by the policy owner, is effective only if both notice of the rescission is given and the policy owner repays all proceeds and any premiums, loans, and loan interest paid on account of the life settlement within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the policy owner or the policy owner's estate of all life settlement proceeds and any premiums, loans, and loan interest on the life settlement within 60 days of the insured's death.

(7) Funds will be sent to the policy owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and that the beneficiary has been designated.

(8) Entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the policy owner. Assistance should be sought from an independent, qualified professional with experience in these matters.

(9) Disclosure to a policy owner shall include distribution of a brochure approved by the commissioner describing the process of life settlements.

(10) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or party to a civil union or a significant other may be disclosed as necessary to effect the life settlement between the policy owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the

disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase who may not be obligated to protect and keep the information confidential. You may be asked to renew your permission to share information every two years."

(11) Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this subchapter. This contact shall be limited to once every three months if the insured has a life expectancy of six months or more, and no more than once every two months if the insured has a life expectancy of six months or less. All such contracts shall be made only by a life settlement provider licensed in the state in which the policy owner resided at the time of the life settlement or by the authorized representative of such duly licensed life settlement provider.

(12) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation, and the manner and amount of the broker's compensation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker's fiduciary duty to the policy owner.

(b)(1) A life settlement provider shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(A) Unless previously disclosed under subsection (a) of this section, the affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be subject to the life settlement contract;

(B) the name, business address, and telephone number of the life settlement provider;

(C) any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser.

(2) If an insurance policy subject to a life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be subject to a life settlement contract, the policy owner or owners shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her or their insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(3) The document shall state the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. The life settlement provider shall also disclose the availability, if known, of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the policy owner's interest in those benefits will be transferred as a result of the life settlement contract.

(4) The document shall state whether the funds will be escrowed with an independent third party or placed in trust during the transfer process. If an escrow account is used, the document shall provide the name, business address, and telephone number of the independent third party escrow agent. If a trust account is used, the document shall identify the state or federally chartered institution. The document shall state that the policy owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(c) A life settlement broker shall provide the policy owner with at least the following disclosures no later than 10 days before the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the policy owner and provide the following information:

(1) the name, business address, and telephone number of the life settlement broker;

(2) a full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(4) the amount and method of calculating the broker's compensation, which term includes anything of value paid or given to a life settlement broker for the placement of a policy; and

(5) where any portion of the life settlement broker's compensation, as defined in subdivision (4) of this subsection, is taken from a proposed life settlement offer, a disclosure of the total amount of the life settlement offer and the percentage of the life settlement offer constituted by the life settlement broker's compensation.

(d) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

§ 3842. DISCLOSURE TO INSURER

Thirty days prior to the execution of a life settlement contract or the execution or other affirmation of an agreement or arrangement to enter into a life settlement contract, a life settlement provider shall provide notice to the insurer that issued or has assumed the policy, provided the contract, agreement or arrangement is executed or otherwise affirmed prior to, or during the first five years after issuance of a policy. The notice shall contain information identifying the policy and the policy owner, if applicable, and a copy of the proposed life settlement contract.

§ 3843. GENERAL RULES

(a)(1) A life settlement provider entering into a life settlement contract shall first obtain:

(A) if the policy owner is the insured, a written statement from a licensed attending physician that the policy owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(B) if the medical records of the insured are intended or required to be released in connection with a proposed life settlement transaction, a document in which the insured consents to the release of his or her medical records to a licensed life settlement provider, life settlement broker, the insurance company that issued the life insurance policy covering the life of the insured, and any other person to whom the medical records will be released.

(2) Within 20 days after a policy owner executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to subject the policy to a life settlement contract, the life settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a policy subject to a life settlement contract. The notice shall be accompanied by the documents required by subdivision (3) of this subsection.

(3) The life settlement provider shall deliver a copy of the medical release required under subdivision (1)(B) of this subsection, a copy of the policy owner's application for the life settlement contract, the notice required under subdivision (2) of this subsection, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life

settlement transaction. A form for verification of coverage approved by the commissioner shall be used.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible insurance or life settlement fraud. The insurer shall accept a request for verification of coverage made on a form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the policy owner. Failure by the insurer to meet its obligations under this subsection shall be a violation of sections 3844 and 3848 of this title.

(5) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the policy owner consents to the life settlement contract, represents that the policy owner has a full and complete understanding of the life settlement contract and of the benefits of the life insurance policy, acknowledges that he or she is entering into the life settlement contract freely and voluntarily, has received the disclosures required in section 3841 of this title and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a life settlement broker performs any of these activities required of the life settlement provider, the provider is deemed to have fulfilled such requirement.

(b) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information and to the department's Regulation No. IH-2001-I, Privacy of Consumer Financial and Health Information.

(c) All life settlement contracts entered into in this state shall provide the policy owner with an absolute right to rescind the contract before 30 calendar days after the date upon which the life settlement contract is executed by all parties.

Rescission by the policy owner may be conditioned upon the policy owner's both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the life settlement provider in connection

with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the life settlement provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider, which demand shall be accompanied by either the policy owner's notice of rescission if rescinded at the election of the policy owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(d) The life settlement provider shall instruct the policy owner to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to an independent escrow agent. Within three business days after the date the escrow agent receives the document (or from the date the life settlement provider receives the documents, if the policy owner erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state- or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the policy owner.

(e) Failure to tender consideration to the policy owner for the life settlement contract within the time set forth in the disclosure pursuant to subdivision 3841(a)(7) of this title renders the life settlement contract voidable by the policy owner for lack of consideration until the time consideration is tendered to and accepted by the policy owner. Funds shall be deemed sent by a life settlement provider to a policy owner as of the date that the escrow agent either releases funds for wire transfer to the policy owner or places a check for delivery to the policy owner via the United States Postal Service or another nationally recognized delivery service.

(f) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred shall only be made by the life settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than six months and to no more than once every two months for insureds with a life expectancy of six months or less. The provider or broker shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers and life settlement brokers shall be responsible for the actions of their authorized representatives.

(g)(1) In order to assure that terminally ill policy owners receive a reasonable return for entering into a life settlement contract, the following shall be minimum payouts; provided that upon request of the policy owner the commissioner may waive the requirements of this subdivision:

<u>Terminally Ill Policy Owner's Remaining Life Expectancy At Time of Settlement</u>	<u>Minimum Percentage of Expected Death Benefit (Net of Loans and Any Cash Surrender Value) to be Received by the Terminally Ill Policy Owner</u>
<u>Less than 6 months</u>	<u>85%</u>
<u>At least 6, but less than 12 months</u>	<u>80%</u>
<u>At least 12, but less than 18 months</u>	<u>75%</u>
<u>At least 18, but less than 24 months</u>	<u>70%</u>
<u>At least 24, but less than 36 months</u>	<u>60%</u>

(2) The expected death benefit is the death benefit provided under the terms of the policy subject to the life settlement contract, assuming the death of the insured were to occur on the date the life settlement contract is signed.

(3) The payout shall be increased by 100 percent of any net cash surrender value of the insurance at the time the life settlement contract is issued.

(4) Payouts may be reduced by the minimum premium (including premiums payable for additional benefits retained at the option of the terminally ill policy owner, if any, required to keep the contract in force for the duration of the terminally ill policy owner's remaining life expectancy. Other than this allowable reduction in payout, there shall be no other retention for expenses or broker's fees. At the time of settlement, the life settlement provider shall place in trust a sum equal to the amount the payout was reduced for future premiums. Sums placed in trust under this section shall only be reduced by the life settlement provider upon payment of policy premiums as they come due. If the terminally ill policy owner dies with a sum held in trust under this section, the sum remaining in trust shall become the property of the life settlement provider.

(5) If the life settlement provider becomes insolvent or is the subject of a bankruptcy or other insolvency proceeding during the life of the terminally ill policy owner whose policy had riders retained, the life settlement provider shall notify the terminally ill policy owner and other insureds of the insolvency or initiation of insolvency proceedings. Persons with an interest in the continuation of riders retained may pay any premiums required to keep riders retained in force.

(6) In computing the minimum percentage of expected death benefit (net of loans and cash surrender value) the death benefit value of any accidental death benefit rider shall not be included. There shall be no minimum percentage payment required for the transfer of an accidental death benefit rider to the life settlement company.

(7) Life expectancy shall be determined by a physician selected by the terminally ill policy owner, on the basis of medical records. The physician selected will send life expectancy information to the life settlement provider. If the life settlement provider disagrees with the life expectancy estimate of the physician selected by the terminally ill policy owner, the terminally ill policy owner will select a second physician to make an estimate of life expectancy, based on medical records. The second physician's decision shall be final.

§ 3844. PROHIBITED PRACTICES

(a) It is a violation of this subchapter for any person to:

(1) commit any fraudulent life settlement acts;

(2) enter into any practice, agreement, arrangement, or transaction

which results in or is intended to result in the issuance of stranger-originated life insurance or STOLI; or

(3) to enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(A) The policy was issued upon the policy owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(i) The policy owner or insured is terminally or chronically ill;

(ii) The policy owner's spouse dies;

(iii) The policy owner divorces his or her spouse;

(iv) The policy owner retires from full-time employment;

(v) The policy owner becomes physically or mentally disabled and a physician determines that the disability prevents the policy owner from maintaining full-time employment;

(vi) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the policy owner, adjudicating the policy owner bankrupt or insolvent or approving a petition seeking reorganization of the policy owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the policy owner's assets; or

(vii) The policy owner has suffered a significant economic reversal, as demonstrated by a 50 percent decline in the policy owner's annual adjusted gross income, or by a 50 percent decline in the policy owner's net worth, or as demonstrated by other facts and circumstances approved by the commissioner; or

(C) The policy owner enters into a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(i) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by or with full recourse liability incurred by the insured or a person described in subdivision 3835(9)(C)(v) of this title;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) A life settlement provider or a life settlement broker has not conducted a life expectancy evaluation of the insured in connection with a proposed settlement of the policy, and the insured has not undergone a life expectancy evaluation for settlement in connection with the issuance of the policy.

(b) Copies of the independent evidence described in subdivision (a)(3)(B) of this section and documents required by subsection 3842(a) of this title shall be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with a policy owner submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(c) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the policy owner, insured, life settlement provider, or life settlement broker sign any forms or disclosures of consent or waiver that have not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(d) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

§ 3845. PROHIBITED PRACTICES AND CONFLICTS OF INTEREST

(a) With respect to any life settlement contract or insurance policy, no life settlement broker shall solicit an offer from, effectuate a life settlement with, or make a sale to any life settlement provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such life settlement broker.

(b) No broker shall have a financial relationship or affiliation with a life settlement provider unless the broker fully discloses such relationship or affiliation. A broker shall not participate in or form a financial arrangement or affiliation with a life settlement provider if such arrangement or affiliation conflicts with the broker's fiduciary duty to the policy owner.

(c) With respect to any life settlement contract or insurance policy, no life settlement provider shall knowingly enter into a life settlement contract with a policy owner if, in connection with such life settlement contract, anything of value will be paid to a life settlement broker that is controlling, controlled by, or under common control with such life settlement provider, the life settlement purchaser, life settlement investment agent, a financing entity, or a related provider trust that is involved in such life settlement contract.

(d) A violation of subsection (a), (b), or (c) of this section shall be deemed a fraudulent life settlement act.

(e) No life settlement provider shall enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a policy owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this subchapter.

(f) No life insurance producer, insurance company, life settlement broker, or life settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

§ 3846. ADVERTISING FOR LIFE SETTLEMENTS

(a) No person engaged in the business of life settlements shall make, issue, circulate, or cause to be made, issued, or circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or by Internet, or in any other way, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, which:

(1) misrepresents or fails to adequately disclose the benefits, advantages, conditions, exclusions, limitations, or terms of any life settlement contract;

(2) uses any name or title of any life settlement contract or class of life settlement contracts misrepresenting the true nature thereof; or

(3) is a misrepresentation for the purpose of inducing or tending to induce a policy owner to enter into a life settlement contract in violation of the provisions of this chapter;

(4) is inaccurate, untruthful, deceptive or misleading in fact or by implication. The form and content of an advertisement of a life settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed;

(5) directly or indirectly markets, advertises, solicits, or otherwise promotes the purchase of a policy for the purpose or, or with an emphasis on entering into a life settlement contract; or

(6) uses the word "free", "no cost", "without cost", no additional cost", "at no extra cost" or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

(b) Every life settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of who wrote, created, designed, or presented them, shall be the responsibility of the life settlement licensees as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the life settlement licensee who disseminate advertisements of the requirements and procedures for approval by the life settlement licensee prior to the use of any advertisements not furnished by the life settlement licensee.

(c) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(d) If the advertising emphasizes the dollar amounts available to policy owners, the advertising shall disclose the average purchase price as a percent of face value obtained by policy owners contracting with the licensee during the past six months.

(e) The fact that the life settlement contract offered is made available for

inspection prior to consummation of the sale, or that an offer is made to refund the payment if the policy owner is not satisfied, or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy any inaccurate, untruthful, deceptive or misleading statements.

§ 3847. FRAUD PREVENTION AND CONTROL

(a)(1) A person shall not commit a fraudulent life settlement act.

(2) A person shall not knowingly or with reason to know interfere with the enforcement of the provisions of this subchapter or investigations of suspected or actual violations of this subchapter.

(3) It shall be a violation of this subchapter for a person in the business of life settlements who with knowledge or who reasonably should know to permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(b)(1) Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract may be guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in subdivision (1) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(c)(1) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be, or has been committed shall immediately provide to the commissioner such information as required and in a manner prescribed by the commissioner by rule or order.

(2) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner such information required and in a manner prescribed by the commissioner by order or rule.

(d)(1) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

(A) the commissioner or the commissioner's employees, agents, or representatives;

(B) federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(C) a person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;

(D) the National Association of Insurance Commissioners, the Financial Industry Regulatory Authority (FINRA), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or another regulatory body overseeing life insurance, life settlements, or securities or investment fraud; or

(E) the life insurer that issued the life insurance policy covering the life of the insured.

(2) Subdivision (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action shall plead specifically any allegation that subdivision (1) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person furnishing information as identified in subdivision (1) of this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this subchapter and if the party bringing the action was not substantially justified in doing so. For the purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent life settlement acts.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (1) of this subsection.

(5) Confidentiality.

(A) The documents and evidence provided pursuant to this subsection or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in any private civil action.

(B) Subdivision (A) of this subdivision does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(i) in administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) to federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(C) Release of documents and evidence under subdivision (B) of this subdivision does not abrogate or modify the privilege granted in subdivision (A) of this subdivision.

(6) This subchapter shall not:

(A) preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(B) prevent or prohibit a person from disclosing voluntarily or otherwise information concerning life settlement fraud to a law enforcement or regulatory agency other than the department of banking, insurance, securities, and health care administration; or

(C) limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(A) Life settlement providers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The commissioner may, at his or her discretion, order or a licensee may request and the commissioner may grant such modifications of the required initiatives listed in subdivision (B) of this subdivision (7) as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

(B) Antifraud initiatives shall include:

(i) the use of fraud investigators, who may be life settlement

provider employees or independent contractors; and

(ii) an antifraud plan, which shall be submitted to the department at the request of the commissioner. The antifraud plan shall include:

(I) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(II) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(III) a description of the plan for antifraud education and training of underwriters and other personnel; and

(IV) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

§ 3848. CIVIL REMEDIES, PENALTIES, AND ENFORCEMENT

In addition to any other civil and administrative remedies, penalties, and enforcement authority provided for by law:

(1) A violation of this subchapter or of a rule or order adopted or issued under this subchapter, including the commission of a fraudulent life settlement act, shall constitute an unfair trade practice under chapter 129 of this title (Insurance Trade Practices) and shall be subject to the remedies, penalties, and enforcement authority provided for in chapter 129 of this title. The commissioner may report any violation of this subchapter to the attorney general, who may prosecute therefore if he or she deems desirable.

(2) The commissioner may issue a cease and desist order upon a person that violates any provision of this subchapter, any rule or order adopted or issued by the commissioner, or any written agreement with a licensee entered into with the commissioner.

(3) When the commissioner finds that an activity in violation of this subchapter or of a rule or order adopted or issued by the commissioner presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with

particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective absent a petition by the respondent and an order by a superior court of Washington County vacating the commissioner's emergency order.

(4) A commissioner's order under this subsection may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter or to take further actions necessary to remedy violations of this subchapter.

§ 3849. ADOPTION OF RULES

The commissioner may:

(1) adopt rules necessary to carry out the purposes of this subchapter;

(2) establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill. This authority includes the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically or terminally ill; and

(3) adopt rules governing the relationships and responsibilities of insurers, life settlement providers, and life settlement brokers during life settlement transaction.

Sec. 2. SAVINGS CLAUSE; RULES UNDER THE VERMONT UNIFORM SECURITIES ACT; TRANSITION

(a) Nothing in this act is intended to alter, abrogate, limit, rescind, or otherwise affect the obligations, operation, and administration of chapter 150 of Title 9 (the Vermont Uniform Securities Act; hereinafter "the Act"), and the orders issued and any rules adopted thereunder, including:

(1) the operation and administration of the antifraud provisions of the Act;

(2) the regulation of life settlement contracts to the extent that such contracts constitute "securities" under the Act;

(3) the registration and regulation of investment advisors, investment advisor representatives, broker-dealers, and broker-dealer agents under the Act, and, to the extent their activities subject them to the Act, life settlement providers, life settlement purchasers, life settlement investment agents,

financing entities, related trust providers, and special purpose entities;

(4) the retention of records and production requirements under the Act;

(5) the conduct of investigations, the issuance of subpoenas, the conduct of audits or inspections, or the production of books and records under the Act;

(6) the regulation of advertising and testimonials under the Act;

(7) required disclosures to life settlement purchasers and investors under the Act; and

(8) the regulation of conflicts of interest and other prohibited practices under the Act.

(b) The commissioner may adopt by rule under section 5605 of Title 9 standards and procedures relating to transactions involving life settlement purchase agreements or viatical settlement purchase agreements or similar investment contracts, including the following:

(1) standards of conduct for investment advisors, investment advisor broker-dealer agents, and broker-dealers;

(2) record retention requirements;

(3) required disclosures to life settlement purchasers or investors prior to the date the life settlement purchase agreement is signed;

(4) required disclosures to life settlement purchasers or investors at the time of the assignment, transfer, or sale of all or a portion of an insurance policy;

(5) a suitable rescission period for life settlement purchasers or investors;

(6) standards prohibiting unfair, deceptive, or misleading advertising;

(7) fraud prevention and control;

(8) any other requirement necessary or desirable to carry out the purposes of this act or the purposes of chapter 150 of Title 9 (the Vermont Uniform Securities Act).

(c) A life settlement provider or life settlement broker transacting business in this state may continue to do so pending approval or disapproval of the provider's or broker's application for a license as long as the application is filed with the commissioner on or before January 1, 2010. All viatical settlement brokers shall be renewed as of April 1, 2010.

Sec. 3. 8 V.S.A. § 24 is added to read:

§ 24. SENIOR INVESTOR PROTECTION

(a) The commissioner may, in addition to other powers conferred on the commissioner by law, adopt rules and issue orders necessary to protect senior investors from being misled by false or misleading certifications, licenses, professional designations, or other credentials that imply or indicate a special level of knowledge with regard to senior investors or their needs in the sale of securities or insurance or both in the providing of investment advice.

(b) To implement the protections described in subsection (a) of this section, the commissioner may:

(1) establish standards for senior-specific certifications, licenses, professional designations, and other credentials;

(2) develop initiatives to investigate and take action against fraudulent, misleading, dishonest, or unethical marketing practices directed toward seniors;

(3) develop educational materials and training aimed at reducing such marketing practices; and

(4) accept grants from government or private entities to fund the activities set forth in this section.

(c) Any rules adopted or orders issued by the commissioner under this section shall conform to the extent practicable to the North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation, as amended, and the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as amended.

(d)(1) A violation of a rule adopted or orders issued under this section with respect to the business of insurance shall constitute an unfair or deceptive act or practice in the business of insurance, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by the Insurance Trade Practices Act, chapter 129 of this title, and pursuant to any other authority conferred upon the commissioner by law.

(2) A violation of a rule adopted or order issued under this section with respect to the business of securities and investment advise shall constitute a violation of subdivision 5412(d)(13) of Title 9, and the commissioner may enforce such violations pursuant to the commissioner's authority conferred by

the Vermont Uniform Securities Act, chapter 150 of Title 9, and pursuant to any other authority conferred upon the commissioner by law.

Sec. 4. 8 V.S.A. chapter 200, subchapter 7 is added to read:

Subchapter 7. Reverse Mortgages

§ 10701. DEFINITIONS

As used in this subchapter:

(1) "Financial institution" means a financial institution as defined in section 10202(5) of this chapter.

(2) "Reverse mortgage loan" means a loan that:

(A) is a loan wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower;

(B) is due upon sale of the property securing the loan or upon the death of the last surviving borrower or upon the borrower terminating use of the real property as a principal residence or upon the borrower's default;

(C) provides cash advances to the borrower based upon the equity or the value in the borrower's owner-occupied principal residence; and

(D) requires no payment of principal or interest until the entire loan becomes due and payable.

§ 10702. COUNSELING

Prior to accepting an application for a reverse mortgage loan, a financial institution shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the counselor that the borrower has received in person face-to-face counseling. However, if the borrower cannot or chooses not to travel to a counselor and cannot be visited by a counselor in their home, telephone counseling shall be provided by counseling agencies that are authorized by the department of banking, insurance, securities and health care administration. The certificate shall be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

§ 10703. ANNUITIES

A financial institution shall not require an applicant for a reverse mortgage to purchase an annuity as a condition of obtaining a reverse mortgage loan. A financial institution or a broker arranging a reverse mortgage loan shall not:

(1) offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

(2) refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

§ 10704. LIMITATION ON REVERSE MORTGAGE LOAN PROGRAMS

No financial institution shall issue a reverse mortgage loan unless it is a lender approved by the federal department of housing and urban development (HUD) to enter into a loan insured by the federal government and the reverse mortgage loan complies with all requirements for participation in the HUD Home Equity Conversion Mortgage Program (or other similar federal reverse mortgage loan program from time to time created) and is insured by the federal housing administration or other similar federal agency or is a government sponsored enterprise reverse mortgage loan.

Sec. 5. REPEAL

Subchapter 5A of chapter 103 of Title 8 (viatical settlements) is repealed on January 1, 2010.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.

Rep. Ancel of Calais, for the committee on Ways and Means, recommended the bill ought to pass when amended as recommended by the committee on Commerce and Economic Development.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committee on Commerce and Economic Development? **Reps. Ancel of Calais, Branagan of Georgia, Clarkson of Woodstock, Condon of Colchester, Howard of Rutland City, Hube of Londonderry, Masland of Thetford, Obuchowski of Rockingham, Sharpe of Bristol, Winters of Williamstown and Zuckerman of Burlington** to moved that the proposal of

amendment offered by the committee on Commerce and Economic Development be further amended as follows:

First: In Sec. 1, in 8 V.S.A. § 3844(a), by striking the following:

“(3) to enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have been met within the five-year period.”

and inserting in lieu thereof the following:

“(3) enter, within a five-year period commencing with the date of issuance of the insurance policy or certificate, into a life settlement contract unless the policy owner certifies to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period.”

Second: In Sec. 1, in 8 V.S.A. § 3844(a)(3), by striking the following:

“(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period.”

and inserting in lieu thereof the following:

“(B) The policy owner submits independent evidence to the life settlement provider that one or more of the following conditions have commenced or occurred after the date of issuance of the insurance policy or certificate and within the five-year period.”

Third: In Sec. 1, in 8 V.S.A. § 3844, by adding subsections (e) and (f) to read:

(e) It shall be a violation of this section to enter into a life settlement contract in reliance on the conditions established in subdivision (a)(3)(B) of this section if such condition commenced or occurred prior to the issuance of the insurance policy or certificate.

(f) The commissioner shall adopt rules regulating the marketing and solicitation of life settlement products.

Which was agreed to and the recommendation of amendment offered by the committee on Commerce and Economic Development, as amended, was agreed to and third reading was ordered.

Rules Suspended; Bill Amended; Third Reading Ordered**H. 240**

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to no-net-loss of state hunting lands

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Bohi of Hartford, for the committee on Fish, Wildlife & Water Resources, to which had been referred the bill reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act shall be known as the "Hunting Heritage Protection Act of 2009."

Sec. 2. 10 V.S.A. § 4144 is amended to read:

~~§ 4144. ACQUISITION OF PROPERTY BY STATE, CLOSED SEASON~~

~~(a) The secretary with approval of the governor may acquire for the use of the state by gift, purchase or lease in the name of the state, lands, ponds or streams, and hunting and fishing rights and privileges in any lands or waters in the state, with necessary rights of ingress or egress to and from such lands and waters.~~

~~(b) The board may regulate the taking of wild animals on such lands or of fish in such waters and close or open such waters or lands or any part thereof to the taking of fish or wild animals.~~

~~(c) Such regulations shall be posted in the areas affected.~~

Sec. 3. 10 V.S.A. § 4147 is amended to read:

~~§ 4147. FISH AND WILDLIFE LANDS~~

(a) The secretary with the approval of the governor may acquire for the use of the state by gift, purchase, or lease in the name of the state lands, ponds, or streams, and hunting and fishing rights and privileges in any lands or waters in the state, with necessary rights of ingress or egress to and from such lands and waters.

(b) Notwithstanding the provisions of section 166 of Title 29, the secretary with the approval of the governor, may exchange, sell or lease lands under the secretary's jurisdiction when, in his or her judgment, it is advantageous to the

state to do so in the highest orderly development of such lands and management of game thereon. Provided, however, such lease, sale, or exchange shall not include oil and gas leases and shall not be contrary to the terms of any contract which has been entered into by the state.

(c) The board may regulate the taking of wild animals on such lands or of fish in such waters and close or open such waters or lands or any part thereof to the taking of fish or wild animals. Such regulations shall be posted in the affected areas.

(d) In acquiring, exchanging, divesting, or leasing land or in regulating the taking of wild animals or fish, a primary goal of the agency, the department, and the board shall be, to the greatest extent possible, to maintain, enhance, and optimize hunting and fishing opportunities.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

**Rules Suspended; Proposal of Amendment Agreed to
and Third Reading Ordered**

S. 47

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to salvage yards

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Deen of Westminster, for the committee on Fish, Wildlife & Water Resources, recommended that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) Salvage yards provide an important and valuable service in Vermont that should be encouraged to continue;

(2) Automobile salvage yards are the leading recycling industry in the United States and are responsible for recycling between 75 percent and 85 percent of the material content of end of life vehicles.

(3) The role of salvage yards in recycling material is an important factor in natural resource conservation and solid waste management in Vermont.

(4) Poorly operated salvage yards, however, have the potential to significantly impact and contaminate the natural resources of Vermont.

(5) The state's regulatory authority over salvage yards should be transferred to the agency of natural resources in order to improve compliance by salvage yards with the relevant state and federal environmental requirements.

Sec. 2. 24 V.S.A. chapter 61, subchapter 10 is amended to read:

Subchapter 10. ~~Junkyards~~ Salvage Yards

Sec. 3. 24 V.S.A. § 2201(b) is amended to read:

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than \$500.00. This violation shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by a municipal attorney, solid waste management district attorney, environmental enforcement officer employed by the agency of natural resources, grand juror, or designee of the legislative body of the municipality, or by any duly authorized law enforcement officer. If the throwing, placing, or depositing was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, placing, or depositing was done by the driver of such motor vehicle. Nothing in this section shall be construed as affecting the operation of an automobile graveyard or ~~junkyard~~ salvage yard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns.

Sec. 4. 24 V.S.A. § 2241 is amended to read:

§ 2241. DEFINITIONS

For the purposes of this subchapter:

(1) "Abandoned" means a motor vehicle as defined in 23 V.S.A. § 2151.

(2) "Board" means the state transportation board, or its duly delegated representative.

(3) "Highway" means any highway as defined in section 1 of Title 19.

(4) "Interstate or primary highway" means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of

Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.

(5) "Junk" means old or scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.

(6) "Junk motor vehicle" means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.

(7) ~~"Junkyard"~~ "Salvage yard" means any place of outdoor storage or deposit ~~which is maintained, operated or used in connection with a business~~ for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Junkyard" "Salvage yard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10. ~~However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services.~~ It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

(8) "Legislative body" means the city council of a city, the board of selectmen of a town or the board of trustees of a village.

(9) "Main traveled way" means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.

(10) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including trailers.

(11) "Notice" means by certified mail with return receipt requested.

(12) "Scrap metal processing facility" means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to

foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process.

(13) "Secretary" means the secretary of natural resources or the secretary's designee.

Sec. 5. 24 V.S.A. § 2242 is amended to read:

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

(a) A person shall not operate, establish, or maintain a junkyard salvage yard unless he or she:

(1) Holds a certificate of approval for the location of the junkyard salvage yard; and

(2) Holds a license certificate of registration issued by the secretary to operate, establish, or maintain a junkyard salvage yard.

(b) The issuance of a certificate of registration under subsection (a) of this section shall not relieve a salvage yard from the obligation to comply with existing state and federal environmental laws and to obtain all permits required under state or federal environmental law.

Sec. 6. 24 V.S.A. § 2243 is amended to read:

§ 2243. AGENCY OF TRANSPORTATION; RESPONSIBILITIES; DUTIES
ADMINISTRATION; DUTIES AND AUTHORITY

The agency of transportation ~~is and~~ the secretary of natural resources are designated as ~~the state agency for the purpose of~~ responsible for carrying out the provisions of this subchapter and shall have the following additional responsibilities and powers:

(1) The agency of transportation or the secretary of natural resources may make such reasonable rules and regulations as it deems he or she deems necessary, provided such rules and regulations do not conflict with any federal laws, rules, and regulations, or the provisions of this subchapter.

(2) The agency of transportation shall enter into agreements with the United States Secretary of Transportation or his or her representatives in order to designate those areas of the state which are properly zoned or used for industrial activities, and to arrange for federal cost participation.

(3) It shall determine the effectiveness of the screening of any junkyard affected by this subchapter.

(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal. The secretary shall

adopt and enforce requirements for adequate fencing and screening of salvage yards.

~~(5) It shall approve and pay from funds appropriated for this purpose costs incurred under section 2264 of this title, and may refuse payment of all or part of such costs when it finds they are unreasonable or unnecessary.~~

~~(6)(4) It~~ The agency of transportation may seek an injunction against the establishment, operation or maintenance of a junkyard a salvage yard which is or will be in violation of this the relevant provisions of this subchapter and may obtain compliance with its orders for screening or removal by a petition to the superior court for the county in which the junkyard is located. The secretary may enforce the relevant provisions of this chapter under chapter 201 of Title 10.

~~(7) It shall conduct a continuing survey of all highways for the purpose of determining the status of junkyards affected and that the provisions of this subchapter are properly observed.~~

~~(8)(5) It~~ The agency of transportation or the secretary may issue necessary orders, findings, and directives, and do all other things reasonably necessary and proper to carry out the purpose of this subchapter.

Sec. 7. 24 V.S.A. § 2245 is amended to read:

§ 2245. INCINERATORS, SANITARY LANDFILLS, ETC., EXCEPTED

The provisions of this subchapter shall not be construed to apply to ~~incinerators, sanitary landfills, or open dumps wholly owned or leased and operated by a municipality for the benefit of its citizens, or to any private garbage dump or any sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services~~ solid waste management facilities regulated under 10 V.S.A. chapter 159.

Sec. 8. 24 V.S.A. § 2246 is amended to read:

§ 2246. EFFECT OF LOCAL ORDINANCES

This subchapter shall not be construed to be in derogation of zoning ordinances or ordinances for the control of ~~junkyards~~ salvage yards now or hereafter established within the proper exercise of the police power granted to municipalities, if those ordinances impose stricter limitations upon ~~junkyards~~ salvage yards. If the limitations imposed by this subchapter are stricter, this subchapter shall control.

Sec. 9. 24 V.S.A. § 2247 is amended to read:

§ 2247. JUNKYARD LICENSES CERTIFICATE OF REGISTRATION

The provisions of this subchapter shall not be construed to repeal or abrogate any other provisions of law authorizing or requiring a license certificate of registration to own, establish, operate, or maintain a junkyard salvage yard, but no license certificate of registration shall be issued in contravention of this subchapter, or continue in force after the date on which the junkyard salvage yard for which it is issued becomes illegal under this subchapter regardless of the term for which the license certificate of registration is initially issued if the junkyard salvage yard is not satisfactorily screened.

Sec. 10. 24 V.S.A. § 2251 is amended to read:

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where ~~it is the salvage yard is located~~ or where it is proposed to ~~locate the junkyard be located~~, and, in municipalities having a zoning ordinance and a zoning board of adjustment bylaw, subdivision regulations established under sections 4301-4492 4301-4498 of this title, or a municipal ordinance or rule established under sections

1971-1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ordinance bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the junkyard salvage yard, which description shall be by reference to so-called permanent boundary markers.

Sec. 11. 24 V.S.A. § 2253 is amended to read:

§ 2253. LOCATION REQUIREMENTS

(a) At the time and place set for hearing, the legislative body shall hear the applicant, the owners of land abutting the facility, and all other persons wishing to be heard on the application for certificate of approval for the location of the junkyard salvage yard. ~~In passing upon the same, it shall take into account, after~~ The legislative body shall consider the following in determining whether to grant or deny the certificate:

(1) proof of legal ownership or the right to such use of the property by the applicant;

(2) the nature and development of surrounding property, such as the proximity of highways and state and town roads and the feasibility of screening the proposed junkyard salvage yard from such highways; and state and town roads; the proximity of churches, places of worship, schools, hospitals, existing, planned, or zoned residential areas, public buildings, or other places of public gathering; and

(3) whether or not the proposed location can be reasonably protected from affecting the public health, safety, environment, or morals by reason of offensive or unhealthy odors or smoke, or of other causes from a nuisance condition.

(b)(1) A person shall not establish, operate, or maintain a junkyard salvage yard which is within ~~one thousand~~ 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems and visible from the main traveled way thereof at any season of the year.

(2) On or after July 1, 2009, no person shall establish or initiate operation of a new salvage yard within 100 feet of the nearest edge of the right-of-way of a state or town road or within 100 feet of a navigable water, as that term is defined in section 1422 of Title 10.

(c) Notwithstanding ~~any provision of this subchapter~~ subsection (b) of this section, junkyards salvage yards and scrap metal processing facilities, may be operated within areas adjacent to the interstate and primary highway systems, which are within one thousand feet of the nearest edge of the right-of-way 1,000 feet of the nearest edge of the right-of-way of the interstate and primary highway system or within 100 feet of the nearest edge of the right-of-way of a state or town road, provided they are that the area in which the salvage yard is located is zoned industrial under authority of state law, or if not zoned industrial under authority of state law, are is used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

Sec. 12. 24 V.S.A. § 2254 is amended to read:

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the junkyard salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this ~~connection~~ regard the legislative body may consider

collectively the type of road servicing the junkyard salvage yard or from which the junkyard salvage yard may be seen, the natural or artificial barriers protecting the junkyard salvage yard from view, the proximity of the proposed junkyard salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, groundwater resources, surface waters, wetlands, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the junkyard salvage yard.

Sec. 13. 24 V.S.A. § 2255 is amended to read:

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

(a) After the hearing the legislative body shall, within ~~two weeks~~ 30 days, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application.

(b) If approved, the certificate of approved location shall be ~~forthwith issued to remain in effect for not less than three nor more than~~ issued for a period not to exceed five years from the following July 1 and shall contain at a minimum the following conditions:

(1) Conditions requiring compliance with the screening and fencing requirements of section 2257 of this title;

(2) Approval shall be personal to the applicant and not assignable;

(3) Conditions that the legislative body deems appropriate to ensure that considerations of section 2254 of this title have been met;

(4) Any other condition that the legislative body deems appropriate to ensure the protection of public health, the environment, or safety or to ensure protection from nuisance conditions; and

(5) A condition requiring a salvage yard established or initiated prior to July 1, 2009 to be setback 100 feet from the nearest edge of a right-of-way of a state or town road or from a navigable water as that term is defined in section 1422 of Title 10, provided that if a salvage yard cannot meet the 100-foot setback requirement of this subsection, a municipality shall regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title.

(c) Certificates of approval shall be renewed thereafter for successive periods of ~~not less than three nor more than five years~~ upon payment of the renewal fee without hearing, provided all provisions of this subchapter are

complied with during the preceding period, and the junkyard salvage yard does not become a public nuisance under the common law.

(d) ~~Any person dissatisfied with the granting or denial of an application may appeal the issuance or denial of a certificate of approved location to the superior court for the county in which the proposed junkyard is located. The court by its order may affirm the action of the legislative body or direct the legislative body to grant or deny the application environmental court within 30 days of the decision.~~ No costs shall be taxed against either party upon such appeal.

Sec. 14. 24 V.S.A § 2257 is amended to read:

§ 2257. SCREENING REQUIREMENTS; FENCING

(a) ~~Junkyards~~ A salvage yard shall be screened by a fence or vegetation which effectively screens it from public view ~~from the highway and which complies with the rules of the secretary relative to the screening and fencing of salvage yards, and shall have a gate which shall be closed, except when entering or departing the yard after business hours.~~

(b) Fences and artificial means used for screening purposes as hereafter provided shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway or state or town road.

(c) All junk stored or deposited in a junkyard salvage yard shall be kept within the enclosure, except while being transported to or from the junkyard salvage yard. All wrecking or other work on the junk shall be accomplished within the enclosure.

(d) Where the topography, natural growth of timber, or other natural barrier ~~screen~~ screens the junkyard salvage yard from view in part, the ~~agency~~ legislative body shall upon granting the ~~license, certificate of approved location~~ require the applicant to screen only those parts of the junkyard salvage yard not so screened.

(e) ~~A junkyard prohibited by section 2253(b) of this title which is lawfully established after July 1, 1969 shall be screened or removed at the time it becomes nonconforming~~ A legislative body may inspect a salvage yard in order to determine compliance with the requirements of this chapter and a certificate of approved location issued under this chapter. A municipality may request that the secretary initiate an enforcement action against a salvage yard for violation of the requirements of this subchapter or statute or regulation within the authority of the secretary.

Sec. 15. 24 V.S.A. § 2261 is amended to read:

§ 2261. APPLICATION

Application for a ~~license to operate, maintain, or establish~~ certificate of registration for a junkyard salvage yard shall be made in writing to the ~~agency secretary~~ upon a form prescribed by ~~it~~ the secretary.

Sec. 16. 24 V.S.A. § 2262 is amended to read:

§ 2262. ELIGIBILITY

The agency secretary shall issue a ~~license if it finds~~ certificate of registration upon finding:

(1) The applicant is able to comply with the provisions of this subchapter.

(2) The applicant has filed a currently valid certificate of approval of location with the agency secretary.

(3) ~~The junkyard will not adversely affect the public health, welfare, or safety and will not constitute a nuisance at common law.~~

(4) The applicant has complied with any regulations of the agency secretary issued under section 2243 of this title and with screening or fencing requirements which, under limitations of the surrounding terrain, are capable of feasibly and effectively screening the junkyard salvage yard from view of the main traveled way of all highways.

Sec. 17. 24 V.S.A. § 2264 is amended to read:

~~§ 2264. COMPENSATION~~

~~Notwithstanding that this subchapter is established under the state's police power for the general welfare and public good, just compensation shall be paid to an owner affected for his reasonable and necessary costs incurred for the landscaping or other adequate screening, or the removal, relocation, or disposal of the following junkyards affected by this subchapter:~~

~~(1) Those lawfully in existence on July 1, 1969.~~

~~(2) Those lawfully established after July 1, 1969 but which, because of a change in status of an existing highway, or the establishment, relocation, or change in grade of the highway are brought within the prohibitions of this subchapter.~~

Sec. 18. 24 V.S.A. § 2281 is amended to read:

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

(a) In addition to the penalty in section 2282 of this title, ~~the agency or the~~ legislative body may seek a temporary restraining order, preliminary injunction, or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is ~~or will be~~ in violation of ~~this act~~ the relevant municipal requirements of this subchapter and may obtain compliance with ~~its orders for screening~~ the relevant municipal requirements of this subchapter and the terms of a certificate of approved location issued under this subchapter by complaint to the superior environmental court for the county in which the ~~junkyard~~ salvage yard is located.

(b) In addition to the penalty in section 2282 of this title, the agency of transportation may seek appropriate injunctive relief in the superior court to enforce the provisions of this subchapter within its regulatory authority.

Sec. 19. 24 V.S.A. § 2283 is amended to read:

§ 2283. APPEALS

After exhausting the right of administrative appeal to the board under section 5(d)(5) of Title 19, a person aggrieved by any order, act or decision of the agency of transportation may appeal to the superior court, and all proceedings shall be de novo. Any person, including the agency of transportation, may appeal to the supreme court from a judgment or ruling of the superior court. Appeals of acts or decisions of the secretary of natural resources or a legislative body of a municipality under this subchapter shall be appealed to the environmental court under 10 V.S.A. § 8503.

Sec. 20. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(16) 10 V.S.A. chapter 162, relating to the Texas Low-Level Radioactive Waste Disposal Compact;

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; and

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 24 V.S.A. chapter 61, subchapter 10, relating to salvage yards.

Sec. 21. 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:

(1) The following provisions of this title:

* * *

(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).

* * *

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

Sec. 22. TRANSITION

(a) For facilities holding a license for a junkyard issued prior to the effective date of this act, the license shall remain in effect until the expiration of the license. No rule adopted by the secretary of natural resources shall impose new siting criteria on existing licensed and operating facilities unless the location of a facility creates a threat to public health or the environment or creates a nuisance.

(b) Notwithstanding any other provision of law to the contrary, the functions, authorities, and responsibilities of the agency of transportation regarding the licensing of junkyards are transferred to the agency of natural resources. Any rules adopted by the agency of transportation regarding the licensing and operation of junkyards shall remain in effect as if adopted by the agency of natural resources, and any reference to the agency of transportation or the transportation board in such rules shall be interpreted to mean the secretary of natural resources or the agency of natural resources.

(c) A municipal ordinance addressing or referring to the term "junkyard" shall be deemed to refer to the term "salvage yard" for the purpose of municipal implementation and enforcement of the requirements of 24 V.S.A. chapter 61, subchapter 10 relating to municipal regulation of salvage yards, provided that at the next revision of the town plan, the municipal ordinance is amended to be consistent with state law.

Sec. 23. AGENCY OF NATURAL RESOURCES REPORT ON THE REGULATION OF SALVAGE YARDS

On or before January 15, 2010, the secretary of natural resources shall submit to the house and senate committees on natural resources and energy and the house committee on fish, wildlife and water resources a proposed program for the regulation and permitting of salvage yards by the agency of natural resources. The report shall include:

(1) A summary of how salvage yards are regulated in the state, including the number of salvage yards licensed by the state; an estimate of the number of unlicensed salvage yards in the state; and the stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements that a salvage yard is required to meet.

(2) A summary of how other New England or northeastern states regulate salvage yards, including whether any states regulate salvage yards under a general permit.

(3) A recommendation of how to regulate all environmental requirements for salvage yards under one agency of natural resources program, including whether the agency recommends the use of a general permit for salvage yards that incorporates stormwater, groundwater, solid waste, air emission, and other environmental and land use requirements.

(4) A recommendation for how to regulate the storing or keeping of salvage motor vehicles for noncommercial purposes, including a threshold number of stored or kept salvage motor vehicles that would trigger a permit or registration requirement.

(5) Environmental standards for the operation of salvage yards, including management practices or requirements for the control of stormwater runoff, control of air emissions, activities in or near wetlands, and activities in close proximity to groundwater resources or potable water supplies.

(6) An estimate of the funding, staffing, and other resources that would be required to implement any regulatory program recommended by the agency under this section.

(7) A recommended source for funding implementation, administration, and enforcement of the program or programs recommended by the agency under this section, including a recommendation of whether to expand or increase the solid waste franchise tax under 32 V.S.A. § 5952 to apply to salvage yards and whether to require a salvage yard to pay a fee under 3 V.S.A. § 2822(j).

(8) Draft legislation or draft rules that would be required to implement the recommendation under this section for the regulation of salvage yards by

the agency of natural resources, including draft legislation to implement the agency's recommendation for funding the regulation of salvage yards.

Sec. 24. AGENCY OF NATURAL RESOURCES STAFF POSITION

The agency of natural resources shall assign at least one staff member employed by the agency as of the effective date of this act to implement and enforce the requirements for salvage yards under 24 V.S.A. chapter 61 and to implement a program under which the agency shall perform a multidisciplinary review of salvage yard compliance with state and federal environmental law.

Sec. 25. REPEAL OF SUNSET OF SCRAP METAL PROCESSOR REQUIREMENTS

Sec. 12 of No. 195 of the Acts of the 2007 Adj. Sess. (2008) (sunset of scrap metal processor requirements for identification of persons selling scrap metal) is repealed.

Sec. 26. 10 V.S.A. § 7106(j) is amended to read:

~~(j) No later than October 1, 2006, each manufacturer required to label by this section shall certify to the agency that it has developed a labeling plan for its mercury-added products that complies with this section, and that this labeling plan shall be implemented for products offered for final sale, sold at a final sale, or distributed in Vermont after July 1, 2007. The labeling plan shall include detailed descriptions of the products involved and the label size, font size, material, wording, location, and attachment method for each product and for the product packaging. The plan shall include how prior to sale notification will be provided, if required. The plan, together with the certification, must be submitted to the agency and the multistate clearinghouse for approval. If a manufacturer has an approved certified labeling plan on file with the agency, the manufacturer must provide an update no later than October 1, 2006 identifying changes, if any, to the product or manufacturer's contact information and shall include all information required in this section. The update must be submitted in writing to the agency and identified as an amendment to the plan. Any changes in labeling methods for products or product categories already approved under the existing plan in order to comply with new labeling requirements must be submitted and reviewed by the agency for approval. A manufacturer who offers for final sale, sells at a final sale, or distributes a product subject to the labeling requirements of this section shall certify to the secretary, on a form provided by the secretary, that the label conforms to the requirements of subsection (d) of this section, subdivision (h)(3)(A) or subdivision (h)(3)(B) of this section.~~

Sec. 27. 10 V.S.A. § 1672(f) is amended to read:

(f) Nothing in this chapter is intended to limit the authority of the public service board under the provisions on Title 30. ~~The secretary shall solicit the concurrence of the public service board when proposing rules under subdivisions (b)(2) through (5) of this section, as applicable to water companies regulated under Title 30. When the secretary and the public service board concur, the rules shall be adopted jointly.~~

Sec. 28. WATER SUPPLY RULEMAKING

The failure of the secretary to solicit concurrence from the public service board under subsection 1672(f) of Title 10 shall not affect the validity of any rule adopted under chapter 56 of Title 10 prior to July 1, 2009.

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife & Water Resources agreed to and third reading ordered.

Rules Suspended; Bill Read Third Time and Passed

H. 222

On motion of **Rep. McDonald of Berlin**, the rules were suspended on House bill, entitled

An act relating to senior protection and financial services;

Thereupon, the bill was placed on all remaining stages of passage. The bill was read the third time and passed and, on motion of **Rep. McDonald of Berlin** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Rules Suspended; Bill Read Third Time and Passed

H. 240

On motion of **Rep. McDonald of Berlin**, the rules were suspended on House bill, entitled

An act relating to no-net-loss of state hunting lands;

Thereupon, the bill was placed on all remaining stages of passage. The bill was read the third time and passed and, on motion of **Rep. McDonald of Berlin** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Bill Read Third Time and Passed in Concurrence
With Proposal of Amendment**

S. 47

On motion of **Rep. McDonald of Berlin**, the rules were suspended on
Senate bill, entitled

An act relating to salvage yards;

Thereupon, the bill was placed on all remaining stages of passage. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. McDonald of Berlin** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Rules Suspended; Bills Messaged to Senate Forthwith

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

H. 125

House bill, entitled

An act relating to farm-fresh milk

H. 222

House bill, entitled

An act relating to senior protection and financial services

H. 240

House bill, entitled

An act relating to no-net-loss of state hunting lands

S. 129

Senate bill, entitled

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

S. 47

Senate bill, entitled

An act relating to salvage yards

Rules Suspended; Bill Committed**S. 48**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. McDonald of Berlin**, the rules were suspended and Senate bill, entitled

An act relating to marketing of prescribed products;

Was taken up for immediate consideration.

Pending reading of the report of the committee on Health Care, on motion of **Rep. McDonald of Berlin**, the bill was committed to the committee on Ways and Means.

Recess

At two o'clock and thirty-five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock and fifty-five minutes in the afternoon, the Speaker called the House to order.

Rules Suspended; Senate Proposal of Amendment Concurred in**H. 6**

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to the sale of engine coolants and antifreeze;

Appearing on the Calendar for notice, was taken up for immediate consideration.

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

First: In Sec. 2, 9 V.S.A. § 2843, by striking out the last sentence and inserting in lieu thereof the following:

This section does not provide immunity to any person to the extent that the cause of liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze

Second: In Sec. 2, 9 V.S.A. § 2844, by striking out § 2844 in its entirety and inserting in lieu thereof the following:

§ 2844. EXCEPTIONS

This subchapter does not apply to:

(1) The sale of a motor vehicle that contains engine coolant or antifreeze; or

(2) Antifreeze or engine coolant for use in a manufacturing process, provided that the manufacturer complies with occupational safety and health standards for the use of the antifreeze or engine coolant and complies with the agency of natural resources for the disposal of antifreeze or engine coolant containing ethylene glycol.

Which proposal of amendment was considered and concurred in.

Rules Suspended; Senate Proposal of Amendment Concurred in

H. 249

On motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to volunteer nonprofit service organizations and casino nights

Appearing on the Calendar for notice, was taken up for immediate consideration.

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

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

Sec. 1. 13 V.S.A. § 2143(d) is amended to read:

(d) Casino events shall be limited as follows:

(1) A location may be the site of no more than:

(A) one casino event in any calendar quarter; or

(B) three casino events in any calendar year, as long as there are at least 15 days between each event.

(2) A location that is owned by a nonprofit, as defined in 32 V.S.A. § 10201(5) may be the site of no more than three casino events in any calendar quarter and no more than 12 casino events in any calendar year as long as there are at least 15 days between each event.

(3) A nonprofit organization, as defined in 32 V.S.A. § 10201(5), may organize and execute no more than:

(A) one casino event in any calendar quarter; or

(B) three casino events in any calendar year, as long as there are at least 15 days between each event.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

and that the title of the bill be amended to read: "An act relating to nonprofit service organizations and casino nights"

Which proposal of amendment was considered and concurred in.

**Rules Suspended; Senate Proposal of Amendment to House Proposal of
Amendment Not Concurred in; Committee of Conference
Requested and Appointed; Rules Suspended and Bill Ordered
Messaged to the Senate Forthwith**

S. 26

On motion of **Rep. McDonald of Berlin**, the rules were suspended and Senate bill, entitled

An act relating to recovery of profits from crime Appearing on the Calendar for notice, was taken up for immediate consideration.

The Senate concurred in the House proposal of amendment with the following amendments thereto:

First: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

Second: In Sec. 5, 14 V.S.A. § 322, by striking out § 322 in its entirety and inserting in lieu thereof a new § 322 to read as follows:

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

(a) Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case in which an individual is entitled to inherit or receive property under the last will of a decedent or otherwise or stands to benefit under the terms of any trust of a decedent, the individual's share in the decedent's estate or benefits from any trust shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if the individual intentionally and unlawfully kills the decedent or intentionally and unlawfully kills another person and, by doing so, stands to inherit under the decedent's will or otherwise or to become a beneficiary under any trust of the decedent.

In any proceedings to contest the right of an individual to inherit or receive property under a will or otherwise or to benefit under the terms of any trust, the record of that individual's conviction of intentionally and unlawfully killing the decedent or other person shall be admissible evidence for purposes of this section.

(b) This section shall apply retroactively to any individual who stands to inherit or receive property under a will or otherwise or benefit under the terms of any trust as the result of committing an intentional and unlawful killing prior to or after the effective date of this section.

Third: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. 4 V.S.A. § 278 is added to read:

§ 278. AUTHORIZATION OF ASSISTANT JUDGES TO RUN FOR THE OFFICE OF PROBATE JUDGE

(a) Notwithstanding any provision of law to the contrary, an assistant judge or a candidate for the office of assistant judge may also seek election to the office of probate judge, and if elected to both offices, may serve both as an assistant judge and as probate judge.

(b) In the event a probate matter arises in the superior court over which an assistant judge is also the probate judge that presides, or has presided, over the same or related probate matter in the probate court, the assistant judge shall be disqualified from hearing and deciding the probate matter in the superior court.

(c) In the event a probate matter arises in the probate court over which a probate judge is also an assistant judge that presides, or has presided, over the same or related probate matter in the superior court, the probate judge shall be disqualified from hearing and deciding the probate matter in the probate court.

Fourth: By adding five new sections to be numbered Secs. 10, 11, 12, 13, and 14 to read as follows:

Sec. 10. 27 V.S.A. § 1270 is amended to read:

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than \$2,500.00 \$5,000.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open distribution, and the unclaimed property \$5,000.00 to the surviving spouse of the surviving spouse, then to the next of kin.

(4) In all other cases where the deceased owner, a probate estate shall interested party, in order to determine unclaimed property. Where an estate is property under this section, the probate c

(b) If the treasurer holds unclaimed p less which more than one person owns, as follows:

(1) If the property has been listed one year, a proportionate share to each and who files a claim.

(2) If the property has been listed more, to the first person who files a claim property.

Sec. 11. REPEAL

Sec. 2a of No. 161 of the Acts of the subsection regarding multiple claimant \$100.00 or less) is repealed so that 27 V on July 1, 2009.

Sec. 12. 8 V.S.A. § 14304 is added to re § 14304. CARD HOLDER REPRESENTEN

(a) A credit card company or its c contact a card holder regarding a debt, l that the card holder is disputing the d represented by legal counsel in the disp the credit card company or its creditor address, and telephone number of the leg

(b) A credit card company or its cre subsection (a) of this section shall be fine

(c) Each violation of subsection (a) separate offense.

Sec. 13. 12 V.S.A. § 1612 is amended to

MAY 01, 2009

state or probate court decree of is valued at less than \$2,500.00 deceased owner, or, if there is no ordering to section 551 of Title 14.

er holds property in the name of a opened by the claimant, or other ne appropriate distribution of the ened solely to distribute unclaimed t may waive any filing fees.

erty valued at ~~\$100.00~~ \$250.00 or treasurer may deliver the property

the treasurer's website for less than he persons who owns the property

the treasurer's website for a year or nd who owns at least a share of the

2005 legislative session (sunset of of unclaimed property valued at A. § 1270(b) shall not be repealed

D BY LEGAL COUNSEL

itor or collection agency shall not fee, or other charge once informed , late fee, or other charge and is , and the card holder has provided collection agency with the name, ounsel.

or or collection agency that violates ot more than \$10,000.00.

this section shall be considered a

ad:

FRI

§ 1612. PATIENTS' PATIENT'S P

(a) Confidential information p privilege or unless the privilege is person authorized to practice medic professional or licensed practical defined in 18 V.S.A. § 7101(13) information acquired in attending a p joint or group counseling sessions provider to act in that capacity.

(b) Identification by dentist; cri dentist shall be required to disclose a patient. A physician, dentist, c disclose information indicating that has been the victim of a crime.

(c) Mental or physical condition

(1) A physician, chiropractor information as to the mental or privileged under subsection (a), e disgrace the memory of the deceden party to the litigation or when the pr

(1)(A) by the personal repre next of kin of the decedent; or

(2)(B) in any litigation where are deemed by the trial judge to decedent, by any party in interest; or

(3)(C) if the validity of the executor named in the will, or the su the next of kin or any other party in

(2) A physician, dentist, ch nurse shall be required to disclose a condition of a deceased patient priv upon request to the chief medical ex

Sec. 14. EFFECTIVE DATE

(a) Secs. 1, 2, 3, 4, 5, 7, 10, passage. Sec. 5 of this act shall app after the effective date of Sec. 5 this shall apply to any individual who s

will or otherwise or benefit under the terms of any trust as the result of committing an intentional and unlawful killing prior to, on, or after the effective date of Sec. 5.

(b) Secs. 6, 8, 9, 12 and 13 of this act shall take effect July 1, 2009.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Lippert of Hinesburg** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Jewett of Ripton

Rep. Flory of Pittsford

Rep. French of Shrewsbury

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Message from the Senate No. 50

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bill of the following title:

S. 97. An act relating to a Vermont state employees' cost-savings incentive program.

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

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

H. 15. An act relating to aquatic nuisance control.

H. 86. An act relating to the regulation of professions and occupations.

H. 436. An act relating to decommissioning and decommissioning funds of nuclear energy generation plants.

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

Recess

At three o'clock and five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At four o'clock and fifteen minutes in the afternoon, the Speaker called the House to order.

Senate Bill Referred to Committee**S. 97**

Senate bill, entitled

An act relating to a Vermont state employees' cost-savings incentive program;

Was taken up, read the first time and referred to the committee on Government Operations.

**Rules Suspended; Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed; Rules Suspended
And Bill Messaged to Senate Forthwith**

H. 86

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. McDonald of Berlin**, the rules were suspended and House bill, entitled

An act relating to the regulation of professions and occupations

Was taken up for immediate consideration.

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

First: By adding a Sec. 2a to read:

Sec. 2a. VERMONT BOARD OF BARBERS AND COSMETOLOGISTS;
LASER PROCEDURES; STUDY

The Vermont board of barbers and cosmetologists shall convene a committee to study the use of laser light and radio frequency devices and shall provide a report and recommendation to the general assembly by January 15, 2010 on the current laws regulating the practice. The committee shall report on the education, training, supervision, and oversight necessary for the safe use of the various types of lasers and their uses in procedures related to skin treatments and care. The committee shall include a representative of the state board of medical practice, a representative of the board of barbers and cosmetologists, a registered nurse, a practicing dermatologist, a practicing esthetician, and other members of the public, or health and medical or skin care industry experts the board deems necessary to contribute to an informed discussion of the issues.

Second: By adding a Sec. 2b to read:

Sec. 2b. STATE BOARD OF PRIVATE INVESTIGATIVE AND SECURITY SERVICES; DIGITAL FORENSICS STUDY

The state board of private investigative and security services shall study the profession of digital forensics and whether regulation of digital forensics is necessary to protect the public. The board may solicit the advice of practitioners of the profession and other industry experts the board deems necessary to contribute to an informed discussion of the issues and shall submit a report of recommendations to the general assembly by January 15, 2010.

Third: By adding a new Sec. 2c to read as follows:

Sec. 2c. LANDSCAPE ARCHITECTS STUDY

By November 15, 2009 the office of legislative council, with the full cooperation and assistance of the office of professional regulation and the Vermont Society of Landscape Architects, shall report to the general assembly whether Vermont landscape architects may currently be restricted in their ability to practice their profession to the full extent of their education and training, and how such restrictions may impact the best interests of Vermonters. The report shall also provide various options for regulation of landscape architects which seek to minimize:

a) any such restrictions on practice, and

b) any inconsistencies with existing laws governing the regulation of new professions.

Fourth: By adding a Sec. 12a to read:

Sec. 12a. OFFICE OF PROFESSIONAL REGULATION; BOARD OF DENTAL EXAMINERS; DENTAL HYGIENISTS

The director of the office of professional regulation shall file a report with the general assembly by January 1, 2010 that recommends whether to restructure the board of dental examiners to improve the regulation of dental hygienists. If the board determines that restructuring is necessary, it shall make appropriate recommendations.

Fifth: In Sec. 18, 26 V.S.A. § 1252(a), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) The board may waive the educational and traineeship requirements for examination as a funeral director, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

Sixth: In Sec. 18, 26 V.S.A. § 1252(b), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) The board may waive the educational and traineeship requirements for examination as an embalmer, provided the applicant possesses a valid license from another state with licensure requirements substantially similar to those required by this chapter.

Seventh: By striking out Sec. 26 in its entirety and inserting in lieu thereof a new Sec. 26 to read:

Sec. 26. NURSING EDUCATION PROGRAMS; FACULTY; EDUCATIONAL EXPERIENCE

A member of the nurse faculty of a baccalaureate or associate degree nursing education program shall hold at least a master's degree with a major in nursing and clinical experience relevant to the areas of responsibility unless the individual was a member of the faculty prior to March 1, 2004, provided that he or she meets all other requirements of the Vermont state board of nursing rules and has either acquired a master's degree in education or is currently in the process of obtaining a master's degree in nursing.

Eighth: In Sec. 41(b), by striking out “§ 71a(a)(2)(A)(ii)” and inserting in lieu thereof § 71a(a)(2)(A)(i)

Ninth: In Sec. 41, by adding a subsection (c) to read:

(c) Sec. 26a of this act shall be repealed on July 1, 2013.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Evans of Essex** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Evans of Essex

Rep. Hubert of Milton

Rep. Townsend of Randolph

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Senate Proposal of Amendment Not Concurred in;
Committee of Conference Requested and Appointed;
Rules Suspended and the Bill Ordered Messaged to the Senate Forthwith**

H. 15

The Senate proposed to the House to amend House bill, entitled

An act relating to aquatic nuisance control

First: In Sec. 1, 10 V.S.A. § 1455(i)(4), by striking out the word “three” where it appears and inserting in lieu thereof the word five

Second: In Sec. 8, by striking out the words “regarding water pollution, use of state waters, hunting, or fishing” where they appear and inserting in lieu thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Third: In Sec. 9, by striking out the words “that address or relate to the use of state surface waters” and inserting in lieu thereof the words regarding the use of state waters for hunting, fishing, or other recreational uses

Fourth: By adding Sec. 10a to read as follows:

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

(b) The advisory committee shall be terminated on January 1, ~~2010~~ 2015, unless extended by the general assembly.

Fifth: By adding Sec. 10b to read as follows:

Sec. 10b. 3 V.S.A. § 2822(j)(13) is amended to read:

(13) For aquatic nuisance control permits issued under 10 V.S.A. § ~~1263a~~ 1455:

Sixth: By adding a new section to be numbered Sec. 10c to read as follows:

Sec. 10c. INVASIVE SPECIES WORKING GROUP

(a) An invasive species working group is established to study the economic and environmental impacts of invasive species in Vermont and to recommend strategies for prevention, early detection, control, and management of invasive species in Vermont.

(b) The working group shall consist of the following members:

(1) The secretary of natural resources or his or her designee;

(2) The secretary of agriculture, food and markets or his or her designee;

(3) The state entomologist;

(4) A staff member of the agency of natural resources aquatic nuisance control program designated by the secretary of natural resources;

(5) Two persons with experience in the research and study of the impact of invasive species, one appointed by the speaker of the house and one appointed by the committee on committees;

(5) A representative of the nursery or landscape industry, appointed by the governor; and

(6) A representative of an environmental organization, appointed by the committee on committees.

(c) The secretary of natural resources shall promptly convene the first meeting of the commission at which time the members of the commission shall elect a chair. A majority of the members of the commission shall constitute a quorum.

(d) On or before January 15, 2010, the invasive species advisory commission shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house committee on fish, wildlife and water resources a report that shall include the following:

(1) A summary of the economic and environmental impact of invasive species on the state;

(2) A summary of how invasive species are currently regulated in the state;

(3) A summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;

(4) Recommendations for improving state regulation of and response to the threat and spread of invasive species, including a recommended lead state agency for coordinating state response to invasive species and recommended draft legislation or draft rules to improve state response to invasive species; and

(5) Recommendations for providing and coordinating public education and outreach regarding invasive species.

* * *

Seventh: In Sec. 11, by striking out subsection (a) in its entirety and inserting in lieu thereof:

(a) This section and Secs. 8 (ANR materials), 9 (department of tourism and marketing materials), 10 (ANR report on financing aquatic nuisance control), 10a (extension of mercury advisory committee sunset), and 10c (invasive species working group) shall take effect July 1, 2009)..

Eighth: In Sec. 11, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Secs. 1 (ANR aquatic nuisance control chapter), 2 (ANR enforcement), 3 (ANR appeals), 4 (repeal of existing aquatic nuisance control authority), 5 (agency of transportation aquatic nuisance educational materials), 6 (boating safety rules educational materials), 7 (special fund for motor vehicle registration), and 10b (aquatic nuisance permit fee) of this act shall take effect July 1, 2010.

Pending the question, Will the House concur in the Senate proposal of amendment? **Rep. Adams of Hartland** moved that the House refuse to concur and ask for a Committee of Conference, which was agreed to, and the Speaker appointed as members of the Committee of Conference on the part of the House:

Rep. Adams of Hartland

Rep. McCullough of Williston

Rep. Webb of Shelburne

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Message from Governor

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

Madam Speaker:

I am directed by the Governor to inform the House that on the first day of May, 2009, he approved and signed a bill originating in the House of the following title:

H. 34 An act relating to automated external defibrillators

Adjournment

At four o'clock and thirty minutes in the afternoon, on motion of **Rep. McDonald of Berlin**, the House adjourned until Monday, May 4, 2009 at ten o'clock in the forenoon.

Monday, May 4, 2009

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rep. Aswad of Burlington.

Committee Bill Introduced**H. 456**

Rep. Pugh of South Burlington, for the committee on Human Services, introduced a bill, entitled

An act relating to seasonal fuel assistance

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

House Resolution Placed on Calendar**H.R. 19**

House resolution, entitled

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont

Offered by: Representative Deen of Westminster

Whereas, the federal Clean Water Act requires dischargers of pollutants to the navigable waters of Vermont to obtain a national pollutant discharge elimination system (NPDES) permit, and

Whereas, the federal Clean Water Act authorizes the U.S. Environmental Protection Agency (EPA) to delegate to states the authority to administer and enforce the NPDES permit program for discharges to navigable waters, and

Whereas, EPA delegated administration of the federal Clean Water Act in Vermont to the agency of natural resources (ANR) in 1974, and

Whereas, ANR's delegated authority allows the agency, instead of EPA, to implement and enforce permitting requirements for all development and farms in the state, and

Whereas, delegation of the Clean Water Act to ANR allows the agency access to significant federal funding to administer the NPDES permitting program in the state, and

Whereas, delegation of the Clean Water Act to ANR allows the agency to initiate an enforcement action to forestall citizen suits against discharges that potentially violate the Clean Water Act, and

Whereas, secretary of natural resources Jonathan Wood stated that ANR is considering returning delegation of the NPDES permit program in Vermont to EPA, and

Whereas, returning delegation of the NPDES permit program to EPA would require developers in Vermont to apply to EPA Region 1 in Boston for necessary stormwater permits, and

Whereas, returning delegation of the NPDES permit program to EPA would require farms and stormwater discharges that are permitted under state law to be permitted by EPA under the federal Clean Water Act, and

Whereas, returning delegation of the NPDES permit program to EPA would prevent ANR from forestalling citizen suits against discharges in the state, and

Whereas, returning delegation of the NPDES permit program to EPA would require ANR to forfeit over \$1.2 million in federal funds and require the termination of 17 employees at the agency, and

Whereas, the Vermont general assembly is the public policy entity of the state, and

Whereas, the return of delegation of the NPDES permit program to EPA is a significant public policy issue, now therefore be it

Resolved by the House of Representatives:

That ANR is urged not to return the authority delegated to it by EPA to implement and enforce the NPDES permit program of the federal Clean Water Act without approval of the Vermont general assembly, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to Governor James Douglas, EPA administrator Lisa Jackson, the Vermont Congressional Delegation, and Vermont Secretary of Natural Resources Jonathan Wood.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 91

Rep. Lanpher of Vergennes, for the committee on Transportation, to which had been referred Senate bill, entitled

An act relating to operation of vessels on public waters

Reported in favor of its passage in concurrence with proposal of amendment as follows:

In Sec. 4, 23 V.S.A. § 3327(a), after the words "give his or her name", by inserting the following: " date of birth "

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Proposals of Amendment Agreed to; Third Reading Ordered

S. 67

Rep. Potter of Clarendon, for the committee on Transportation, to which had been referred Senate bill, entitled

An act relating to motor vehicles

Reported in favor of its passage in concurrence with proposal of amendment as follows:

First: By inserting a Sec. 14 to read:

Sec. 14. 23 V.S.A. § 618a is added to read:

§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM

The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter 109 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.

Second: By inserting a Sec. 15 to read:

Sec. 15. 23 V.S.A. § 4111(a) is amended to read:

(a) Contents of license. A commercial ~~driver~~ driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extend practicable, tamper proof, and shall include, but not be limited to the following information:

* * *

(11) An indicator that a licensee has executed a document that serves as an anatomical gift pursuant to section 618a of this title.

Third: By inserting a Sec. 16 to read:

Sec. 16. 23 V.S.A. § 108 is amended to read:

§ 108. APPLICATION FORMS

(a) The commissioner shall prepare and furnish all forms for applications, accident reports, conviction reports, a pamphlet containing the full text of the motor vehicle laws of the state, and all other forms needed in the proper conduct of his or her office. He or she shall furnish an adequate supply of ~~such~~

registration forms, license applications, and motor vehicle laws each year to each town clerk, and to ~~such~~ other persons ~~as may so~~ who make a request.

(b) The commissioner shall state on applications for an operator license and a commercial driver license, including applications for renewals, the following statement: "By submitting or signing this application, I am consenting to registration with the Selective Service System, if so required by law, unless I have checked the "opt out" box."

Fourth: By inserting a Sec. 17 to read:

Sec. 17. 23 V.S.A. § 115(l) is added to read:

(l) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for a nondriver identification card, renewal of a card, or replacement of a card which has been lost, destroyed, or mutilated shall serve as registration with the Selective Service System for those persons required to comply with the federal law unless they indicate on the application that they do not wish to register via the license. The commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

Fifth: By inserting a Sec. 18 to read:

Sec. 18. 23 V.S.A. § 603(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for an operator license or renewal of a license shall serve as registration with the Selective Service System for those persons required to comply with the federal law unless they indicate on the application that they do not wish to register via the license. The commissioner shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

Sixth: By inserting a Sec. 19 to read:

Sec. 19. 23 V.S.A. § 4110(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. The signature on the application for a commercial driver license or

renewal of a license shall serve as registration with the Selective Service System for those persons required to comply with the federal law unless they indicate on the application that they do not wish to register via the license. The commissioner shall forward the necessary personal information in an electronic format to the Selective Service for all those who do not opt out of registration.

Seventh: By inserting a Sec. 20 to read:

Sec. 20. EFFECTIVE DATES

(a) Secs. 16-19 of this act shall take effect on July 1, 2010.

(b) All other sections of this act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Thereupon, **Rep. Fisher of Lincoln** asked that the question be divided and the first and second proposals of amendment were agreed to.

Rep. Jewett in Chair.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Transportation in the third through seventh proposals of amendment? **Rep. Haas of Rochester** moved to commit the bill to the committee on Appropriations, which was disagreed to on a Division Vote. Yeas, 50. Nays, 52.

Thereupon, pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Transportation in the third through seventh recommendation of proposals of amendment? **Rep. Wright of Burlington** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Transportation in the third through seventh recommendation of proposals of amendment? was decided in the negative. Yeas, 60. Nays, 68.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Aswad of Burlington
Atkins of Winooski
Audette of South Burlington
Baker of West Rutland
Bissonnette of Winooski
Bohi of Hartford

Botzow of Pownal
Branagan of Georgia
Bray of New Haven
Brennan of Colchester
Canfield of Fair Haven
Clarkson of Woodstock
Clerkin of Hartford
Conquest of Newbury
Corcoran of Bennington

Courcelle of Rutland City
Devereux of Mount Holly
Dickinson of St. Albans
Town
Donaghy of Poultney
Evans of Essex
Fagan of Rutland City
French of Shrewsbury
Gilbert of Fairfax

Greshin of Warren	Macaig of Williston	Rodgers of Glover
Helm of Castleton	Manwaring of Wilmington	Savage of Swanton
Higley of Lowell	Marcotte of Coventry	Scheuermann of Stowe
Howard of Rutland City	McAllister of Highgate	Sharpe of Bristol
Hube of Londonderry	McDonald of Berlin	South of St. Johnsbury
Hubert of Milton	Myers of Essex	Sweaney of Windsor
Jerman of Essex	Nease of Johnson	Toll of Danville
Keenan of St. Albans City	O'Donnell of Vernon	Westman of Cambridge
Koch of Barre Town	Pearce of Richford	Winters of Williamstown
Komline of Dorset	Peaslee of Guildhall	Wright of Burlington
Larocque of Barnet	Potter of Clarendon	
Lawrence of Lyndon	Reis of St. Johnsbury	

Those who voted in the negative are:

Ancel of Calais	Klein of East Montpelier	Nuovo of Middlebury
Andrews of Rutland City	Krawczyk of Bennington	O'Brien of Richmond
Burke of Brattleboro	Lanpher of Vergennes	Obuchowski of Rockingham
Cheney of Norwich	Larson of Burlington	Pellett of Chester
Condon of Colchester	Lenes of Shelburne	Peltz of Woodbury
Consejo of Sheldon	Leriche of Hardwick	Perley of Enosburg
Copeland-Hanzas of	Lewis of Derby	Poirier of Barre City
Bradford	Lippert of Hinesburg	Ram of Burlington
Davis of Washington	Lorber of Burlington	Shand of Weathersfield
Deen of Westminster	Maier of Middlebury	Smith of Mendon
Donahue of Northfield	Malcolm of Pawlet	Spengler of Colchester
Donovan of Burlington	Marek of Newfane	Stevens of Waterbury
Edwards of Brattleboro	Martin of Springfield	Taylor of Barre City
Emmons of Springfield	Martin of Wolcott	Till of Jericho
Fisher of Lincoln	Masland of Thetford	Townsend of Randolph
Frank of Underhill	McCullough of Williston	Waite-Simpson of Essex
French of Randolph	McFaun of Barre Town	Webb of Shelburne
Grad of Moretown	Milkey of Brattleboro	Weston of Burlington
Haas of Rochester	Miller of Shaftsbury	Wheeler of Derby
Head of South Burlington	Minter of Waterbury	Wilson of Manchester
Hooper of Montpelier	Mitchell of Barnard	Wizowaty of Burlington
Johnson of South Hero	Mook of Bennington	Young of St. Albans City
Kitzmiller of Montpelier	Moran of Wardsboro	Zenie of Colchester

Those members absent with leave of the House and not voting are:

Browning of Arlington	Johnson of Canaan	Partridge of Windham
Clark of Vergennes	Kilmartin of Newport City	Pugh of South Burlington
Crawford of Burke	McNeil of Rutland Town	Smith of Morristown
Flory of Pittsford	Morley of Barton	Stevens of Shoreham
Geier of South Burlington	Morrissey of Bennington	Trombley of Grand Isle
Heath of Westford	Mrowicki of Putney	Turner of Milton
Howrigan of Fairfield	Orr of Charlotte	Zuckerman of Burlington

Rep. Andrews of Rutland City explained her vote as follows:

"Mr. Speaker:

I am concerned about young people without strong parental and community guidance who may slip through the cracks and be penalized for their ignorance. I would support a plan to remind and educate them about their responsibilities at the time they apply for a license, but this feels like an unwarranted intrusion of Federal requirements into our state business. I also feel this proposal should be reviewed by the House committee on General, Housing and Military Affairs."

Thereupon, third reading was ordered.

Recess

At twelve o'clock and forty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock in the afternoon, the Speaker called the House to order.

Senate Proposal to House Proposal of Amendment Concurred in

S. 94

Senate bill, entitled

An act relating to licensing state forestland for maple sugar production

The Senate concurs in the House proposal of amendment with the following amendments thereto:

First: In Sec. 1, 10 V.S.A. § 2606b(b), by striking out the words "right to transport" where they appear in the first sentence before "such sap" and inserting in lieu thereof "transportation of"

Second: In Sec. 1, 10 V.S.A. § 2606b(d), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) Three sugar makers, at least one of which is an independent sugar maker unaffiliated with an association, appointed by the secretary of agriculture, food and markets.

Third: In Sec. 1, 10 V.S.A. § 2606b, by adding subsection (f) to read as follows:

(f) On or before January 15, 2010, the commissioner of forests, parks and recreation shall submit to the senate and house committees on natural resources and energy and the senate and house committees on agriculture a report

regarding the implementation of the requirements of this section. The report shall include:

(1) A copy of the guidelines required by this section for issuing licenses for the use of state forestland for maple sap collection and production.

(2) A summary of the process used to identify parcels of state forestland suitable for licensing for maple sap collection and production and the process by which the department allocated licenses.

(3) A summary of the licenses issued for maple sap collection and production on state forestland.

(4) An estimate of the fees collected for licenses issued under this section.

(5) A copy of any rules adopted by or proposed for adoption by the commissioner to implement the requirements of this section.

Which proposal of amendment was considered and concurred in.

**Rules Suspended; Bill Read Third Time and Passed in Concurrence
with Proposal of Amendment**

S. 91

Senate bill, entitled

An act relating to operation of vessels on public waters;

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment.

Rules Suspended; Bills Messaged to Senate Forthwith

On motion of **Rep. McDonald of Berlin**, the rules were suspended and bills of the following titles were ordered messaged to the Senate forthwith.

S. 91

Senate bill, entitled

An act relating to operation of vessels on public waters;

S. 94

Senate bill, entitled

An act relating to licensing state forestland for maple sugar production.

**Rules Suspended; Proposal of Amendment Agreed to;
Third Reading Ordered; Rules Suspended and Bill Ordered
Messaged to Senate Forthwith**

S. 70

On motion of **Rep. McDonald of Berlin**, the rules were suspended and Senate bill, entitled

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Brennan of Colchester, for the committee on Transportation, to which had been referred Senate bill, entitled

Reported in favor of its passage in concurrence with proposal of amendment as follows:

First: In Sec. 1, subsection (b), subdivision (1) by striking the figure "\$1,000.00" and inserting in lieu thereof the figure "\$500.00" and

Second: In Sec. 1, subsection (b), subdivision (1), after the final period, by inserting the following: "The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant."

Rep. Masland of Thetford, for the committee on Ways and Means, recommends the bill ought to pass in concurrence when amended as recommended by the committee on Transportation.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Proposal of Amendment Agreed to; Third Reading
Ordered; Rules Suspended and the Resolution was Ordered
Messaged to the Senate Forthwith**

On motion of **Rep. McDonald of Berlin**, the rules were suspended and Joint resolution, entitled

Joint resolution relating to the legalization of industrial hemp

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Malcolm of Pawlet, for the committee on Agriculture, to which had been referred the resolution reported in favor of its passage in concurrence with proposal of amendment as follows:

By striking it in its entirety and inserting in lieu thereof the following:

Joint resolution relating to the legalization of industrial hemp

Whereas, industrial hemp refers to the nondrug oilseed and fiber varieties of *Cannabis* which have less than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) and which are cultivated exclusively for fiber, stalk, and seed, and

Whereas, industrial hemp is genetically distinct from drug varieties of *Cannabis* (also known as marijuana), and the flowering tops of industrial hemp do not produce any psychoactive drug effect when smoked or ingested, and

Whereas, Congress did not intend to prohibit the production of industrial hemp when restricting the production, possession and use of marijuana, and

Whereas, the legislative history of the Marijuana Tax Act of 1937 (50 Stat. 551), the statutory source for the federal definition of marijuana, shows that industrial hemp farmers and manufacturers of industrial hemp products were assuaged by the Federal Bureau of Narcotics commissioner, that the proposed legislation bore no threat to hemp-related activities, and

Whereas, the United States Court of Appeals for the Ninth Circuit ruled in Hemp Industries v. Drug Enforcement Administration, 357 F.3d 1012

(9th Cir. 2004), that the federal Controlled Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana, and the federal government declined to appeal that decision, and

Whereas, the Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a Schedule I drug, and those findings include that the substance has a high potential for abuse, has no accepted medical use, and has a lack of accepted safety for use, none of which applies to industrial hemp, and

Whereas, Article 28, § 2 of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, states that, "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes," and

Whereas, industrial hemp is commercially produced in more than 30 countries, including Australia, Canada, China, Great Britain, France, Germany and Romania, without undue restriction or complications, and

Whereas, American companies are forced to import millions of dollars' worth of hemp seed and fiber products, denying American farmers the opportunity to compete for and share in profits for cultivating hemp, and

Whereas, nutritious hemp foods can be found in grocery stores nationwide, and strong durable hemp fibers can be found in the interior parts of millions of American cars, and

Whereas, buildings are being constructed of a hemp and lime mixture that sequesters carbon, and

Whereas, retail sales of hemp products in this country are estimated to be \$365 million annually, and

Whereas, industrial hemp is a high-value low-input crop that is not genetically modified, requires little or no pesticide use, can be dry-land farmed, and uses less fertilizer than wheat or corn, and

Whereas, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value low-input crop, which can provide significant economic benefits to producers and manufacturers, and

Whereas, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses, and

Whereas, the Vermont General Assembly passed Act 212 in the 2007 session, which established a process wherein Vermont producers could take advantage of agronomic and commercial opportunities related to industrial hemp, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to:

- 1) Recognize industrial hemp as a valuable agricultural commodity;

- 2) Define industrial hemp in federal law as a nonpsychoactive and genetically identifiable species of the genus *Cannabis*;
- 3) Acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and
- 4) Assist United States producers by removing barriers to state regulation of the commercial production of industrial hemp, *and be it further*

Resolved: That the United States Drug Enforcement Administration allow the states to regulate industrial hemp farming without federal applications, licenses or fees, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Administrator of the United States Drug Enforcement Administration, United States Secretary of Agriculture Tom Vilsack, and the Vermont Congressional delegation.

The resolution, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the resolution placed on all remaining stages of passage in concurrence with proposal of amendment. The resolution was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. McDonald of Berlin**, the rules were suspended and the resolution was ordered messaged to the Senate forthwith.

Consideration Interrupted by Recess

S. 125

Rep. Lippert of Hinesburg, for the committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to expanding the sex offender registry

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

(a) The act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the act, the National Conference of State Legislatures called the guidelines a “burdensome,” “preemptive,” “unfunded mandate” for the states, requiring every legislature to undertake an extensive review of its laws as compared to the act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the act, as of February 1, 2009, no state has been certified to be in substantial compliance with the act. States are required to comply with the act by July 27, 2009 or lose 10 percent of the state’s federal Byrne/JAG Funds, although Vermont has recently received a one-year extension from the Office of Justice Programs’ SMART office, which is responsible for regulations and compliance under the act.

(c) Constitutional challenges. The act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the act retroactively, requiring Vermont to retier all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and would be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635a. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) "Coercion" means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(3) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

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

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

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

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than \$25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct which arises out of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense other than a violation of chapter 59 (lewdness and prostitution) or chapter 63 (obscenity) of this title which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an

affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

* * * Minor Disseminating Indecent Material ("Sexting") * * *

Sec. 3. 13 V.S.A. § 2802b is added to read:

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

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

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

(b) Penalties; minors.

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

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

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (1) of this subsection or may be prosecuted in district court under chapter 64 of this title (sexual exploitation of children) but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than \$300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under sections 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or

2632 (prohibited acts) of this title, or under any other applicable provision of law.

Sec. 4. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

* * *

* * * Sex Offender Registry * * *

Sec. 5. 13 V.S.A. § 5401(10) is amended to read;

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

- (i) sexual assault as defined in 13 V.S.A. § 3252;
- (ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;
- (iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;
- (iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A.

§ 1379;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c);

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); and

(vii) a federal conviction in federal court for any of the following offenses:

(I) sex trafficking of children as defined in 18 U.S.C. § 1591;

(II) aggravated sexual abuse as defined in 18 U.S.C. § 2241;

(III) sexual abuse as defined in 18 U.S.C. § 2242;

(IV) sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243;

(V) abusive sexual contact as defined in 18 U.S.C. § 2244;

(VI) offenses resulting in death as defined in 18 U.S.C. § 2245;

(VII) sexual exploitation of children as defined in 18 U.S.C. § 2251;

(VIII) selling or buying of children as defined in 18 U.S.C. § 2251A;

(IX) material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252;

(X) material containing child pornography as defined in 18 U.S.C. § 2252A;

(XI) production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260;

(XII) transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421;

(XIII) coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422;

(XIV) transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423;

(XV) transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425;

(vii)(ix) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

- (i) any offense listed in subdivision (A) of this subdivision (10);
- (ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);
- (iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;
- (iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;
- (v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;
- (vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);
- (vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a;
- (viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a;
- (ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b);
- (x) an attempt to commit any offense listed in this subdivision (B).

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)(A)~~ or (B) of this ~~section~~ subdivision (10) if committed in this state.

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

~~(D)~~(E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

Sec. 6. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt. If the registrant's name appears on the list of address verification forms automatically generated by the registry, it shall be presumed that the sex offender has received that form.

* * *

Sec. 7. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than \$1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than \$5,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than \$5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

Sec. 8. NOTIFICATION OF RESPONSIBILITIES TO SEX OFFENDER

On or before June 15, 2009, the department of public safety shall provide written notice to all persons required to register as sex offenders under chapter 167 of Title 13 of the changes to sex offender reporting requirements made by this act and the penalties for failing to meet those requirements. The offender shall be presumed to have received the letter required by this section if the department sends the letter by first class mail to the offender at his or her last known address.

* * * Internet Sex Offender Registry * * *

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) ~~Sex offenders who have been convicted of a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child):~~

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such

proof as required under this subdivision (B) shall result in the offender's placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;
- (6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

(9) a statement that there is an outstanding warrant for the offender's arrest, if applicable; ~~and~~

(10) the reason for which the offender information is accessible under this section; and

(11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender

who is requested by the department to report to the department or a local law enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.

(g) Information on sex offenders shall be posted on the Internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution."

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county, city, or town of residence.

(j) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall not implement this section prior to the adoption of such rules.

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411B. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections ~~may~~ shall evaluate a sex offender for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. The designation of high-risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including internet access.

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. The department of corrections shall not implement this section prior to the adoption of such rules.

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than September 1, 2005 2009.

Sec. 11. APPLICABILITY

Secs. 5, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13 unless the sex offender review committee determines pursuant to the requirements of this subdivision (3) that the person:

(1) has not been charged or convicted of a criminal offense since being placed on the registry; or

(2) has successfully reintegrated into the community.

(B)(1) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(2) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(3) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

* * * Sex Offender Name Changes * * *

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM
FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

Sec. 13. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

(b) All information contained in the registry may be disclosed for any purpose permitted under the law of this state, including use by:

(1) local, state and federal law enforcement agencies exclusively for lawful law enforcement activities;

(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released; ~~and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released; and

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

* * * Sex Offender Addresses on Internet * * *

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

- (1) the offender's name and any known aliases;
- (2) the offender's date of birth;
- (3) a general physical description of the offender;
- (4) a digital photograph of the offender;
- (5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest; or

(D) the offender has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)(7)~~ the date and nature of the offender's conviction;

~~(7)(8)~~ if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)(9)~~ whether the offender complied with treatment recommended by the department of corrections;

~~(9)(10)~~ a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)(11)~~ the reason for which the offender information is accessible under this section.

* * *

~~(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.~~

* * *

* * * Risk Assessments * * *

Sec. 15. 28 V.S.A. § 204a is amended to read:

§ 204A. SEXUAL OFFENDERS; PRE-SENTENCE INVESTIGATIONS;
RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

* * *

(e) The department shall use assessment of offender risk for reoffense as the basis for classifying sex offenders and developing programming for sex offenders under the department.

(f) Nothing in this section shall be construed to infringe in any manner upon the department's authority to make decisions about programming for

defendants or to create a right on the part of the offender to receive treatment in a particular program.

* * * Statutes of Limitations in Child Sex Abuse Cases * * *

*** Statutes of Limitations in Child Sex Abuse Cases ***

Sec. 16. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection 141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ 18 years of age or under, ~~shall be commenced within the earlier of the date the victim attains the age of 24 or six years from the date the offense is reported, and not after.~~ For purposes of this subsection, an offense is reported when a report of the conduct constituting the offense is made to a law enforcement officer by the victim may be commenced at any time after the commission of the offense.

* * *

* * * Miscellaneous Provisions * * *

Sec. 17. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual.~~ ~~However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment.~~ If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the defendant is acquitted, the Vermont crime information center shall request the

FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Sec. 18. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 19. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON IN NEED OF GUARDIANSHIP WITH DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

(a) Statements by a person who is a child 12 years of age or under or who is a person in need of guardianship as defined in 14 V.S.A. § 3061 with a mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person in need of guardianship with a mental illness or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253, aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or

lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person in need of guardianship with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person in need of guardianship with a mental illness or developmental disability is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person in need of guardianship with a mental illness or developmental disability to testify for the state.

Sec. 20. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the state

and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Sec. 19 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Recess

At three o'clock and twenty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At four o'clock in the afternoon, the Speaker called the House to order.

Consideration Resumed; Proposal of Amendment Agreed to and Third Reading Ordered; Rules Suspended; Bill Read Third Time and Passed in Concurrence With Proposal of Amendment; Rules Suspended and Bill Was Ordered Messaged to the Senate Forthwith

S. 125

Consideration resumed on Senate bill, entitled

An act relating to expanding the sex offender registry;

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary? **Reps. Poirier of Barre City, Andrews of Rutland City, Atkins of Winooski, Bissonnette of Winooski, Courcelle of Rutland City, Howard of Rutland City, McDonald of Berlin, McFaun of Barre Town and Taylor of Barre City** moved to amend the recommendation of proposal of amendment offered by the committee on Judiciary, as follows:

By adding a new Sec. 20a to read as follows:

Sec. 20a. DEPARTMENT OF CORRECTIONS WORKING GROUP

(a) The commissioner of the department of corrections shall convene a working group for the purpose of identifying ways to provide assistance to those municipalities that are being asked to take a disproportionately high number of department supervisees into their communities. The working group shall consider how to employ strategies that facilitate community reintegration that do not unduly burden the services and budgets of communities with a large number of supervisees.

(b) The working group shall comprise the commissioner and at least four representatives of communities that have a disproportionate number of supervisees as residents. Community representatives shall be selected by the commissioner.

(c) The working group shall present its report to the house committees on judiciary and on corrections and institutions, and the senate committee on judiciary no later than January 10, 2010.

Thereupon, **Rep. Branagan of Georgia** raised a Point of Order that the amendment was not germane to the bill, which Point of Order the Speaker ruled not well taken in that both the amendment and the Judiciary recommendation of proposal of amendment deal with offenders who are released into the community.

Pending the question, Shall the House amend the recommendation of proposal of amendment offered by the committee on Judiciary, as offered by Reps. Poirier of Barre City, et al? **Rep. Milkey of Brattleboro** moved to amend the recommendation of proposal of amendment offered by Reps. Poirier of Barre City, et al, as follows:

In Subdivision (b), after the words "selected by the commissioner" by inserting the following:

,and shall represent all geographical areas of the state that have a disproportionate number of supervisees as residents.

Which was agreed to.

Thereupon, the recommendation of proposal of amendment offered by Reps. Poirier of Barre City, et al, as amended, was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary, as amended? **Rep. Donahue of Northfield** asked that the question be divided and Sec. 17, be voted on first.

Thereupon, Sec. 17 was agreed to on a Division vote: Yeas, 81. Nays, 32

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary, as amended? **Rep. Flory of Pittsford** moved to amend the recommendation of proposal of amendment offered by the committee on Judiciary, as amended, as follows:

In Sec. 16 § 450 (c), by striking "18 years of age or under" and inserting in lieu thereof the following, under 18 years of age

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Judiciary, as amended? **Rep. Emmons of Springfield** moved to amend the recommendation of proposal of amendment offered by the committee on Judiciary, as amended, as follows:

In Sec. 20a, subsection (a), in the second sentence, after the words "working group" by inserting the following: , in consultation with the joint committee on corrections oversight,

Which was agreed to.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on Judiciary, in Sec. 1 through 16 and Sec. 18 through 21 as amended? **Rep. Komline of Dorset** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on Judiciary in Sec. 1 through 16 and Sec. 18 through 21 as amended? was decided in the affirmative. Yeas, 131. Nays, 0.

Those who voted in the affirmative are:

Acinapura of Brandon	Clark of Vergennes	Edwards of Brattleboro
Adams of Hartland	Clarkson of Woodstock	Emmons of Springfield
Ainsworth of Royalton	Clerkin of Hartford	Evans of Essex
Ancel of Calais	Condon of Colchester	Fagan of Rutland City
Andrews of Rutland City	Conquest of Newbury	Flory of Pittsford
Atkins of Winooski	Consejo of Sheldon	Frank of Underhill
Audette of South Burlington	Corcoran of Bennington	French of Shrewsbury
Baker of West Rutland	Courcelle of Rutland City	French of Randolph
Bissonnette of Winooski	Crawford of Burke	Gilbert of Fairfax
Bohi of Hartford	Davis of Washington	Grad of Moretown
Botzow of Pownal	Deen of Westminster	Greshin of Warren
Branagan of Georgia	Devereux of Mount Holly	Haas of Rochester
Bray of New Haven	Dickinson of St. Albans	Head of South Burlington
Brennan of Colchester	Town	Helm of Castleton
Burke of Brattleboro	Donaghy of Poultney	Higley of Lowell
Canfield of Fair Haven	Donahue of Northfield *	Hooper of Montpelier
Cheney of Norwich	Donovan of Burlington	Howard of Rutland City

Howrigan of Fairfield	McCullough of Williston	Reis of St. Johnsbury
Hube of Londonderry	McDonald of Berlin	Rodgers of Glover
Hubert of Milton	McFaun of Barre Town	Savage of Swanton
Johnson of South Hero	Milkey of Brattleboro	Scheuermann of Stowe
Keenan of St. Albans City	Miller of Shaftsbury	Shand of Weathersfield
Kitzmiller of Montpelier	Minter of Waterbury	Sharpe of Bristol
Klein of East Montpelier	Mitchell of Barnard	South of St. Johnsbury
Koch of Barre Town	Mook of Bennington	Spengler of Colchester
Komline of Dorset	Moran of Wardsboro	Stevens of Waterbury
Krawczyk of Bennington	Morrissey of Bennington	Stevens of Shoreham
Lanpher of Vergennes	Mrowicki of Putney	Sweaney of Windsor
Larocque of Barnet	Myers of Essex *	Taylor of Barre City
Lawrence of Lyndon	Nease of Johnson *	Till of Jericho
Lenes of Shelburne	Nuovo of Middlebury	Toll of Danville
Leriche of Hardwick	O'Brien of Richmond	Townsend of Randolph
Lewis of Derby	Obuchowski of Rockingham	Turner of Milton
Lippert of Hinesburg	O'Donnell of Vernon	Waite-Simpson of Essex
Lorber of Burlington	Orr of Charlotte	Webb of Shelburne
Macaig of Williston	Pearce of Richford	Weston of Burlington
Maier of Middlebury	Peaslee of Guildhall	Wheeler of Derby
Malcolm of Pawlet	Pellett of Chester	Wilson of Manchester
Manwaring of Wilmington	Peltz of Woodbury	Winters of Williamstown
Marcotte of Coventry	Perley of Enosburg	Wizowaty of Burlington
Martin of Springfield	Poirier of Barre City	Wright of Burlington
Martin of Wolcott	Potter of Clarendon	Young of St. Albans City
Masland of Thetford	Pugh of South Burlington	Zenie of Colchester
McAllister of Highgate	Ram of Burlington	Zuckerman of Burlington

Those who voted in the negative were:

none

Those members absent with leave of the House and not voting are:

Aswad of Burlington	Jerman of Essex	Partridge of Windham
Browning of Arlington	Johnson of Canaan	Smith of Mendon
Copeland-Hanzas of	Kilmartin of Newport City	Smith of Morristown
Bradford	Larson of Burlington	Trombley of Grand Isle
Fisher of Lincoln	Marek of Newfane	Westman of Cambridge
Geier of South Burlington	McNeil of Rutland Town	
Heath of Westford	Morley of Barton	

Rep. Donahue of Northfield explained her vote as follows:

"Mr. Speaker:

I support the effort to craft a balanced approach to the sex offender registry. I very much regret the unnecessary and unrelated extension of law to sending the fingerprints of persons to the FBI central database from the point of arrest, prior to any judicial review."

Rep. Myers of Essex explained her vote as follows:

“Mr. Speaker:

I voted yes on the good work of the Judiciary committee, but I resent the move to circumvent the committee process by the addition of an amendment which should have been decided by the committee to which the question was first presented.”

Rep. Nease of Johnson explained his vote as follows:

“Mr. Speaker:

I voted yes. That’s twice today that the member from Guildhall and I have voted in agreement. It must be that the end is near... the end of the session, I mean.”

Thereupon, third reading was ordered. On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Proposal of Amendment Agreed to;
Third Reading Ordered; Rules Suspended; Bill Read Third Time and
Passed in Concurrence With Proposal of Amendment; Rules Suspended
and Bill was Ordered Messaged to the Senate Forthwith**

S. 89

On motion of **Rep. Komline of Dorset**, the rules were suspended and Senate bill, entitled

An act relating to stabilization of prices paid to Vermont dairy farmers

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Bray of New Haven, for the committee on Agriculture, to which had been referred Senate bill, entitled

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. VERMONT MILK COMMISSION; PRODUCER PRICE
STABILIZATION

(a) The general assembly finds that the recent precipitous drop in producer prices is causing a tremendous burden on Vermont dairy producers and the industry at large, and that this burden must be alleviated as quickly as possible.

(b) The general assembly followed the proceedings of the Vermont milk commission during the summer and fall of 2008 and finds that the commissioner has held the public hearings required by chapter 161 of Title 6.

Sec. 2. 6 V.S.A. § 2924(c) is amended to read:

(c) Public hearings. In order to be informed of the status of the state's dairy industry, the commission shall hold a public hearing: at least annually and whenever the chair deems it necessary.

~~(1) At least annually.~~

~~(2) Whenever the price paid to producers, including the federal market order price and any over order premiums, on average, has been reduced by five percent or more over the last month or by 10 percent or more over the last three months.~~

~~(3) Whenever the retail price, on average, has increased by more than 10 percent per gallon within a three month period or 15 percent per gallon within a 12 month period.~~

~~(4) Whenever the cost of production increases by 10 percent or more within a period of three to 12 months.~~

~~(5) Whenever a loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market has occurred or is likely to occur and that the public health is menaced, jeopardized, or likely to be impaired or deteriorated by the loss or substantial lessening of the supply of fluid dairy products of proper quality in a specified market.~~

Sec. 3. ANTI-TRUST INQUIRY; REPORT BY THE ATTORNEY GENERAL

(a) Findings. The attorney general shall, in cooperation, where possible, with attorneys general from other states, undertake a study of the northeast fluid milk market, and the Vermont segment of that market, and further work with the United States Congress and the United States attorney general to investigate possible anticompetitive practices in the dairy industry.

(b) By January 15, 2010, the attorney general shall report back to the house and senate committees on agriculture with the findings and recommendations of the study required by this section.

Sec. 4. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk ~~or cream~~ from Vermont producers or milk cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount ~~which, at the conclusion of five equal annual increases in bond coverage, is on January 1~~ equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who sell milk to the handler for a 41-day period during the previous 12 months. He or she may accept, in lieu of such bond, a guaranteed irrevocable letter of credit ~~in such sum as he or she deems sufficient~~. The bonds shall be taken for the ~~sole~~ benefit of milk producers ~~of such milk handlers~~ and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary ~~shall~~ shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~A handler shall be exempt from providing the financial security required by this section for payments the handler makes to a producer who is a member of a milk cooperative which guarantees its members' milk checks. To receive this exemption, a handler shall notify the secretary of each such producer and the secretary shall validate the cooperative membership of the producer.~~

§ 2882. EXEMPTIONS FROM FILING BOND

(a) ~~A handler who purchases or receives milk or cream from producers~~ milk cooperative or a nonprofit cooperative association organized under

Vermont law or similar laws in other states shall not be required to furnish surety as provided in section 2881 of this title if the handler is a nonprofit cooperative association organized under Vermont statutes or under similar laws in other states for payments made to a milk cooperative or to a producer who is a member of a milk cooperative.

(b) A handler who does not purchase milk ~~or cream~~ from Vermont producers or milk cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays a milk cooperative for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every milk cooperative selling milk to handlers who pay for milk in advance or at the time of delivery shall, on January 1 and July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative shall not be required to furnish surety as provided under section 2881 of this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Favorable Report; Third Reading Ordered;
Rules Suspended; Bill Read Third Time and Passed; Rules Suspended;
Bill Ordered Messaged to the Senate Forthwith**

H. 452

On motion of **Rep. Komline of Dorset**, the rules were suspended and House bill, entitled

An act relating to the approval of amendments to the charter of the village of Essex Junction

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Evans of Essex, for the committee on Government Operations, to which had been referred the bill reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage. The bill was read the third time and passed and, on motion of **Rep. Komline of Dorset** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Favorable Report; Third Reading Ordered;
Rules Suspended; Bill Read Third Time and Passed in Concurrence;
Rules Suspended; Bill Ordered Messaged to the Senate Forthwith**

S. 111

On motion of **Rep. Komline of Dorset**, the rules were suspended and Senate bill, entitled

An act relating to legislative apportionment board appointments

Appearing on the Calendar for notice, was taken up for immediate consideration.

Rep. Hubert of Milton, for the committee on Government Operations, to which had been referred the bill reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Adjournment

At six o'clock and ten minutes in the evening, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of

Representatives, are hereby adopted in concurrence.

H.C.R. 143

House concurrent resolution congratulating Benjamin Bond of Champlain Valley Union High School on his being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement;

H.C.R. 144

House concurrent resolution congratulating Caroline Heydinger on winning second place at the American Legion national high school oratorical contest;

H.C.R. 145

House concurrent resolution congratulating the 2009 Essex High School We the People . . . The Citizen and the Constitution state championship class;

H.C.R. 146

House concurrent resolution congratulating the Vermont Student Assistance Corporation's Career and Education Outreach program on its 40th anniversary;

H.C.R. 147

House concurrent resolution designating June 1 as Vermont Employer Support of the Guard and Reserve Day;

H.C.R. 148

House concurrent resolution congratulating Erlon (Bucky) Broomhall on his induction into the Vermont Ski Museum Hall of Fame;

H.C.R. 149

House concurrent resolution congratulating Marion Voorheis of South Burlington High School on being named the 2009 Vermont high school teacher winner of the Siemens Award for Advanced Placement;

H.C.R. 150

House concurrent resolution congratulating the 2009 University of Vermont Catamounts nationally third-ranked men's ice hockey team;

H.C.R. 151

House concurrent resolution congratulating Milton Junior-Senior High School co-principal Anne Blake on her receipt of the 2009 Robert F. Pierce Award;

H.C.R. 152

House concurrent resolution congratulating New England Kurn Hattin

Homes Principal Tom Fahner on being named the Vermont Principals' Association John Winton National Middle Level Principal-of-the-Year;

H.C.R. 153

House concurrent resolution honoring Gene E. Irons for three decades of extraordinary service as a Bennington Museum trustee;

H.C.R. 154

House concurrent resolution in memory of David S. Jareckie of Bennington;

S.C.R. 25

Senate concurrent resolution congratulating faculty and students at Burlington High School on the 2008-2009 11th grade's achievements in adequate yearly progress testing in mathematics and reading;

S.C.R. 26

Senate concurrent resolution congratulating the Vermont Studio Center on its 25th anniversary;

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2009, seventieth Biennial session.]

Tuesday, May 5, 2009

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Vermont storyteller, John Shraven.

Pledge of Allegiance

Page Ashlynn Doyon of Hardwick led the House in the Pledge of Allegiance.

Message from the Senate No. 51

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

H. 313. An act relating to near-term and long-term economic development.

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

Pursuant to the request of the House for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill entitled:

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

The President pro tempore announced the appointment as members of such Committee on the part of the Senate:

Senator Mullin
Senator Campbell
Senator Sears

Message from the Senate No. 52

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

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

H. 427. An act relating to making miscellaneous amendments to education law.

H. 431. An act relating to miscellaneous adjustments to the public retirement systems.

H. 435. An act relating to palliative care.

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

The Senate has on its part adopted Senate concurrent resolutions of the following titles:

S.C.R. 25. Senate concurrent resolution congratulating faculty and students at Burlington High School on the 2008-2009 11th grade's achievements in adequate yearly progress testing in mathematics and reading.

S.C.R. 26. Senate concurrent resolution congratulating the Vermont Studio

Center on its 25th anniversary.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 143. House concurrent resolution congratulating Benjamin Bond of Champlain Valley Union High School on his being named a 2009 Vermont student winner of the Siemens Award for Advanced Placement.

H.C.R. 144. House concurrent resolution congratulating Caroline Heydinger on winning second place at the American Legion national high school oratorical contest.

H.C.R. 145. House concurrent resolution congratulating the 2009 Essex High School *We the People . . . The Citizen and the Constitution* state championship class.

H.C.R. 146. House concurrent resolution congratulating the Vermont Student Assistance Corporation's Career and Education Outreach program on its 40th anniversary.

H.C.R. 147. House concurrent resolution designating June 1 as Vermont Employer Support of the Guard and Reserve Day.

H.C.R. 148. House concurrent resolution congratulating Erlon (Bucky) Broomhall on his induction into the Vermont Ski Museum Hall of Fame.

H.C.R. 149. House concurrent resolution congratulating Marion Voorheis of South Burlington High School on being named the 2009 Vermont high school teacher winner of the Siemens Award for Advanced Placement.

H.C.R. 150. House concurrent resolution congratulating the 2009 University of Vermont Catamounts nationally third-ranked men's ice hockey team.

H.C.R. 151. House concurrent resolution congratulating Milton Junior-Senior High School co-principal Anne Blake on her receipt of the 2009 Robert F. Pierce Award.

H.C.R. 152. House concurrent resolution congratulating New England Kurn Hattin Homes Principal Tom Fahner on being named the Vermont Principals' Association John Winton National Middle Level Principal-of-the-Year.

H.C.R. 153. House concurrent resolution honoring Gene E. Irons for three decades of extraordinary service as a Bennington Museum trustee.

H.C.R. 154. House concurrent resolution in memory of David S. Jareckie of Bennington.

Joint Resolution Placed on Calendar

J.R.H. 29

Joint resolution urging Congress to enact a new Homeowner and Bank Protection Act

Offered by: Representatives Obuchowski of Rockingham and Botzow of Pownal

Whereas, in 2008, the House of Representatives passed J.R.H. 49, expressing its concern over the likelihood of a coming financial crisis's impact on the state's economy and the livelihood of Vermonters, and

Whereas, J.R.H. 49 urged Congress "to enact emergency homeowners and bank protection legislation that protects families and state and federally chartered financial institutions from negative consequences of foreclosure actions," and

Whereas, Vermonters continue to experience the negative effects of the global financial meltdown, and

Whereas, Vermont banks' ability to extend credit for loans for basic necessities such as homes and vehicles, as well as support for struggling businesses of all sizes, has been hurt by financial conditions beyond Vermont's borders despite the relative health of Vermont's financial sector, and

Whereas, many Vermonters are concerned about the rising national debt and the consequences for future generations, and

Whereas, Congress has attempted to mitigate the crisis through bailouts, loans, the Troubled Assets Relief Program, and other legislative remedies with mixed results at best, and

Whereas, other solutions to the current financial crisis have been offered, such as the previously proposed Homeowners Bankruptcy Protection Act of 2007, and

Whereas, creative, timely, and vigilant bold action is necessary to stabilize financial markets and secure the financial well-being of Vermonters, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to examine all options to relieve the toxic mortgage crisis and stabilize the housing and credit markets and to act

decisively to secure the promise of the American dream and specifically urges that Congress:

1. Declare an economic emergency equivalent to the one associated with emergency banking legislation in 1933 during the Great Depression.
2. Mandate federal bankruptcy reorganization of national and state-chartered banks that includes the writing down of debt securities.
3. Freeze all mortgages and delay any foreclosure actions, either in progress or pending, until the economy is revived.
4. Mandate the establishment of fair-market payments that are equivalent to rent to be paid to banks in lieu of mortgage payments in order that banks can be recapitalized and that these payments be subject to regulation by the states, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

**Bill Read Third Time and Passed in Concurrence
With Proposal of Amendment**

S. 67

Senate bill, entitled

An act relating to motor vehicles

Was taken up and pending third reading of the bill, **Reps. Howrigan of Fairfield, and Brennan of Colchester** moved to amend the House proposal of amendment as follows:

First: By inserting a Sec. 16 to read:

Sec. 16. 23 V.S.A. § 108 is amended to read:

§ 108. APPLICATION FORMS

* * *

(b) The commissioner shall include on applications for a nondriver identification card, an operator license and a commercial driver license, including applications for renewals, the statement, "I consent to the use of this application for the purpose of registering me with the Selective Service System", and a check box adjacent to that statement.

(c) The commissioner shall, in the instructions for applications for a nondriver identification card, an operator license and a commercial driver license, including applications for renewals and for replacement of lost, destroyed, or mutilated nondriver identification cards, include the following statement: "Federal law imposes upon male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age and who fail to register with the Selective Service System penalties that may include monetary fines, incarceration, and ineligibility for federal student aid."

Second: By inserting a Sec. 17 to read:

Sec. 17. 23 V.S.A. § 115(l) is added to read:

(l) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. Applicants for a nondriver identification card, renewal of a card, or replacement of a card which has been lost, destroyed, or mutilated, and who meet the above criteria may elect to register with the Selective Service System by so indicating on their application. For applicants who elect to register via their applications rather than through other available means, the commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service.

Third: By inserting a Sec. 18 to read:

Sec. 18. 23 V.S.A. § 603(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. Applicants for an operator license or renewal of a license who meet the above criteria may elect to register with the Selective Service System by so indicating on their application. For applicants who elect to register via their applications rather than through other available means, the commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service.

Fourth: By inserting a Sec. 19 to read:

Sec. 19. 23 V.S.A. § 4110(e) is added to read:

(e) Section 3 of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) requires male United States citizens and immigrants who are at least 18 years of age but less than 26 years of age to register with the Selective Service System. Applicants for a commercial driver license or renewal of a license

who meet the above criteria may elect to register with the Selective Service System by so indicating on their application. For applicants who elect to register via their applications rather than through other available means, the commissioner of motor vehicles shall forward the necessary personal information in an electronic format to the Selective Service.

Pending the question, Shall the House proposal of amendment be amended as recommended by Reps. Howrigan of Fairfield and Brennan of Colchester? **Rep. Stevens of Waterbury** raised a Point of Order in that the amendment is in violation of Rule 77, which Point of Order the Speaker ruled well taken.

Thereupon, **Rep. Koch of Barre Town** appealed the ruling of the Chair.

Thereupon, **Rep. Koch of Barre Town** asked and was granted leave of the House to withdraw his appeal.

Thereupon, **Rep. Koch of Barre Town** moved to suspend the rules to permit consideration of the amendment, the provisions of Rule 77 notwithstanding, which was disagreed to on a Division Vote. Yeas, 61. Nays, 61, a three-quarters vote of 92 required.

Pending third reading of the bill, **Rep. Masland of Thetford** moved to amend the House proposal of amendment by inserting a new Sec. 16 to read:

Sec. 16. 23 V.S.A. § 108 is amended to read:

§ 108. APPLICATION FORMS

(a) The commissioner shall prepare and furnish all forms for applications, accident reports, conviction reports, a pamphlet containing the full text of the motor vehicle laws of the state, and all other forms needed in the proper conduct of his or her office. He or she shall furnish an adequate supply of ~~such~~ registration forms, license applications, and motor vehicle laws each year to each town clerk, and to ~~such~~ other persons ~~as may so~~ who make a request.

(b) At the time of application for a motor vehicle drivers license, the commissioner of motor vehicles shall provide each applicant subject to the requirements of selective service registration with information outlining the requirements of registration, the consequences and penalties of not registering and also with information indicating that an individual may apply for conscientious objector status as provided in 50 U.S.C. App. 451 et seq. and how to apply for that status.

Thereupon, **Rep. Donovan of Burlington** raised a Point of Order that the amendment was in violation of Rule 77, which Point of Order the Speaker ruled not well taken.

Thereupon, the recommendation of proposal of amendment offered by Rep. Masland of Thetford was disagreed to, the bill was read a third time and passed in concurrence with proposal of amendment.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 48

Rep. Copeland-Hanzas of Bradford, for the committee on Health Care, to which had been referred Senate bill, entitled

An act relating to marketing of prescription drugs

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 18 V.S.A. § 4631(b) is amended to read:

(b) As used in this section:

* * *

(3) "Health care professional" shall have the same meaning as health care provider in section 9402 of this title.

* * *

Sec. 2. LEGISLATIVE FINDINGS; INTENT

(a) The general assembly finds that the legislative findings in Sec. 1 of No. 80 of the Acts of 2007 provide a sound basis for instituting a ban of certain gifts to prescribers and disclosure of marketing activities as provided for in this act. Findings (1) through (8), (13), (15), (17), (19), and (21) shall be incorporated into this act by reference.

(b) The general assembly also finds:

(1) In 2007, Vermonters spent an estimated \$572 million on prescription and over-the-counter drugs and nondurable medical supplies. In 2002, spending was about \$377 million. Between 2002 and 2007, the average annual increase in spending was 8.7 percent, which is slightly higher than the average increase in overall health care spending during this same period.

(2) According to the U.S. District Court for the District of Vermont in IMS v. Sorrell, Docket No. 1:07-CV-188 (Apr. 23, 2009), the state of Vermont has a substantial interest in cost containment and the protection of public health.

(3) The court in IMS v. Sorrell found that research shows that doctors are influenced by the marketing efforts of pharmaceutical companies, and that doctors who attend talks sponsored by a pharmaceutical company often prescribe that company's drug more than a competitor's drugs.

(4) The court in IMS v. Sorrell also found that drug detailing encourages doctors to prescribe newer, more expensive, and potentially more dangerous drugs instead of adhering to evidence-based treatment guidelines.

(5) According to a 2009 report from the Institute of Medicine of the National Academies, acceptance of meals and gifts and other relationships are common between physicians and pharmaceutical, medical device, and biotechnology companies. The report found that these relationships may influence physicians to prescribe a company's medicines even when evidence indicates another drug would be more beneficial to the patient.

(6) According to the April 2009 Report of Vermont Attorney General William H. Sorrell, in fiscal year 2008, pharmaceutical manufacturers reported spending \$2,935,248.00 in Vermont on fees, travel expenses, and other direct payments to Vermont physicians, hospitals, universities, and others for the purpose of marketing their products. Of Vermont's 4,573 licensed health care professionals, 2,280 were recipients. Of the above amount, approximately \$2.1 million in payments went to physicians. The top 100 individual recipients received nearly \$1,770,000.00 in fiscal year 2008.

(7) Of the disclosures reported by pharmaceutical manufacturers, only 17 percent were available to the public due to the current trade secret exemption in state law.

(8) According to the attorney general, expenditures on food totaled \$861,911.70, or 29.36 percent of all marketing expenditures. Of the 1,132 recipients of food in fiscal year 2008, 20.36 percent had \$500.00 or more expended on them, including 11.31 percent who had \$1,000.00 or more expended on them. 41.1 percent of the 1,132 recipients of food received food valued at \$100.00 or less. The individual recipient with the greatest reported food expenditure received \$15,793.78 in food for him- or herself and any colleagues who may not prescribe.

(9) The federal Office of Inspector General (OIG) has taken enforcement action against several medical device manufacturers in recent years for violations of fraud and abuse laws. Through its investigations, the OIG found medical device manufacturers providing kickbacks to physicians in the form of all-expense-paid trips, false consulting arrangements, meals, and other gifts. The OIG recommends subjecting the financial relationships

between medical device manufacturers and physicians to reporting requirements and greater transparency.

(10) There is little or no difference in the marketing of biological products and prescription drugs. It is logical and necessary to include biological products to the same extent as prescription drugs to ensure appropriate and consistent transparency and reduce real or perceived conflicts of interest.

(11) This act is necessary to increase transparency for consumers by requiring disclosure of allowable expenditures and gifts to health care providers and facilities providing health care. This act is also necessary to reduce real or perceived conflicts of interest which undermine patient confidence in health care providers and increase health care costs by influencing prescribing patterns. Limitations on gifts and increased transparency are expected to save money for consumers, businesses, and the state by reducing the promotion of expensive prescription drugs, biological products, and medical devices, and to protect public health by reducing sales-oriented information to prescribers.

Sec. 3. 18 V.S.A. § 4631a is added to read:

§ 4631a. GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

(A) Payment to the sponsor of a significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) the payment is not made directly to a health care provider;

(ii) funding is used solely for bona fide educational purposes; and

(iii) all program content is objective, free from industry control, and does not promote specific products.

(B) Honoraria and payment of the expenses of a health care professional who serves on the faculty at a bona fide significant educational, medical, scientific, or policy-making conference or seminar, provided:

(i) there is an explicit contract with specific deliverables which are restricted to medical issues, not marketing activities; and

(ii) the content of the presentation, including slides and written materials, is determined by the health care professional.

(C) For a bona fide clinical trial:

(i) gross compensation for the Vermont location or locations involved;

(ii) direct salary support per principal investigator and other health care professionals per year; and

(iii) expenses paid on behalf of investigators or other health care professionals paid to review the clinical trial.

(D) For a research project that constitutes a systematic investigation, is designed to develop or contribute to general knowledge, and reasonably can be considered to be of significant interest or value to scientists or health care professionals working in the particular field of inquiry:

(i) gross compensation;

(ii) direct salary support per health care professional; and

(iii) expenses paid on behalf of each health care professional.

(E) Payment or reimbursement for the reasonable expenses, including travel and lodging-related expenses, necessary for technical training of individual health care professionals on the use of a medical device if the commitment to provide such expenses and the amounts or categories of reasonable expenses to be paid are described in a written agreement between the health care provider and the manufacturer.

(F) Royalties and licensing fees paid to health care providers in return for contractual rights to use or purchase a patented or otherwise legally recognized discovery for which the health care provider holds an ownership right.

(G) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

(2) "Bona fide clinical trial" means an FDA-reviewed clinical trial that constitutes "research" as that term is defined in 45 C.F.R. § 46.102 and reasonably can be considered to be of interest to scientists or health care professionals working in the particular field of inquiry.

(3) "Clinical trial" means any study assessing the safety or efficacy of prescribed products administered alone or in combination with other prescribed products or other therapies, or assessing the relative safety or efficacy of prescribed products in comparison with other prescribed products or other therapies.

(4) "Gift" means a payment, food, entertainment, travel, subscription, advance, service, or anything else of value provided to a health care provider for less than fair market value.

(5)(A) "Health care professional" means:

(i) a person who is authorized to prescribe or to recommend prescribed products and who either is licensed by this state to provide or is otherwise lawfully providing health care in this state; or

(ii) a partnership or corporation made up of the persons described in subdivision (i) of this subdivision (5)(A); or

(iii) an officer, employee, agent, or contractor of a person described in subdivision (i) of this subdivision (5)(A) who is acting in the course and scope of employment, agency, or contract related to or supportive of the provision of health care to individuals.

(B) The term shall not include a person described in subdivision (A) of this subdivision (5) who is employed solely by a manufacturer.

(6) "Health care provider" means a health care professional, a hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to dispense or purchase for distribution prescribed products in this state.

(7) "Manufacturer" means a pharmaceutical, biological product, or medical device manufacturer or any other person who is engaged in the production, preparation, propagation, compounding, processing, packaging, repackaging, distributing, or labeling of prescribed products. The term does not include a wholesale distributor of biological products or a pharmacist licensed under chapter 36 of Title 26.

(8) "Marketing" shall include promotion, detailing, or any activity that is intended to be used or is used to influence sales or market share or to evaluate the effectiveness of a professional sales force.

(9) "Pharmaceutical manufacturer" means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. The term does not include a wholesale distributor of prescription drugs or a pharmacist licensed under chapter 36 of Title 26.

(10) "Prescribed product" means a drug or device as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, or a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262.

(11) "Significant educational, scientific, or policy-making conference or seminar" means an educational, scientific, or policy-making conference or seminar that:

(A) is accredited by the Accreditation Council for Continuing Medical Education or a comparable organization; and

(B) offers continuing medical education credit, features multiple presenters on scientific research, or is authorized by the sponsoring association to recommend or make policy.

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

(A) Samples of a prescribed product provided to a health care provider for free distribution to patients.

(B) The loan of a medical device for a short-term trial period, not to exceed 90 days, to permit evaluation of a medical device by a health care provider or patient.

(C) The provision of reasonable quantities of medical device demonstration or evaluation units to a health care provider to assess the appropriate use and function of the product and determine whether and when to use or recommend the product in the future.

(D) The provision, distribution, dissemination, or receipt of peer-reviewed academic, scientific, or clinical articles or journals and other items that serve a genuine educational function provided to a health care provider for the benefit of patients.

(E) Scholarship or other support for medical students, residents, and fellows to attend a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(F) Rebates and discounts for prescribed products provided in the normal course of business.

(G) Labels approved by the federal Food and Drug Administration for prescribed products.

(c) The attorney general may bring an action in Washington superior court for injunctive relief, costs, and attorney's fees and may impose on a manufacturer that violates this section a civil penalty of no more than \$10,000.00 per violation. Each unlawful gift shall constitute a separate violation.

Sec. 4. 18 V.S.A. § 4632 is amended to read:

§ 4632. PHARMACEUTICAL MARKETERS DISCLOSURE OF ALLOWABLE EXPENDITURES AND GIFTS BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a)(1) Annually on or before ~~December~~ October 1 of each year, every pharmaceutical manufacturing company manufacturer of prescribed products shall disclose to the office of the attorney general for the fiscal year ending the previous June 30th the value, nature, and purpose, and recipient information of any gift, fee, payment, subsidy, or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in Vermont authorized to prescribe, dispense, or purchase prescription drugs in this state. Disclosure shall include the name of the recipient. Disclosure shall be made on a form and in a manner prescribed by the office of the attorney general and shall require pharmaceutical manufacturing companies to report the value, nature, and purpose of all gift expenditures according to specific categories. The office of the attorney general shall report annually on the disclosures made under this section to the general assembly and the governor on or before April 1.

(A) any allowable expenditure or gift allowed under subdivision 4631a(b)(2) of this title to any health care provider, except:

(i) royalties and licensing fees as described in subdivision 4631a(a)(1)(F) of this title;

(ii) rebates and discounts for prescribed products provided in the normal course of business as described in subdivision 4631a(b)(2)(F) of this title; and