House Calendar

Tuesday, April 17, 2018

105th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ACTION CALENDAR

Favorable with Amendment

H. 482

An act relating to consumer protection

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

Sec. 1. 9 V.S.A. § 41a is amended to read:

§ 41a. LEGAL RATES

(a) Except as specifically provided by law, the rate of interest or the sum allowed for forbearance or use of money shall be 12 percent per annum computed by the actuarial method.

(b) The rate of interest or the sum allowed:

* * *

(10) Interest on a judgment against a debtor in default on credit card debt incurred for personal, family, or household purposes shall accrue at the rate of 12 percent per annum using simple interest, unless a court suspends or reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

* * *

Sec. 2. 12 V.S.A. chapter 113 is amended to read:

CHAPTER 113. ~~JUDGMENT LIEN~~ JUDGMENTS AND JUDGMENT LIENS

* * *

§ 2903. DURATION AND EFFECTIVENESS

* * *

(c) ~~Interest~~ Unless a court suspends or reduces the accrual of interest pursuant to section 2903a of this title, interest on a judgment lien shall accrue at the rate of 12 percent per annum using simple interest.

(d) If a judgment lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in this title and ~~V.R.C.P.~~ Rule 80.1 of the Vermont Rules of Civil Procedure. Unless the court finds that as of the date of foreclosure the amount of the outstanding debt exceeds the value of the real property being foreclosed, section 4531 of this title shall apply to foreclosure of a judgment lien.

§ 2903a. ACCRUAL OF POSTJUDGMENT INTEREST ON CREDIT CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

(a) Upon or after entering a judgment against a debtor in default on credit

card debt incurred for personal, family, or household purposes, a court may suspend or reduce the accrual of interest on the judgment if it finds:

(1) the judgment debtor's income and assets are exempt from collection; or

(2) based on his or her current income, assets, and expenses, the judgment debtor does not have more financial resources available than what is reasonably necessary to support the debtor and his or her dependents.

(b) To request suspension or reduction of interest on a judgment, the debtor shall submit to the court a motion to suspend or reduce interest that includes:

(1) a completed financial disclosure, on a form adopted by the Vermont Judiciary; and

(2) any additional documentation the court prescribes.

(c) If the court approves the request, it:

(1) shall provide in its order that the suspension or reduction of interest is based on the judgment debtor's current income, assets, and expenses; and

(2) may require the judgment debtor periodically to provide the judgment creditor with an updated financial disclosure form.

(d) The court may revise its order upon a motion by the judgment creditor or judgment debtor to reinstate, reduce further, or suspend the accrual of interest based on a substantial change in the judgment debtor's income, assets, or expenses.

* * *

Sec. 3. 9 V.S.A. chapter 63, subchapter 9 is added to read:

Subchapter 9. Debt Collectors and Debt Collection

§ 2491. DEFINITIONS

As used in this subchapter:

(1) "Credit card debtor" means a consumer who is in default on credit card debt incurred for personal, family, or household purposes.

(2) "Debt collector" means a person who engages, or directly or indirectly aids, in collecting a credit card debt incurred for personal, family, or household purposes, and includes a debt buyer.

§ 2491a. ENFORCEMENT

A person who violates a provision of this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

§ 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO CONSUMER

(a) Notice prior to initiating action. Prior to initiating an action to obtain a judgment against a credit card debtor, a debt collector shall deliver to the credit card debtor:

(1) a claim of exemption form adopted by the Vermont Judiciary; and

(2) a written notice that contains:

(A) the amount of the debt;

(B) the name of the person to whom the debt is owed;

(C) the name of the original creditor, the last four digits of the account, and the alleged date of the last payment if any;

(D) a statement that, if the credit card debtor indicates in writing that his or her current income and assets are exempt from collection, the debt collector will review the information in deciding whether and how to proceed in collecting the debt.

(b) Time for delivering notice prior to initiating action. A debt collector shall deliver the notice required in subsection (a) of this section not more than 90 days and not less than 30 days before initiating an action to obtain a judgment against a credit card debtor.

(c) Notice by assignee prior to filing a motion to collect on a judgment against credit card debtor. Prior to filing a motion to collect on a judgment against a credit card debtor, an assignee of the judgment shall deliver to the judgment debtor:

(1) a copy of the judgment against the credit card debtor;

(2) the date and parties to each assignment of the judgment;

(3) a claim of exemption form adopted by the Vermont Judiciary; and

(4) a written statement that, if the credit card debtor indicates in writing that his or her current income and assets are exempt from collection, the assignee will review the information in deciding whether and how to proceed in collecting on the judgment.

(d) Time for delivering notice by assignee prior to filing a motion to collect on a judgment against credit card debtor. The assignee of a judgment shall deliver the notice required in subsection (c) of this section not more than 90 days and not less than 30 days before filing a motion to collect on the judgment.

§ 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS EXPIRED; LIMITATIONS

(a)(1) A debt collector shall not initiate a civil action to collect a debt from a credit card debtor when the debt collector knows or reasonably should know that the statute of limitations provided in 12 V.S.A. § 511 has expired.

(2) Notwithstanding any other provision of law, when the limitations period provided in 12 V.S.A. § 511 expires, any subsequent payment toward, written or oral affirmation of, or other activity on the debt does not revive or extend the limitations period.

(b) After the statute of limitations provided in 12 V.S.A. § 511 has expired, a debt collector may only communicate with a credit card debtor concerning the debt after providing written or verbal notice that the credit card debtor has the right to request that the debt collector cease all communications with the

credit card debtor concerning the debt and providing one of the following disclosures:

(1) If the debt is not past the date for obsolescence set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

"The law limits how long you can be sued on a debt. Because of the age of your debt, we cannot sue you for it. However, if you do not pay the debt, [creditor or debt collector name] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(2) If the debt is past the date for obsolescence set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

"The law limits how long you can be sued on a debt. Because of the age of your debt, [creditor or debt collector name] cannot sue you for it and will not report it to any credit reporting agency."

Sec. 4. 12 V.S.A. § 2732 is amended to read:

§ 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

On request of the judgment creditor, the clerk of the court granting judgment shall issue ~~to the officer holding the execution~~ a summons as trustee to a third person having in his or her hands goods, effects, or credits, other than earnings, of the debtor that have not previously been attached on trustee process in connection with the action. The summons shall be in such form as the Supreme Court may by rule provide for a summons to a trustee in connection with the commencement of an action and shall state the date and amount of the judgment. The summons shall be served by the officer upon the trustee in like manner and with the same effect as mesne process. A copy of the summons shall be served upon the judgment debtor with the officer's endorsement thereon of the date of service upon the trustee. After service of the summons, proceedings shall be had as provided by law and by rule promulgated by the Supreme Court for trustee process in connection with the commencement of an action.

Sec. 5. 12 V.S.A. § 3170 is amended to read:

§ 3170. EXEMPTIONS; ISSUANCE OF ORDER

(a) No order approving the issuance of trustee process against earnings shall be entered against a judgment debtor who was, within the two-month period preceding the hearing provided in section 3169 of this title, a recipient of assistance from the Vermont Department for Children and Families or the Department of Vermont Health Access. The judgment debtor must establish this exemption at the time of hearing.

(b) The earnings of a judgment debtor shall be exempt as follows:

(1) 75 percent of the debtor's weekly disposable earnings~~,~~ or 30 times the ~~federal~~ minimum hourly wage, whichever is greater; or

(2) if the judgment debt arose from a consumer credit transaction, as

that term is defined by 15 U.S.C. § 1602 and implementing regulations of the Federal Reserve Board, 85 percent of the debtor's weekly disposable earnings, or 40 times the ~~federal~~ minimum hourly wage, whichever is greater; or

(3) if the court finds that the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivisions (1) and (2) of this subsection, such greater amount of earnings as the court shall order.

* * *

Sec. 6. 12 V.S.A. § 3173 is added to read:

§ 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S BANK ACCOUNTS; PROCEDURE

(a)(1) A judgment creditor may, pursuant to this section, obtain trustee process against a judgment debtor's accounts or funds in the possession of a bank or other financial institution to enforce a money judgment in a civil action.

(2) Notwithstanding section 2732 of this title or any other provision of law, a judgment debtor's accounts or funds in the possession of a bank or other financial institution shall not be attached, be subject to trustee process, or be subject to execution by a judgment creditor unless the requirements of this section are satisfied.

(3) Nothing in this section shall prohibit a financial institution from exercising a contractual right of setoff against a judgment debtor's deposit accounts with the financial institution.

(b)(1) A judgment creditor may file an ex parte motion for trustee process against a judgment debtor's accounts or funds in the possession of a bank or other financial institution describing in detail the grounds for the motion, the amount alleged to be unpaid, including estimated costs anticipated to be expended for court fees and service on parties in connection with the trustee process procedure.

(2) The judgment creditor shall prepare a summons and a disclosure for the trustee, and a claim of exemption for the judgment debtor, on forms provided by the court.

(c)(1) Upon receipt of a motion for trustee process filed under this section when a judgment is final and has not been satisfied, the Superior clerk is authorized to issue one or more summonses to any trustee financial institution specified by the judgment creditor that possesses accounts or funds belonging to the judgment debtor.

(2) If the judgment creditor requests issuance of more than one summons, the judgment creditor shall specify, and the clerk shall include in the summons, which financial institution shall not freeze the amounts exempted by subdivision 2740(15) of this title.

(3) The clerk shall issue a notice of hearing concurrently with the

summons and shall set the matter for hearing not sooner than 30 days after issuing the notice and summons.

(4) A summons issued pursuant to this subsection shall contain instructions to the trustee financial institution directing it not to freeze any funds of the judgment debtor that, based on deposit or other information kept by the trustee financial institution, are protected under 31 C.F.R. part 212 or exempt under subdivision 2740(15) of this title.

(d)(1) The judgment creditor shall serve on the trustee financial institution and the judgment debtor pursuant to Rule 4 of the Vermont Rules of Civil Procedure, unless the judgment debtor files an appearance pursuant to Rule 5 of the Vermont Rules of Civil Procedure after the motion for trustee process is filed:

(A) the motion for trustee process;

(B) the summons and notice of hearing issued by the clerk pursuant to subdivisions (c)(1) and (3) of this section;

(C) a claim of exemptions form approved by the Court Administrator that permits the judgment debtor to identify any of the debtor's funds in the possession of the trustee financial institution that may be exempt from execution under section 2740 of this title; and

(D) a disclosure form for the trustee.

(2) If the judgment creditor does not provide proof of service on the judgment debtor by the time of the hearing and the judgment debtor does not appear at the hearing, the court shall issue an order denying the motion for trustee process and directing the trustee financial institution to release all of the judgment debtor's held funds to the judgment debtor, unless the hearing is continued for good cause.

(e) Upon receipt of a summons served pursuant to subsection (d) of this section, a trustee financial institution, based on the instructions contained in the summons and deposit or other information kept by the institution:

(1) shall not freeze any funds in its possession belonging to the judgment debtor that are protected under 31 C.F.R. part 212 or that are exempt under subdivision 2740(15) of this title;

(2) shall freeze any funds up to the amount owed as provided in the summons to the trustee that are not protected under 31 C.F.R. part 212 and that are not exempt under subdivision 2740(15) of this title; and

(3) shall return the disclosure form to the court and to the parties within 10 days.

(f)(1) A judgment debtor may request an expedited hearing to determine a claim of exemption.

(2) The judgment debtor shall:

(A) submit the request in writing; and

(B) send a copy of the request to the court, to the judgment creditor,

and to the trustee financial institution.

(3) The court shall give notice to the parties and hold the hearing within three business days after the judgment debtor makes the request.

(4) If the judgment debtor requests an expedited hearing, he or she is deemed to have entered an appearance and waived any further service.

(g) At the hearing on the motion for trustee process or motion for expedited hearing, the court shall consider the disclosure form from the trustee and the testimony and affidavits offered by any party, provided that an affiant is available to testify in person or by telephone. The court shall issue an order granting or denying the motion for trustee process, which shall:

(1) state the amount of the judgment unpaid, including costs incurred since filing the motion;

(2) state the rate of postjudgment interest due under 9 V.S.A. § 41a(b)(10);

(3) identify any funds of the judgment debtor in the possession of the trustee financial institution that are exempt from execution under section 2740 of this title and order release of those funds to the judgment debtor;

(4) review any proposed settlement between the judgment creditor and the judgment debtor and make a finding as to whether any waiver of exemptions was knowing; and

(5) identify the amount of funds in the possession of the trustee financial institution that shall be released to the judgment creditor.

(h) A trustee financial institution shall not be subject to criminal or civil liability for any actions taken in reliance upon the provisions of this section.

Sec. 7. IMPLEMENTATION; REPORT

(a) On or before January 15, 2020, the Attorney General, in consultation with the Judicial Branch, representatives of creditors and debtors, and national nonprofit organizations representing the receivables industry, shall submit to the House and Senate Committees on Judiciary, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs a report that addresses:

(1) the implementation, outcomes, and effectiveness of this act;

(2) whether to expand the applicability of the provisions of this act beyond credit card debt; and

(3) any recommendations for further legislative action related to this act.

(b) On or before January 15, 2019, the Attorney General, in consultation with the Judicial Branch and representatives of creditors and debtors, shall submit to the House and Senate Committees on Judiciary, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs a report that addresses the potential costs and benefits of requiring a court to acquire and review a debtor's credit report when considering a request to reduce or

suspend the accrual of postjudgment interest, who should be responsible for producing the credit report, and how to ensure consumer privacy if a credit report is used for those purposes in a court action.

Sec. 8. EFFECTIVE DATE

This act shall take effect on October 1, 2018.

and that after passage the title of the bill be amended to read: "An act relating to consumer protection, credit card debt, and trustee process"

(Committee Vote: 7-2-2)

Rep. Conquest of Newbury, for the Committee on Judiciary**,** recommends the bill ought to pass when amended as recommended by the Committee on Commerce and Economic Development**.**

(Committee Vote: 7-1-3)

Amendment to be offered by Reps. Sullivan of Dorset and McCoy of Poultney to the recommendation of amendment of the Committee on Commerce and Economic Development to H. 482

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

Sec. 1. 9 V.S.A. § 41a is amended to read:

§ 41a. LEGAL RATES

(a) Except as specifically provided by law, the rate of interest or the sum allowed for forbearance or use of money shall be 12 percent per annum computed by the actuarial method.

(b) The rate of interest or the sum allowed:

* * *

(10) Interest on a judgment against a consumer credit card debtor, as defined in 12 V.S.A. § 2903a(a)(1), shall accrue at the rate of 12 percent per annum using simple interest unless a court suspends or reduces the accrual of interest pursuant to 12 V.S.A. § 2903a.

* * *

Sec. 2. 12 V.S.A. chapter 113 is amended to read:

CHAPTER 113. ~~JUDGMENT LIEN~~ JUDGMENTS AND JUDGMENT LIENS

* * *

§ 2903. DURATION AND EFFECTIVENESS

* * *

(c) ~~Interest~~ Unless a court suspends or reduces the accrual of interest pursuant to section 2903a of this title, interest on a judgment lien shall accrue at the rate of 12 percent per annum using simple interest.

(d) If a judgment lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in this title and ~~V.R.C.P.~~ Rule 80.1 of the Vermont Rules of Civil Procedure. Unless the court finds that as of the date of foreclosure the amount of the outstanding debt exceeds the value of the real property being foreclosed, section 4531 of this title shall apply to foreclosure of a judgment lien.

§ 2903a. ACCRUAL OF POSTJUDGMENT INTEREST ON CREDIT CARD DEBT; SUSPENSION; REDUCTION; REINSTATEMENT

(a) As used in this section:

(1)(A) "Consumer credit card debtor" means a person who is in default on an unsecured consumer credit card debt and whose gross annual household income does not exceed 80 percent of the applicable county median income, as determined by the Department of Housing and Urban Development.

(B) "Consumer credit card debtor" does not include a business entity, partnership, association, or limited liability company; an owner, member, officer, or authorized agent of a business entity, partnership, association, or limited liability company; or a self-employed person.

(2) "Consumer debt collection business" means an entity or person who in the regular course of its or their business engages or assists in the collection of defaulted unsecured consumer credit card debt.

(b) Upon or after entering a judgment against a consumer credit card debtor, a court may suspend or reduce the accrual of interest on the judgment if it finds:

(1) the consumer credit card debtor's income and assets are exempt from collection; or

(2) the consumer credit card debtor does not have financial resources sufficient reasonably to support the debtor and his or her dependents.

(c) To request suspension or reduction of interest on a judgment, the consumer credit card debtor shall submit to the court a motion to suspend or reduce interest that includes:

(1) a completed financial disclosure, on a form adopted by the Vermont Judiciary; and

(2) any additional documentation the court prescribes.

(d) If the court approves the request, it:

(1) shall provide in its order that the suspension or reduction of interest is based on the consumer credit card debtor's current income, assets, and expenses; and

(2) may require the consumer credit card debtor periodically to provide the judgment creditor with an updated financial disclosure form.

(e) The court may revise its order upon a motion by the judgment creditor or consumer credit card debtor to reinstate, reduce further, or suspend the accrual of interest based on a material change in the consumer credit card debtor's income, assets, or expenses.

(f) This section shall not apply to, or affect the substantive rights and obligations of parties in, federal bankruptcy proceedings, actions brought by any court-ordered receiver, arbitration proceedings, or actions initiated in courts outside of this State.

* * *

Sec. 3. 9 V.S.A. chapter 63, subchapter 9 is added to read:

Subchapter 9. Consumer Debt Collection Business and Debt Collection

§ 2491. DEFINITIONS

As used in this subchapter:

(1)(A) "Consumer credit card debtor" means a person who is in default on an unsecured consumer credit card debt and whose gross annual household income does not exceed 80 percent of the applicable county median income, as determined by the Department of Housing and Urban Development.

(B) "Consumer credit card debtor" does not include a business entity, partnership, association, or limited liability company; an owner, member, officer, or authorized agent of a business entity, partnership, association, or limited liability company; or a self-employed person.

(2) "Consumer debt collection business" means an entity or person who in the regular course of its or their business engages or assists in the collection of defaulted unsecured consumer credit card debt.

§ 2491a. ENFORCEMENT

A person who violates a provision of this subchapter commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

§ 2491b. CREDIT CARD DEBT COLLECTION; NOTICES TO CONSUMER

(a) Notice prior to initiating an action to obtain a judgment against a consumer credit card debtor. Prior to initiating an action in the courts of this State to obtain a judgment against a consumer credit card debtor, a consumer debt collection business shall deliver to the consumer credit card debtor:

(1) a claim of exemption from adopted by the Vermont Judiciary; and

(2) a written notice that contains:

(A) the amount of the debt;

(B) the name of the person to whom the debt is owed;

(C) the name of the original creditor, the last four digits of the account, and the alleged date of the last payment if any;

(D) a statement that, if the consumer credit card debtor indicates in writing that his or her current income and assets are exempt from collection, the consumer debt collection business will review the information in deciding whether and how to proceed in collecting the debt.

(b) Time for delivering notice prior to initiating an action to obtain a judgment against a consumer credit card debtor. A consumer debt collection business shall deliver the notice required in subsection (a) of this section not more than 90 days and not less than 30 days before initiating an action pursuant to Vermont law to obtain a judgment against a consumer credit card debtor.

(c) Notice by assignee prior to filing a motion to collect on a judgment against consumer credit card debtor. Prior to filing a motion to collect on a judgment obtained in the courts of this State against a consumer credit card debtor, an assignee of the judgment shall deliver to the judgment debtor:

(1) a copy of the judgment against the consumer credit card debtor;

(2) the date and parties to each assignment of the judgment;

(3) a claim of exemption form adopted by the Vermont Judiciary; and

(4) a written statement that, if the consumer credit card debtor indicates in writing that his or her current income and assets are exempt from collection, the assignee will review the information in deciding whether and how to proceed in collecting on the judgment.

(d) Time for delivering notice by assignee prior to filing a motion to collect on a judgment against consumer credit card debtor. The assignee of a judgment shall deliver the notice required in subsection (c) of this section not more than 90 days and not less than 30 days before filing a motion to collect on the judgment pursuant to Vermont law.

§ 2491c. DEBT COLLECTION AFTER STATUTE OF LIMITATIONS EXPIRED; LIMITATIONS

(a) A consumer debt collection business shall not initiate an action to collect debt from a consumer credit card debtor when the consumer debt collection business knows or reasonably should know that the applicable statute of limitations has expired.

(b) After the statute of limitations to initiate an action to collect debt from a consumer credit card debtor has expired, a consumer debt collection business may only communicate with a consumer credit card debtor concerning the debt after providing written or verbal notice that the consumer credit card debtor has the right to request that the consumer debt collection business cease all communications with the consumer credit card debtor concerning the debt and providing one of the following disclosures:

(1) If the debt is not past the date for obsolescence set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

"The law limits how long you can be sued on a debt. Because of the age of your debt, we cannot sue you for it. However, if you do not pay the debt, [creditor or consumer debt collection business name] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(2) If the debt is past the date for obsolescence set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c(a):

"The law limits how long you can be sued on a debt. Because of the age of your debt, [creditor or consumer debt collection business name] cannot sue you for it and will not report it to any credit reporting agency."

§ 2491d. LIMITATION OF SCOPE

This subchapter shall not apply to, or affect the substantive rights and obligations of parties in, federal bankruptcy proceedings, actions brought by any court-ordered receiver, arbitration proceedings, or actions initiated in courts outside of this State.

Sec. 4. 12 V.S.A. § 2732 is amended to read:

§ 2732. GOODS, EFFECTS, AND CREDITS HELD BY THIRD PERSON

On request of the judgment creditor, the clerk of the court granting judgment shall issue ~~to the officer holding the execution~~ a summons as trustee to a third person having in his or her hands goods, effects, or credits, other than earnings, of the debtor that have not previously been attached on trustee process in connection with the action. The summons shall be in such form as the Supreme Court may by rule provide for a summons to a trustee in connection with the commencement of an action and shall state the date and amount of the judgment. The summons shall be served by the officer upon the trustee in like manner and with the same effect as mesne process. A copy of the summons shall be served upon the judgment debtor with the officer's endorsement thereon of the date of service upon the trustee. After service of the summons, proceedings shall be had as provided by law and by rule promulgated by the Supreme Court for trustee process in connection with the commencement of an action.

Sec. 5. 12 V.S.A. § 3170 is amended to read:

§ 3170. EXEMPTIONS; ISSUANCE OF ORDER

(a) No order approving the issuance of trustee process against earnings shall be entered against a judgment debtor who was, within the two-month period preceding the hearing provided in section 3169 of this title, a recipient of assistance from the Vermont Department for Children and Families or the Department of Vermont Health Access. The judgment debtor must establish this exemption at the time of hearing.

(b) The earnings of a judgment debtor shall be exempt as follows:

(1) 75 percent of the debtor's weekly disposable earnings~~,~~ or 30 times the ~~federal~~ minimum hourly wage, whichever is greater; or

(2) if the judgment debt arose from a consumer credit transaction, as that term is defined by 15 U.S.C. § 1602 and implementing regulations of the Federal Reserve Board, 85 percent of the debtor's weekly disposable earnings, or 40 times the ~~federal~~ minimum hourly wage, whichever is greater; or

(3) if the court finds that the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivisions (1) and (2) of this subsection, such greater amount of earnings as the court shall order.

* * *

Sec. 6. 12 V.S.A. § 3173 is added to read:

§ 3173. TRUSTEE PROCESS AGAINST JUDGMENT DEBTOR'S BANK ACCOUNTS; PROCEDURE

(a)(1) A judgment creditor may, pursuant to this section, obtain trustee process against a judgment debtor's accounts or funds in the possession of a bank or other financial institution to enforce a money judgment in a civil action.

(2) Notwithstanding section 2732 of this title or any other provision of law, a judgment debtor's accounts or funds in the possession of a bank or other financial institution shall not be attached, be subject to trustee process, or be subject to execution by a judgment creditor unless the requirements of this section are satisfied.

(3) Nothing in this section shall prohibit a financial institution from exercising a contractual right of setoff against a judgment debtor's deposit accounts with the financial institution.

(b)(1) A judgment creditor may file an ex parte motion for trustee process against a judgment debtor's accounts or funds in the possession of a bank or other financial institution describing in detail the grounds for the motion, the amount alleged to be unpaid, including estimated costs anticipated to be expended for court fees and service on parties in connection with the trustee process procedure.

(2) The judgment creditor shall prepare a summons and a disclosure for the trustee, and a claim of exemption for the judgment debtor, on forms provided by the court.

(c)(1) Upon receipt of a motion for trustee process filed under this section when a judgment is final and has not been satisfied, the Superior clerk is authorized to issue one or more summonses to any trustee financial institution specified by the judgment creditor that possesses accounts or funds belonging to the judgment debtor.

(2) If the judgment creditor requests issuance of more than one summons, the judgment creditor shall specify, and the clerk shall include in the summons, which financial institution shall not freeze the amounts exempted by subdivision 2740(15) of this title.

(3) The clerk shall issue a notice of hearing concurrently with the summons and shall set the matter for hearing not sooner than 30 days after issuing the notice and summons.

(4) A summons issued pursuant to this subsection shall contain instructions to the trustee financial institution directing it not to freeze any funds of the judgment debtor that, based on deposit or other information kept by the trustee financial institution, are protected under 31 C.F.R. part 212 or exempt under subdivision 2740(15) of this title.

(d)(1) The judgment creditor shall serve on the trustee financial institution and the judgment debtor pursuant to Rule 4 of the Vermont Rules of Civil Procedure, unless the judgment debtor files an appearance pursuant to Rule 5 of the Vermont Rules of Civil Procedure after the motion for trustee process is filed:

(A) the motion for trustee process;

(B) the summons and notice of hearing issued by the clerk pursuant to subdivisions (c)(1) and (3) of this section;

(C) a claim of exemptions form approved by the Court Administrator that permits the judgment debtor to identify any of the debtor's funds in the possession of the trustee financial institution that may be exempt from execution under section 2740 of this title; and

(D) a disclosure form for the trustee.

(2) If the judgment creditor does not provide proof of service on the judgment debtor by the time of the hearing and the judgment debtor does not appear at the hearing, the court shall issue an order denying the motion for trustee process and directing the trustee financial institution to release all of the judgment debtor's held funds to the judgment debtor, unless the hearing is continued for good cause.

(e) Upon receipt of a summons served pursuant to subsection (d) of this section, a trustee financial institution, based on the instructions contained in the summons and deposit or other information kept by the institution:

(1) shall not freeze any funds in its possession belonging to the judgment debtor that are protected under 31 C.F.R. part 212 or that are exempt under subdivision 2740(15) of this title;

(2) shall freeze any funds up to the amount owed as provided in the summons to the trustee that are not protected under 31 C.F.R. part 212 and that are not exempt under subdivision 2740(15) of this title; and

(3) shall return the disclosure form to the court and to the parties within 10 days.

(f)(1) A judgment debtor may request an expedited hearing to determine a claim of exemption.

(2) The judgment debtor shall:

(A) submit the request in writing; and

(B) send a copy of the request to the court, to the judgment creditor, and to the trustee financial institution.

(3) The court shall give notice to the parties and hold the hearing within three business days after the judgment debtor makes the request.

(4) If the judgment debtor requests an expedited hearing, he or she is deemed to have entered an appearance and waived any further service.

(g) At the hearing on the motion for trustee process or motion for expedited hearing, the court shall consider the disclosure form from the trustee and the testimony and affidavits offered by any party, provided that an affiant is available to testify in person or by telephone. The court shall issue an order granting or denying the motion for trustee process, which shall:

(1) state the amount of the judgment unpaid, including costs incurred since filing the motion;

(2) state the rate of postjudgment interest due under 9 V.S.A. § 41a(b)(10);

(3) identify any funds of the judgment debtor in the possession of the trustee financial institution that are exempt from execution under section 2740 of this title and order release of those funds to the judgment debtor;

(4) review any proposed settlement between the judgment creditor and the judgment debtor and make a finding as to whether any waiver of exemptions was knowing; and

(5) identify the amount of funds in the possession of the trustee financial institution that shall be released to the judgment creditor.

(h) A trustee financial institution shall not be subject to criminal or civil liability for any actions taken in reliance upon the provisions of this section.

Sec. 7. IMPLEMENTATION; REPORT

On or before January 15, 2020, the Attorney General, in consultation with the Judicial Branch, representatives of creditors and debtors, and national nonprofit organizations representing the receivables industry, shall submit to the House and Senate Committees on Judiciary, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs a report that:

(1) addresses the implementation and outcomes of this act; and

(2) specifies the number of cases affected by this act involving low income Vermonters.

Sec. 8. EFFECTIVE DATE

This act shall take effect on October 1, 2018.

and that after passage the title of the bill be amended to read: "An act relating to consumer protection, credit card debt, and trustee process"

S. 166

An act relating to the provision of medication-assisted treatment for inmates

Rep. Shaw of Pittsford, for the Committee on Corrections and Institutions**,** recommends 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. LEGISLATIVE INTENT

It is the intent of the General Assembly that medication-assisted treatment offered at or facilitated by a correctional facility is a medically necessary component of treatment for inmates diagnosed with opioid use disorder.

Sec. 2. 18 V.S.A. § 4750 is added to read:

§ 4750. DEFINITION

As used in this chapter, "medication-assisted treatment" means the use of U.S. Federal Drug Administration-approved medications, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders.

Sec. 3. 28 V.S.A. § 801 is amended to read:

§ 801. MEDICAL CARE OF INMATES

* * *

(b)(1) Upon admission to a correctional facility for a minimum of 14 consecutive days, each inmate shall be given a physical assessment unless extenuating circumstances exist.

(2) Within 24 hours after admission to a correctional facility, each inmate shall be screened for substance use disorders as part of the initial and ongoing substance use screening and assessment process. This process includes screening and assessment for opioid use disorders.

* * *

(e)(1) Except as otherwise provided in this subsection, an ~~offender~~ inmate who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed physician assistant, or a licensed advanced practice registered nurse~~, or a licensed nurse practitioner~~ and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont Prescription Monitoring System or other prescription monitoring or information system, including buprenorphine, methadone, or other medication prescribed in the course of medication-assisted treatment, shall be entitled to continue that medication and to be provided that

medication by the Department pending an evaluation by a licensed physician, a licensed physician assistant, ~~a licensed nurse practitioner,~~ or a licensed advanced practice registered nurse.

(2) ~~However~~ Notwithstanding subdivision (1) of this subsection, the Department may defer provision of a validly prescribed medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician assistant, ~~a nurse practitioner,~~ or an advanced practice registered nurse, it is not ~~in the inmate's best interest~~ medically necessary to continue the medication at that time.

(3) The licensed practitioner who makes the clinical judgment to discontinue a medication shall ~~enter~~ cause the reason for the discontinuance to be entered into the inmate's ~~permanent~~ medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(4) It is not the intent of the General Assembly that this subsection shall create a new or additional private right of action.

(5) As used in this subchapter:

(A) "Medically necessary" describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual's diagnosis or condition, are informed by generally accepted medical or scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition.

(B) "Medication-assisted treatment" shall have the same meaning as in 18 V.S.A. § 4750.

* * *

Sec. 4. 28 V.S.A. § 801b is added to read:

§ 801b. MEDICATION-ASSISTED TREATMENT IN CORRECTIONAL FACILITIES

(a) If an inmate receiving medication-assisted treatment prior to entering the correctional facility continues to receive medication prescribed in the course of medication-assisted treatment pursuant to section 801 of this title, the

inmate shall be authorized to receive that medication for as long as medically necessary.

(b)(1) If at any time an inmate screens positive as having an opioid use disorder, the inmate may elect to commence buprenorphine-specific medication-assisted treatment if it is deemed medically necessary by a provider authorized to prescribe buprenorphine. The inmate shall be authorized to receive the medication as soon as possible and for as long as medically necessary.

(2) Nothing in this subsection shall prevent an inmate who commences medication-assisted treatment while in a correctional facility from transferring from buprenorphine to methadone if:

(A) methadone is deemed medically necessary by a provider authorized to prescribe methadone; and

(B) the inmate elects to commence methadone as recommended by a provider authorized to prescribe methadone.

(c) The licensed practitioner who makes the clinical judgment to discontinue a medication shall cause the reason for the discontinuance to be entered into the inmate's medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(d) As part of reentry planning for an inmate who screens positive for an opioid use disorder and for whom medication assisted treatment is medically necessary, the Department shall commence medication-assisted treatment prior to release. If medication-assisted treatment is indicated and despite best efforts induction is not possible prior to release, the Department shall ensure comprehensive care coordination with a community-based provider.

(e) Any counseling or behavioral therapies provided in conjunction with the use of medication-assisted treatment shall be medically necessary.

* * *

Sec. 5. MEMORANDUM OF UNDERSTANDING; MEDICATION-ASSISTED TREATMENT IN STATE CORRECTIONAL FACILITIES

(a) On or before December 31, 2018, the Departments of Corrections and

of Health may enter into a memorandum of understanding with opioid treatment programs throughout the State, certified and accredited pursuant to 42 C.F.R. part 8, that serve regions in which a State correctional facility is located to provide medication-assisted treatment to those inmates for whom a licensed practitioner has determined medication-assisted treatment is medically necessary. Treatment received pursuant to this section shall be coordinated pursuant to 18 V.S.A. § 4753.

(b) As used in this section, "medication-assisted treatment" shall have the same meaning as in 18 V.S.A. § 4750.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 10-0-1)

(For text see Senate Journal March 13, 2018)

S. 203

An act relating to systemic improvements of the mental health system

Rep. Donahue of Northfield, for the Committee on Health Care**,** recommends 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:

* * * Order of Non-Hospitalization Study Committee * * *

Sec. 1. ORDER OF NON-HOSPITALIZATION STUDY COMMITTEE

(a) Creation. There is created the Order of Non-Hospitalization Study Committee to examine the strengths and weaknesses of Vermont's orders of non-hospitalizations for the purpose of improving patient care.

(b) Membership. The Committee shall be composed of the following 12 members:

(1) the Commissioner of Mental Health or designee;

(2) the Commissioner of Public Safety or designee;

(3) the Chief Superior Judge or designee;

(4) a member appointed by the Vermont Care Partners;

(5) a member appointed by the Vermont Association of Hospitals and Health Systems;

(6) a member appointed by Vermont Legal Aid's Mental Health Project;

(7) a member appointed by the Executive Director of the Department of State's Attorneys and Sheriffs;

(8) the Vermont Defender General or designee;

(9) the Executive Director of Vermont Psychiatric Survivors or designee;

(10) the Mental Health Care Ombudsman designated pursuant to 18 V.S.A. § 7259;

(11) an individual who was previously under an order of non-hospitalization, appointed by Vermont Psychiatric Survivors; and

(12) the family member of an individual who is currently or was previously under an order of non-hospitalization, appointed by the Vermont chapter of the National Alliance on Mental Illness.

(c) Powers and duties. The Committee shall examine the strengths and weaknesses of Vermont's orders of non-hospitalization for the purpose of improving patient care and may propose a pilot project that seeks to redress any weaknesses and build upon any existing strengths. The Committee shall:

(1) review and understand existing laws pertaining to orders of non-hospitalization, including 1998 Acts and Resolves No. 114;

(2) review existing studies and reports on whether or not outpatient commitment and involuntary treatment orders improve patient outcomes;

(3) review existing data pertaining to orders of non-hospitalization, including data pertaining to individuals entering the mental health system through both civil and forensic procedures;

(4) if appropriate, propose a pilot project for the purpose of improving the efficacy of orders of non-hospitalization;

(5) if appropriate, recommend any changes necessary to approve the efficacy of orders of non-hospitalization; and

(6) identify statutory changes necessary to implement recommended changes to orders of non-hospitalization, if any.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Department of Mental Health.

(e) Report. On or before November 1, 2018, the Committee shall submit a written report to the House Committee on Health Care and the Senate Committee on Health and Welfare with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Commissioner of Mental Health or designee shall call the first meeting of the Committee to occur on or before August 1, 2018.

(2) The Commissioner of Mental Health or designee shall be the Chair.

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

(4) The Committee shall cease to exist on December 1, 2018.

(g) Compensation and reimbursement. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than four meetings. These payments shall be made from monies appropriated to the Department of Mental Health.

* * * Waiver of Certificate of Need Requirement for Secure Residential Recovery Facility * * *

Sec. 2. WAIVER OF CERTIFICATE OF NEED REQUIREMENT FOR SECURE RESIDENTIAL RECOVERY FACILITY

Notwithstanding the provisions of 18 V.S.A. chapter 221, subchapter 5, the construction, development, purchase, or renovation of land or buildings, or a combination thereof, in order to establish a secure residential recovery facility as authorized in the fiscal year 2019 capital bill shall not be considered a "new health care project" for which a certificate of need is required.

* * * Use of Emergency Involuntary Procedures in the Secure Residential Recovery Facility * * *

Sec. 3. EMERGENCY INVOLUNTARY PROCEDURES IN SECURE RESIDENTIAL RECOVERY FACILITIES

In the event that the Department of Disabilities, Aging, and Independent Living amends its rules pertaining to secure residential recovery facilities to allow the use of emergency involuntary procedures in them, the rules adopted shall be identical to those rules adopted by the Department of Mental Health that govern the use of emergency involuntary procedures in psychiatric inpatient units.

* * * Reports * * *

Sec. 4. REPORT; TRANSPORTING PATIENTS

On or before January 15, 2019, the Secretary of Human Services shall submit a written report to the House Committees on Appropriations and on Health Care and to the Senate Committees on Appropriations and on Health and Welfare regarding the implementation of 2017 Acts and Resolves No. 85, Sec. E.314 (transporting patients). Specifically, the report shall:

(1) describe specifications introduced into the Agency of Human Services' fiscal year 2019 contracts as a result of 2017 Acts and Resolves

No. 85, Sec. E.314;

(2) summarize the Agency's oversight and enforcement of 2017 Acts and Resolves No. 85, Sec. E.314; and

(3) provide data from each sheriff's department in the State on the use of restraints during patient transports.

Sec. 5. DATA COLLECTION AND REPORT; PATIENTS SEEKING MENTAL HEALTH CARE IN HOSPITAL SETTINGS

(a) Pursuant to the authority granted to the Commissioner of Mental Health under 18 V.S.A. § 7401, the Commissioner shall collect the following information from hospitals in the State that have either an inpatient psychiatric unit or emergency department receiving patients with psychiatric health needs:

(1) the number of individuals seeking psychiatric care voluntarily and the number of individuals in the custody or temporary custody of the Commissioner who are admitted to inpatient psychiatric units and the corresponding lengths of stay on the unit;

(2) the lengths of stay in emergency departments for individuals seeking psychiatric care voluntarily and for individuals in the custody or temporary custody of the Commissioner; and

(3) data regarding emergency involuntary procedures performed in an emergency department on individuals seeking psychiatric care.

(b) On or before January 15 of each year between 2019 and 2021, the Commissioner of Mental Health shall submit a written report to the House Committee on Health Care and to the Senate Committee on Health and Welfare containing the data collected pursuant to subsection (a) of this section during the previous calendar year.

Sec. 6. REPORT; RATES OF PAYMENTS TO DESIGNATED AND SPECIALIZED SERVICE AGENCIES

On or before January 15, 2019, the Secretary of Human Services shall submit a written report to the House Committees on Appropriations and on Health Care and to the Senate Committees on Appropriations and on Health and Welfare pertaining to the implementation of 18 V.S.A. § 8914 (rates of payments to designated and specialized services agencies). Specifically, the report shall address the cost adjustment factor used to reflect changes in reasonable costs of goods and services of designated and specialized service agencies, including those attributed to inflation and labor market dynamics. If new payment methodologies are developed, the report shall address how the payments cover reasonable costs of goods and services of designated and specialized service agencies, including labor market dynamics.

Sec. 7. 2017 Acts and Resolves No. 82, Sec. 3(c) is amended to read:

(c) On or before January 15, 2019, the Secretary shall submit a comprehensive evaluation of the overarching structure for the delivery of mental health services within a sustainable, holistic health care system in Vermont to the Senate Committee on Health and Welfare and to the House Committees on Health Care and on Human Services~~, including~~. The Secretary shall ensure that the evaluation process provides for input from persons who identify as psychiatric survivors, consumers, or peers; family members of such persons; providers of mental health services; and providers of services within the broader health care system. The evaluation process shall include direct stakeholder involvement in the development of a written statement that articulates a common, long-term, statewide vision of how integrated, recovery- and resiliency-oriented services shall emerge as part of a comprehensive and holistic health care system. The evaluation shall include:

* * *

(5) how mental health care is being fully integrated into health care payment reform; ~~and~~

(6) any recommendations for structural changes to the mental health system that would assist in achieving the vision of an integrated, holistic health care system;

(7) how Vermont's mental health system currently addresses, or should be revised better to address, the goals articulated in 18 V.S.A. § 7629 of achieving "high-quality, patient-centered health care, which the Institute of Medicine defines as 'providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions'" and of achieving a mental health system that does not require coercion;

(8) recommendations for encouraging regulators and policymakers to account for mental health care spending growth as part of overall cost growth within the health care system rather than singled out and capped by the State's budget; and

(9) recommendations for ensuring parity between providers with similar job descriptions regardless of whether they are public employees or are employed by a State-financed agency.

Sec. 8. REPORT, INSTITUTIONS FOR MENTAL DISEASE

The Secretary of Human Services, in partnership with entities in Vermont designated by the Centers for Medicare and Medicaid Services as "institutions for mental disease" (IMDs), shall submit the following reports to the House Committees on Appropriations, on Corrections and Institutions, on Health

Care, and on Human Services and to the Senate Committees on Appropriations, on Health and Welfare, and on Institutions regarding the Agency's progress in evaluating the impact of federal IMD spending on persons with serious mental illness or substance use disorders:

(1) status updates that shall provide possible solutions considered as part of the State's response to the Centers for Medicare and Medicaid Services' requirement to begin reducing federal Medicaid spending due on or before July 15, September 15, and November 15 of 2019; and

(2) on or before January 15 of each year from 2019 to 2025, a written report evaluating:

(A) the impact to the State caused by the requirement to reduce and eventually terminate federal Medicaid IMD spending;

(B) the number of existing psychiatric and substance use disorder treatment beds at risk and the geographical location of those beds;

(C) the State's plan to address the needs of Vermont residents if psychiatric and substance use disorder treatment beds are at risk;

(D) the potential of attaining a waiver from the Centers for Medicare and Medicaid Services for existing psychiatric and substance use disorder services; and

(E) alternative solutions, including alternative sources of revenue, such as general funds, or opportunities to repurpose buildings designated as IMDs.

* * * Mental Health Parity * * *

Sec. 9. 8 V.S.A. § 4062(h) is amended to read:

(h)(1) The authority of the Board under this section shall apply only to the rate review process for policies for major medical insurance coverage and shall not apply to the policy forms for major medical insurance coverage or to the rate and policy form review process for policies for specific disease, accident, injury, hospital indemnity, dental care, vision care, disability income, long-term care, student health insurance coverage, Medicare supplemental coverage, or other limited benefit coverage, or to benefit plans that are paid directly to an individual insured or to his or her assigns and for which the amount of the benefit is not based on potential medical costs or actual costs incurred. Premium rates and rules for the classification of risk for Medicare supplemental insurance policies shall be governed by sections 4062b and 4080e of this title.

(2) The policy forms for major medical insurance coverage, as well as the policy forms, premium rates, and rules for the classification of risk for the

other lines of insurance described in subdivision (1) of this subsection shall be reviewed and approved or disapproved by the Commissioner. In making his or her determination, the Commissioner shall consider whether a policy form, premium rate, or rule is affordable and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State; and, for a policy form for major medical insurance coverage, whether it ensures equal access to appropriate mental health care in a manner equivalent to other aspects of health care as part of an integrated, holistic system of care. The Commissioner shall make his or her determination within 30 days after the date the insurer filed the policy form, premium rate, or rule with the Department. At the expiration of the 30-day period, the form, premium rate, or rule shall be deemed approved unless prior to then it has been affirmatively approved or disapproved by the Commissioner or found to be incomplete. The Commissioner shall notify an insurer in writing if the insurer files any form, premium rate, or rule containing a provision that does not meet the standards expressed in this subsection. In such notice, the Commissioner shall state that a hearing will be granted within 20 days upon the insurer's written request.

Sec. 10. 18 V.S.A. § 7201 is amended to read:

§ 7201. MENTAL HEALTH

(a) The Department of Mental Health, as the successor to the Division of Mental Health Services of the Department of Health, shall centralize and more efficiently establish the general policy and execute the programs and services of the State concerning mental health, and integrate and coordinate those programs and services with the programs and services of other departments of the State, its political subdivisions, and private agencies, so as to provide a flexible comprehensive service to all citizens of the State in mental health and related problems.

(b) The Department shall ensure equal access to appropriate mental health care in a manner equivalent to other aspects of health care as part of an integrated, holistic system of care.

Sec. 11. 18 V.S.A. § 7251 is amended to read:

§ 7251. PRINCIPLES FOR MENTAL HEALTH CARE REFORM

The General Assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

* * *

(4) The mental health system shall be integrated into the overall health care system and ensure equal access to appropriate mental health care in a manner equivalent to other aspects of health care as part of an integrated, holistic system of care.

* * *

Sec. 12. 18 V.S.A. § 9371 is amended to read:

§ 9371. PRINCIPLES FOR HEALTH CARE REFORM

The General Assembly adopts the following principles as a framework for reforming health care in Vermont:

* * *

(4) Primary care must be preserved and enhanced so that Vermonters have care available to them, preferably within their own communities. The health care system must ensure that Vermonters have access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability and that is equivalent to other components of health care as part of an integrated, holistic system of care. Other aspects of Vermont's health care infrastructure, including the educational and research missions of the State's academic medical center and other postsecondary educational institutions, the nonprofit missions of the community hospitals, and the critical access designation of rural hospitals, must be supported in such a way that all Vermonters, including those in rural areas, have access to necessary health services and that these health services are sustainable.

* * *

Sec. 13. 18 V.S.A. § 9382 is amended to read:

§ 9382. OVERSIGHT OF ACCOUNTABLE CARE ORGANIZATIONS

(a) In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization shall obtain and maintain certification from the Green Mountain Care Board. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for certifying accountable care organizations. To the extent permitted under federal law, the Board shall ensure these rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation. In order to certify an ACO to operate in this State, the Board shall ensure that the following criteria are met:

* * *

(2) The ACO has established appropriate mechanisms and care models to provide, manage, and coordinate high-quality health care services for its patients, including incorporating the Blueprint for Health, coordinating services for complex high-need patients, and providing access to health care providers who are not participants in the ACO. The ACO ensures equal access to appropriate mental health care that meets the Institute of Medicine's triple

aims of quality, access, and affordability in a manner that is equivalent to other aspects of health care as part of an integrated, holistic system of care.

* * *

Sec. 14. 18 V.S.A. § 9405(a) is amended to read:

(a) ~~No later than January 1, 2005, the~~ The Secretary of Human Services or designee, in consultation with the Chair of the Green Mountain Care Board and health care professionals and after receipt of public comment, shall adopt a State Health Improvement Plan that sets forth the health goals and values for the State. The Secretary may amend the Plan as the Secretary deems necessary and appropriate. The Plan shall include health promotion, health protection, nutrition, and disease prevention priorities for the State~~,~~; identify available human resources as well as human resources needed for achieving the State's health goals and the planning required to meet those needs~~,~~; identify gaps in ensuring equal access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care; and identify geographic parts of the State needing investments of additional resources in order to improve the health of the population. ~~The Plan shall contain sufficient detail to guide development of the State Health Resource Allocation Plan.~~ Copies of the Plan shall be submitted to members of the Senate ~~and House Committees~~ Committee on Health and Welfare ~~no later than January 15, 2005~~ and the House Committee on Health Care.

Sec. 15. 18 V.S.A. § 9405a(a) is amended to read:

(a) Each hospital shall have a protocol for meaningful public participation in its strategic planning process for identifying and addressing health care needs that the hospital provides or could provide in its service area. Needs identified through the process shall be integrated with the hospital's long-term planning. Each hospital shall post on its website a description of its identified needs, strategic initiatives developed to address the identified needs, annual progress on implementation of the proposed initiatives, ~~and~~ opportunities for public participation, and the ways in which the hospital ensures access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care. Hospitals may meet the community health needs assessment and implementation plan requirement through compliance with the relevant Internal Revenue Service community health needs assessment requirements for nonprofit hospitals.

Sec. 16. 18 V.S.A. § 9437 is amended to read:

§ 9437. CRITERIA

A certificate of need shall be granted if the applicant demonstrates and the Board finds that:

* * *

(7) the applicant has adequately considered the availability of affordable, accessible patient transportation services to the facility; ~~and~~

(8) if the application is for the purchase or lease of new Health Care Information Technology, it conforms with the health information technology plan established under section 9351 of this title; and

(9) The project will support equal access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care, as appropriate.

Sec. 17. 18 V.S.A. § 9456(c) is amended to read:

(c) Individual hospital budgets established under this section shall:

(1) be consistent with the Health Resource Allocation Plan;

(2) take into consideration national, regional, or ~~instate~~ in-state peer group norms, according to indicators, ratios, and statistics established by the Board;

(3) promote efficient and economic operation of the hospital;

(4) reflect budget performances for prior years; ~~and~~

(5) include a finding that the analysis provided in subdivision (b)(9) of this section is a reasonable methodology for reflecting a reduction in net revenues for non-Medicaid payers; and

(6) demonstrate that they support equal access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care.

Sec. 18. 18 V.S.A. § 9491 is amended to read:

§ 9491. HEALTH CARE WORKFORCE; STRATEGIC PLAN

* * *

(b) The Director or designee shall collaborate with the area health education centers, the Workforce Development Council established in 10 V.S.A. § 541, the Prekindergarten-16 Council established in 16 V.S.A. § 2905, the Department of Labor, the Department of Health, the Department of Vermont Health Access, and other interested parties~~,~~ to develop and maintain the plan. The Director of Health Care Reform shall ensure that the strategic

plan includes recommendations on how to develop Vermont's health care workforce, including:

* * *

(2) the resources needed to ensure that:

(A) the health care workforce and the delivery system are able to provide sufficient access to services given demographic factors in the population and in the workforce, as well as other factors~~, and~~;

(B) the health care workforce and the delivery system are able to participate fully in health care reform initiatives, including ~~how to ensure that all Vermont residents have~~ establishing a medical home for all Vermont residents through the Blueprint for Health pursuant to chapter 13 of this title~~,~~ ~~and how to transition~~ and transitioning to electronic medical records; and

(C) all Vermont residents have access to appropriate mental health care that meets the Institute of Medicine's triple aims of quality, access, and affordability equivalent to other components of health care as part of an integrated, holistic system of care;

* * *

* * * Effective Date * * *

Sec. 19. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 9-0-2)

(For text see Senate Journal February 27, 2018)

Rep. Hooper of Montpelier, for the Committee on Appropriations**,** recommends the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Health Care**.**

(Committee Vote: 10-0-1)

Senate Proposal of Amendment

H. 551

An act relating to flying the Green Mountain Boys Flag at the State House

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

First: By adding a new Sec. 5 to read:

Sec. 5. 1 V.S.A. § 496c is added to read:

§ 496c. POW-MIA FLAG; FLYING ON STATE FLAGPOLES

The State of Vermont shall fly on State-owned flagpoles, where practicable, the National League of Families Prisoner of War and Missing in Action Flag, as designated in 36 U.S.C. § 189, provided the flag is donated.

Second: By adding a Sec. 6 to read:

Sec. 6. 1 V.S.A. § 496d is added to read:

496d. FLAG PROTOCOL

The Department of Buildings and General Services shall adopt and update as necessary a protocol for the flying of any flag on a State-owned flagpole and on municipally owned flagpoles if statutorily directed. The protocol shall incorporate any existing flag-flying policies or protocols that the Department has previously adopted.

Third: By adding a Sec. 7 to read:

Sec. 7. REPEAL

29 V.S.A. § 7 (POW-MIA flag) is repealed.

And by renumbering the remaining section to be numerically correct

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

An act relating to flags and flag-flying protocol.

(For text see House Journal January 23, 2018)

H. 566

An act relating to animal cruelty

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 352 is amended to read:

§ 352. CRUELTY TO ANIMALS

A person commits the crime of cruelty to animals if the person:

(1) ~~intentionally~~ Intentionally kills or attempts to kill any animal belonging to another person without first obtaining legal authority or consent of the owner~~;~~.

(2) ~~overworks~~ Overworks, overloads, tortures, torments, abandons, administers poison to, cruelly ~~beats~~ harms or mutilates an animal~~,~~ or exposes a poison with intent that it be taken by an animal~~;~~.

(3) ~~ties~~ Ties, tethers, or restrains an animal, either a pet or livestock, in a manner that is inhumane or is detrimental to its welfare. Livestock and poultry husbandry practices are exempted~~;~~.

(4) ~~deprives~~ Deprives an animal ~~which~~ that a person owns, possesses, or acts as an agent for~~,~~ of adequate food, water, shelter, rest, sanitation, or necessary medical attention~~,~~ or transports an animal in overcrowded vehicles~~;~~.

(5)(A) ~~owns~~ Owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting~~, or~~; possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting~~,~~; or permits any such act to be done on premises under his or her charge or control~~; or~~.

(B) ~~owns~~ Owns, possesses, ships, transports, delivers, or keeps a device, equipment, or implement for the purpose of training or conditioning an animal for participation in animal fighting~~,~~ or enhancing an animal's fighting capability.

(6) ~~acts~~ Acts as judge or spectator at events of animal fighting or bets or wagers on the outcome of such fight~~;~~.

(7) ~~as~~ As poundkeeper, officer, or agent of a humane society or as an owner or employee of an establishment for treatment, board, or care of an animal, knowingly receives, sells, transfers, or otherwise conveys an animal in his or her care for the purpose of research or vivisection~~;~~.

(8) ~~intentionally~~ Intentionally torments or harasses an animal owned or engaged by a police department or public agency of the State or its political subdivisions~~,~~ or interferes with the lawful performance of a police animal~~;~~.

(9) ~~knowingly~~ Knowingly sells, offers for sale, barters, or displays living baby chicks, ducklings, or other fowl ~~which~~ that have been dyed, colored, or otherwise treated so as to impart to them an artificial color~~,~~ or fails to provide poultry with proper brooder facilities~~;~~.

(10) ~~uses~~ Uses a live animal as bait or lure in a race, game, or contest~~,~~ or in training animals in a manner inconsistent with 10 V.S.A. Part 4 or the rules adopted thereunder~~;~~.

(11)(A) ~~engages~~ Engages in sexual conduct with an animal~~;~~.

(B) ~~possesses~~ Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that it be used for sexual conduct~~;~~.

(C) ~~organizes~~ Organizes, promotes, conducts, aids, abets, or participates in as an observer an act involving any sexual conduct with an animal~~;~~.

(D) ~~causes~~ Causes, aids, or abets another person to engage in sexual conduct with an animal~~;~~.

(E) ~~permits~~ Permits sexual conduct with an animal to be conducted on premises under his or her charge or control~~; or~~.

(F) ~~advertises~~ Advertises, offers, or accepts the offer of an animal with the intent that it be subject to sexual conduct in this State.

Sec. 1a. 13 V.S.A. § 353(a) is amended to read:

(a) Penalties.

* * *

(5) A person who violates subdivision 352(1) of this title by intentionally killing or attempting to kill an animal belonging to another or subdivision 352(2) of this title by torturing, administering poison to, or cruelly ~~beating~~ harming or mutilating an animal shall be imprisoned not more than two years or fined not more than $5,000.00, or both.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal January 30, 2018)

H. 874

An act relating to inmate access to prescription drugs

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 801 is amended to read:

§ 801. MEDICAL CARE OF INMATES

* * *

(e)(1) Except as otherwise provided in this subsection, an offender who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed physician assistant, or a licensed advanced practice registered nurse~~, or a licensed nurse practitioner~~ and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont Prescription Monitoring System or other prescription monitoring or information system shall be entitled to continue that medication and to be provided that medication by the Department pending an evaluation by a licensed physician, a licensed physician assistant, ~~a licensed nurse practitioner,~~ or a licensed advanced practice registered nurse.

(2) ~~However,~~ Notwithstanding subdivision (1) of this subsection, the Department may defer provision of a validly prescribed medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician assistant~~, a nurse practitioner~~, or an advanced practice

registered nurse, it is not ~~in the inmate's best interest~~ medically necessary to continue the medication at that time.

(3) The licensed practitioner who makes the clinical judgment to discontinue a medication shall ~~enter~~ cause the reason for the discontinuance to be entered into the inmate's ~~permanent~~ medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(4) It is not the intent of the General Assembly that this subsection shall create a new or additional private right of action.

* * *

Sec. 2. DATA COLLECTION

(a) The Department of Corrections shall collect information on: how often a medication for which an inmate has a valid prescription is continued or discontinued upon incarceration at each correctional facility, the name of the medication, and the reason for discontinuance.

(b) The Department shall collect this information for a period of at least six months and provide a written report of its findings based on the data collected, including a breakdown by correctional facility of record, to the House Committee on Corrections and Institutions and the Senate Committee on Institutions on or before January 31, 2019. Prior to finalizing the report, the Department shall consult with the Prisoners' Rights Office and Disability Rights Vermont.

(c) Nothing in this section shall require the Department to reveal individually identifiable health information in violation of State or federal law.

Sec. 3. EFFECTIVE DATES

(a) This section and Sec. 2 shall take effect on passage.

(b) Sec. 1 shall take effect on July 1, 2018.

(For text see House Journal March 13, 2018)

H. 906

An act relating to professional licensing for service members and veterans

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

First: In Sec. 1, 26 V.S.A. § 906(c)(3), after the following: "has completed a minimum of 8,000 hours and four years of active duty field work" by inserting the following: as a 12R Electrician or equivalent

Second: In Sec. 3, 26 V.S.A. § 2194(b)(3), after the following: "has completed a minimum of 8,000 hours and four years of active duty field work" by inserting the following: as a 12K Plumber or equivalent

Third: After Sec. 7, by inserting a Sec. 8 to read as follows:

Sec. 8. REPORTING; UTILIZATION BY SERVICE MEMBERS AND VETERANS

(a) The Executive Director of the Division of Fire Safety shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding:

(1) the number of journeyman electrician licenses issued to service members and veterans pursuant to 26 V.S.A. § 906(c) during the previous calendar year;

(2) the number of journeyman plumber licenses issued to service members and veterans pursuant to 26 V.S.A. § 2194(b) during the previous calendar year; and

(3) the number of instances during the previous calendar year in which the Electrician's Licensing Board, in determining the qualifications of a service member or veteran for a master electrician license, gave recognition to an applicant's experience as a 12R Electrician or equivalent in the U.S. Armed Forces as required by 26 V.S.A. § 907(b).

(b) The Director of the Office of Professional Regulation shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding:

(1) the number of licenses to practice as a registered nurse issued to service members and veterans pursuant to 26 V.S.A. § 1622(b) during the previous calendar year; and

(2) the number of licenses to practice as a nursing assistant issued to service members and veterans pursuant to 26 V.S.A. § 1643(b) during the previous calendar year.

(c) The Commissioner of Motor Vehicles shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding the number of service members and veterans who, during the previous calendar year, were certified to perform inspections without being required to pass an examination as provided pursuant to 23 V.S.A. § 1227(b)(2).

(d) The Commissioner of Health shall, on or before February 1 of each year, report to the House Committees on Commerce and Economic Development, on General, Housing, and Military Affairs, and on Government Operations and the Senate Committees on Economic Development, Housing and General Affairs and on Government Operations regarding the number of service members and veterans who, during the previous calendar year, were deemed to have knowledge of the prevention of food-borne disease, be able to apply the Hazard Analysis Critical Control Point principles, and have met the criteria for "demonstration of knowledge" requirements set forth by the Department of Health in rule for the purposes of obtaining a food establishment license as provided pursuant to 18 V.S.A. § 4303(b) and the total number of food establishment licenses issued to those service members and veterans.

And by renumbering the remaining section to be numerically correct.

(For text see House Journal March 13, 14, 2018)

NOTICE CALENDAR

Favorable with Amendment

S. 92

An act relating to interchangeable biological products

Rep. Houghton of Essex, for the Committee on Health Care**,** recommends 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:

* * * Interchangeable Biological Products * * *

Sec. 1. 18 V.S.A. § 4601 is amended to read:

§ 4601. DEFINITIONS

~~For the purposes of this chapter, unless the context otherwise clearly requires~~ As used in this chapter:

(1) ~~"Brand name" means the registered trademark name given to a drug product by its manufacturer or distributor;~~ "Biological product" means a virus,

therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition in human beings.

(2) ~~"Generic name" means the official name of a drug product as established by the United States Adopted Names Council (USAN) or its successor, if applicable;~~ "Brand name" means the registered trademark name given to a drug product by its manufacturer or distributor.

(3) ~~"Pharmacist" means a natural person licensed by the state board of pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons;~~

~~(4)~~ "Generic drug" means a drug listed by generic name and considered to be chemically and therapeutically equivalent to a drug listed by brand name, as both names are identified in the most recent edition of or supplement to the ~~federal~~ U.S. Food and Drug Administration's ~~"Orange Book" of approved drug products;~~ Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).

(4) "Generic name" means the official name of a drug product as established by the U. S. Adopted Names Council (USAN) or its successor, if applicable.

(5) "Interchangeable biological product" means a biological product that the U.S. Food and Drug Administration has:

(A) licensed and determined, pursuant to 42 U.S.C. § 262(k)(4), to be interchangeable with the reference product against which it was evaluated; or

(B) determined to be therapeutically equivalent as set forth in the latest edition of or supplement to the U.S. Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).

(6) "Pharmacist" means a natural person licensed by the State Board of Pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons.

~~(5)~~(7) "Prescriber" means any duly licensed physician, dentist, veterinarian, or other practitioner licensed to write prescriptions for the treatment or prevention of disease in man or animal.

(8) "Proper name" means the non-proprietary name of a biological product.

(9) "Reference product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which the interchangeable biological product was evaluated by the U.S. Food and Drug Administration pursuant to 42 U.S.C. § 262(k).

Sec. 2. 18 V.S.A. § 4605 is amended to read:

§ 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT SELECTION

(a)(1) When a pharmacist receives a prescription for a drug ~~which~~ that is listed either by generic name or brand name in the most recent edition of or supplement to the U.S. Department of Health and Human Services' publication Approved Drug Products With Therapeutic Equivalence Evaluations (the "Orange Book") of approved drug products, the pharmacist shall select the lowest priced drug from the list which is equivalent as defined by the "Orange Book," unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug.

(2) When a pharmacist receives a prescription for a biological product, the pharmacist shall select the lowest priced interchangeable biological product unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced biological product.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, when a pharmacist receives a prescription from a Medicaid beneficiary, the pharmacist shall select the preferred brand-name or generic drug or biological product from the Department of Vermont Health Access's preferred drug list.

(b) The purchaser shall be informed by the pharmacist or his or her representative that an alternative selection as provided under subsection (a) of this section will be made unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(c) When refilling a prescription, pharmacists shall receive the consent of the prescriber to dispense a drug or biological product different from that originally dispensed, and shall inform the purchaser that a ~~generic~~ substitution shall be made pursuant to this section unless the purchaser agrees to pay any

additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(d) Any pharmacist substituting a generically equivalent drug or interchangeable biological product shall charge no more than the usual and customary retail price for that selected drug or biological product. This charge shall not exceed the usual and customary retail price for the prescribed brand.

(e)(1) Except as described in subdivision (4) of this subsection, within five business days following the dispensing of a biological product, the dispensing pharmacist or designee shall communicate the specific biological product provided to the patient, including the biological product's name and manufacturer, by submitting the information in a format that is accessible to the prescriber electronically through one of the following:

(A) an interoperable electronic medical records system;

(B) an electronic prescribing technology;

(C) a pharmacy benefit management system; or

(D) a pharmacy record.

(2) Entry into an electronic records system as described in subdivision (1) of this subsection shall be presumed to provide notice to the prescriber.

(3)(A) If a pharmacy does not have access to one or more of the electronic systems described in subdivision (1) of this subsection, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using telephone, facsimile, electronic transmission, or other prevailing means.

(B) If a prescription is communicated to the pharmacy by means other than electronic prescribing technology, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using the electronic process described in subdivision (1) of this subsection unless the prescriber requests a different means of communication on the prescription.

(4) Notwithstanding any provision of this subsection to the contrary, a pharmacist shall not be required to communicate information regarding the biological product dispensed in the following circumstances:

(A) the U.S. Food and Drug Administration has not approved any interchangeable biological products for the product prescribed; or

(B) the pharmacist dispensed a refill prescription in which the product dispensed was unchanged from the product dispensed at the prior

filling of the prescription.

(f) The Board of Pharmacy shall maintain a link on its website to the current lists of all biological products that the U.S. Food and Drug Administration has determined to be interchangeable biological products.

Sec. 3. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber has determined that the generic equivalent of a drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank or shall indicate the same using electronic prescribing technology and the pharmacist shall not substitute the generic equivalent or interchangeable biological product. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug or biological product is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product.

Sec. 4. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the ~~state~~ State shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent drug or interchangeable biological product for the drug or biological product prescribed unless you or your physician direct otherwise. Ask your pharmacist."

(b) The label of the container of all drugs and biological products dispensed by a pharmacist under this chapter shall indicate the generic or proper name using an abbreviation if necessary, the strength of the drug or biological product, if applicable, and the name or number of the manufacturer or distributor.

Sec. 5. 18 V.S.A. § 4608 is amended to read:

§ 4608. LIABILITY

(a) Nothing in this chapter shall affect a licensed hospital with the development and maintenance of a hospital formulary system in accordance with that institution's policies and procedures that pertain to its drug distribution system developed by the medical staff in cooperation with the hospital's pharmacist and administration.

(b) The substitution of a generic drug or interchangeable biological product by a pharmacist under the provisions of this chapter does not constitute the practice of medicine.

Sec. 6. 8 V.S.A. § 4089i is amended to read:

§ 4089i. PRESCRIPTION DRUG COVERAGE

* * *

(g) A health insurance or other health benefit plan offered by a health insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs shall apply the same cost-sharing requirements to interchangeable biological products as apply to generic drugs under the plan.

(h) As used in this section:

* * *

(6) "Interchangeable biological products" shall have the same meaning as in 18 V.S.A. § 4601.

~~(h)~~(i) The Department of Financial Regulation shall enforce this section and may adopt rules as necessary to carry out the purposes of this section.

* * * Health Insurance Plan Reporting * * *

Sec. 7. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

* * *

(b)(1) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-

152, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(2)(A) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall disclose to the Board:

(i) for all covered prescription drugs, including generic drugs, brand-name drugs excluding specialty drugs, and specialty drugs dispensed at a pharmacy, network pharmacy, or mail-order pharmacy for outpatient use:

(I) the percentage of the premium rate attributable to prescription drug costs for the prior year for each category of prescription drugs;

(II) the year-over-year increase or decrease, expressed as a percentage, in per-member, per-month total health plan spending on each category of prescription drugs; and

(III) the year-over-year increase or decrease in per-member, per-month costs for prescription drugs compared to other components of the premium rate; and

(ii) the specialty tier formulary list.

(B) The insurer shall provide, if available, the percentage of the premium rate attributable to prescription drugs administered by a health care provider in an outpatient setting that are part of the medical benefit as separate from the pharmacy benefit.

(C) The insurer shall include information on its use of a pharmacy benefit manager, if any, including which components of the prescription drug coverage described in subdivisions (A) and (B) of this subdivision (2) are managed by the pharmacy benefit manager, as well as the name of the pharmacy benefit manager or managers used.

(c)(1) The Board shall provide information to the public on the Board's website about the public availability of the filings and summaries required under this section.

(2)(A) ~~Beginning no later than January 1, 2014, the~~ The Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the Board's website within five calendar days ~~of~~ following filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

* * *

Sec. 8. 18 V.S.A. § 4636 is added to read:

§ 4636. IMPACT OF PRESCRIPTION DRUG COSTS ON HEALTH INSURANCE PREMIUMS; REPORT

(a)(1) Each health insurer with more than 1,000 covered lives in this State shall report to the Green Mountain Care Board, for all covered prescription drugs, including generic drugs, brand-name drugs, and specialty drugs provided in an outpatient setting or sold in a retail setting:

(A) the 25 most frequently prescribed drugs and the average wholesale price for each drug;

(B) the 25 most costly drugs by total plan spending and the average wholesale price for each drug; and

(C) the 25 drugs with the highest year-over-year price increases and the average wholesale price for each drug.

(2) A health insurer shall not be required to provide to the Green Mountain Care Board the actual price paid, net of rebates, for any prescription drug.

(b) The Green Mountain Care Board shall compile the information reported pursuant to subsection (a) of this section into a consumer-friendly report that demonstrates the overall impact of drug costs on health insurance premiums. The data in the report shall be aggregated and shall not reveal information as specific to a particular health benefit plan.

(c) The Board shall publish the report required pursuant to subsection (b) of this section on its website on or before January 1 of each year.

* * * Prescription Drug Price Transparency and Notice of New High-Cost Drugs * * *

Sec. 9. 18 V.S.A. § 4635 is amended to read:

§ 4635. ~~PHARMACEUTICAL~~ PRESCRIPTION DRUG COST TRANSPARENCY

(a) As used in this section:

(1) "Manufacturer" shall have the same meaning as "pharmaceutical manufacturer" in section 4631a of this title.

(2) "Prescription drug" means a drug as defined in 21 U.S.C. § 321.

(b)(1)(A) The ~~Green Mountain Care Board, in collaboration with the~~ Department of Vermont Health Access~~,~~ shall ~~identify~~ create annually ~~up to 15~~ a list of 10 prescription drugs on which the State spends significant health care

dollars and for which the wholesale acquisition cost has increased by 50 percent or more over the past five years or by 15 percent or more ~~over the past 12 months~~ during the previous calendar year, creating a substantial public interest in understanding the development of the drugs' pricing. ~~The drugs identified shall represent different drug classes.~~ The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department shall include the percentage of the wholesale acquisition cost increase for each drug on the list; rank the drugs on the list from those with the largest increase in wholesale acquisition cost to those with the smallest increase; indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both; and provide the Department's total expenditure for each drug on the list during the most recent calendar year.

(B) The Department of Vermont Health Access shall create annually a list of 10 prescription drugs on which the State spends significant health care dollars and for which the cost to the Department of Vermont Health Access, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, creating a substantial public interest in understanding the development of the drugs' pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department shall rank the drugs on the list from those with the greatest increase in net cost to those with the smallest increase and indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both.

(C)(i) Each health insurer with more than 5,000 covered lives in this State for major medical health insurance shall create annually a list of 10 prescription drugs on which its health insurance plans spend significant amounts of their premium dollars and for which the cost to the plans, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, or both, creating a substantial public interest in understanding the development of the drugs' pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the health insurer considers to be specialty drugs.

(ii) A health insurer shall not be required to identify the exact percentage by which the net cost to its plans for any prescription drug increased over any specific period of time, but shall rank the drugs on its list in order from the largest to the smallest cost increase and shall provide the

insurer's total expenditure, net of rebates and other price concessions, for each drug on the list during the most recent calendar year.

(2) The ~~Board~~ Department of Vermont Health Access and the health insurers shall provide to the Office of the Attorney General and the Green Mountain Care Board the ~~list~~ lists of prescription drugs developed pursuant to this subsection ~~and the percentage of the wholesale acquisition cost increase for each drug and~~ annually on or before June 1. The Office of the Attorney General and the Green Mountain Care Board shall make all of the information available to the public on ~~the Board's website~~ their respective websites.

(c)(1)(A) ~~For each prescription drug identified~~ Of the prescription drugs listed by the Department of Vermont Health Access and the health insurers pursuant to ~~subsection (b)~~ subdivisions (b)(1)(B) and (C) of this section, the Office of the Attorney General shall identify 15 drugs as follows:

(i) of the drugs appearing on more than one payer's list, the Office of the Attorney General shall identify the top 15 drugs on which the greatest amount of money was spent across all payers during the previous calendar year, to the extent information is available; and

(ii) if fewer than 15 drugs appear on more than one payer's list, the Office of the Attorney General shall rank the remaining drugs based on the amount of money spent by any one payer during the previous calendar year, in descending order, and select as many of the drugs at the top of the list as necessary to reach a total of 15 drugs.

(B) For the 15 drugs identified by the Office of the Attorney General pursuant to subdivision (A) of this subdivision (1), the Office of the Attorney General shall require the ~~drug's~~ manufacturer of each such drug to provide ~~a justification~~ all of the following:

(i) Justification for the increase in the ~~wholesale acquisition~~ net cost of the drug to the Department of Vermont Health Access, to one more health insurers, or both, which shall be provided to the Office of the Attorney General in a format that the Office of the Attorney General determines to be understandable and appropriate and shall be provided in accordance with a timeline specified by the Office of the Attorney General. The manufacturer shall submit to the Office of the Attorney General all relevant information and supporting documentation necessary to justify the manufacturer's ~~wholesale acquisition~~ net cost increase ~~over~~ to the Department of Vermont Health Access, to one more health insurers, or both during the identified period of time, ~~which may include~~ including:

~~(A)~~(I) ~~all factors that have contributed to the wholesale acquisition~~ each factor that specifically caused the net cost increase ~~over~~ to the

Department of Vermont Health Access, to one more health insurers, or both during the specified period of time;

~~(B)~~(II) the percentage of the total ~~wholesale acquisition~~ cost increase attributable to each factor; and

~~(C)~~(III) an explanation of the role of each factor in contributing to the ~~wholesale acquisition~~ cost increase.

(ii) A separate version of the information submitted pursuant to subdivision (i) of this subdivision (1)(B), which shall be made available to the public by the Office of the Attorney General and the Green Mountain Care Board pursuant to subsection (d) of this section. In the event that the manufacturer believes it necessary to redact certain information in the public version as proprietary or confidential, the manufacturer shall provide an explanation for each such redaction to the Office of the Attorney General. The information, format, and any redactions shall be subject to approval by the Office of the Attorney General.

(iii) Additional information in response to all requests for such information by the Office of the Attorney General.

(2) Nothing in this section shall be construed to restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

(d)(1) The Attorney General~~, in consultation with the Department of Vermont Health Access,~~ shall provide a report to the General Assembly on or before December 1 of each year based on the information received from manufacturers pursuant to this section. The Attorney General shall ~~also~~ post the report and the public version of each manufacturer's information submitted pursuant to subdivision (c)(1)(B)(ii) of this section on the Office of the Attorney General's website.

(2) The Green Mountain Care Board shall post on its website the report prepared by the Attorney General pursuant to subdivision (1) of this subsection and the public version of each manufacturer's information submitted pursuant to subdivision (c)(1)(B)(ii) of this section, and may inform the public of the availability of the report and the manufacturers' justification information.

(e) Information provided to the Office of the Attorney General pursuant to this section is exempt from public inspection and copying under the Public Records Act and shall not be released in a manner that allows for the identification of an individual drug or manufacturer or that is likely to compromise the financial, competitive, or proprietary nature of the information, except for the information prepared for release to the public pursuant to subdivision (c)(1)(B)(ii) of this section.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees, and to impose on a manufacturer that fails to provide any of the information required by subsection (c) of this section, in the format requested by the Office of the Attorney General and in accordance with the timeline specified by the Office of the Attorney General, a civil penalty of ~~no~~ not more than $10,000.00 per violation. Each unlawful failure to provide information shall constitute a separate violation. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

Sec. 10. 18 V.S.A. § 4637 is added to read:

§ 4637. NOTICE OF INTRODUCTION OF NEW HIGH-COST PRESCRIPTION DRUGS

(a) As used in this section:

(1) "Manufacturer" shall have the same meaning as "pharmaceutical manufacturer" in section 4631a of this title.

(2) "Prescription drug" means a drug as defined in 21 U.S.C. § 321.

(b) A prescription drug manufacturer shall notify the Office of the Attorney General in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(c) Not later than 30 calendar days following notification pursuant to subsection (b) of this section, the manufacturer shall provide all of the following information to the Office of the Attorney General in a format that the Office prescribes:

(1) a description of the marketing and pricing plans used in the launch of the new drug in the United States and internationally;

(2) the estimated volume of patients who may be prescribed the drug;

(3) whether the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval; and

(4) the date and price of acquisition if the drug was not developed by

the manufacturer.

(d) The manufacturer may limit the information reported pursuant to subsection (c) of this section to that which is otherwise in the public domain or publicly available.

(e) The Office of the Attorney General shall publish on its website at least quarterly the information reported to it pursuant to this section. The information shall be published in a manner that identifies the information that is disclosed on a per-drug basis and shall not be aggregated in a manner that would not allow identification of the drug.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of not more than $1,000.00 per day for every day after the notification period described in subsection (b) of this section that the required information is not reported. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

* * * Disclosures by Pharmacists * * *

Sec. 11. 18 V.S.A. § 9473(b) is amended to read:

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; ~~or~~

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer;

(4) prohibit or penalize a pharmacy or pharmacist for providing information to an insured regarding the insured's cost-sharing amount for a prescription drug; or

(5) prohibit or penalize a pharmacy or pharmacist for the pharmacist or other pharmacy employee disclosing to an insured the cash price for a prescription drug or selling a lower cost drug to the insured if one is available.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

(a) Secs. 1–6 (interchangeable biological products) shall take effect on July 1, 2018.

(b) Sec. 11 (18 V.S.A. § 9473; disclosures by pharmacists) shall take effect on July 1, 2018 and shall apply to all contracts taking effect on or after that date.

(c) The remaining sections shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to prescription drug price transparency and cost containment"

(Committee vote: 11-0-0)

(For text see Senate Journal March 22, 2018)

S. 173

An act relating to sealing criminal history records when there is no conviction

Rep. Jessup of Middlesex, for the Committee on Judiciary**,** recommends 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. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION; PROCEDURE

* * *

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence ~~since the person was convicted of the qualifying crime~~ in the last 7 years.

(C) The person has not been convicted of a misdemeanor during the past five years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the

qualifying crime serves the interest of justice.

* * *

Sec. 2. 13 V.S.A. § 7603 is amended to read:

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) ~~A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or~~ Unless either party objects in the interest of justice, the court shall issue an order sealing ~~of~~ the criminal history record related to the citation or arrest ~~if one of the following conditions is met~~ of a person:

(1) ~~No criminal charge is filed by the State and the statute of limitations has expired.~~

~~(2) The~~ twelve months after the dismissal if:

(A) the court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment ~~and the statute of limitations has expired.~~; or

~~(3)~~(B) ~~The~~ the charge is dismissed before trial~~:~~

~~(A)~~ without prejudice ~~and the statute of limitations has expired; or~~

~~(B) with prejudice~~.

~~(4)~~(2) ~~The~~ at any time if the prosecuting attorney and the defendant ~~and the respondent~~ stipulate that the court may grant the petition to ~~expunge and~~ seal the record.

(b) ~~The State's Attorney or Attorney General shall be the respondent in the matter.~~ If a party objects to sealing or expunging a record pursuant to this section, the court shall schedule a hearing to determine if sealing or expunging the record serves the interest of justice. The ~~petitioner~~ defendant and the ~~respondent~~ prosecuting attorney shall be the only parties in the matter.

(c) ~~The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice.~~ [Repealed.]

(d) ~~The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if:~~

~~(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.~~

~~(2) The person committed the qualifying crime after reaching 19 years of age.~~ [Repealed.]

(e) Unless either party objects in the interest of justice, the court shall issue an order expunging a criminal history record related to the citation or arrest of a person:

(1) not more than 45 days after:

(A) acquittal if the defendant is acquitted of the charges; or

(B) dismissal if the charge is dismissed with prejudice before trial;

(2) at any time if the prosecuting attorney and the defendant stipulate that the court may grant the petition to expunge the record.

(f) Unless either party objects in the interest of justice, the court shall issue an order to expunge a record sealed pursuant to subsection (a) or (g) of this section after the statute of limitations has expired.

(g) A person may file a petition with the court requesting sealing or expungement of a criminal history record related to the citation or arrest of the person at any time. The court shall grant the petition and issue an order sealing or expunging the record if it finds that sealing or expunging the record serves the interest of justice.

(h) The court may expunge any records that were sealed pursuant to this section prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subsection, the court shall provide to the State's Attorney's office that prosecuted the case written notice of its intent to expunge the record.

Sec. 3. 13 V.S.A. § 7606 is amended to read:

§ 7606. EFFECT OF EXPUNGEMENT

* * *

(d)(1) The court ~~may~~ shall keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to ~~section 7602 or 7603 of this title~~ this chapter. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case ~~or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice~~. The Administrative Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The Court Administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

Sec. 4. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS; EXPUNGEMENT-ELIGIBLE CRIMES; AUTOMATIC EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS; REPORT

The Department of State's Attorneys and Sheriffs, in consultation with the Office of the Court Administrator, the Vermont Crime Information Center, the Office of the Attorney General, the Office of the Defender General, the Center for Crime Victim Services, and Vermont Legal Aid, shall:

(1) consider:

(A) expanding the list of qualifying crimes eligible for expungement pursuant to 13 V.S.A. § 7601 to include any nonviolent drug-related offenses;

(B) the implications of such an expansion on public health, economic development, and law enforcement efforts in the State; and

(C) the viability of automating the process of expunging and sealing criminal history records;

(2) seek input from the Vermont Governor's Opioid Coordination Council; and

(3) on or before November 1, 2018, report to the Joint Legislative Justice Oversight Committee on the findings of the group, including any recommendations on specific crimes to add to the definition of qualifying crimes pursuant to 13 V.S.A. § 7601.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 9-0-2)

(For text see Senate Journal March 13, 2018)

S. 175

An act relating to the wholesale importation of prescription drugs into Vermont, bulk purchasing, and the impact of prescription drug costs on health insurance premiums

Rep. Lippert of Hinesburg, for the Committee on Health Care**,** recommends 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. 18 V.S.A. chapter 91, subchapter 4 is added to read:

Subchapter 4. Wholesale Prescription Drug Importation Program

§ 4651. WHOLESALE IMPORTATION PROGRAM FOR PRESCRIPTION DRUGS; DESIGN

(a) The Agency of Human Services, in consultation with interested stakeholders and appropriate federal officials, shall design a wholesale prescription drug importation program that complies with the applicable requirements of 21 U.S.C. § 384, including the requirements regarding safety and cost savings. The program design shall:

(1) designate a State agency that shall either become a licensed drug wholesaler or contract with a licensed drug wholesaler in order to seek federal certification and approval to import safe prescription drugs and provide significant prescription drug cost savings to Vermont consumers;

(2) use Canadian prescription drug suppliers regulated under the laws of Canada or of one or more Canadian provinces, or both;

(3) ensure that only prescription drugs meeting the U.S. Food and Drug Administration's safety, effectiveness, and other standards shall be imported by or on behalf of the State;

(4) import only those prescription drugs expected to generate substantial savings for Vermont consumers;

(5) ensure that the program complies with the tracking and tracing requirements of 21 U.S.C. §§ 360eee and 360eee-1 to the extent feasible and practical prior to imported drugs coming into the possession of the State wholesaler and that it complies fully after imported drugs are in the possession of the State wholesaler;

(6) prohibit the distribution, dispensing, or sale of imported products outside Vermont's borders;

(7) establish a fee on each prescription or establish another financing mechanism to ensure that the program is funded adequately in a manner that does not jeopardize significant consumer savings; and

(8) include a robust audit function.

(b) On or before January 1, 2019, the Secretary of Human Services shall submit the proposed design for a wholesale prescription drug importation program to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance.

§ 4652. MONITORING FOR ANTICOMPETITIVE BEHAVIOR

The Agency of Human Services shall consult with the Office of the Attorney General to identify the potential, and to monitor, for anticompetitive behavior in industries that would be affected by a wholesale prescription drug importation program.

§ 4653. FEDERAL COMPLIANCE

(a) On or before July 1, 2019, the Agency of Human Services shall submit a formal request to the Secretary of the U.S. Department of Health and Human Services for certification of the State's wholesale prescription drug importation program.

(b) The Agency of Human Services shall seek the appropriate federal approvals, waivers, exemptions, or agreements, or a combination thereof, as needed to enable all covered entities enrolled in or eligible for the federal 340B Drug Pricing Program to participate in the State's wholesale prescription drug importation program to the fullest extent possible without jeopardizing their eligibility for the 340B Program.

§ 4654. IMPLEMENTATION PROVISIONS

Upon certification and approval by the Secretary of the U.S. Department of Health and Human Services, the Agency of Human Services shall begin implementation of the wholesale prescription drug importation program and shall begin operating the program within six months following the date of the Secretary's approval. As part of the implementation process, the Agency of Human Services shall, in accordance with State procurement and contract laws, rules, and procedures as appropriate:

(1) become licensed as a wholesaler or enter into a contract with a Vermont-licensed wholesaler;

(2) contract with one or more Vermont-licensed distributors;

(3) contract with one or more licensed and regulated Canadian suppliers;

(4) engage with health insurance plans, employers, pharmacies, health care providers, and consumers;

(5) develop a registration process for health insurance plans, pharmacies, and prescription drug-administering health care providers who are willing to participate in the program;

(6) create a publicly available source for listing the prices of imported prescription drug products that shall be made available to all participating entities and consumers;

(7) create an outreach and marketing plan to generate program awareness;

(8) starting in the weeks before the program becomes operational, create and staff a hotline to answer questions and address the needs of consumers, employers, health insurance plans, pharmacies, health care providers, and other affected sectors;

(9) establish the audit function and a two-year audit work-plan cycle; and

(10) conduct any other activities that the Agency determines to be important for successful implementation of the program.

§ 4655. ANNUAL REPORTING

(a) Annually on or before January 15, the Agency of Human Services shall report to the House Committee on Health Care and the Senate Committees on Health and Welfare and on Finance regarding the operation of the wholesale prescription drug importation program during the previous calendar year, including:

(1) which prescription drugs were included in the wholesale importation program;

(2) the number of participating pharmacies, health care providers, and health insurance plans;

(3) the number of prescriptions dispensed through the program;

(4) the estimated savings to consumers, health plans, employers, and the State during the previous calendar year and to date;

(5) information regarding implementation of the audit plan and audit findings; and

(6) any other information the Secretary of Human Services deems relevant.

(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall

not apply to the report to be made under this section.

Sec. 2. WHOLESALE IMPORTATION PROGRAM; CONDITION FOR IMPLEMENTATION

The Agency of Human Services shall be required to design and commence implementation of the wholesale prescription drug importation program described in Sec. 1 of this act only to the extent that funds are appropriated for this purpose in the budget bill enacted by the General Assembly for fiscal year 2019 or are otherwise made available.

and that after passage the title of the bill be amended to read: "An act relating to the wholesale importation of prescription drugs into Vermont"

(Committee vote: 11-0-0)

(For text see Senate Journal February 28, 2018)

S. 260

An act relating to funding the cleanup of State waters

Rep. Deen of Westminster, for the Committee on Natural Resources; Fish; and Wildlife**,** recommends 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:

* * * Clean Water Working Group * * *

Sec. 1. FINDINGS

The General Assembly finds that for the purposes of this section and Secs. 2–4 of this act:

(1) Within Vermont there are 7,100 miles of rivers and streams and 812 lakes and ponds of at least five acres in size.

(2) Currently, over 350 waters or water segments in the State do not meet water quality standards, are at risk of not meeting water quality standards, or are altered due to the presence of aquatic nuisances.

(3) In 2015, the General Assembly enacted 2015 Acts and Resolves No. 64, an act relating to improving the quality of State waters (Act 64), for the purpose, among others, of providing mechanisms, staffing, and financing necessary for the State to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.

(4) Act 64 directed the State Treasurer to recommend to the General Assembly a long-term mechanism for financing water quality improvement in the State, including proposed revenue sources for water quality improvement programs.

(5) The State Treasurer submitted a Clean Water Report in January 2017 that included:

(A) an estimate that over 20 years it would cost $2.3 billion to achieve compliance with water quality requirements;

(B) a projection that revenue available for water quality over the 20-year period would be approximately $1.06 billion, leaving a 20-year total funding gap of $1.3 billion;

(C) an estimate of annual compliance costs of $115.6 million, which, after accounting for projected revenue, would leave a funding gap of $48.5 million to pay for the costs of compliance with the first tier of federal and State water quality requirements; and

(D) a financing plan to provide more than $25 million annually in additional State funds for water quality programs.

(6) After determining that a method to achieve equitable and effective long-term funding methods to support clean water efforts in Vermont was necessary, the General Assembly established in 2017 Acts and Resolves No. 73, Sec. 26 the Working Group on Water Quality Funding to develop draft legislation to accomplish this purpose.

(7) The Act 73 Working Group did not recommend a long-term funding method to support clean water efforts in Vermont and instead recommended that the General Assembly maintain a Capital Bill clean water investment of $15 million a year through fiscal years 2020 and 2021.

(8) In the years beyond fiscal year 2021, the Act 73 Working Group acknowledged that capital funds would need to be reduced to $10 to $12 million a year and that additional revenues would need to be raised.

(9) The U.S. Environmental Protection Agency (EPA) in a letter to the General Assembly stated that it is important for the State of Vermont to establish a long-term revenue source to support water quality improvement in order to comply with the accountability framework of the Lake Champlain Total Maximum Daily Load plan.

(10) To ensure that the State has sufficient funds to clean and protect the State's waters so that they will continue to provide their integral and inherent environmental and economic benefits, the State should require a Clean Water Working Group to recommend to the General Assembly draft legislation to establish equitable and effective long-term funding methods to support clean water efforts in Vermont.

(11) If the General Assembly does not enact a recommendation of the Clean Water Working Group, the State shall implement a water quality revenue

occupancy surcharge to support water quality improvement.

Sec. 2. CLEAN WATER WORKING GROUP

(a) Creation. There is created the Clean Water Working Group to recommend to the General Assembly how to establish an equitable and effective long-term funding method to:

(1) fund the necessary water quality programs and projects that will remediate, improve, and protect the quality of the waters of the State;

(2) coordinate water quality funding in the State;

(3) plan for the water quality funding needs of the State; and

(4) ensure accountability of the State's efforts to clean up impaired waters, maintain or achieve the Vermont Water Quality Standards in all waters, and prevent the future degradation of waters.

(b) Membership. The Clean Water Working Group shall be composed of the following ten members:

(1) the Secretary of Natural Resources or designee;

(2) the Secretary of Agriculture, Food and Markets or designee;

(3) the Commissioner of Taxes or designee;

(4) one representative of a municipality in the State that has a stormwater utility or other water quality funding mechanism, to be appointed by the Speaker of the House;

(5) one representatives of a municipality in the State that does not have a stormwater utility or other water quality funding mechanism, to be appointed by the Committee on Committees;

(6) one representative of a business interest located in the State, to be appointed by the Governor;

(7) a representative of the hospitality or tourism industry in the State, to be appointed by the Speaker of the House;

(8) a representative of a regional planning commission, natural resource conservation district, or regional or statewide watershed organization, to be appointed by the Committee on Committees;

(9) a person with expertise in financial lending or investment, to be appointed by the Governor; and

(10) a farmer, to be appointed by the Speaker of the House.

(c) Powers and duties. The Clean Water Working Group shall recommend to the General Assembly:

(1) whether the State should establish an independent authority or implement other alternatives to coordinate and fund water quality programs and projects across State government;

(2) a description of the structure, powers, duties, and feasibility of the

independent authority or alternative mechanism recommended under subdivision (1) of this subsection;

(3) a funding plan for water quality programs and projects in the State that includes priorities for funding water quality programs in the State and that will sufficiently fund the following State obligations:

(A) federally required or State-required cleanup plans for individual waters or water segments, such as total maximum daily load plans;

(B) the requirements of 2015 Acts and Resolves No. 64; and

(C) the Agency of Natural Resources' Combined Sewer Overflow Rule;

(4) one or more funding alternatives that are sufficient to implement the financing plan for water quality recommended under subdivision (3) of this subsection, including how each recommended funding alternative revenue source shall be implemented, assessed, and collected; and

(5) whether the State Treasurer's estimate of State funding needs in the Clean Water Report in January 2017 should be revised or updated due to economic conditions or due to the need to reflect the most effective measures to improve water quality.

(d) Assistance. The Clean Water Working Group shall have the administrative, technical, and legal assistance of the Agency of Natural Resources and the Agency of Agriculture, Food and Markets and the fiscal assistance of the Department of Taxes. The Working Group shall also be entitled to seek financial, technical, and scientific input or services from the Office of the State Treasurer, the Agency of Transportation, the Vermont Center for Geographic Information Services, and the Agency of Commerce and Community Development. The Working Group may seek the input or assistance of regional planning commissions, natural resources conservation districts, and statewide and regional watershed organizations.

(e) Report. On or before January 15, 2019, the Clean Water Working Group shall submit to the General Assembly draft legislation that addresses the issues set forth under subsection (c) of this section.

(f) Meetings.

(1) The Secretary of Natural Resources shall call the first meeting of the Clean Water Working Group to occur on or before August 1, 2018.

(2) The Clean Water Working Group shall select a chair or co-chairs from among its members at its first meeting.

(3) A majority of the membership of the Clean Water Working Group

shall constitute a quorum.

(4) The Clean Water Working Group shall cease to exist on June 1, 2019.

(g) Compensation. Members of the Clean Water Working Group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010, to be paid from the budget of the Agency of Administration.

* * * Water Quality Occupancy Surcharge * * *

Sec. 3. 32 V.S.A. § 9241a is added to read:

§ 9241a. WATER QUALITY OCCUPANCY SURCHARGE

(a) In addition to the tax on the rent of each occupancy imposed in section 9241 of this title, an operator shall collect a water quality occupancy surcharge of $2.00 per room for each night of occupancy. The surcharge shall be in addition to any tax assessed under section 9241 of this title.

(b) The Commissioner shall deposit the surcharge collected under this section in the Clean Water Fund under 10 V.S.A. § 1388.

(c) The provisions of this chapter relating to the imposition, collection, remission, and enforcement of the meals and rooms tax imposed in section 9241 of this title shall apply to the water quality occupancy surcharge imposed in this section.

* * * Clean Water Fund * * *

Sec. 4. 10 V.S.A. § 1388 is amended to read:

§ 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the "Clean Water Fund" to be administered by the Secretary of Administration. The Fund shall consist of:

(1) revenues ~~dedicated for deposit into the Fund by the General Assembly, including~~ from the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a; ~~and~~

(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration;

(3) revenues from the Water Quality Occupancy Surcharge established under 32 V.S.A. § 9241a; and

(4) other revenues dedicated for deposit into the Fund by the General Assembly.

(b) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5, unexpended balances and any earnings shall remain in the Fund from year to year.

* * * Clean Water Fund Board * * *

Sec. 5. 10 V.S.A. § 1389 is amended to read:

§ 1389. CLEAN WATER FUND BOARD

(a) Creation.

(1) There is created the Clean Water Fund Board ~~which~~ that shall recommend to the Secretary of Administration ~~expenditures~~:

(A) appropriations from the Clean Water Fund; and

(B) clean water projects to be funded by capital appropriations.

(2) The Clean Water Fund Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Fund Board shall be composed of:

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

(3) the Secretary of Agriculture, Food and Markets or designee;

(4) the Secretary of Commerce and Community Development or designee;

(5) the Secretary of Transportation or designee; and

(6) two members of the public who are not legislators, one of whom shall represent a municipality subject to the municipal separate storm sewer system (MS4) permit and one of whom shall represent a municipality that is not subject to the MS4 permit, appointed as follows:

(A) the Speaker of the House shall appoint the member from an MS4 municipality; and

(B) the Committee on Committees shall appoint the member who is not from an MS4 municipality.

(c) Officers; committees; rules.

(1) The ~~Clean Water Fund Board shall annually elect a chair from its members~~ Secretary of Administration shall serve as the Chair of the Board. The Clean Water Fund Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as

necessary and appropriate to perform its work.

(2) Members of the Board who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board.

(d) Powers and duties of the Clean Water Fund Board. The Clean Water Fund Board shall have the following powers and authority:

(1) The Clean Water Fund Board shall recommend to the Secretary of Administration the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306. All recommendations from the Board should be intended to achieve the greatest water quality gain for the investment. The recommendations of the Clean Water Fund Board shall be open to inspection and copying under the Public Records Act, and the Clean Water Fund Board shall submit to the Senate Committees on Appropriations, on Finance, on Agriculture, and on Natural Resources and Energy and the House Committees on Appropriations, on Ways and Means, on Agriculture and Forestry, and on Natural Resources, Fish, and Wildlife a copy of any recommendations provided to the Governor.

(2) The Clean Water Fund Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(3) The Clean Water Fund Board shall:

(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;

(B) develop an annual revenue estimate and proposed budget for the Clean Water Fund;

(C) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(D) issue the annual Clean Water Investment Report required under section 1389a of this title; ~~and~~

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:

(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);

(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;

(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;

(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy;

(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices; ~~and~~

(H) funding to municipalities for the establishment and operation of stormwater utilities; and

(I) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.

(2) In developing its recommendations under subsection (d) of this

section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Fund Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements~~,~~ and to municipalities for the establishment and operation of stormwater utilities.

(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide ~~for equitable apportionment of awards from the Fund to all regions of the State and for control of all sources of point and non-point sources of pollution in the State~~ investment in all watersheds of the State based on the needs identified in watershed basin plans.

(f) Assistance. The Clean Water Fund Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

(g) Terms; appointed members. Members who are appointed to the Clean Water Fund Board shall be appointed for terms of four years, except initial appointments shall be made such that the member appointed by the Speaker shall be appointed for a term of two years. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments.

* * * Coordinated Water Quality Grants; Performance Grants * * *

Sec. 6. COORDINATED WATER QUALITY GRANTS

The Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall coordinate prior to awarding water quality grants or funding in order to maximize the water quality benefit or impact of funded projects in a watershed planning basin. When grants are issued, the Secretary of Natural Resources, the Secretary of Agriculture, Food and Markets, and the Secretary of Transportation shall, when allowed by law, authorize funds or identify other funding opportunities that may be used to support capacity to implement projects in the watershed basin.

Sec. 7. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forestry, on Natural Resources ~~and Energy, and on Fish, Wildlife and Water Resources~~, Fish, and Wildlife, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) assure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(E) assure regional and local input in State water quality policy development and planning processes;

(F) provide education to municipal officials and citizens regarding the basin planning process;

(G) develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, ~~contract with a regional planning commission or~~ negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When ~~contracting~~ negotiating a scope of work with ~~a regional planning commission or~~ the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or produce a basin plan, the Secretary may require the ~~regional planning commission~~ Vermont Association of Planning and Development Agencies or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection (d);

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations ~~to~~ better to meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure ~~cost effective~~ cost-effective use of State and federal funds.

* * * Lakes in Crisis * * *

Sec. 8. 10 V.S.A. chapter 47, subchapter 2A is added to read:

Subchapter 2A. Lake in Crisis

§ 1310. DESIGNATION OF LAKE IN CRISIS

(a) The Secretary of Natural Resources (Secretary) shall review whether a lake in the State should be designated as a lake in crisis upon the Secretary's own motion or upon petition of 15 or more persons or a selectboard of a municipality in which the lake or a portion of the lake is located.

(b) The Secretary shall designate a lake as a lake in crisis if, after review under subsection (a) of this section, the Secretary determines that:

(1) the lake or segments of the lake have been listed as impaired;

(2) the condition of the lake will cause:

(A) a potential harm to the public health; and

(B) a risk of damage to the environment or natural resources; and

(3) a municipality in which the lake or a portion of the lake is located has reduced the valuation of real property due to the condition of the lake.

§ 1311. STATE RESPONSE TO A LAKE IN CRISIS

(a) Adoption of crisis response plan. When a lake is declared in crisis, the Secretary shall within 90 days after the designation of the lake in crisis issue a comprehensive crisis response plan for the management of the lake in crisis in order to improve water quality in the lake or to mitigate or eliminate the potential harm to public health or the risk of damages to the environment or natural resources. The Secretary shall coordinate with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation in the development of the crisis response plan. The crisis response plan may require implementation of one or both of the following in the watershed of the lake in crisis:

(1) water quality requirements necessary to address specific harms to public health or risks to the environment or natural resources; or

(2) implementation of or compliance with existing water quality requirements under one or more of the following:

(A) water quality requirements under chapter 47 of this title, including requiring a property owner to obtain a permit or implement best management practices for the discharge of stormwater runoff from any size of impervious surfaces if the Secretary determines that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater on the lake in crisis;

(B) agricultural water quality requirements under 6 V.S.A. chapter 215, including best management practices under 6 V.S.A. § 4810 to reduce runoff from the farm; or

(C) water quality requirements adopted under section 1264 of this section for stormwater runoff from municipal or State roads.

(b) Public hearing. The Secretary shall hold at least one public hearing in the watershed of the lake in crisis and shall provide an opportunity for public notice and comment for a proposed lake in crisis response plan.

(c) Term of designation. A lake shall remain designated as in crisis under this section until the Secretary determines that the lake no longer satisfies the

criteria for designation under subsection (b) of this section.

(d) Agency cooperation and services. All other State agencies shall cooperate with the Secretary in responding to the lake in crisis, and the Secretary shall be entitled to seek technical and scientific input or services from the Agency of Agriculture, Food and Markets, the Agency of Transportation, or other necessary State agencies.

§ 1312. LAKE IN CRISIS ORDER

The Secretary, after consultation with the Secretary of Agriculture, Food and Markets, may issue a lake in crisis order as an administrative order under chapter 201 of this title to require a person to:

(1) take an action identified in the lake in crisis response plan;

(2) cease or remediate any acts, discharges, site conditions, or processes contributing to the impairment of the lake in crisis;

(3) mitigate a significant contributor of a pollutant to the lake in crisis; or

(4) conduct testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the potential harm to the public health or a risk of damage to the environment or natural resources.

§ 1313. ASSISTANCE

(a) A person subject to a lake in crisis order shall be eligible for technical and financial assistance from the Secretary to be paid from the Lake in Crisis Response Program Fund. The Secretary shall adopt by procedure the process for application for assistance under this section.

(b) State financial assistance awarded under this section shall be in the form of a grant. An applicant for a State grant shall pay at least 35 percent of the total eligible project cost. The dollar amount of a State grant shall be equal to the total eligible project cost, less 35 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded.

(c) A grant awarded under this section shall comply with all terms and conditions for the issuance of State grants.

§ 1314. FUNDING OF STATE RESPONSE TO A LAKE IN CRISIS

(a) Initial response. Upon designation of a lake in crisis, the Secretary may, for the purposes of the initial response to the lake in crisis, expend up to $50,000.00 appropriated to the Agency of Natural Resources from the Clean Water Fund for authorized contingency spending.

(b) Long-term funding. In the subsequent budget submitted to the General Assembly under 32 V.S.A. § 701, the Secretary of Administration shall propose appropriations to the Lake in Crisis Response Program Fund to implement fully the crisis response plan for the lake in crisis, including recommended appropriations from one or more of the following:

(1) the Clean Water Fund established under section 1389 of this title;

(2) the Vermont Housing and Conservation Trust Fund established under section 312 of this title;

(3) capital funds and other monies available from the Secretary of Agriculture, Food and Markets for water quality programs or projects;

(4) capital funds and other monies available from the Secretary of Natural Resources for water quality programs or projects; and

(5) General Fund appropriations.

§ 1315. LAKE IN CRISIS RESPONSE PROGRAM FUND

(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) funds that may be appropriated by the General Assembly; and

(2) other gifts, donations, or funds received from any source, public or private, dedicated for deposit into the Fund.

(b) The Secretary shall use monies deposited in the Fund for the Secretary's implementation of a crisis response plan for a lake in crisis and for financial assistance under section 1313 of this title to persons subject to a lake in crisis order.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3) and (4), interest earned by the Fund and the balance of the Fund at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund.

Sec. 9. LAKE CARMI; LAKE IN CRISIS

The General Assembly declares Lake Carmi as a lake in crisis under 10 V.S.A. chapter 47, subchapter 2A. The crisis response plan for Lake Carmi shall include implementation of runoff controls.

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

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to

subdivision (10) of this subsection:

(1) 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter 32, relating to flood hazard areas;

(3) 10 V.S.A. chapters 47 and 56, relating to water pollution control, water quality standards, ~~and~~ public water supply, and lakes in crisis;

* * *

Sec. 11. 10 V.S.A. § 8503(a) is amended to read:

(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:

(A) chapter 23 (air pollution control);

(B) chapter 50 (aquatic nuisance control);

(C) chapter 41 (regulation of stream flow);

(D) chapter 43 (dams);

(E) chapter 47 (water pollution control; lakes in crisis);

* * *

* * * ANR Report on Future Farming Practices * * *

Sec. 12. AGENCY OF AGRICULTURE, FOOD AND MARKETS

REPORT ON FARMING PRACTICES IN VERMONT

(a) The Nutrient Management Commission convened by the Secretary of Agriculture, Food and Markets as a requirement of the U.S. Environmental Protection Agency's approved implementation plan for the Lake Champlain total maximum daily load plan shall review whether and how to revise farming practices in Vermont in a manner that mitigates existing environmental impacts while maintaining economic viability. In conducting its review, the Commission shall consider whether and how to:

(1) revise farming practice to improve or build healthy soils;

(2) reduce agriculturally based pollution in areas of high pollution, stressed, or impaired waters;

(3) establish a carrying capacity or maximum number of livestock that the land used for nutrient application on a farm can support without contribution of nutrients to a water;

(4) provide financial and technical support to facilitate the transition by farms to less-polluting practices through one or more of the following:

(A) cover cropping;

(B) reduced tillage or no tillage;

(C) accelerated implementation of best management practices (BMPs);

(D) evaluation of the effectiveness of using riparian buffers in excess of 25 feet;

(E) increased use of direct manure injection;

(F) crop rotations to build soil health, including limits on the planting of continuous corn;

(G) elimination or reduction of the use of herbicides in the termination of cover crops; and

(H) diversification of dairy farming.

(b) On or before January 15, 2019, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry any recommendation of the Nutrient Management Commission regarding any of the farming practices or subject areas listed under subdivisions (a)(1)–(4) of this section.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES; IMPLEMENTATION

This act shall take effect on passage, except that Secs. 3–5 (water quality occupancy surcharge) shall take effect on January 1, 2020.

(Committee vote: 7-1-1)

(For text see Senate Journal March 21, 22, 2018)

S. 289

An act relating to protecting consumers and promoting an open Internet in Vermont.

Rep. Sibilia of Dover, for the Committee on Energy and Technology**,** recommends 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:

* * * Legislative Findings * * *

Sec. 1. FINDINGS

The General Assembly finds and declares that:

(1) Our State has a compelling interest in preserving and promoting an open Internet in Vermont.

(2) As Vermont is a rural state with many geographically remote locations, broadband Internet access service is essential for supporting economic and educational opportunities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement.

(3) The accessibility and quality of communications networks in Vermont, specifically broadband Internet access service, will critically impact our State's future.

(4) Net neutrality is an important topic for many Vermonters. Nearly 50,000 comments attributed to Vermonters were submitted to the FCC during the *Notice of Proposed Rulemaking* regarding the *Restoring Internet Freedom Order,* WC Docket No. 17-108, FCC 17-166. Transparency with respect to the network management practices of ISPs doing business in Vermont will continue to be of great interest to many Vermonters.

(5) In 1996, Congress recognized that "[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity" and "[i]ncreasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services." 47 U.S.C. § 230(a)(3) and (5).

(6) Many Vermonters do not have the ability to choose easily between Internet service providers (ISPs). This lack of a thriving competitive market, particularly in isolated locations, disadvantages the ability of consumers and businesses to protect their interests sufficiently.

(7) Without net neutrality, "ISPs will have the power to decide which websites you can access and at what speed each will load. In other words, they'll be able to decide which companies succeed online, which voices are heard – and which are silenced." Tim Berners-Lee, founder of the World Wide Web and Director of the World Wide Web Consortium (W3C), December 13, 2017.

(8) The Federal Communications Commission's (FCC's) recent repeal of the federal net neutrality rules pursuant to its *Restoring Internet Freedom Order* manifests a fundamental shift in policy.

(9) The FCC anticipates that a "light-touch" regulatory approach under

Title I of the Communications Act of 1934, rather than "utility-style" regulation under Title II, will further advance the Congressional goals of promoting broadband deployment and infrastructure investment.

(10) The FCC's regulatory approach is unlikely to achieve the intended results in Vermont. The policy does little, if anything, to overcome the financial challenges of bringing broadband service to hard-to-reach locations with low population density. However, it may result in degraded Internet quality or service. The State has a compelling interest in preserving and protecting consumer access to high quality Internet service.

(11) The economic theory advanced by the FCC in 2010 known as the "virtuous circle of innovation" seems more relevant to the market conditions in Vermont. See *In re Preserving the Open Internet*, 25 F.C.C.R. 17905, 17910-11 (2010).

(12) As explained in the FCC's 2010 Order, "The Internet's openness. . . enables a virtuous circle of innovation in which new uses of the network – including new content, applications, services, and devices – lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses. Novel, improved, or lower-cost offerings introduced by content, application, service, and device providers spur end-user demand and encourage broadband providers to expand their networks and invest in new broadband technologies." 25 FCC Rcd. at 17910-11, upheld by *Verizon v. FCC*, 740 F.3d 623, 644-45 (D.C. Circuit 2014).

(13) As affirmed by the FCC five years later, "[t]he key insight of the virtuous cycle is that broadband providers have both the incentive and the ability to act as gatekeepers standing between edge providers and consumers. As gatekeepers, they can block access altogether; they can target competitors, including competitors in their own video services; and they can extract unfair tolls." *Open Internet Order*, 30 FCC Rcd at para. 20.

(14) The State may exercise its traditional role in protecting consumers from potentially unfair and anticompetitive business practices. Doing so will provide critical protections for Vermont individuals, entrepreneurs, and small businesses that do not have the financial clout to negotiate effectively with commercial providers, some of whom may provide services and content that directly compete with Vermont companies or companies with whom Vermonters do business.

(15) The FCC's most recent order expressly contemplates state exercise of traditional police powers on behalf of consumers: "we do not disturb or displace the states' traditional role in generally policing such matters as fraud, taxation, and general commercial dealings, so long as the administration of such general state laws does not interfere with federal regulatory objectives."

Restoring Internet Freedom Order, WC Docket No. 17-108, FCC 17-166, para. 196.

(16) The benefits of State measures designed to protect the ability of Vermonters to have unfettered access to the Internet far outweigh the benefits of allowing ISPs to manipulate Internet traffic for pecuniary gain.

(17) The most recent order of the FCC contemplates federal and local enforcement agencies preventing harm to consumers: "In the unlikely event that ISPs engage in conduct that harms Internet openness. . . we find that utility-style regulation is unnecessary to address such conduct. Other legal regimes – particularly antitrust law and the FTC's authority under Section 5 of the FTC Act to prohibit unfair and deceptive practices – provide protections to consumers." para. 140. The Attorney General enforces antitrust violations or violations of the Consumer Protection Act in Vermont.

(18) The Governor's Executive Order No. 2-18, requiring all State agency contracts with Internet service providers to include net neutrality protections, manifests a significant and reasonable step toward preserving an open Internet in Vermont.

(19) The State has a compelling interest in knowing with certainty what services it receives pursuant to State contracts.

(20) Procurement laws are for the benefit of the State. When acting as a market participant, the government enjoys unrestricted power to contract with whomever it deems appropriate and purchase only those goods or services it desires.

(21) The disclosures required by this act are a reasonable exercise of the State's traditional police powers and will support the State's efforts to monitor consumer protection and economic factors in Vermont, particularly with regard to competition, business practices, and consumer choice, and will also enable consumers to stay apprised of the network management practices of ISPs offering service in Vermont.

(22) The State is in the best position to balance the needs of its constituencies with policies that best serve the public interest. The State has a compelling interest in promoting Internet consumer protection and net neutrality standards. Any incidental burden on interstate commerce resulting from the requirements of this act is far outweighed by the compelling interests the State advances.

* * * Consumer Protection; Disclosure; Net Neutrality Compliance * * *

Sec. 2. 9 V.S.A. § 2466c is added to read:

§ 2466c. INTERNET SERVICE; NETWORK MANAGEMENT;

ATTORNEY GENERAL REVIEW AND DISCLOSURE

(a) The Attorney General shall review the network management practices of Internet service providers in Vermont and, to the extent possible, make a determination as to whether the provider's broadband Internet access service complies with the open Internet rules contained in the Federal Communications Commission's 2015 Open Internet Order, "Protecting and Promoting the Open Internet," WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601.

(b) The Attorney General shall disclose his or her findings under this section on a publicly available, easily accessible website maintained by his or her office.

* * * Net Neutrality Study; Attorney General * * *

Sec. 3. NET NEUTRALITY STUDY

On or before December 15, 2018, the Attorney General, in consultation with the Commissioner of Public Service and with input from industry and consumer stakeholders, shall submit findings and recommendations in the form of a report or draft legislation to the Senate Committees on Finance and on Economic Development, Housing and General Affairs and the House Committees on Energy and Technology and on Commerce and Economic Development reflecting whether and to what extent the State should enact net neutrality rules applicable to Internet service providers offering broadband Internet access service in Vermont. Among other things, the Attorney General shall consider:

(1) the scope and status of federal law related to net neutrality and ISP regulation;

(2) the scope and status of net neutrality rules proposed or enacted in state and local jurisdictions;

(3) methods for and recommendations pertaining to the enforcement of net neutrality requirements;

(4) the economic impact of federal or state changes to net neutrality policy, including to the extent practicable methods for and recommendations pertaining to tracking broadband investment and deployment in Vermont and otherwise monitoring market conditions in the State;

(5) the efficacy of the Governor's Executive Order No. 2-18, requiring all State agency contracts with Internet service providers to include net neutrality protections;

(6) proposed courses of action that balance the benefits to society that the communications industry brings with actual and potential harms the

industry may pose to consumers; and

(7) any other factors and considerations the Attorney General deems relevant to making recommendations pursuant to this section.

* * * Connectivity Initiative; Grant Eligibility; H.581 * * *

Sec. 4. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service that is capable of speeds of at least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only satellite or dial-up Internet service and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload. Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers to deploy broadband to eligible census blocks. Funding shall be available for capital improvements only, not for operating and maintenance expenses. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; however, the Department also shall consider:

(1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;

(2) the price to consumers of services;

(3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; and

(6) the objectives of the State's Telecommunications Plan.

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 8-0-0)

(For text see Senate Journal January 31, February 2, 2018)

Favorable

H. 926

An act relating to approval of amendments to the charter of the Town of Colchester

Rep. Lewis of Berlin, for the Committee on Government Operations**,** recommends the bill ought to pass.

(Committee Vote: 9-0-2)

H. 927

An act relating to approval of amendments to the charter of the City of Montpelier

Rep. Lewis of Berlin, for the Committee on Government Operations**,** recommends the bill ought to pass.

(Committee Vote: 9-0-2)

Senate Proposal of Amendment

H. 300

An act relating to the statute of limitations for recovery and possession of property actions against the grantee of a tax collector's deed

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2293 is amended to read:

§ 2293. EXTINGUISHMENT OF CLAIM FOR RELIEF

A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

(1) under subdivision 2288(a)(1) of this title not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision 2288(a)(2) or subsection 2289(a) of this title not

later than four years after the transfer was made or the obligation was incurred; ~~or~~

(3) under subsection 2289(b) of this title, not later than one year after the transfer was made or the obligation was incurred; or

(4) pursuant to the provisions of 32 V.S.A. chapter 133, subchapter 9 for a tax sale, not later than two years after the tax collector's deed is delivered to the successful bidder at the tax sale.

Sec. 2. 32 V.S.A. § 5263 is amended to read:

§ 5263. LIMITATION OF ACTIONS AGAINST GRANTEE IN POSSESSION

An action for the recovery of lands, or the possession thereof, shall not be maintained against the grantee of such lands in a tax collector's deed, duly recorded, or his or her heirs or assigns, when the grantee, his or her heirs or assigns have been in continuous and open possession of the land conveyed in such deed and have paid the taxes thereon, unless commenced within ~~three years~~ one year after the cause of action first accrues to the plaintiff or those under whom he or she claims.

Sec. 3. 32 V.S.A. § 5252 is amended to read:

§ 5252. LEVY AND NOTICE OF SALE; SECURING PROPERTY

(a) When the collector of taxes of a town or of a municipality within it has for collection a tax assessed against real estate in the town and the taxpayer is delinquent, the collector may extend a warrant on such land. If a collector receives notice from a mobile home park owner pursuant to 10 V.S.A. § 6248(c), the collector shall, within 15 days ~~of~~ after the notice, commence tax sale proceedings to hold a tax sale within 60 days ~~of~~ after the notice. If the collector fails to initiate such proceedings, the town may initiate tax sale proceedings only after complying with 10 V.S.A. § 6249(f). If the tax collector extends the warrant, the collector shall:

(1) File in the office of the town clerk for record a true and attested copy of the warrant and so much of the tax bill committed to the collector for collection as relates to the tax against the delinquent taxpayer, a sufficient description of the land so levied upon, and a statement in writing that by virtue of the original tax warrant and tax bill committed to the collector for collection, the collector has levied upon the described land.

(2) Advertise forthwith such land for sale at public auction in the town where it lies three weeks successively in a newspaper circulating in the vicinity, the last publication to be at least 10 days before such sale.

(3) Give the delinquent taxpayer written notice by ~~registered~~ certified

mail requiring a return receipt directed to the last known address of the delinquent of the date and place of such sale at least 10 days prior thereto if the delinquent is a resident of the town, and 20 days prior thereto if the delinquent is a nonresident of the town. If the notice by certified mail is returned unclaimed, notice shall be provided to the taxpayer by resending the notice by first-class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure.

(4) Give to the mortgagee or lien holder of record written notice of such sale at least 10 days prior thereto if a resident of the town, and if a nonresident, 20 days' notice to the mortgagee or lien holder of record or his or her agent or attorney by ~~registered~~ certified mail requiring a return receipt directed to the last known address of such person. If the notice by certified mail is returned unclaimed, notice shall be provided by resending the notice by first-class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure.

(5) Post a notice of such sale in some public place in the town.

* * *

Sec. 4. 32 V.S.A. § 5258 is amended to read:

§ 5258. FEES AND COSTS ALLOWED AFTER WARRANT AND LEVY RECORDED

(a) The fees and costs allowed after the warrant and levy for delinquent taxes have been recorded shall be as follows:

(1) levy and extending of warrant, $10.00;

(2) recording levy and extending of warrant in the town clerk's office, $10.00, to be paid to the town clerk;

(3) notices and publication of notices, actual costs incurred, including the costs of service pursuant to subdivisions 5252(a)(3) and (4) of this title;

(4) expenses actually and reasonably incurred by the town in securing a property for which property taxes are delinquent against illegal activity and fire hazards, to be paid to the town clerk, provided that the expenses shall not exceed 20 percent of the uncollected tax;

(5) when authorized by the selectboard, expenses actually and reasonably incurred by the tax collector for legal assistance in the preparation for or conduct of a tax sale, provided that the expenses shall not exceed 15 percent of the uncollected tax;

(6) travel reimbursement at the rate established by the contract governing State employees;

(7) attending and holding the sale, $10.00;

(8) making return and recording the return in the town clerk's office, $10.00, to be paid to the town clerk;

(9) collector's deed, $30.00~~;~~.

(b) ~~the~~ The fees and costs allowed in subsection (a) of this section, together with a collector's fee of up to eight percent, shall be in lieu of all other fees and costs.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(For text see House Journal January 23, 2018)

H. 429

An act relating to establishment of a communication facilitator program

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

In Sec. 2, in the first sentence, after the word "establishment" by inserting the word of.

(For text see House Journal March 20, 2018)

Ordered to Lie

H. 167

An act relating to alternative approaches to addressing low-level illicit drug use.

Pending Question: Shall the House concur in the Senate proposal of amendment?

H. 219

An act relating to the Vermont spaying and neutering program.

Pending Question: Shall the House concur in the Senate proposal of amendment?

S. 267

An act relating to timing of a decree nisi in a divorce proceeding.

Pending Question: Second reading?