Journal of the Senate

WEDNESDAY, MAY 6, 2009

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred

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

H. 456.

An act relating to seasonal fuel assistance.

To the Committee on Appropriations.

Joint Resolution Adopted on the Part of the Senate

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

By Senators Lyons and Racine,

J.R.S. 34. Joint resolution designating October 2009 as health care career awareness month.

Whereas, quality health care services are of great importance to all Vermonters, and

Whereas, Vermont's aging population is demanding more health care services, and

Whereas, the similarly aging population of health care professionals and other health care workers could place a strain on the delivery of health care services in the state with impacts on Vermont's economy and quality of life, and

Whereas, there may be a lack of awareness among younger persons and adults seeking second careers of the excellent health care career opportunities in Vermont and of the flexibility, excellent pay, security and benefits that jobs in this field can offer, and

Whereas, it is imperative that health care professionals be attracted to the state's rural areas where there will be increasingly disproportionate challenges to health care access without the infusion of new health care professionals, and

Whereas, it would be most advantageous to the state of Vermont if a coordinated effort is undertaken to disseminate information about career opportunities in the health care field, and

Whereas, in order to meet this important public policy objective, members of the health care workforce development partnership, a team of professionals working with Vermont's workforce development council, are collaborating on long-term solutions to sustain Vermont's health care workforce, and

Whereas, greater public knowledge of the need to attract health care professionals to Vermont is in everyone's best interest, *now therefore be it*

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

That the General Assembly designates October 2009 as health care career awareness month, *and be it further*

***Resolved*:** That the Secretary of State be directed to send a copy of this resolution to the director of the University of Vermont College of Medicine's Office of Primary Care and AHEC Program, Elizabeth Cote, in Burlington.

Joint Resolution Placed on Calendar

J.R.H. 27.

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

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

Whereas, every person in Vermont and the United States deserves access to affordable, quality health care, and

Whereas, there is a growing crisis in health care in the United States of America, manifested in rising health care costs, increased premiums, increased out-of-pocket spending, and decreased international business competitiveness, and

Whereas, over 47,000 Vermonters still lack health insurance coverage, and

Whereas, public and private health care costs in Vermont have risen from $2.2 billion in 2002 to $4.2 billion in 2007, a greater percentage increase than the increase in national health care spending during the same time period, and

Whereas, these greatly increased costs have resulted in higher school and municipal budgets, which increase the property tax burden placed on all Vermonters, and

Whereas, the establishment of new small businesses can be a major force contributing to an improved Vermont economy, and health care concerns should not be a barrier to this important economic stimulus, and

Whereas, many individuals are dissuaded from establishing their own business enterprises because they fear that leaving their current jobs will mean a loss of health insurance coverage, and

Whereas, those insured are all too often underinsured, and

Whereas, one-half of all personal bankruptcies are due to illnesses or medical bills, and

Whereas, the increasing expense of Medicaid and the rising costs of insuring public sector employees can best be met by creating a national publicly funded health insurance program, and

Whereas, the complex bureaucracy arising from our fragmented, for-profit, multipayer system of health care financing has overhead expenses of nearly 30 percent, while Medicare operates with an overhead of only three percent, and

Whereas, Vermont's ability to step forward on universal health care depends on action at the federal level, and

Whereas, U.S. Representative John Conyers, Jr. has introduced H.R. 676, the United States National Health Insurance Act (or the Expanded and Improved Medicare for All Act), and

Whereas, this act would provide a universal and comprehensive system of high-quality national health insurance, and

Whereas, in the Senate, U.S. Senator Bernie Sanders has introduced S. 703, the American Health Security Act of 2009 that "establishes a state-based American Health Security Program to provide every U.S. resident who is a U.S. citizen, national, or lawful resident alien with health care services," and "requires each participating state to establish a state health security program," and

Whereas, S. 703 would create a system of comprehensive health care hospital services, professional services (including patient education training in self-management), community-based primary health services, long-term, acute, and chronic care services, prescription drugs, biologicals, insulin, and medical foods, dental services, mental health and substance abuse treatment services,

diagnostic tests, and other services, including outpatient therapy, durable medical equipment, home dialysis, ambulance service, prosthetic devices, and addition items and services, and

Whereas, these new state health security programs would replace Medicare, Medicaid, SCHIP, and other existing federal health care programs, be funded through new federal health care income and payroll taxes, and be exempt from the limitations on state health care programs under ERISA, and

Whereas, individual state health care security programs could be tailored to the specific needs of an individual state while minimum national standards would be maintained through the newly established American Health Care Security Standards Board, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to enact H.R. 676, the United States National Health Insurance Act (or the Expanded and Improved Medicare for All Act) or, in the alternative, S. 703, the American Health Care Security Act of 2009, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the members of the Vermont Congressional Delegation.

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

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 75.

On motion of Senator Shumlin, the rules were suspended, and H. 75 was taken up for immediate consideration, for the purpose of relieving the Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to interim budget and appropriation adjustments,

and the bill was committed to the Committee on Appropriations.

Rules Suspended; Committee Relieved of Further Consideration; Bill Committed

H. 125.

On motion of Senator Shumlin, the rules were suspended, and H. 125 was taken up for immediate consideration, for the purpose of relieving the

Committee on Rules from further consideration of the bill. Thereupon, on motion of Senator Shumlin, the Committee on Rules was relieved of House bill entitled:

An act relating to the sale of unpasteurized milk,

and the bill was committed to the Committee on Agriculture.

House Proposal of Amendment Concurred In with Amendment

S. 47.

House proposal of amendment to Senate bill entitled:

An act relating to salvage yards.

Was taken up.

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

Sec. 1. FINDINGS

The general assembly finds and declares that:

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

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

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

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

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

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

Subchapter 10. ~~Junkyards~~ Salvage Yards

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

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than $500.00. This violation shall be enforceable in the judicial bureau

pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by a municipal attorney, solid waste management district attorney, environmental enforcement officer employed by the agency of natural resources, grand juror, or designee of the legislative body of the municipality, or by any duly authorized law enforcement officer. If the throwing, placing, or depositing was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, placing, or depositing was done by the driver of such motor vehicle. Nothing in this section shall be construed as affecting the operation of an automobile graveyard or ~~junkyard~~ salvage yard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns.

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

§ 2241. DEFINITIONS

For the purposes of this subchapter:

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

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

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

(4) "Interstate or primary highway" means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.

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

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

(7) ~~"Junkyard"~~ "Salvage yard" means any place of outdoor storage or deposit ~~which is maintained, operated or used in connection with a business~~ for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. ~~"Junkyard"~~ "Salvage yard" also means any place of outdoor storage or deposit, not in connection with a business which is

maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10. ~~However, the term does not include a private garbage dump or a sanitary landfill which is in compliance with section 2202 of this title and the regulations of the secretary of human services.~~ It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

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

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

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

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

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

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

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

§ 2242. REQUIREMENT FOR OPERATION OR MAINTENANCE

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

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

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

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

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

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

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

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

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

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

~~(4) It shall determine whether any junkyard must be screened or removed and may order such screening or any removal~~ The secretary shall adopt and enforce requirements for adequate fencing and screening of salvage yards.

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

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

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

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

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

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

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

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

§ 2246. EFFECT OF LOCAL ORDINANCES

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

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

§ 2247. JUNKYARD ~~LICENSES~~ CERTIFICATE OF REGISTRATION

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

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

§ 2251. APPLICATION FOR CERTIFICATE OF APPROVED LOCATION

Application for a certificate of approved location shall be made in writing to the legislative body of the municipality where ~~it is~~ the salvage yard is located or where it is proposed to ~~locate the junkyard~~ be located, and, in municipalities having a zoning ~~ordinance and a zoning board of adjustment~~ bylaw, subdivision regulations established under sections ~~4301-4492~~ 4301–4498 of this title, or a municipal ordinance or rule established under sections 1971–1984 of this title, the application shall be accompanied by a certificate from the ~~board of adjustment~~ legislative body or a public body designated by the legislative body. The legislative body or its designee shall find the proposed salvage yard location is not within an established district restricted against such uses or otherwise contrary to the requirements or prohibitions of such zoning ~~ordinance~~ bylaw or other municipal ordinance. The application shall contain a description of the land to be included within the ~~junkyard~~ salvage yard, which description shall be by reference to so-called permanent boundary markers.

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

§ 2253. LOCATION REQUIREMENTS

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

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

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

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

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

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

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

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

§ 2254. AESTHETIC, ENVIRONMENTAL, AND COMMUNITY WELFARE CONSIDERATIONS

At the hearing regarding location of the ~~junkyard~~ salvage yard, the legislative body may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued stability and development of the tourist and recreational industry of the state and the general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this ~~connection~~ regard the legislative body may consider collectively the type of road servicing the ~~junkyard~~ salvage yard or from which the ~~junkyard~~ salvage yard may be seen, the natural or artificial barriers protecting the ~~junkyard~~ salvage yard from view, the proximity of the proposed ~~junkyard~~ salvage yard to established tourist and recreational areas or main access routes, thereto, proximity to neighboring residences, groundwater resources, surface waters, wetlands, drinking water supplies, consistency with an adopted town plan, as well as the reasonable availability of other suitable sites for the ~~junkyard~~ salvage yard.

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

§ 2255. GRANT OR DENIAL OF APPLICATION; APPEAL

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

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

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

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

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

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

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

(c) Certificates of approval shall be renewed thereafter for successive periods of not ~~less than three nor~~ more than five years upon payment of the renewal fee without hearing, provided all provisions of this subchapter are complied with during the preceding period, and the ~~junkyard~~ salvage yard does not become a public nuisance under the common law.

(d) Any person ~~dissatisfied with the granting or denial of an application~~ may appeal the issuance or denial of a certificate of approved location to the ~~superior court for the county in which the proposed junkyard is located. The court by its order may affirm the action of the legislative body or direct the legislative body to grant or deny the application~~ environmental court within 30

days of the decision. No costs shall be taxed against either party upon such appeal.

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

§ 2257. SCREENING REQUIREMENTS; FENCING

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

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

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

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

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

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

§ 2261. APPLICATION

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

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

§ 2262. ELIGIBILITY

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

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

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

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

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

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

~~§ 2264. COMPENSATION~~

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

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

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

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

§ 2281. INJUNCTIVE RELIEF; OTHER REMEDIES

(a) In addition to the penalty in section 2282 of this title, ~~the agency or~~ the legislative body may seek a temporary restraining order, preliminary injunction, or permanent injunction against the establishment, operation, or maintenance of a ~~junkyard~~ salvage yard which is ~~or will be~~ in violation of ~~this act~~ the relevant municipal requirements of this subchapter and may obtain compliance with ~~its orders for screening~~ the relevant municipal requirements

of this subchapter and the terms of a certificate of approved location issued under this subchapter by complaint to the ~~superior~~ environmental court for the county in which the ~~junkyard~~ salvage yard is located.

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

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

§ 2283. APPEALS

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

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

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

* * *

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

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

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

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

Sec. 21. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

* * *

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

Sec. 22. TRANSITION

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

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

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

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

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

(1) A summary of how salvage yards are regulated in the state, including the number of salvage yards licensed by the state; an estimate of the number of unlicensed salvage yards in the state; and the stormwater, groundwater, solid

waste, air emission, and other environmental and land use requirements that a salvage yard is required to meet.

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

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

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

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

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

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

(8) Draft legislation or draft rules that would be required to implement the recommendation under this section for the regulation of salvage yards by the agency of natural resources, including draft legislation to implement the agency's recommendation for funding the regulation of salvage yards.

Sec. 24. AGENCY OF NATURAL RESOURCES STAFF POSITION

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

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

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

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

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

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

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

Sec. 28. WATER SUPPLY RULEMAKING

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

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2009.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Lyons moved that the Senate concur in the House proposal of amendment with a further amendment as follows: In Sec. 13, 24 V.S.A. § 2255(b)(5), after the following: "Title 10,"by striking out all of the language through the end of the sentence and inserting in lieu thereof the following: provided that if a salvage yard cannot demonstrate during the application process that it meets the 100 feet setback requirement of this subdivision, a municipality may regulate the salvage yard as a nonconforming use, nonconforming structure, or nonconforming lot under a municipal nonconformity bylaw adopted under section 4412 of this title, provided that no enlargement or further encroachment within a setback required under this subdivision shall be allowed.

Which was agreed to.

Rules Suspended; Joint Senate Resolution Amended; Third Reading Ordered; Rules Suspended; Joint Senate Resolution Adopted

J.R.S. 32.

Appearing on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and joint Senate resolution entitled:

Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges and to sell a portion of Camel's Hump State Park.

Was taken up for immediate consideration.

Senator White, for the Committee on Institutions, to which the resolution was referred, reported recommending that the joint resolution be amended by striking out the resolution in its entirety and inserting in lieu thereof the following:

By the Committee on Institutions,

J.R.S. 32. Joint resolution authorizing the commissioner of forests, parks and recreation to enter into land exchanges.

Whereas, 10 V.S.A. § 2606(b) authorizes the commissioner of forests, parks and recreation to exchange or lease certain lands with the approval of the general assembly, and

Whereas, 29 V.S.A. §166 authorizes the commissioner of buildings and general services to sell state lands with the approval of the general assembly, and

Whereas, the general assembly considers the following actions to be in the best interest of the state, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Commissioner of Forests, Parks and Recreation is authorized to amend the ski area lease on Okemo Mountain at Okemo State Forest to provide for three additional ten-year extension periods, *and be it further*

Resolved: That the Commissioner of Forests, Parks and Recreation is authorized to convey a limited right-of-way in common along a portion of a state forest highway locally known as "Rangers Road" to the owners of Lots 42, 43, 44, 45, and 46 located adjacent to a portion of Coolidge State Forest in the Town of Plymouth. The right-of-way in common shall begin at the westernmost end of Town Highway 38 and shall extend westerly along Rangers Road to the adjoining private parcels. The right-of-way in common shall be limited to vehicular access to the existing lots only and does not include the right to install power or telephone lines within the right-of-way. The department may gate or close this portion of Rangers Road for maintenance purposes or if unsafe conditions exist. However, the department shall not be obligated to maintain this right-of-way in common beyond what it deems necessary for its own purposes. In exchange for this right-of-way in common, the owners of Lots 42, 43, 44, 45, and 46 shall agree not to subdivide their parcels; to limit development on their parcels to one single-family residence and associated structures; and to relinquish any claim they may have for an alternative right-of-way by necessity to the west of the parcels from Town Highway 4 (Messer Hill Rd). Additionally, as a condition of this conveyance, the owners of Lots 43, 44, 45, and 46 shall agree to convey a right-of-way to the department of forests, parks and recreation along the portion of the state forest highway that crosses their respective parcels, *and be it further*

Resolved: That the Commissioner of Forests, Parks and Recreation is authorized to convey a separate limited right-of-way across state forestland to the owner of Lot 42 adjacent to the Coolidge State Forest in the Town of Plymouth. This right-of-way shall be limited to vehicular access to Lot 42 as it currently exists, and maintenance of this right-of-way shall be the sole

responsibility of the owner of Lot 42. In exchange for this limited right-of-way, the owner of Lot 42 shall ensure through the conveyance of permanent restrictive covenants to the department or through the conveyance of an easement or other legal mechanism approved by the department that Lot 42 will not be subdivided and that development will be limited to one single family residence and associated structures. As a condition of any conveyance of this limited right-of-way, the owner of Lot 42 shall also demonstrate that he or she has legal, permanent access from the end of the state's right-of-way across adjacent private lands to Lot 42, *and be it further*

Resolved: That pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services, on behalf of and in consultation with the commissioner of forests, parks and recreation, is authorized to sell a portion of Camel's Hump State Park containing the so-called Lafreniere House located in the Town of Bolton. The property to be sold is considered surplus by the Department of Forests, Parks and Recreation and shall be so configured to include only that acreage deemed necessary to encompass the Lafreniere House and associated outbuildings, structures, facilities, and access drives. The barns located on this property may also be included in the sale if it is deemed in the best interest of the state to include them. The Department of Forests, Parks and Recreation shall work closely with the Town of Bolton to ensure their interests and needs are carefully considered prior to any sale or conveyance of this property. Any sale shall be contingent on the approval of the Vermont Housing and Conservation Board and shall include any legal restrictions deemed necessary to maintain the historic integrity and open space character of the property. Pursuant to the provisions of subsection 166(d) of Title 29, the general assembly hereby authorizes that the net proceeds of this transaction shall be used by the department to cover all expenses associated with the sale of this property with the balance to be deposited in the Vermont Housing and Conservation Trust Fund, *and be it further*

Resolved: That a 10± acre portion of Victory State Forest within the town of Victory may be conveyed or leased to the town of Victory to be used for a new town garage as follows:

(1) pursuant to 10 V.S.A. § 2606(b), the commissioner of forests, parks and recreation may exchange the land for land of equivalent or greater value to the state;

(2) pursuant to 10 V.S.A. § 2606(b), the commissioner of forests, parks and recreation may lease the land to the town of Victory; or

(3) pursuant to 29 V.S.A. § 166, the commissioner of buildings and general services, on behalf of and in consultation with the commissioner of forests,

parks and recreation, may sell the land. However, notwithstanding 29 V.S.A. § 166(b), the land may be sold to the town of Victory for fair market value as determined by an independent appraisal, *and be it further*

Resolved: That conveyance or lease of the Victory state forestland shall be contingent on the following: (1) the town of Victory conducts an engineering assessment of the state forest parcel which demonstrates that the site is suitable for the town's intended purposes; (2) the town of Victory assumes any and all associated costs, including appraisal, survey, permitting, and legal; (3) the final proposal, including the consideration offered by the town to the state for the exchange, sale, or lease of the state forest parcel is approved by both the Department of Forests, Parks and Recreation and the Vermont Housing and Conservation Board. Pursuant to subsection 166(d) of Title 29, the general assembly hereby authorizes that the net proceeds of any sale of the state forest parcel shall be deposited in the Vermont Housing and Conservation Trust Fund.

And that when so amended the joint resolution ought to be adopted.

Thereupon, the joint resolution was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to.

Thereupon, pending the question, Shall the resolution be read the third time?, Senators Nitka, Campbell and McCormack moved to amend the joint resolution in the first Resolved clause following the words "provide for three additional ten-year extension periods" by inserting the following: provided that the lease shall not preclude the placement of wind turbines on the leased premises

Which was agreed to.

Thereupon, third reading of the joint resolution was ordered.

Thereupon, on motion of Senator Shumlin, the rules were suspended and the joint resolution was placed on all remaining stages of its adoption forthwith.

Thereupon, the joint resolution was read the third time and adopted on the part of the Senate.

House Proposals of Amendment Concurred In

S. 70.

House proposals of amendment to Senate bill entitled:

An act relating to clarifying the procedure for reinstatement of a driver's license based on total abstinence from alcohol and drugs.

Were taken up.

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

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

First: In Sec. 1, subsection (b), subdivision (1) by striking out the figure "$1,000.00" and inserting in lieu thereof the figure $500.00

Second: In Sec. 1, subsection (b), subdivision (1), after the final period, by inserting the following: The commissioner shall have the discretion to waive the application fee if the commissioner determines that payment of the fee would present a hardship to the applicant.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 91.

House proposal of amendment to Senate bill entitled:

An act relating to operation of vessels on public waters.

Was taken up.

The House proposes to the Senate to amend the bill in Sec. 4, 23 V.S.A. § 3327(a), after the words "give his or her name", by inserting the following: , date of birth,

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested; Committee of Conference Appointed

S. 125.

House proposal of amendment to Senate bill entitled:

An act relating to expanding the sex offender registry.

Was taken up.

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

Sec. 1. COMPLIANCE WITH THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

(a) The act. The Adam Walsh Child Protection and Safety Act of 2006 was signed by President George W. Bush in 2006. While well-intended, it contains

a broad span of provisions that would significantly change state practice related to the registration and management of sex offenders in Vermont in a manner that is inconsistent with widely accepted evidence-based best practices at a substantial financial cost to the state. In comments directed to the U.S. Department of Justice regarding proposed guidelines to interpret and implement the act, the National Conference of State Legislatures called the guidelines a "burdensome," "preemptive," "unfunded mandate" for the states, requiring every legislature to undertake an extensive review of its laws as compared to the act and necessitating changes to state policy traditionally within the purview of the states.

(b) No state is in compliance. Due to the complexity and costs associated with the act, as of February 1, 2009, no state has been certified to be in substantial compliance with the act. States are required to comply with the act by July 27, 2009 or lose 10 percent of the state's federal Byrne/JAG Funds, although Vermont has recently received a one-year extension from the Office of Justice Programs' SMART office, which is responsible for regulations and compliance under the act.

(c) Constitutional challenges. The act is currently being challenged on a number of constitutional grounds in both federal and state courts at a substantial cost to many states. In addition, registry requirements and the consequences for failure to comply with them have expanded so significantly in recent years that imposition of such requirements on offenders may now violate the constitutional ban on retroactive punishment.

(d) Retroactive application and juveniles. Regulations issued by former U.S. Attorney General Alberto Gonzales require states to apply the requirements of the act retroactively, requiring Vermont to retier all sexual offenders, some of whom are currently beyond their duty to register. The retroactive application also applies to juveniles adjudicated delinquent for certain sexual offenses, even though they are currently not required to be registered under state law. Even though such juveniles were afforded the protections of the juvenile system at the time of their plea, they would now be subject to a registration term as long as 25 years with no opportunity to petition for relief and would be subject to inclusion on the Internet sex offender registry.

Sec. 2. 13 V.S.A. § 2635a is added to read:

§ 2635A. SEX TRAFFICKING OF CHILDREN; SEX TRAFFICKING OF ANY PERSON BY FORCE, FRAUD, OR COERCION

(a) As used in this section:

(1) "Coercion" means:

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious bodily harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(2) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(3) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(b) No person shall knowingly:

(1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;

(2) compel a person through force, fraud, or coercion to engage in a commercial sex act; or

(3) benefit financially or by receiving anything of value from participation in a venture knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture.

(c) A person who violates subsection (b) of this section shall be imprisoned for a term up to and including life or fined not more than $25,000.00 or both.

(d)(1) A person who is a victim of sex trafficking as defined in this section shall not be found in violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct which arises out of the sex trafficking or which benefits a sex trafficker.

(2) If a person who is a victim of sex trafficking as defined in this section is prosecuted for any offense other than a violation of chapter 59 (lewdness and prostitution) or chapter 63 (obscenity) of this title which arises out of the sex trafficking or benefits a sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

* * * Minor Disseminating Indecent Material ("Sexting") * * *

Sec. 3. 13 V.S.A. § 2802b is added to read:

§ 2802b. MINOR ELECTRONICALLY DISSEMINATING INDECENT MATERIAL TO ANOTHER PERSON

(a)(1) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to transmit an indecent visual depiction of himself or herself to another person.

(2) No person shall possess a visual depiction transmitted to the person in violation of subdivision (1) of this subsection. It shall not be a violation of this subdivision if the person took reasonable steps, whether successful or not, to destroy or eliminate the visual depiction.

(b) Penalties; minors.

(1) A minor who violates subsection (a) of this section shall be adjudicated delinquent. An action brought under this subdivision (1) shall be filed in family court and treated as a juvenile proceeding pursuant to chapter 52 of Title 33 and may be referred to the juvenile diversion program of the district in which the action is filed.

(2) A minor who violates subsection (a) of this section and who has not previously been adjudicated in violation of that section shall not be prosecuted under chapter 64 of this title (sexual exploitation of children) and shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(3) A minor who violates subsection (a) of this section who has previously been adjudicated in violation of that section may be adjudicated in family court as under subdivision (1) of this subsection or may be prosecuted in district court under chapter 64 of this title (sexual exploitation of children) but shall not be subject to the requirements of subchapter 3 of chapter 167 of this title (sex offender registration).

(c) Penalties; adults. A person 18 years of age or older who violates subdivision (a)(2) of this section shall be fined not more than $300.00 or imprisoned for not more than six months or both.

(d) This section shall not be construed to prohibit a prosecution under sections 1027 (disturbing the peace by use of telephone or electronic communication), 2601 (lewd and lascivious conduct), 2605 (voyeurism), or 2632 (prohibited acts) of this title, or under any other applicable provision of law.

Sec. 4. Sec. 4 of No. 192 of the Acts of the 2005 Adj. Sess. (2006) is amended to read:

Sec. 4. SEXUAL VIOLENCE PREVENTION TASK FORCE

(a) The general assembly acknowledges that many diverse organizations in Vermont currently provide sexual violence prevention education in Vermont schools with minimal financial support from the state. In order to further the goal of comprehensive, collaborative statewide sexual violence prevention efforts, the antiviolence partnership at the University of Vermont shall convene a task force to identify opportunities for sexual violence prevention education in Vermont schools. The task force shall conduct an inventory of sexual violence prevention activities currently offered by Vermont schools and by nonprofit and other nongovernmental organizations, and shall, as funding allows, provide information to them concerning the changes to law made by this act and concerning the consequences of sexual activity among minors, including the risks of using computers and electronic communication devices to transmit indecent and inappropriate images. As funding allows, the task force shall include the information collected under this subsection in education and outreach programs for minors, parents, teachers, court diversion programs, restorative justice programs, and the community.

* * *

* * * Sex Offender Registry * * *

Sec. 5. 13 V.S.A. § 5401(10) is amended to read;

(10) "Sex offender" means:

(A) A person who is convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court of any of the following offenses:

(i) sexual assault as defined in 13 V.S.A. § 3252;

(ii) aggravated sexual assault as defined in 13 V.S.A. § 3253;

(iii) lewd and lascivious conduct as defined in 13 V.S.A. § 2601;

(iv) sexual abuse of a vulnerable adult as defined in 13 V.S.A. § 1379;

(v) second or subsequent conviction for voyeurism as defined in 13 V.S.A. § 2605(b) or (c);

(vi) kidnapping with intent to commit sexual assault as defined in 13 V.S.A. § 2405(a)(1)(D); ~~and~~

(vii) a federal conviction in federal court for any of the following offenses:

(I) sex trafficking of children as defined in 18 U.S.C. § 1591;

(II) aggravated sexual abuse as defined in 18 U.S.C. § 2241;

(III) sexual abuse as defined in 18 U.S.C. § 2242;

(IV) sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243;

(V) abusive sexual contact as defined in 18 U.S.C. § 2244;

(VI) offenses resulting in death as defined in 18 U.S.C. § 2245;

(VII) sexual exploitation of children as defined in 18 U.S.C. § 2251;

(VIII) selling or buying of children as defined in 18 U.S.C. § 2251A;

(IX) material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252;

(X) material containing child pornography as defined in 18 U.S.C. § 2252A;

(XI) production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260;

(XII) transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421;

(XIII) coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422;

(XIV) transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423;

(XV) transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425;

~~(vii)~~(ix) an attempt to commit any offense listed in this subdivision (A).

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be

considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

(i) any offense listed in subdivision (A) of this subdivision (10);

(ii) kidnapping as defined in 13 V.S.A. § 2405(a)(1)(D);

(iii) lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602;

(iv) ~~white~~ slave traffic as defined in 13 V.S.A. § 2635;

(v) sexual exploitation of children as defined in 13 V.S.A. chapter 64;

(vi) ~~or~~ procurement or solicitation as defined in 13 V.S.A. § 2632(a)(6);

(vii) aggravated sexual assault of a child as defined in 13 V.S.A. § 3253a;

(viii) sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in 13 V.S.A. § 2635a;

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § 3258(b);

(x) an attempt to commit any offense listed in this subdivision (B).

(C) A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, for a sex crime the elements of which would constitute a crime under subdivision ~~(10)~~(A) or (B) of this ~~section~~ subdivision (10) if committed in this state.

(D) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

~~(D)~~(E) A nonresident sex offender who crosses into Vermont and who is employed, carries on a vocation, or is a student.

Sec. 6. 13 V.S.A. § 5407 is amended to read:

§ 5407. SEX OFFENDER'S RESPONSIBILITY TO REPORT

* * *

(g) The department shall adopt forms and procedures for the purpose of verifying the addresses of persons required to register under this subchapter in accordance with the requirements set forth in section (b)(3) of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Every 90 days for sexually violent predators and annually for other registrants, the department shall verify addresses of registrants by sending a nonforwardable address verification form to each registrant at the address last reported by the registrant. The registrant shall be required to sign and return the form to the department within 10 days of receipt. If the registrant's name appears on the list of address verification forms automatically generated by the registry, it shall be presumed that the sex offender has received that form.

* * *

Sec. 7. 13 V.S.A. § 5409 is amended to read:

§ 5409. PENALTIES

(a) Except as provided in subsection (b) of this section, a sex offender who knowingly fails to comply with any provision of this subchapter shall:

(1) Be imprisoned for not more than two years or fined not more than $1,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(2) For the second or subsequent offense, be imprisoned not more than three years or fined not more than $5,000.00, or both. A sentence imposed under this subdivision shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(b) A sex offender who knowingly fails to comply with any provision of this subchapter for a period of more than five consecutive days shall be imprisoned not more than five years or fined not more than $5,000.00, or both. A sentence imposed under this subsection shall run consecutively to any sentence being served by the sex offender at the time of sentencing.

(c) It shall be presumed that every sex offender knows and understands his or her obligations under this subchapter.

(d)(1) An affidavit by the administrator of the sex offender registry which describes the failure to comply with the provisions of this subchapter shall be prima facie evidence of a violation of this subchapter.

(2) Certified records of the sex offender registry shall be admissible into evidence as business records.

Sec. 8. NOTIFICATION OF RESPONSIBILITIES TO SEX OFFENDER

On or before June 15, 2009, the department of public safety shall provide written notice to all persons required to register as sex offenders under chapter 167 of Title 13 of the changes to sex offender reporting requirements made by this act and the penalties for failing to meet those requirements. The offender shall be presumed to have received the letter required by this section if the department sends the letter by first class mail to the offender at his or her last known address.

* * * Internet Sex Offender Registry * * *

Sec. 9. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of ~~a violation of section 3253 of this title (aggravated sexual assault), section 2602 of this title (lewd or lascivious conduct with child) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title, or subdivision 2405(a)(1)(D) of this title if a registrable offense (kidnapping and sexual assault of a child)~~:

(A) Aggravated sexual assault of a child (13 V.S.A. § 3253a).

(B) Aggravated sexual assault (13 V.S.A. § 3253).

(C) Sexual assault (13 V.S.A. § 3252).

(D) Kidnapping with intent to commit sexual assault (13 V.S.A. § 2405(a)(1)(D)).

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)) if the offender has been designated as high risk by the department of corrections pursuant to section 5411b of this title.

(G) Slave traffic if a registrable offense under subdivision 5401(10)(B)(iv) of this title (13 V.S.A. § 2635).

(H) Sex trafficking of children or sex trafficking by force, fraud, or coercion (13 V.S.A. § 2635a).

(I) Sexual exploitation of a minor (13 V.S.A. § 3258(b)).

(J) Any offense regarding the sexual exploitation of children (chapter 64 of this title).

(K) Sexual abuse of a vulnerable adult (13 V.S.A. § 1379).

(L) A federal conviction in federal court for any of the following offenses:

(i) Sex trafficking of children as defined in 18 U.S.C. § 1591.

(ii) Aggravated sexual abuse as defined in 18 U.S.C. § 2241.

(iii) Sexual abuse as defined in 18 U.S.C. § 2242.

(iv) Sexual abuse of a minor or ward as defined in 18 U.S.C. § 2243.

(v) Abusive sexual contact as defined in 18 U.S.C. § 2244.

(vi) Offenses resulting in death as defined in 18 U.S.C. § 2245.

(vii) Sexual exploitation of children as defined in 18 U.S.C. § 2251.

(viii) Selling or buying of children as defined in 18 U.S.C. § 2251A.

(ix) Material involving the sexual exploitation of minors as defined in 18 U.S.C. § 2252.

(x) Material containing child pornography as defined in 18 U.S.C. § 2252A.

(xi) Production of sexually explicit depictions of a minor for import into the United States as defined in 18 U.S.C. § 2260.

(xii) Transportation of a minor for illegal sexual activity as defined in 18 U.S.C. § 2421.

(xiii) Coercion and enticement of a minor for illegal sexual activity as defined in 18 U.S.C. § 2422.

(xiv) Transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, and engaging in illicit sexual conduct in foreign places as defined in 18 U.S.C. § 2423.

(xv) Transmitting information about a minor to further criminal sexual conduct as defined in 18 U.S.C. § 2425.

(2) Sex offenders who have at least one prior conviction for an offense described in subdivision 5401(10) of this subchapter.

(3) Sex offenders who have failed to comply with sex offender registration requirements and for whose arrest there is an outstanding warrant for such noncompliance. Information on offenders shall remain on the Internet only while the warrant is outstanding.

(4) Sex offenders who have been designated as sexual predators pursuant to section 5405 of this title.

(5)(A) Sex offenders who have not complied with sex offender treatment recommended by the department of corrections or who are ineligible for sex offender treatment. The department of corrections shall establish rules for the administration of this subdivision and shall specify what circumstances constitute noncompliance with treatment and criteria for ineligibility to participate in treatment. Offenders subject to this provision shall have the right to appeal the department of corrections' determination in superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure. This subdivision shall apply prospectively and shall not apply to those sex offenders who did not comply with treatment or were ineligible for treatment prior to March 1, 2005.

(B) The department of corrections shall notify the department if a sex offender who is compliant with sex offender treatment completes his or her sentence but has not completed sex offender treatment. As long as the offender complies with treatment, the offender shall not be considered noncompliant under this subdivision and shall not be placed on the Internet registry in accordance with this subdivision alone. However, the offender shall submit to the department proof of continuing treatment compliance every three months. Proof of compliance shall be a form provided by the department that the offender's treatment provider shall sign, attesting to the offender's continuing compliance with recommended treatment. Failure to submit such proof as required under this subdivision (B) shall result in the offender's

placement on the Internet registry in accordance with subdivision (A) of this subdivision (5).

(6) Sex offenders who have been designated by the department of corrections, pursuant to section 5411b of this title, as high-risk.

(7) A person 18 years of age or older who resides in this state, other than in a correctional facility, and who was required to register as a sex offender in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal, or tribal court, prior to taking up residence within this state, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old.

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the date and nature of the offender's conviction;

(7) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

(8) whether the offender complied with treatment recommended by the department of corrections;

(9) a statement that there is an outstanding warrant for the offender's arrest, if applicable~~; and~~

(10) the reason for which the offender information is accessible under this section; and

(11) whether the offender has been designated high-risk by the department of corrections pursuant to section 5411b of this title.

(c) The department shall have the authority to take necessary steps to obtain digital photographs of offenders whose information is required to be posted on the Internet and to update photographs as necessary. An offender who is requested by the department to report to the department or a local law

enforcement agency for the purpose of being photographed for the Internet shall comply with the request within 30 days.

(d) An offender's street address shall not be posted electronically. The identity of a victim of an offense that requires registration shall not be released.

(e) Information regarding a sex offender shall not be posted electronically if the conduct that is the basis for the offense is criminal only because of the age of the victim and the perpetrator is within 38 months of age of the victim.

(f) Information regarding a sex offender shall not be posted electronically prior to the offender reaching the age of 18, but such information shall be otherwise available pursuant to section 5411 of this title.

(g) Information on sex offenders shall be posted on the Internet for the duration of time for which they are subject to notification requirements under section 5401 et seq. of this title.

(h) Posting of the information shall include the following language: "This information is made available for the purpose of complying with 13 V.S.A. § 5401 et seq., which requires the Department of Public Safety to establish and maintain a registry of persons who are required to register as sex offenders and to post electronically information on sex offenders. The registry is based on the legislature's decision to facilitate access to publicly available information about persons convicted of sexual offenses. EXCEPT FOR OFFENDERS SPECIFICALLY DESIGNATED ON THIS SITE AS HIGH-RISK, THE DEPARTMENT OF PUBLIC SAFETY HAS NOT CONSIDERED OR ASSESSED THE SPECIFIC RISK OF REOFFENSE WITH REGARD TO ANY INDIVIDUAL PRIOR TO HIS OR HER INCLUSION WITHIN THIS REGISTRY AND HAS MADE NO DETERMINATION THAT ANY INDIVIDUAL INCLUDED IN THE REGISTRY IS CURRENTLY DANGEROUS. THE MAIN PURPOSE OF PROVIDING THIS DATA ON THE INTERNET IS TO MAKE INFORMATION MORE EASILY AVAILABLE AND ACCESSIBLE, NOT TO WARN ABOUT ANY SPECIFIC INDIVIDUAL. IF YOU HAVE QUESTIONS OR CONCERNS ABOUT A PERSON WHO IS NOT LISTED ON THIS SITE OR YOU HAVE QUESTIONS ABOUT SEX OFFENDER INFORMATION LISTED ON THIS SITE, PLEASE CONTACT THE DEPARTMENT OF PUBLIC SAFETY OR YOUR LOCAL LAW ENFORCEMENT AGENCY. PLEASE BE AWARE THAT MANY NONOFFENDERS SHARE A NAME WITH A REGISTERED SEX OFFENDER. Any person who uses information in this registry to injure, harass, or commit a criminal offense against any person included in the registry or any other person is subject to criminal prosecution."

(i) The department shall post electronically general information about the sex offender registry and how the public may access registry information. Electronically posted information regarding sex offenders listed in subsection (a) of this section shall be organized and available to search by the sex offender's name and the sex offender's county, city, or town of residence.

(j) The department shall adopt rules for the administration of this section and shall expedite the process for the adoption of such rules. The department shall not implement this section prior to the adoption of such rules.

(k) If a sex offender's information is required to be posted electronically pursuant to subdivision (a)(2) of this section, the department shall list the offender's convictions for any crime listed in subdivision 5401(10) of this title, regardless of the date of the conviction or whether the offender was required to register as a sex offender based upon that conviction.

Sec. 10. 13 V.S.A. § 5411b is amended to read:

§ 5411B. DESIGNATION OF HIGH-RISK SEX OFFENDER

(a) The department of corrections ~~may~~ shall evaluate a sex offender for the purpose of determining whether the offender is "high-risk" as defined in section 5401 of this title. The designation of high-risk under this section is for the purpose of identifying an offender as one who should be subject to increased public access to his or her status as a sex offender and related information, including internet access.

(b) After notice and an opportunity to be heard, a sex offender who is designated as high-risk shall have the right to appeal de novo to the superior court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(c) The department of corrections shall adopt rules for the administration of this section. The department of corrections shall not implement this section prior to the adoption of such rules.

(d) The department of corrections shall identify those sex offenders under the supervision of the department as of the date of passage of this act who are high-risk and shall designate them as such no later than September 1, ~~2005~~ 2009.

Sec. 11. APPLICABILITY

Secs. 5, 9, and 14 of this act (sex offender registry and Internet sex offender registry) shall apply only to the following persons:

(1) A person convicted prior to the effective date of this act who is under the supervision of the department of corrections.

(2) A person convicted on or after the effective date of this act.

(3)(A) A person convicted prior to the effective date of this act who is not under the supervision of the department of corrections and is subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13 unless the sex offender review committee determines pursuant to the requirements of this subdivision (3) that the person:

(1) has not been charged or convicted of a criminal offense since being placed on the registry; or

(2) has successfully reintegrated into the community.

(B)(1) No person's name shall be posted electronically pursuant to subdivision (3)(A) of this section before October 1, 2009.

(2) On or before July 1, 2009, the department of public safety shall provide notice of the right to petition under this subdivision to all persons convicted prior to the effective date of this act who are not under the supervision of the department of corrections and are subject to sex offender registry requirements under subchapter 3 of chapter 167 of Title 13.

(3) A person seeking a determination from the sex offender review committee that he or she is not subject to subdivision (3)(A) of this section shall file a petition with the committee before October 1, 2009. If a petition is filed before October 1, 2009, the petitioner's name shall not be posted electronically pursuant to subdivision (3)(A) of this section until after the sex offender review committee has ruled on the petition.

* * * Sex Offender Name Changes * * *

Sec. 12. 15 V.S.A. § 817 is added to read:

§ 817. CONSULTATION OF SEX OFFENDER REGISTRY WHEN FORM FILED

Upon receipt of a change-of-name form submitted pursuant to section 811 of this title, the probate court shall request the department of public safety to determine whether the person's name appears on the sex offender registry established by section 5402 of Title 13. If the person's name appears on the registry, the probate court shall not permit the person to change his or her name unless it finds, after permitting the department of public safety to appear, that there is a compelling purpose for doing so.

Sec. 13. 13 V.S.A. § 5402 is amended to read:

§ 5402. SEX OFFENDER REGISTRY

(a) The department of public safety shall establish and maintain a sex offender registry, which shall consist of the information required to be filed under this subchapter.

(b) All information contained in the registry may be disclosed for any purpose permitted under the law of this state, including use by:

(1) local, state and federal law enforcement agencies exclusively for lawful law enforcement activities;

(2) state and federal governmental agencies for the exclusive purpose of conducting confidential background checks;

(3) any employer, including a school district, who is authorized by law to request records and information from the Vermont criminal information center, where such disclosure is necessary to protect the public concerning persons required to register under this subchapter. The identity of a victim of an offense that requires registration shall not be released~~; and~~

(4) a person identified as a sex offender in the registry for the purpose of reviewing the accuracy of any record relating to him or her. The identity of a victim of an offense that requires registration shall not be released; and

(5) probate courts for purposes of conducting checks on persons applying for changes of name under section 811 of Title 15.

(c) The departments of corrections and public safety shall adopt rules, forms and procedures under chapter 25 of Title 3 to implement the provisions of this subchapter.

* * * Sex Offender Addresses on Internet * * *

Sec. 14. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

(1) the offender's name and any known aliases;

(2) the offender's date of birth;

(3) a general physical description of the offender;

(4) a digital photograph of the offender;

(5) the offender's town of residence;

(6) the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

(A) the offender has been designated as high-risk by the department of corrections pursuant to section 5411b of this title;

(B) the offender has not complied with sex offender treatment;

(C) there is an outstanding warrant for the offender's arrest; or

(D) the offender has been electronically posted for an offense committed in another jurisdiction which required the person's address to be electronically posted in that jurisdiction;

~~(6)~~(7) the date and nature of the offender's conviction;

~~(7)~~(8) if the offender is under the supervision of the department of corrections, the name and telephone number of the local department of corrections office in charge of monitoring the sex offender;

~~(8)~~(9) whether the offender complied with treatment recommended by the department of corrections;

~~(9)~~(10) a statement that there is an outstanding warrant for the offender's arrest, if applicable; and

~~(10)~~(11) the reason for which the offender information is accessible under this section.

* * *

(d) ~~An offender's street address shall not be posted electronically.~~ The identity of a victim of an offense that requires registration shall not be released.

* * *

* * * Risk Assessments * * *

Sec. 15. 28 V.S.A. § 204a is amended to read:

§ 204A. SEXUAL OFFENDERS; PRE-SENTENCE INVESTIGATIONS; RISK ASSESSMENTS; PSYCHOSEXUAL EVALUATIONS

* * *

(e) The department shall use assessment of offender risk for reoffense as the basis for classifying sex offenders and developing programming for sex offenders under the department.

(f) Nothing in this section shall be construed to infringe in any manner upon the department's authority to make decisions about programming for defendants or to create a right on the part of the offender to receive treatment in a particular program.

*** Statutes of Limitations in Child Sex Abuse Cases ***

Sec. 16. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, sexual assault, lewd and lascivious conduct, sexual exploitation of children, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under subsection 141(d) of Title 33, and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for sexual assault, lewd and lascivious conduct, and lewd or lascivious conduct with a child, alleged to have been committed against a child ~~16~~ under 18 years of age ~~or under~~, ~~shall be commenced within the earlier of the date the victim attains the age of 24 or six years from the date the offense is reported, and not after~~. ~~For purposes of this subsection, an offense is reported when a report of the conduct constituting the offense is made to a law enforcement officer by the victim~~ may be commenced at any time after the commission of the offense.

* * *

* * * Miscellaneous Provisions * * *

Sec. 17. 20 V.S.A. § 2061 is amended to read:

§ 2061. FINGERPRINTING

* * *

(m) The Vermont crime information center may electronically transmit fingerprints and photographs of accused persons to the Federal Bureau of Investigation (FBI) at any time after arrest, summons, or citation ~~for the sole purpose of identifying an individual. However, the Vermont crime information center shall not forward fingerprints and photographs to the FBI for the purpose of inclusion in the National Crime Information Center Database until after arraignment~~. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and the

defendant is acquitted, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs. If the Vermont crime information center forwards fingerprints and photographs to the FBI ~~after arraignment~~ and all charges against the defendant are dismissed, the Vermont crime information center shall request the FBI to destroy the fingerprints and photographs, unless the attorney for the state can show good cause why the fingerprints and photographs should not be destroyed.

* * *

Sec. 18. 13 V.S.A. § 7044 is amended to read:

§ 7044. SENTENCE CALCULATION; NOTICE TO DEFENDANT

(a) Within 30 days after sentencing in all cases where the court imposes a sentence which includes a period of incarceration to be served, the commissioner of corrections shall provide to the court and the office of the defender general a calculation of the potential shortest and longest lengths of time the defendant may be incarcerated taking into account the provisions for reductions of term pursuant to 28 V.S.A. § 811 based on the sentence or sentences the defendant is serving, and the effect of any credit for time served as ordered by the court pursuant to 13 V.S.A. § 7031. The commissioner's calculation shall be a public record.

(b) In all cases where the court imposes a sentence which includes a period of incarceration to be served, the department of corrections shall provide the defendant with a copy and explanation of the sentence calculation made pursuant to subsection (a) of this section.

Sec. 19. Rule 804a of the Vermont Rules of Evidence is amended to read:

Rule 804a. HEARSAY EXCEPTION; PUTATIVE VICTIM AGE 12 OR UNDER; PERSON ~~IN NEED OF GUARDIANSHIP~~ WITH DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS

(a) Statements by a person who is a child 12 years of age or under or who is a person ~~in need of guardianship as defined in 14 V.S.A. § 3061~~ with a mental illness as defined in 18 V.S.A. § 7101(14) or a developmental disability as defined in 18 V.S.A. § 8722(2) at the time the statements were made are not excluded by the hearsay rule if the court specifically finds at the time they are offered that:

(1) the statements are offered in a civil, criminal, or administrative proceeding in which the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is a putative victim of sexual assault under 13 V.S.A. § 3252, aggravated sexual assault under 13 V.S.A. § 3253,

aggravated sexual assault of a child under 13 V.S.A. § 3253a, lewd or lascivious conduct under 13 V.S.A. § 2601, lewd or lascivious conduct with a child under 13 V.S.A. § 2602, incest under 13 V.S.A. § 205, abuse, neglect, or exploitation under 33 V.S.A. § 6913, sexual abuse of a vulnerable adult under 13 V.S.A. § 1379, or wrongful sexual activity and the statements concern the alleged crime or the wrongful sexual activity; or the statements are offered in a juvenile proceeding under chapter 52 of Title 33 involving a delinquent act alleged to have been committed against a child 13 years of age or under or a person ~~in need of guardianship~~ with a mental illness or developmental disability if the delinquent act would be an offense listed herein if committed by an adult and the statements concern the alleged delinquent act; or the child is the subject of a petition alleging that the child is in need of care or supervision under chapter 53 of Title 33, and the statement relates to the sexual abuse of the child;

(2) the statements were not taken in preparation for a legal proceeding and, if a criminal or delinquency proceeding has been initiated, the statements were made prior to the defendant's initial appearance before a judicial officer under Rule 5 of the Vermont Rules of Criminal Procedure;

(3) the child or person ~~in need of guardianship~~ with a mental illness or developmental disability is available to testify in court or under Rule 807; and

(4) the time, content, and circumstances of the statements provide substantial indicia of trustworthiness.

(b) Upon motion of either party in a criminal or delinquency proceeding, the court shall require the child or person ~~in need of guardianship~~ with a mental illness or developmental disability to testify for the state.

Sec. 20. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. Deputy state's attorneys may not enter upon the duties of the

office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy state's attorney may prosecute cases in another county if the state's attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 20a to read as follows:

Sec. 20a. DEPARTMENT OF CORRECTIONS WORKING GROUP

(a) The commissioner of the department of corrections shall convene a working group for the purpose of identifying ways to provide assistance to those municipalities that are being asked to take a disproportionately high number of department supervisees into their communities. The working group, in consultation with the joint committee on corrections oversight, shall consider how to employ strategies that facilitate community reintegration that do not unduly burden the services and budgets of communities with a large number of supervisees.

(b) The working group shall comprise the commissioner and at least four representatives of communities that have a disproportionate number of supervisees as residents. Community representatives shall be selected by the commissioner, and shall represent all geographical areas of the state that have a disproportionate number of supervisees as residents.

(c) The working group shall present its report to the house committees on judiciary and on corrections and institutions, and the senate committee on judiciary no later than January 10, 2010.

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except as follows:

(1) Sec. 19 of this act shall take effect on July 2, 2009.

(2) Sec. 14 of this act shall take effect July 1, 2010.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Campbell
Senator Mullin
Senator Sears

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

House Proposal of Amendment Concurred In

J.R.S. 26.

House proposal of amendment to joint Senate resolution entitled:

Joint resolution relating to the legalization of industrial hemp.

Was taken up.

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

Whereas, industrial hemp refers to the nondrug oilseed and fiber varieties of *Cannabis* which have less than three-tenths of one percent (0.3%) tetrahydrocannabinol (THC) and which are cultivated exclusively for fiber, stalk, and seed, and

Whereas, industrial hemp is genetically distinct from drug varieties of *Cannabis* (also known as marijuana), and the flowering tops of industrial hemp do not produce any psychoactive drug effect when smoked or ingested, and

Whereas, Congress did not intend to prohibit the production of industrial hemp when restricting the production, possession and use of marijuana, and

Whereas, the legislative history of the Marijuana Tax Act of 1937

(50 Stat. 551), the statutory source for the federal definition of marijuana, shows that industrial hemp farmers and manufacturers of industrial hemp products were assuaged by the Federal Bureau of Narcotics commissioner, that the proposed legislation bore no threat to hemp-related activities, and

Whereas, the United States Court of Appeals for the Ninth Circuit ruled in Hemp Industries v. Drug Enforcement Administration, 357 F.3d 1012 (9th Cir. 2004), that the federal Controlled Substances Act of 1970 (21 U.S.C. Sec. 812(b)) explicitly excludes nonpsychoactive industrial hemp from the definition of marijuana, and the federal government declined to appeal that decision, and

Whereas, the Controlled Substances Act of 1970 specifies the findings to which the government must attest in order to classify a substance as a Schedule I drug, and those findings include that the substance has a high potential for

abuse, has no accepted medical use, and has a lack of accepted safety for use, none of which applies to industrial hemp, and

Whereas, Article 28, § 2 of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, states that, "This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes," and

Whereas, industrial hemp is commercially produced in more than 30 countries, including Australia, Canada, China, Great Britain, France, Germany and Romania, without undue restriction or complications, and

Whereas, American companies are forced to import millions of dollars' worth of hemp seed and fiber products, denying American farmers the opportunity to compete for and share in profits for cultivating hemp, and

Whereas, nutritious hemp foods can be found in grocery stores nationwide, and strong durable hemp fibers can be found in the interior parts of millions of American cars, and

Whereas, buildings are being constructed of a hemp and lime mixture that sequesters carbon, and

Whereas, retail sales of hemp products in this country are estimated to be $365 million annually, and

Whereas, industrial hemp is a high-value low-input crop that is not genetically modified, requires little or no pesticide use, can be dry-land farmed, and uses less fertilizer than wheat or corn, and

Whereas, the reluctance of the United States Drug Enforcement Administration to permit industrial hemp farming is denying agricultural producers in this country the ability to benefit from a high-value low-input crop, which can provide significant economic benefits to producers and manufacturers, and

Whereas, the United States Drug Enforcement Administration has the authority under the Controlled Substances Act to allow this state to regulate industrial hemp farming under existing laws and without requiring individual federal applications and licenses, and

Whereas, the Vermont General Assembly passed Act 212 in the 2007 session, which established a process wherein Vermont producers could take advantage of agronomic and commercial opportunities related to industrial hemp, *now therefore be it*

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

That the General Assembly urges Congress to:

1) Recognize industrial hemp as a valuable agricultural commodity;

2) Define industrial hemp in federal law as a nonpsychoactive and genetically identifiable species of the genus *Cannabis*;

3) Acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and

4) Assist United States producers by removing barriers to state regulation of the commercial production of industrial hemp, *and be it further*

***Resolved*:** That the United States Drug Enforcement Administration allow the states to regulate industrial hemp farming without federal applications, licenses or fees, *and be it further*

***Resolved*:** That the Secretary of State be directed to send a copy of this resolution to the Administrator of the United States Drug Enforcement Administration, United States Secretary of Agriculture Tom Vilsack, and the Vermont Congressional delegation.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Committees of Conference Appointed

H. 313.

An act relating to near-term and long-term economic development.

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

Senator Illuzzi
Senator Miller
Senator Hartwell

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

H. 427.

An act relating to making miscellaneous amendments to education law.

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

Senator Starr
Senator Doyle
Senator Nitka

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 47, S. 125.

Rules Suspended; Joint Senate Resolution Messaged

On motion of Senator Shumlin, the rules were suspended, and the following joint resolution was ordered messaged to the House forthwith:

J.R.S. 32.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following a bill were severally ordered delivered to the Governor forthwith:

S. 70, S. 91.

Rules Suspended; Consideration Interrupted by Recess

H. 83.

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

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

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Shumlin moved that the Senate recess until four o’clock in the afternoon.

Called to Order

At four o'clock and fifteen minutes the Senate was called to order by the President.

Consideration Resumed; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 83.

Consideration was resumed on House bill entitled:

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

Senator MacDonald, for the Committee on Natural Resources and Energy, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended by striking out Sec. 9 in its entirety and inserting in lieu thereof the following:

Sec. 9. 10 V.S.A. § 1944 is amended to read:

§ 1944. UNDERGROUND STORAGE TANK LOAN ASSISTANCE PROGRAM

* * *

(b) Loans shall be made to the person who owns the existing motor fuel tanks or will own the new motor fuel tanks. Loans will be in accordance with terms and conditions established by the secretary which shall include but not be limited to requirements that:

* * *

(4) loans have a satisfactory maturity date, in no case later than ten years from the date of the loan. The secretary may, upon a showing of financial hardship by the person who took out the loan, extend the maturity date for not more than an additional five years.

(c) The loans will be at a zero interest rate~~, except that a person who owns five or more facilities shall have an interest rate of four percent. As used in this subsection, "facility" shall mean the property upon which a category one tank is located~~.

* * *

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

Senator MacDonald, for the Committee on Finance, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

Senator Bartlett, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Natural Resources and Energy.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Proposals of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 136.

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

An act relating to executive branch fees.

Was taken up for immediate consideration.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 20 V.S.A. § 1815(a), in subdivisions (3) and (4), by striking out in each instance: ". No fee shall be charged under this subdivision to a defendant whom the court has determined to be indigent"

Second: In Sec. 4, 22 V.S.A. § 724(a) by striking out the following: "~~(5) Other funds as may be appropriated by the legislature.~~" and inserting in lieu thereof the following: (5) ~~Other funds as may be appropriated by the legislature~~ Revenues from the sale of publications.

Third: By striking out Secs. 11 and 12 and inserting in lieu thereof fifteen new sections to be numbered Secs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 to read as follows:

* * * Pet Vendors * * *

Sec. 11. 20 V.S.A. § 3681 is amended to read:

§ 3681. KENNEL PERMIT

The owner or keeper of ~~two~~ one or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes~~, except for his or her own use,~~ shall apply to the ~~municipal~~ clerk of the ~~town or city~~ municipality in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the ~~commissioner~~ secretary and pay the clerk a fee of $10.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, ~~shall~~ apply to the permit which shall be in addition to other permits required. A kennel permit ~~shall expire~~ expires on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder. A person convicted of animal cruelty under 13 V.S.A. § 352 is not eligible for a kennel permit under this section.

Sec. 12. 20 V.S.A. chapter 194 is amended to read:

CHAPTER 194. WELFARE OF ANIMALS; SALE OF ANIMALS

Subchapter 1. Generally

§ 3901. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise:

(1) "Adequate feed" means the provision at suitable intervals, not exceeding 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. All foodstuff shall be served in a clean and sanitary manner.

(2) "Adequate water" means a constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

(3) "Ambient temperature" means the temperature surrounding the animal.

(4) "Animal" means any dog or cat, rabbit, rodent, ~~nonhuman primate,~~ bird, or other warm-blooded vertebrate but ~~shall~~ does not include horses, cattle, sheep, goats, swine, and domestic fowl.

(5) "Animal shelter" means a facility ~~which~~ that is used to house or contain animals and is owned, operated, or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of animals.

(6) "Secretary" means the secretary of agriculture, food and markets.

(7) "~~Dealer~~ Pet dealer" means any person, other than a pet shop or a veterinarian, who sells, exchanges, or donates, or offers to sell, exchange, or donate animals~~, but shall not include a person who makes disposition only of offspring from animals maintained by him only as household pets~~.

(8) "Euthanize" means to humanely destroy an animal by a method producing instantaneous unconsciousness and immediate death, or by anesthesia produced by an agent ~~which~~ that causes painless loss of consciousness and death during the loss of consciousness. "Euthanasia" means the humane destruction of animals in accordance with this subdivision.

(9) "Housing facility" means any room, building, or area used to contain a primary enclosure or enclosures.

(10) ~~"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity~~ "Consumer" means an individual who purchases an animal from a person licensed or registered under this chapter.

(11) "Pet shop" means a place of retail or wholesale business that is not part of a private dwelling where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

(12) "Primary enclosure" means any structure used to immediately restrict an animal or animals, excluding household pets, to a limited amount of space, such as a room, pen, cage, compartment, or hutch.

(13) "Public auction" means any place or establishment where dogs or cats are sold at auction to the highest bidder whether individually, as a group, or by weight.

(14) "Fair" means any public or privately operated facility where animals are confined for the purpose of display ~~and/or~~ or sale or both or for viewing.

(15) ~~"Pet merchant" means any person who operates a pet shop or who acts as a dealer.~~ "Rescue organization" means an organization that accepts more than five animals in a calendar year for the purpose of finding adoptive homes for the animals and that is one or more of the following:

(A) Licensed as a pet shop.

(B) A nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, but is not an animal shelter.

(C) Registered as an animal shelter with the agency of agriculture, food and markets under section 3903 of this title.

Subchapter 2. Animal Welfare

§ 3902. REGISTRATION OF FAIRS

No person may operate a fair as defined under section 3901 of this title unless a certificate of registration for the fair has been granted by the secretary. Application for the certificate shall be made in a manner provided by the secretary. No fee shall be required for the certificate. Certificates of registration shall be valid for a period of one year or until revoked, and may be removed for like periods upon application in the manner provided.

§ 3903. REGISTRATION OF ANIMAL SHELTERS AND RESCUE ORGANIZATIONS

(a) No person may operate an animal shelter ~~after the expiration of six months following the effective date of this chapter~~ or rescue organization unless a certificate of registration for the animal shelter or rescue organization has been granted by the secretary. Application for the certificate shall be made in the manner provided by the secretary. No fee ~~shall be~~ is required for the certificate. Certificates of registration ~~shall be~~ are valid for a period of one year or until revoked, and may be renewed for like periods upon application in the manner provided.

(b) An animal shelter or rescue organization registered under this ~~chapter~~ subchapter shall not accept an animal unless the ~~donor~~ person transferring the animal to the animal shelter provides the following information: the name and address of the ~~donor~~ person transferring the animal and, if known, the name of the animal, its vaccination history, and other information concerning the background, temperament, and health of the animal.

§ 3905. PUBLIC AUCTIONS

No person may operate a public auction as defined in this chapter ~~after the expiration of six months following the effective date of this chapter~~ unless a license to operate the auction has been granted by the secretary. The license period shall be April 1 to March 31, and the license fee ~~shall be~~ is $10.00 for each license period or part thereof.

§ 3906. LICENSING OF PET ~~MERCHANTS~~ SHOPS

~~(a)~~ No person may transact business as a pet ~~merchant, as defined in this chapter,~~ shop unless a license for that purpose has been granted by the secretary to that person. Application for the license shall be made in the manner provided by the secretary. The license period shall be April 1 to March 31, and the license fee shall be $150.00 for each license period or part thereof.

§ 3907. DENIAL OR REVOCATION OF REGISTRATION OR LICENSE

Issuance of a certificate of registration may be denied to any animal shelter, rescue organization, or fair, or a license denied to any public auction, ~~or~~ pet ~~merchants~~ shop, or any certificate or license previously granted under this ~~chapter,~~ subchapter may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate for the purposes of this ~~chapter~~ subchapter, or if the feeding, watering, sanitizing, and housing practices of the animal shelter, rescue organization, fair, public auction, pet ~~merchant~~ shop, as the case may be, are not consistent with this ~~chapter~~ subchapter or with rules adopted under this ~~chapter~~ subchapter.

§ 3908. ADOPTION OF ~~REGULATIONS~~ RULES

The secretary may ~~as he deems necessary~~ adopt, amend, revise, and repeal rules consistent with this ~~chapter~~ subchapter for the purpose of carrying out its purposes. The rules may include~~, but need not be limited to,~~ provisions relating to humane transportation to and from registered or licensed premises, records of purchase and sale, identification of animals, primary enclosures, housing facilities, sanitation, euthanasia, ambient temperatures, feeding, watering, and adequate veterinary medical care, with respect to animals kept or cared for at premises licensed or registered under this ~~chapter~~ subchapter. The secretary may ~~at his discretion,~~ adopt in whole or in part those portions of the rules of the secretary of agriculture under Public Law 89-544, commonly known as the Laboratory Animal Welfare Act~~, which~~ that are consistent with the purposes of this ~~chapter~~ subchapter.

§ 3909. SALE OF ANIMALS BY HUMANE SOCIETY

The board of directors of an incorporated humane society shall determine the method of disposition of animals released by it. Any proceeds derived from the sale of animals by the society shall be paid to the clerk or treasurer of the humane society and no part of the proceeds shall accrue to any individual. Proceeds from the sale of animals by any person authorized by a municipality to dispose of such animals shall revert to the treasury of the municipality.

§ 3910. EXCEPTIONS

This ~~chapter~~ subchapter shall not apply to any place or establishment operated as an animal hospital under the supervision of a duly licensed veterinarian in connection with the treatment, alleviation, or prevention of diseases.

§ 3911. PENALTIES

(a) Any person licensed or registered under this ~~chapter,~~ subchapter who fails to provide animals under the person's care or custody with adequate food or adequate water~~, as defined in section 3901 of this title,~~ or who fails to house animals in the person's care or custody in a manner which is adequate for their welfare, shall be fined not more than $500.00.

(b) Any person who operates a fair~~,~~ or public auction~~,~~ or who transacts business as a pet ~~merchant,~~ shop, animal shelter, or rescue organization without being duly licensed or without possessing a proper certificate of registration, as the case may be, as required under this ~~chapter~~ subchapter, or who violates any provision of this chapter or of any rule lawfully adopted under its authority for which no other penalty is provided~~,~~ shall be fined not more than $300.00 or imprisoned for not more than six months~~,~~ or both.

(c) The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

* * *

§ 3914. SPECIAL FUNDS

Fees collected under this chapter shall be credited to a special fund and shall be available to the agency of agriculture, food and markets to offset the cost of providing the services.

Subchapter 3. Sale of Dogs and Cats

§ 3921. SALE OF A DOG OR CAT; RESTITUTION

(a) If, within seven days following the sale of a dog or cat, a veterinarian of the consumer's choosing certifies that the dog or cat is unfit for purchase due to illness or the presence of signs of contagious or infectious disease or if, within one year, the veterinarian certifies that the dog or cat has a congenital malformation or hereditary disease, the consumer may act under subdivision (1) of this subsection, or if mutually agreed upon, under subdivision (2) or (3) of this subsection. The consumer may have the right to one of the following:

(1) Return the dog or cat and receive a full refund of the purchase price, including sales tax, and receive reasonable veterinary fees related to

certification under this section. A veterinary finding of common intestinal parasites in an otherwise healthy pet is not grounds for declaring a dog or cat unfit, nor is an injury or illness sustained subsequent to the consumer taking possession of a dog or cat.

(2) Return the dog or cat in exchange for another dog or cat of the consumer's choice of equivalent value and receive reasonable veterinary costs related to certification under this subsection.

(3) Retain the dog or cat and receive reimbursement from the pet dealer or pet shop for reasonable veterinary service for the purpose of curing or attempting to cure the dog or cat. In no case shall this service exceed the purchase price of the dog or cat. Veterinary service is reasonable if it compares to similar service rendered by other veterinarians in the area, but in no case may it cover costs not directly related to the certification of unfitness.

(b) The secretary shall prescribe a form for and the content of the certificate to be used under subsection (a) of this section. The form shall include an identification of the type of dog or cat, the owner, date, and diagnosis, the treatment recommended, if any, and an estimated cost of the treatment, and the provisions of subsection (a) of this section.

(c) Every pet dealer or pet shop that sells a dog or cat to a consumer shall provide the consumer at the time of sale with the written form prescribed by the secretary. The notice may be included in a written contract, in a certificate of the history of the dog or cat, or in another separate document.

(d) The secretary shall prescribe by rule other information to be provided in writing by the pet dealer or pet shop to the consumer at the time of sale. This information shall include a description of the dog or cat, including breed; date of purchase; the name, address, and telephone number of the consumer; and the purchase price. Certification of this document occurs when signed by the pet dealer or pet shop.

(e) Refund or reimbursement under subsection (a) of this section shall be made within ten business days following receipt of the signed veterinary certification. The certification shall be presented to the pet dealer or pet shop within three business days by the consumer.

§ 3922. CHALLENGE BY PET DEALER OR PET SHOP

A pet dealer or pet shop may contest a demand for reimbursement, refund, or exchange under section 3921 of this title by requiring the consumer to produce the dog or cat for examination by a licensed veterinarian of the pet dealer's or pet shop's designation. If the consumer and the pet dealer or pet shop are unable to reach an agreement under provisions of this section within

ten business days of an examination, the consumer may initiate an action in a court of competent jurisdiction in the locality where the consumer resides to obtain a refund, exchange, or reimbursement. Nothing in this section shall limit the rights or remedies otherwise available to the consumer under any other law.

§ 3923. ADMINISTRATIVE PENALTIES

The secretary may assess administrative penalties under sections 15–17 of Title 6, not to exceed $1,000.00, for violations of this chapter.

§ 3924. EXEMPTIONS

A duly incorporated humane society, rescue organization, or animal shelter that offers dogs or cats for adoption is exempt from the requirements of this subchapter, except that dogs or cats that are imported into the state for sale, resale, exchange, or donation are not exempt when offered for adoption by a humane society, rescue organization, or animal shelter.

Subchapter 4. Health Certificates for Importation

§ 3931. HEALTH CERTIFICATE FOR TRANSPORT INTO STATE

A dog, cat, ferret, or wolf-hybrid imported into the state for sale, resale, exchange, or donation shall be accompanied by an official health certificate or similar certificate of inspection for the dog, cat, ferret, or wolf-hybrid issued by a veterinarian licensed in the state or country of origin. The certificate of health inspection shall certify the following:

(1) That the dog, cat, ferret, or wolf-hybrid has been examined and is free of visible signs of infections or contagious or communicable disease.

(2) That if the dog, cat, ferret, or wolf-hybrid is age-eligible, the dog, cat, ferret, or wolf-hybrid has a current rabies vaccination.

§ 3932. RULEMAKING

The agency of agriculture, food and markets may adopt rules regarding the issuance and contents of a health certificate required under this subchapter.

Sec. 13. 20 V.S.A. § 3815 is amended to read:

§ 3815. DOG, CAT, AND WOLF-HYBRID SPAYING AND NEUTERING PROGRAM

* * *

(c) Only a dog, cat, or wolf-hybrid acquired by adoption is eligible for funding from the animal spaying and neutering program established under this section, except that a dog, cat, or wolf-hybrid imported into the state for sale,

resale, exchange, or donation is not eligible for funding from the animal spaying and neutering program established under this section. For purposes of this subsection, a nominal fee or donation required for adoption of a dog, cat, or wolf-hybrid shall not constitute the purchase of the animal.

Sec. 14. 20 V.S.A. § 3546 is amended to read:

§ 3546. INVESTIGATION OF ~~VICIOUS~~ DOMESTIC PETS OR WOLF-HYBRIDS; ORDER

* * *

~~(e) The procedures provided in this section shall not apply if the voters of a municipality, at a special or annual meeting duly warned for the purpose, have authorized the legislative body of the municipality to regulate domestic pets or wolf-hybrids by ordinances that are inconsistent with this section, in which case those ordinances shall apply.~~

Sec. 15. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY ~~TOWNS~~ MUNICIPALITIES

The legislative body of a ~~city or town~~ municipality by ordinance may regulate the keeping, leashing, muzzling, restraint, impoundment, and, in conformance with section 3546 of this title, destruction of domestic pets or wolf-hybrids and their running at large.

Sec. 16. 24 V.S.A. § 2291is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a ~~town, city,~~ municipality or incorporated village ~~shall have~~ has the following powers:

* * *

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling, restraint, and impoundment~~, and destruction~~.

* * *

* * * Animal Control Officers * * *

Sec. 17. 13 V.S.A. § 351(4) is amended to read:

(4) "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11), auxiliary state police officers, deputy game wardens, humane society officer, elected or appointed animal control officer,

employee or agent, local board of health officer or agent, or any officer authorized to serve criminal process.

Sec. 18. REPEAL

Chapter 199 of Title 20 (sale of dogs and cats) is repealed.

* * * Fish and Wildlife * * *

Sec. 19. 10 V.S.A. §4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

(2) ~~All remaining permits~~ Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the department for a $10.00 fee for residents. Ten percent of ~~these shall~~ the remaining permits may be issued to nonresident applicants for a $25.00 fee.

* * * Criminal and Civil Penalty Assessments * * *

Sec. 20. 13 V.S.A. § 7282 is amended to read:

§ 7282. ASSESSMENT

(a) In addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense or any civil penalty imposed for a traffic violation, including any violation of a fish and wildlife statute or regulation,

violation of a motor vehicle statute, or violation of any local ordinance relating to the operation of a motor vehicle, except violations relating to seat belts and child restraints and ordinances relating to parking violations, the clerk of the court or judicial bureau shall levy an additional fee of:

* * *

(8)(A) For any offense or violation committed after June 30, 2006, but before July 1, 2008, $26.00, of which $18.75 shall be deposited in the victims' compensation special fund and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

* * *

(C) For any offense or violation committed after June 30, 2009, $41.00, of which $33.75 shall be deposited in the victims' compensation special fund, and $2.25 shall be deposited into the criminal justice training council special fund established in section 2363 of Title 20.

(b) The fees imposed by this section shall be used for the purposes set out in section 7281 of this title and shall not be waived by the court.

(c) SIU ASSESSMENT Notwithstanding section 7281 of this title and subsection (b) of this section, in addition to any penalty or fine imposed by the court or judicial bureau for a criminal offense committed after July 1, 2009, the clerk of the court or judicial bureau shall levy an additional fee of $100.00 to be deposited with the specialized investigative unit grants board created in 24 V.S.A. § 1940(c) to be used to pay for staffing for specialized investigative units.

* * * Municipal Clerks * * *

Sec. 21 . 32 V.S.A. § 1671(a) is amended to read:

(a) For the purposes of this section a "page" is defined as a single side of a leaf of paper on which is printed, written, or otherwise placed information to be recorded or filed. The maximum covered area on a page shall be 71/2 inches by 14 inches. All letters shall be at least one-sixteenth inch in height or in at least eight point type. Unless otherwise provided by law, the fees to town clerks shall be as follows:

(1) For recording a trust mortgage deed as provided in section 1155 of Title 24, $10.00 per page;

(2) For filing or recording a copy of a complaint to foreclose a mortgage as provided in subsection 4523(b) of Title 12, ~~$6.00~~ $10.00 per page;

* * *

(6) Notwithstanding any other provision of law to the contrary, for the recording or filing, or both, of any document that is to become a matter of public record in the town clerk's office, or for any certified copy of such document, a fee of ~~$8.00~~ $10.00 per page shall be charged; except that for the recording or filing, or both, of a property transfer return, a fee of ~~$8.00~~ $10.00 shall be charged;

* * *

(8) For survey plats filed in accordance with chapter 17 of Title 27, a fee of ~~$6.00~~ $15.00 per 11 inch by 17 inch sheet, ~~$8.00~~ $15.00 per 18 inch by 24 inch sheet, and ~~$10.00~~ $15.00 per 24 inch by 36 inch sheet shall be charged.

Sec. 22. 32 V.S.A. § 9606(d) is amended to read:

(d) For receiving a property transfer return and tax payment, if any, under this chapter, there shall be paid to the town clerk at the time of filing a fee of ~~$7.00~~ $10.00.

* * * Home Health Agencies * * *

Sec. 23. 33 V.S.A. §1955a(a) is amended to read:

(a) Beginning July 1, ~~2005~~ 2009, each home health agency's assessment shall be ~~18.45~~ 17.69 percent of its net operating revenues from core home health care services, excluding revenues for services provided under Title XVIII of the federal Social Security Act. The amount of the tax shall be determined by the director based on the home health agency's most recent audited financial statements at the time of submission, a copy of which shall be provided on or before December 1 of each year to the office. For providers who begin operations as a home health agency after January 1, 2005, the tax shall be assessed as follows:

* * *

* * * Executive Branch Fees * * *

Sec. 24. EXECUTIVE BRANCH FEES; 2010 LEGISLATIVE REVIEW

Notwithstanding 32 V.S.A. §605(b), in addition to the fee report and request covering all fees listed in 32 V.S.A. §605(b)(2), the governor shall also submit a fee report and request covering the fees listed in 32 V.S.A. §605(b)(3) to the general assembly on the third Tuesday of the 2010 legislative session.

Sec. 25. EFFECTIVE DATES

This act shall take effect on July 1, 2009, except that this section and Secs. 1, 2, 6, 7, and 24 shall take effect on passage.

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposals of amendment.

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

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 15.

Senator McCormack, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House bill entitled:

An act relating to aquatic nuisance control.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment, and that the bill be further amended as follows:

First: In Sec. 1, 10 V.S.A. § 1451, by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) It is the policy of the state of Vermont to prevent the infestation and proliferation of invasive species in the state that result in negative environmental impacts, including habitat loss and a reduction in native biodiversity along with adverse social and economic impacts and impacts to the public health and safety.

(3) The agency of agriculture, food and markets and the department of forests, parks and recreation have established an informal working group to address invasive and noxious weeds, but additional authority is necessary for the agency of natural resources to adequately respond to invasive aquatic nuisance species.

And by renumbering the following subdivisions accordingly.

Second: By striking out Sec. 10c in its entirety and inserting in lieu thereof a new Sec. 10c to read as follows:

Sec. 10c. AGENCY OF NATURAL RESOURCES REPORT ON INVASIVE SPECIES

On or before January 15, 2010, the agency of natural resources, after consultation with the invasive and noxious plants working group administered by the agency of agriculture, food, and markets and the department of forests, parks and recreation, shall submit to the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house committee on fish, wildlife and water resources a report that shall include the following:

(1) A summary of the economic and environmental impact of invasive species on the state;

(2) A summary of how invasive species are currently regulated in the state;

(3) A summary of how state agencies and affected state industry respond to invasive species outbreaks in the state;

(4) Recommendations for improving state regulation of and response to the threat and spread of invasive species; and

(5) Recommendations for providing and coordinating public education and outreach regarding invasive species.

Third: In Sec. 11, subsection (a), by striking out the second period at the end of the sentence

RICHARD J. MCCORMACK
ROBERT M. HARTWELL
DIANE SNELLING

Committee on the part of the Senate

STEVEN C. ADAMS
JIM MCCULLOUGH
KATE WEBB

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 86.

Senator Shumlin, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House bill entitled:

An act relating to the regulation of professions and occupations.

Respectfully reports that it has met and considered the same and recommends as follows:

First: That the Senate recede from its *Third* proposal of amendment;

Second: That the House accede to the Senate's First, Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth proposals of amendment;

And when so amended, that the bill ought to pass.

WILLIAM T. DOYLE
RANDY BROCK
JEANETTE K. WHITE

Committee on the part of the Senate

DEBBIE EVANS
RONALD E. HUBERT
LAWRENCE TOWNSEND

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Rules Suspended; Proposal of Amendment; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 453.

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

An act relating to receivership of long-term care facilities.

Was taken up for immediate consideration.

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

Sec. 1. 33 V.S.A. chapter 71 is amended to read:

CHAPTER 71. ~~LICENSING OF NURSING HOMES~~ REGULATION OF LONG-TERM CARE FACILITIES

Subchapter 1. General Provisions

§ 7101. POLICY

The purpose of this chapter is to provide for the development, establishment and enforcement of standards for the construction, maintenance ~~and~~, operation, provision of receivership and dissolution of ~~nursing homes and similar institutions~~ long-term care facilities in which medical, nursing, or other ~~remedial~~ care is rendered, ~~and of homes for the aged,~~ which will promote safe surroundings, adequate care, and humane treatment, safeguard the health of, safety of, and continuity of care to residents, and protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7102. DEFINITIONS

~~The following words and phrases, as used in~~ For purposes of this chapter~~, have the following meanings unless otherwise provided~~:

~~(1) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:~~

~~(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and~~

~~(B) Level IV, which provides personal care, as described in subdivision (A), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care;~~

~~(2) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness or delinquency;~~

~~(3) "Licensing agency" means the agency of human services, or the department or division within the agency as the secretary of human services may designate;~~

~~(4) "Maternity home" means a place, other than a hospital as defined by statute, which maintains and operates facilities, for profit or otherwise, accommodating a person or persons, unrelated to the home operator, who require maternity care;~~

~~(5) "Maternity care" means a high level of nursing care, prescribed by the physician, and medical care required by obstetrical patients prior to delivery, during delivery, and for such period following delivery as the physician may indicate. The term "maternity care" shall also include care of the newborn in accordance with procedures and techniques recommended in "Hospital Care of Newborn Infants," most recent edition published by the American Academy of Pediatrics;~~

~~(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment and skill and meet the standards of the nursing regimen, or the medical regimen, or both, as defined in 26 V.S.A. § 1572(4) and (5);~~

~~(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:~~

~~(A) Skilled nursing care and related services for residents who require medical or nursing care.~~

~~(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.~~

~~(C) On a 24-hour basis, health related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care;~~

~~(8) "Person" means any individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity. Whenever used in any provision of this chapter which prescribes or imposes a fine or imprisonment, or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation,~~

~~the officers thereof; a firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine;~~

(1) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

~~(9)~~(2) "Facility" means a residential care home, ~~maternity home,~~ nursing home, assisted living residence, home for the terminally ill, or therapeutic community residence licensed or required to be licensed pursuant to the provisions of this chapter.

~~(10)~~(3) "Home for the terminally ill" means a place providing services specifically for three or more dying people, including room, board, personal care and other assistance for the residents' emotional, spiritual, and physical well-being. ~~A home for the terminally ill shall not be considered a nursing home, residential care home or any other facility regulated by this chapter.~~

~~(11) "Assisted living residence" means a program which combines housing, health and supportive services for the support of resident independence and aging in place. Within a homelike setting, assisted living units offer, at a minimum, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living promotes resident self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity.~~

(4) "Licensee" means any person, other than a receiver appointed under this chapter, which is licensed or required to be licensed to operate a facility.

(5) "Licensing agency" means the agency of human services or the department or division within the agency as the secretary of human services may designate.

(6) "Nursing care" means the performance of services necessary in caring for the sick or injured that require specialized knowledge, judgment, and skill and meet the standards of nursing as defined in 26 V.S.A. § 1572.

(7) "Nursing home" means an institution or distinct part of an institution which is primarily engaged in providing to its residents any of the following:

(A) Skilled nursing care and related services for residents who require medical or nursing care.

(B) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(C) On a 24-hour basis, health-related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional care.

(8) "Owner" means the holder of the title to the property on or in which the facility is maintained.

(9) "Resident" means any person who lives in and receives services or care in a facility.

(10) "Residential care home" means a place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board, and personal care to three or more residents unrelated to the home operator. Residential care homes shall be divided into two groups, depending upon the level of care they provide, as follows:

(A) Level III, which provides personal care, defined as assistance with meals, dressing, movement, bathing, grooming, or other personal needs, or general supervision of physical or mental well-being, including nursing overview and medication management as defined by the licensing agency by rule, but not full-time nursing care; and

(B) Level IV, which provides personal care, as described in subdivision (A) of this subdivision (10), or general supervision of the physical or mental well-being of residents, including medication management as defined by the licensing agency by rule, but not other nursing care.

(11) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

Subchapter 2. Licensing of Long-Term Care Facilities

§ 7103. LICENSE

(a) A person shall not operate a nursing home, ~~maternity home,~~ assisted living residence, home for the terminally ill, residential care home or therapeutic community residence without first obtaining a license.

(b) A person shall not operate a nursing home as defined in this chapter or as defined in chapter 46 of Title 18 except under the supervision of an administrator licensed in the manner provided in chapter 46 of Title 18.

(c) ~~A person shall not operate a home for the terminally ill without first obtaining a license.~~

~~(d)~~ Residents of a home for the terminally ill ~~shall be admitted to a Medicare-certified hospice and affiliated programs and~~ shall receive necessary medical and nursing services, which may be provided through outside providers. ~~The licensing standards for a home for the terminally ill shall be adopted by the licensing agency after consultation with provider groups, consumers and the general public as determined by the licensing agency.~~

* * *

§ 7105. LICENSE REQUIREMENTS

(a) Upon receipt of an application for license, the licensing agency shall issue a full license when it has determined that the applicant and facilities meet the standards established by the licensing agency. Licenses issued hereunder shall expire one year after date of issuance, or upon such uniform dates annually as the licensing agency may prescribe by regulation. Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) In its discretion the licensing agency may issue a temporary license permitting operation of a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a nursing home, assisted living residence, therapeutic community residence, residential care home or ~~maternity~~ home for the terminally ill operate under a temporary license or renewal thereof for a period exceeding ~~thirty-six~~ 36 months.

(c) ~~[Deleted.]~~ An owner, licensee, or administrator shall disclose to the licensing agency any changes in the ownership interests in the company, ownership of any real property, management of the facility, or corporate structure that occur after the date the license is issued. The licensing agency may require the owner, licensee, or administrator to apply for a new license.

~~(d) In its discretion the licensing agency may issue a temporary license permitting operation of a residential care home for such period or periods and subject to such conditions as the licensing agency deems proper, but in no case shall a residential care home operate under a temporary license or renewal thereof for a period exceeding thirty-six months.~~

* * *

§ 7107. UNLICENSED HOMES

(a) The licensing agency shall promulgate regulations governing the identification of unlicensed residential care homes, nursing homes, assisted living residences, therapeutic community residences, and ~~maternity~~ homes for the terminally ill.

* * *

(e)(1) Within 30 days of the date a license to operate any facility pursuant to this section is revoked or voluntarily relinquished, the operator shall obtain a new license or shall cause all of the residents in the facility to be moved promptly.

(2) The facility shall be responsible for securing suitable alternative placements for the residents and shall be responsible for the cost of the planning for the transition and transportation of the residents to the alternative placements.

(3) Failure to comply with this subsection may result in penalties being assessed against the operator, owner or the facility as provided for in section 7111 of this title.

* * *

§ 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

(a) The licensing agency shall enforce provisions of this chapter to protect residents of facilities.

(b) The licensing agency may require a facility to take corrective action to eliminate a violation of a rule or provision of this chapter within a specified period of time. If the licensing agency does require corrective action:

(1) the licensing agency may, within the limits of resources available to it, provide technical assistance to the facility to enable it to comply with the provisions of this chapter;

(2) the facility shall provide the licensing agency with proof of correction of the violation within the time specified; and

(3) if the facility has not corrected the violation by the time specified, the licensing agency may take such further action as it deems appropriate under this section.

(c)(1) The licensing agency may impose an administrative penalty against a facility for failure to correct a violation or failure to comply with a plan of corrective action for such a violation, as follows:

~~(1)~~(A) up to $5.00 per resident or $50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;

~~(2)~~(B) up to $8.00 per resident or $80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents; and

~~(3)~~(C) up to $10.00 per resident or $100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents~~;~~.

(2) The licensing agency may impose an administrative penalty against a facility of up to $10.00 per resident or $100.00, whichever is greater, for each day a facility operates without a license when either:

(A) the facility has not obtained a license; or

(B) a license has been revoked or voluntarily relinquished and the operator fails to obtain a new license or to cause all of the residents to be moved promptly and appropriately.

~~(4)~~(3) ~~for~~ For purposes of imposing administrative penalties under this subsection, a violation shall be deemed to have first occurred as of the date of the notice of violation.

(d) The licensing agency may, after notice and an opportunity for a hearing, suspend, revoke, modify or refuse to renew a license upon any of the following grounds:

(1) violation by the licensee of any of the provisions of this chapter or the rules adopted pursuant to this chapter;

(2) conviction of a crime for conduct which demonstrates the unfitness of the licensee or the principal owner to operate a facility under this chapter;

(3) conduct inimical to the public health, morals, welfare and safety of the people of the state of Vermont in the maintenance and operation of the premises for which a license is issued;

(4) financial incapacity of the licensee to provide adequate care and services; or

(5) failure to comply with a final decision or action of the licensing agency.

(e) In the interest of the public health, safety and pursuant to the provisions for the summary suspension of a license in subsection 814(c) of Title 3, the licensing agency shall suspend the license of a nursing home which has been

administered by a provisional administrator licensed under section 2061 of Title 18 for the preceding 90 days and which nursing home is not presently administered by an administrator who is permanently licensed under section 2055 of Title 18.

(f) The licensing agency may suspend admissions to a facility or transfer residents from a facility to an alternative placement, or both for a violation which may directly impair the health, safety or rights of residents or for operating without a license. Residents subject to transfer shall

(1) be allowed to participate in the decision-making process of the agency concerning the selection of an alternative placement;

(2) receive adequate notice of a pending transfer; and

(3) be allowed to contest their transfer in accordance with the procedures in section 7118 of this title.

(g) The licensing agency, the attorney general or a resident may bring an action for injunctive relief against a facility in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of this chapter or rules adopted pursuant to this chapter.

(h) The ~~licensing agency~~ commissioner of disabilities, aging, and independent living, the attorney general, or a resident or a resident's legal representative may bring an action ~~in accordance with the Rules of Civil Procedure for appointment of a receiver for a facility, if there are grounds to support suspension, revocation, modification or refusal to renew the facility's license and alternative placements for the residents are not readily available~~ as provided for in subchapter 3 of this chapter.

~~§ 7113. INTERPRETATION~~

~~This chapter shall not be construed in any way to restrict or modify any law pertaining to the placement and adoption of children or the care of unmarried mothers.~~

* * *

Sec. 2. 33 V.S.A. chapter 71, subchapter 3 is added to read:

Subchapter 3. Receivership Proceedings

§ 7201. POLICY

The purpose of this subchapter is to provide for the receivership of a long-term care facility in order to ensure safe surroundings, adequate care, and humane treatment; to safeguard the health of, safety of, and continuity of care

to residents; and to protect residents from the adverse health effects caused by abrupt or unsuitable transfer of such persons cared for in these facilities.

§ 7202. APPLICATION FOR RECEIVER

(a) The commissioner of disabilities, aging, and independent living or the attorney general may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver when:

(1) A licensee intends to close and has not secured suitable placements for its residents at least 30 days prior to closure;

(2) A situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents exists in a facility, including imminent or actual abandonment of a facility;

(3) A facility is in substantial or habitual violation of the standards of health, safety, or resident care established under state or federal regulations to the detriment of the welfare of the residents or clients;

(4) The facility is insolvent; or

(5) The licensing agency has suspended, revoked, or modified the existing license of the facility.

(b)(1) A resident or resident's representative may petition the licensing agency or the attorney general to seek a receivership under this section. If the licensing agency or attorney general denies the petition or fails to file a complaint within five days, the party bringing the petition may file a complaint in the superior court of the county in which the licensing agency or the facility is located, requesting the appointment of a receiver on the same grounds listed in subsection (a) of this section. Prior to a hearing for the appointment of a receiver, the commissioner of disabilities, aging, and independent living shall file an affidavit describing the results of any investigation conducted, including a statement of findings with respect to the resident's petition and the reasons for not filing an action under this section. The commissioner shall include the two most recent reports of deficiencies in the facility, if any.

(2) If the court finds the grounds listed in subsection (a) of this section are not met, the court may dismiss the complaint without a hearing as provided for in the Vermont rules of civil procedure.

(c)(1) The licensing agency shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver shall be a necessary party after the temporary receiver is appointed and shall

remain a party until a receiver is appointed under section 7204 of this chapter. A receiver appointed under section 7204 of this chapter shall be deemed a necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

(2) The entity filing the complaint shall notify the state long-term care ombudsman and the mortgage holder upon filing of the complaint.

§ 7203. APPOINTMENT OF TEMPORARY RECEIVER

(a) A motion to appoint a temporary receiver may be filed with the complaint or at any time prior to the hearing on the merits provided for in section 7204 of this chapter. The motion shall be accompanied by an affidavit alleging facts necessary to show the grounds for the receivership and the necessity for appointing a temporary receiver prior to the hearing on the merits. A motion to prejudgment attachment under Rule of Civil Procedure 4.1(b)(3) may also be filed with the complaint or at any time prior to the hearing on the merits.

(b) The court may appoint a temporary receiver ex parte when the court finds that there is a reasonable likelihood that:

(1)(A) a licensee intends to close the facility and has not secured suitable placements for its residents prior to closure; or

(B) a situation, physical condition, or a practice, method, or operation presents imminent danger of death or serious physical or mental harm to residents; and

(2) the situation must be remedied immediately to ensure the health, safety, and welfare of the residents of the facility.

(c) If the order for temporary receivership is granted, the complaint and order shall be served on the owner, licensee, or administrator and shall be posted in a conspicuous place in the facility no later than 24 hours after issuance.

§ 7204. APPOINTMENT OF RECEIVER; NOTICE

(a)(1) Unless the complaint is dismissed as provided for in section 7202 of this chapter or parties agree to a later date, the court shall hold a hearing on the merits to appoint a receiver within 10 days of filing the complaint. The court shall hold a hearing on the merits even when the court has appointed a temporary receiver as provided for in section 7203 of this chapter.

(2) Notice of the hearing shall be served on the owner, the licensee, the mortgage holder, the state long-term care ombudsman, and the licensing agency not less than five days before the hearing. If the owner or the licensee cannot be served, the court shall specify an alternative form of notice.

(b) The licensee shall post notice of the hearing, in a form approved by the court, in a conspicuous place in the facility for not less than five days before the date of the hearing.

§ 7205. APPOINTMENT OF RECEIVER; RECOMMENDATIONS BY LICENSING AGENCY

Not less than two days prior to the hearing on the merits, the commissioner shall file with the court a list of recommended persons to consider for appointment as the receiver, which may include licensed nursing home administrators or other qualified persons with experience in the delivery of health care services and the operation of a long-term care facility. The list shall include a minimum of three recommended persons and shall include the names and the qualifications of the persons.

§ 7206. APPOINTMENT OF RECEIVER; HEARING AND ORDER

(a) After the hearing on the merits, the court may appoint a receiver from the list provided by the licensing agency if it finds that one of the grounds in section 7202 of this chapter is satisfied, and that the person is qualified to perform the duties of a receiver as provided for in section 7205 of this chapter.

(b) The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with surety as the court may require. Any expenditure, including the compensation of the receiver, shall be paid from the revenues of the facility.

(c) The court may order limitations and conditions on the authority of the receiver provided for in section 7207 of this chapter. The order shall divest the owner and licensee of possession and control of the facility during the period of receivership under the conditions specified by the court.

(d) An order issued pursuant to this section shall confirm on the receiver all rights and powers described in section 7207 of this chapter and shall provide the receiver with the authority to conduct any act authorized under this section, including managing the accounts, banking transactions, and payment of debts.

(e) An order appointing a receiver under this chapter has the effect of a license for the duration of the receivership and of suspending the license of the licensee. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and a violation of regulations governing the

conduct of the facility, if not promptly corrected, shall be reported by the licensing agency to the court. The order shall not remove the obligation of the receiver to comply with all relevant federal and state rules applicable to the facility.

(f) The court shall order regular accountings by the receiver at least semi-annually.

§ 7207. POWERS AND DUTIES OF RECEIVER

(a) A receiver shall not take any actions or assume any responsibilities inconsistent with the purposes of this subchapter or the duties specifically provided for in this section.

(b) Unless otherwise ordered by the court and subject to the limitations provided for in sections 7208 through 7211 of this chapter, the receiver appointed under this subchapter shall:

(1) notify residents of the receivership and shall provide written notice by first-class mail to the last known address of the next of kin after the facility is placed in receivership;

(2) operate the facility;

(3) remedy the conditions that constituted grounds for the receivership;

(4) remedy violations of federal and state regulations governing the operation of the facility;

(5) protect the health, safety, and welfare of the residents, including the correction or elimination of any deficiency of the facility that endangers the safety or health of the residents;

(6) preserve the assets and property of the residents, the owner, and the licensee;

(7) hire, direct, manage, and discharge any employees, including the administrator or manager of the facility;

(8)(A) Apply the revenues of the facility to current operating expenses;

(B) Receive and expend in a reasonable and prudent manner the revenues of the facility due during the 30-day period preceding the date of appointment and becoming due thereafter; and

(C) To the extent possible, apply the revenues of the facility to debts incurred by the licensee prior to the appointment of the receiver;

(9) continue the business of the facility and the care of residents;

(10) file monthly reports containing information as required by the licensing agency to the owner and the licensing agency; and

(11) exercise such additional powers and perform such additional duties as ordered by the court.

§ 7208. LIMITATIONS; CORRECTION OF CONDITIONS

(a)(1) Except as provided for in subsection (b) of this section, if the total cost of correcting conditions that constituted grounds for the receivership and violations of federal and state regulations governing the operation of the facility or of other health and safety issues exceeds $5,000.00, the receiver shall notify the mortgage holder, licensee and owner of the conditions needing correcting and the estimated amount needed to correct the condition.

(2) The mortgage holder, owner, or licensee shall have five days from the date of mailing of the notice to apply to the court to determine the reasonableness of the expenditure by the receiver.

(3) If the mortgage holder, owner, or licensee files a motion objecting to the corrections, the receiver shall not correct the conditions until ordered by the court.

(b) If the condition constitutes a situation, physical condition, or a practice, method, or operation which presents imminent danger of death or serious physical or mental harm to residents and the estimate and the total cost of the correction exceeds $10,000.00, the receiver shall notify the mortgage holder, owner, and licensee who may object to the court as provided for in subsection (a) of this section. The receiver may proceed with the corrections pending a hearing and order of the court.

§ 7209. LIMITATIONS; PAYMENT OF DEBTS

The receiver shall petition the court when debts incurred prior to appointment of the receiver appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility; or where payment of the debts will interfere with the purposes of the receivership. The court shall determine the order of priority of debts with first priority given to expenditures for direct care of current residents.

§ 7210. LIMITATIONS; AUTHORITY TO BORROW

(a) In the event that the receiver does not have sufficient funds to cover expenses needed to prevent or remove jeopardy to the resident or to pay the debts accruing to the facility, the receiver may petition the court for permission to borrow for these purposes.

(b) Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, the mortgage holder, and the licensing agency.

(c) The court may, after hearing, authorize the receiver to borrow money upon specified terms of repayment and to pledge security, if necessary, if the court determines that the facility should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy, or if it determines that the facility should be closed and that the expenditure is necessary to prevent or remove jeopardy to residents for the limited period of time when they are awaiting transfer.

§ 7211. LIMITATIONS; CLOSURE OF THE FACILITY

(a) The receiver may not close the facility without leave of the court.

(b) The court shall consider the protection of residents and shall prevent the closure of facilities that, under proper management, are likely to be financially viable. This section may not be construed as a method of financing major repair or capital improvements to facilities that have been allowed to deteriorate because the owner or licensee has been unable or unwilling to secure financing by conventional means.

(c) In ruling on a motion to close the facility, the court shall consider:

(1) The rights and best interests of the residents;

(2) The availability of suitable alternative placements;

(3) The rights, interest, and obligations of the owner and licensee;

(4) The licensure status of the facility; and

(5) The need for the facility in the geographic area.

(d) When a facility is closed, the receiver shall provide for the orderly transfer of residents to mitigate trauma caused by the transfer to another facility.

§ 7212. WRIT OF POSSESSION

After notice and a hearing, the court may issue a writ of possession as provided for in section 4854 of Title 12 on behalf of the receiver for specific real or personal property related or pertaining to the facility.

§ 7213. ATTACHMENT; TRUSTEE PROCESS

Revenues held by or owing to the receiver in connection with the operation of the facility are exempt from attachment as provided for in chapter 123 of

Title 12 and trustee process as provided for in chapter 121 of Title 12, including process served prior to the institution of receivership proceedings.

§ 7214. AVOIDANCE OF CONTRACTS

(a) The court may grant a motion filed by the receiver to avoid a lease, mortgage, secured transaction, or other contract entered into by the owner or licensee of the facility if the court finds that the agreement:

(1) was entered into for a fraudulent purpose or to hinder or delay creditors;

(2) including a rental amount, price, or rate of interest, was unreasonable or excessive at the time the agreement was entered into; or

(3) is unrelated to the operation of the facility.

(b)(1) The receiver shall send notice of the motion to any known owners and mortgage holder of the property, the licensing agency, and the state long-term care ombudsman at the time of filing.

(2) The court shall hold a hearing on the receiver's motion to avoid a contract within 15 days.

(c) If the receiver is in possession of real estate or goods subject to a contract or security interest that the receiver is permitted to avoid under this section and if the real estate or goods are necessary for the continued operation of the facility, the court may set a reasonable rental amount, price, rate of interest, or of replacement contract term to be paid by the receiver during the term of the receivership.

(d) Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received notice.

(e) Notwithstanding this section, there may not be a foreclosure or eviction during the receivership by any person if the foreclosure or eviction would, in view of the court, serve to defeat the purpose of the receivership.

§ 7215. OBLIGATIONS OF THE OWNER OR LICENSEE

(a) A licensee, owner, manager, employee, or such person's agent shall cooperate with the receiver in any proceeding under this chapter, including replying promptly to any inquiry from the receiver or the licensing agency requesting a reply, and making available to the receiver any books, accounts, documents, or other records or information or property pertaining to operation of the facility in his or her possession, custody, or control. A person shall not obstruct or interfere with the receiver in the conduct of any receivership.

(b) This section shall not be construed to abridge otherwise existing legal rights, including the right to resist a petition for receivership or revocation or suspension of licensure.

(c)(1) After notice of the receiver's appointment, a person who fails to cooperate with the receiver or any person who obstructs or interferes with the receiver in the conduct of the receivership shall be assessed a civil penalty of not more than $10,000.00.

(2) A person who violates this subsection may be subject to the revocation or suspension of a nursing home administrator's license or a license to operate a facility.

§ 7216. REVIEW AND TERMINATION

(a) The court shall review the necessity of the receivership at least semiannually.

(b) Either party or the commissioner of disabilities, aging, and independent living may petition the court to terminate the receivership. The petition shall include a certification from the commissioner or designee that the conditions that prompted the appointment have been corrected or, in the case of a discontinuance of operation, when the residents are safely relocated.

(c) The petitioner shall send notice of the petition to terminate the receivership to the mortgage holder, the licensing agency, and the state long-term care ombudsman at the time of filing.

(d) A receivership may not be terminated in favor of the former or the new licensee, unless that person assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

(e) At the time of termination of the receivership, the court shall lift the suspension or revoke the license of the licensee.

§ 7217. DUTIES OF LICENSING AGENCY

The licensing agency shall have the duty to provide information to residents of long-term care facilities for which a receiver has been appointed by the court. When applicable, the licensing agency shall assist in the process of transferring residents to another long-term care facility, including providing information about facilities with available openings.

Sec. 3. REPORT; DAIL

No later than January 15, 2011, the department of disabilities, aging, and independent living shall report to the house and senate committees on judiciary

with information on the number of receivership proceedings which have been filed and the disposition of the proceedings. The department shall solicit comments and information from the long-term care ombudsman and Vermont Health Care Association, Inc. on the content of the report. The department shall include in the report any suggestions for revisions to subchapter 3 of chapter 71 of Title 33.

Sec. 4. SUNSET

(a) Sec. 2 of this act (33 V.S.A. chapter 73, subchapter 3) shall expire on June 30, 2011.

(b) Upon expiration of Sec. 2 of this act, 33 V.S.A. § 7101 shall be amended by striking the term ", provision of receivership and dissolution".

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

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

Thereupon, on motion of Senator Shumlin, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

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

Rules Suspended; Bills Messaged

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 15, H. 83, H. 86, H. 136, H. 453.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until ten o'clock in the morning.