

Journal of the Senate

THURSDAY, MARCH 18, 2010

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

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 36

A message was received from the House of Representatives by Mr. William M. MaGill, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 555. An act relating to youth hunting.

H. 600. An act relating to permitted investments by the state treasurer.

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

The House has adopted joint resolutions of the following titles:

J.R.H. 42. Joint resolution in support of Congress's adoption of the Main Street Fairness Act.

J.R.H. 43. Joint resolution urging Congress to amend the Toxic Substances Control Act of 1976.

J.R.H. 44. Joint resolution authorizing the Green Mountain Girls' State Program to use the state house on June 23, 2010.

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

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

J.R.S. 53. Joint resolution related to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on the March 17, 2010, he approved and signed a bill originating in the House of the following title:

H. 483. An act relating to approval of the merger of the village of North Westminster and the Town of Westminster and the Charter of the Town of Westminster .

Bill Referred to Committee on Appropriations

S. 226.

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

An act relating to medical marijuana dispensaries.

Bill Referred to Committee on Finance

S. 266.

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

An act relating to rights of workers' compensation claimants.

Bills Referred

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

H. 555.

An act relating to youth hunting.

To the Committee on Natural Resources and Energy.

H. 600.

An act relating to permitted investments by the state treasurer.

To the Committee on Finance.

Joint Resolutions Referred

J.R.H. 42.

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

Joint resolution in support of Congress's adoption of the Main Street Fairness Act.

Whereas, in 1992, the U.S. Supreme Court issued its decision in the case Quill Corporation v. North Dakota, ruling that states could not collect sales taxes from businesses that lacked a physical presence within their borders, and

Whereas, this ruling was based on the theory that states' collection of sales taxes on these businesses was a burden on interstate commerce, and

Whereas, at the time of the ruling, the decision primarily affected catalogue sales, and

Whereas, in 2010, the nation's commercial marketplace has drastically changed, and online sales are now worth \$150 billion annually, and

Whereas, although consumers are not officially excused from paying sales taxes on online sales, the overwhelming majority do not pay sales tax on making an online purchase, and a University of Tennessee study concluded that billions of state sales tax dollars are lost due to nonpayment, and

Whereas, not only are states denied much-needed revenue during these difficult economic times, but local retailers must confront competition from huge merchandisers that lack the overhead expenses of a traditional store and are effectively offering their merchandise tax free, and

Whereas, although in 1992, the U.S. Supreme Court forbade the state of North Dakota from collecting sales taxes from the Quill Corporation, the court held that Congress could enact legislation granting the states the authority to collect sales taxes from retailers with no physical presence in a state, and

Whereas, in order to establish an administrative foundation for the universal collection of state sales taxes, many states, including Vermont, have adopted the Streamlined Sales and Use Tax Agreement, and

Whereas, nationwide, over 1,800 online or remote sellers are now voluntarily collecting state sales tax, and although this is a positive step, it does not address the problem of the nonpayment of state sales taxes comprehensively, and

Whereas, in past sessions of Congress, the Main Street Fairness Act, which would grant federal legislative approval for states to collect sales tax from out-of-state retailers, has been introduced but not passed, and

Whereas, it is anticipated that U.S. Senator Michael Enzi of Wyoming and U.S. Representative William Delahunt of Massachusetts will be introducing this measure in the coming weeks, and

Whereas, the economic vitality of the states demands that Congress enact the Main Street Fairness Act before final adjournment of the 111th Congress, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges U.S. Senator Michael Enzi and U.S. Representative William Delahunt to introduce the Main Street Fairness Act in their respective legislative chambers as soon as possible, and be it further

Resolved: That the General Assembly urges Congress to enact the Main Street Fairness Act following its introduction, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to U.S. Senator Michael Enzi, U.S. Representative William Delahunt, and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Finance.

J.R.H. 43.

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

Joint resolution urging Congress to amend the Toxic Substances Control Act of 1976.

Whereas, more than three decades ago, Congress enacted the Toxic Substances Control Act of 1976, Public Law 94-469 (TSCA), to protect human beings and the environment from the adverse impact of dangerous chemicals, and

Whereas, during the 34 years it has been in force, TSCA has resulted in the testing of fewer than 200 of the roughly 80,000 chemicals known to be in industrial products and has banned only five chemicals or chemical groups, and

Whereas, in 2010, the threat that toxic substances pose to human beings has greatly increased, and

Whereas, these substances include carcinogens, mutagens, reproductive or developmental toxins, endocrine disruptors, and persistent or bioaccumulative toxins, and

Whereas, there is an urgent need to broaden and strengthen the regulation of toxic chemicals and substances in order to reduce their threat to human beings and the environment, and

Whereas, the Alliance for a Clean and Healthy Vermont recently issued a report entitled *Toxic Exposures in the Green Mountain State*, and

Whereas, in this report there were published the results of body burden testing conducted on six ordinary Vermonters, and

Whereas, they were tested to determine the presence of four broad categories of chemicals: bisphenol A (BPA), mercury, pesticides, and flame retardants, and

Whereas, the study was designed to determine the presence of any one of approximately 65 specific chemicals, and

Whereas, DDT, which was famously banned in 1972 after enormous publicity concerning its harmful effects on humans and birds, was found in five of the six persons tested, and chlordane, which has also been banned, was found in all of the test participants, and

Whereas, mercury, which is an extremely harmful neurotoxin, was present in four of the six participants, and

Whereas, within each participant's body, there was detected a minimum of 35 of the approximately 65 chemicals within the four broad categories, and

Whereas, beyond the disheartening specific findings was the overall testing result that these contaminants were present in any of the participants, because it is not natural for these "chemicals to be present in any quantity in the human body," and

Whereas, the general assembly believes that protecting Vermonters against dangerous chemicals is a core function of government, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to amend the Toxic Substances Control Act of 1976 to require broader testing and authorize stronger regulation of chemicals known to be dangerous to human health and the environment but with specific language that the states are not preempted from adopting laws that go beyond the federal requirements, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to President Obama, the Vermont Congressional Delegation and Environmental Protection Agency Administrator Lisa Jackson.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Natural Resources and Energy.

J.R.H. 44.

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

Joint resolution authorizing the Green Mountain Girls' State Program to use the state house on June 23, 2010.

Whereas, the Green Mountain Girls' State program brings together high school students from all areas of Vermont to our capital city in order to view firsthand the workings of state government, and

Whereas, the lessons learned by these students make a significant contribution to their future growth as valuable citizens and leaders of our state, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers of the house of representatives and the senate and the committee meeting rooms of the state house for the Green Mountain Girls' State Program on Wednesday, June 23, 2010, during regular business hours.

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

Bills Passed

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

S. 222. An act relating to recognition of Abenaki tribes.

S. 283. An act relating to amending miscellaneous motor vehicle laws, eliminating the motorcycle rider training program advisory committee, and repealing the interstate compact for motor vehicle safety equipment.

Bill Passed in Concurrence**H. 761.**

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

An act relating to authorization of High-Speed Intercity Passenger Rail Program grants.

Resolution Adopted in Concurrence

Joint House resolution of the following title was read the third time and adopted in concurrence:

J.R.H. 34. Joint resolution in support of the New England Secondary School Consortium.

Bills Amended; Third Readings Ordered**S. 103.**

Senator Kitchel, for the Committee on Transportation, to which was referred Senate bill entitled:

An act relating to ignition interlock drivers' licenses.

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

Sec. 1. LEGISLATIVE INTENT

It is the intent of the general assembly to require the commissioner of motor vehicles to conduct an in-depth study of the most effective and efficient mechanisms for promoting the use of ignition interlock devices or other devices that prevent impaired driving and implementing legislation related to such devices in Vermont. The commissioner also is directed to formulate recommended legislation by January 15, 2011, to advance the general assembly's goal to pass ignition interlock legislation.

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

(1) In 2008, nearly 12,000 people were killed in crashes attributed to alcohol-impaired driving, which accounted for 32 percent of all traffic fatalities in the United States. Impaired driving is a significant public safety concern.

(2) As a tool to combat impaired driving, 47 states have laws concerning the use of ignition interlock devices. Ignition interlock devices are installed in motor vehicles to prevent them from being started unless the operator blows into the device and the device detects that the operator's alcohol concentration is below a pre-set limit. Devices may be programmed to require periodic retesting while the car is running. About 146,000 ignition interlock devices currently are in use in the United States.

(3) Vermont is one of just three states that has not enacted ignition interlock legislation.

(4) Research shows that ignition interlock devices reduce subsequent arrest rates among both first-time and repeat DUI offenders by 50 to 90 percent while such devices are installed.

(5) Research estimating the costs versus the benefits of ignition interlock programs suggests a \$3.00 benefit for each \$1.00 in program costs for first-time DUI offenders and a \$4.00 to \$7.00 benefit for each \$1.00 in program costs for other DUI offenders.

Sec. 3. IGNITION INTERLOCK DEVICE STUDY

(a) The commissioner of motor vehicles, in consultation with the commissioner of corrections, the court administrator, the department of public safety, state's attorneys and sheriffs, the defender general, the attorney general, the Vermont bar association, and any other organizations or entities the commissioners deem appropriate, shall study and formulate recommended legislation authorizing use of ignition interlock devices or other devices that prevent impaired driving in Vermont. In carrying out this directive, the commissioner shall:

(1) Review current laws, rules, and regulations, and practices regarding use of ignition interlock devices in other states and attempt to ascertain the factors that contribute to the varying success of states in promoting use of ignition interlock devices.

(2) Consider whether legislation should:

(A) require installation of ignition interlock devices by some or all DUI offenders as a condition of license reinstatement;

(B) authorize operation during a suspension period, and, if so, the period of "hard" suspension that must be served prior to such authorization for different classes of DUI offenders;

(C) authorize or require that some or all DUI offenders, at their request, be allowed to install ignition interlock devices in exchange for a reduced period of license suspension;

(D) authorize or require judges to order installation of ignition interlock devices as a condition of probation for some or all DUI offenders;

(E) authorize or require judges to provide incentives (such as reduced fines) to some or all DUI offenders to encourage installation of such devices;

(F) require devices to be installed for a period in excess of usual suspension periods for some or all offenders;

(G) supplement, or operate as an alternative to, the state's abstinence program for persons whose license has been suspended for life;

(H) apply to all impaired driving offenders (i.e., include those whose violations involve operating under the influence of drugs) or only to those whose offense involved operating under the influence of intoxicating liquor;

(I) limit eligibility to certain classes of DUI offenders (i.e., those whose offense did not result in death of another); or

(J) authorize or require installation of ignition interlock devices under any other circumstances.

(3) Consider how any recommended use of ignition interlock devices should be coordinated with the use of electronic monitoring equipment such as global position monitoring equipment, automated voice recognition telephone equipment, and transdermal alcohol monitoring equipment.

(4) Study the costs of ignition interlock devices, including installation, monthly lease charges, periodic recalibration, and data downloads and the relative merits of having such costs borne entirely by DUI offenders or partially borne by the state.

(5) Study whether conditions or restrictions (such as hours of operation or limitation to travel to or from work, school, or a treatment program) should be imposed on some or all DUI offenders operating subject to an ignition interlock device requirement.

(6) Study the administrative tasks that must be performed to implement and carry out ignition interlock legislation and the costs associated with them; which agency or agencies are best suited to perform these tasks; and what additional authority or resources this agency or these agencies will need to perform these tasks.

(7) Consider appropriate penalties for DUI offenders required to operate vehicles equipped with ignition interlock devices who tamper with or otherwise circumvent such devices, or operate a vehicle not equipped with such a device, or whose attempt to operate a vehicle is prevented through the functioning of such device, and the due process to which DUI offenders cited for such activities shall be entitled.

(8) Consider appropriate penalties for third parties who tamper with or otherwise circumvent ignition interlock devices or knowingly provide vehicles not equipped with such devices for DUI offenders required to operate vehicles equipped with such devices, and the due process to which persons cited for such activities shall be entitled.

(9) Consider the degree to which the state should monitor, utilize, and impose sanctions based on data obtained from ignition interlock devices.

(10) Consider and study any other issues deemed relevant to ignition interlock device policy and legislation.

(b) The commissioner shall report his or her findings and recommended legislation to the senate and house committees on transportation, the senate and house committees on judiciary, and the joint corrections oversight committee no later than January 15, 2011.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

“An act relating to the study and recommendation of ignition interlock device legislation.”

And that when so amended the bill ought to pass.

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

S. 153.

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

An act relating to preventing conviction of innocent persons.

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

Sec. 1. LEGISLATIVE INTENT; FORENSIC LABORATORY OVERSIGHT

The general assembly finds that at this time, there is not sufficient need for a forensic laboratory oversight commission, provided the Vermont crime laboratory continues to be properly accredited.

Sec. 2. PRESERVATION OF EVIDENCE

(a)(1) It is the intent of the general assembly that on and after July 1, 2012, notwithstanding any other provision of law, any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation shall be retained by the government entity having custody of the evidence for the period of time that:

(A) the statute of limitations has not expired for a crime that remains unsolved; and

(B) a person remains incarcerated, on probation or parole, or subject to registration as a sex offender in connection with a criminal case.

(2) For purposes of this section, criminal case or investigation shall include only the following offenses:

(A) arson causing death as defined in 13 V.S.A. § 501;

(B) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

(C) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);

(D) aggravated assault as defined in 13 V.S.A. § 1024;

(E) aggravated murder as defined in 13 V.S.A. § 2311 and murder as defined in 13 V.S.A. § 2301;

(F) manslaughter as defined in 13 V.S.A. § 2304;

(G) kidnapping as defined in 13 V.S.A. § 2405;

(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

(I) maiming as defined in 13 V.S.A. § 2701;

(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

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

(L) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); and

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

(3) For purposes of this section, “biological evidence” means:

(A) a sexual assault forensic examination kit; or

(B) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary no later than January 15, 2011.

(c) The department of public safety, the department of buildings and general services, the police chiefs’ association, and the sheriffs’ association

shall develop a proposal for establishing one or more facilities for retention of items of physical evidence containing biological material that is secured in connection with a criminal case or investigation. Such facilities would be available for use by all Vermont law enforcement agencies. The proposal shall be presented to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011.

Sec. 3. RECORDING CUSTODIAL INTERROGATIONS;
ADMISSIBILITY OF DEFENDANT'S STATEMENT

(a) It is the intent of the general assembly that on and after July 1, 2012, a law enforcement agency shall make an audio or an audio and visual recording of any custodial interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

(b) The Vermont law enforcement advisory board shall develop a proposal for implementation of this section and present it to the senate and house committees on judiciary, the house committee on corrections and institutions, and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 4. EYEWITNESS IDENTIFICATION BEST PRACTICES

(a) The general assembly finds that eyewitness misidentification remains the single largest contributing factor to wrongful conviction. According to the Innocence Project, there are currently 249 DNA exonerations across the nation, and in nearly 80 percent of them, there was at least one misidentification.

(b) A statewide study committee created by No. 60 of the Acts of 2007 reported that the Vermont police academy currently teaches best practices regarding eyewitness identification.

(c) To ensure that law enforcement agencies statewide are employing best practices with regard to eyewitness identification, the Vermont law enforcement advisory board shall develop a proposal to establish best practices that are well suited for Vermont and its many, small rural law enforcement agencies, including consideration of conditions for the use and administration of show-ups, use of blind administrators for lineups, proper filler selection in live or photo lineups, instructions for eyewitnesses prior to a live or photo lineup, and confidence statements from eyewitnesses. The Vermont law enforcement advisory board shall present its proposal to the senate and house committees on judiciary, the house committee on corrections and institutions,

and the senate committee on institutions no later than January 15, 2011. The proposal shall address the costs associated with purchasing, installing, and maintaining audio and visual recording as required by this section.

Sec. 5. 13 V.S.A. § 4010 is amended to read:

§ 4010. GUN SILENCERS

A person who manufactures, sells ~~or~~ uses, or possesses with intent to sell or use, an appliance known as or used for a gun silencer shall be fined \$25.00 for each offense. The provisions of this section shall not prevent the use or possession of gun silencers ~~for military purposes when so used or possessed under proper military authority and restriction by:~~

(1) a certified, full-time law enforcement officer in connection with his or her duties and responsibilities and in accordance with the policies and procedures of that officer's agency or department; or

(2) the Vermont National Guard in connection with its duties and responsibilities.

Sec. 6. EFFECTIVE DATE

This act shall take effect upon passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and pending the question, Shall the bill be read a third time?, Senator Sears on behalf of the Committee on Judiciary moved to amend the bill as amended as follows:

First: In Sec. 2, by striking out (a)(1) in its entirety and inserting in lieu thereof a new subsection (a)(1) to read as follows:

(a)(1) The general assembly finds that it is in the interest of justice that Vermont establish a system for the preservation of any item of physical evidence containing biological material that is secured in connection with a criminal case or investigation by the government entity having custody of the evidence for the period of time that:

Second: In Sec. 3, by adding a subsection (c) to read as follows:

(c) In the first year of the 2011–2012 biennium, the senate and house committees on judiciary shall consider the proposal required by subsection (b) of this section for the purpose of enacting statutes by the date of adjournment in 2012 to implement a plan for audio and visual recording of any custodial

interrogation of a person when it is conducted in a place of detention after the person is arrested in relation to the investigation or prosecution of a felony.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Sears moved to amend the bill in Sec. 5, 13 V.S.A. § 4010, in subdivision (1) after the words “law enforcement officer” by adding the following: or department of fish and wildlife employee and after the word “officer’s” by adding or employee’s

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**Consideration Resumed; House Proposal of Amendment Concurred in
with Further Proposal of Amendment**

S. 77.

Consideration was resumed on Senate bill entitled:

An act relating to the disposal of electronic waste.

Thereupon, the pending question, Shall the Senate concur in the House proposal of amendment with further proposal of amendment?, was agreed to.

Bills Amended; Third Readings Ordered

S. 171.

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

An act relating to nutritional labeling of food by chain restaurants.

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

Sec. 1. STATUTORY REVISION

18 V.S.A. §§ 4051–4071 shall be recodified as subchapter 1 (labeling for marketing and sale) of chapter 82 of Title 18.

Sec. 2. 18 V.S.A. chapter 82, subchapter 2 is added to read:

Subchapter 2. Menu Labeling

§ 4086. MENUS AND MENU BOARDS

(a) Except as otherwise provided in 4091 of this title, in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing

business under the same name, regardless of the type of ownership of the locations, and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subsection (b) of this section.

(b) Except as otherwise provided in section 4091 of this title, the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner:

(1) On a menu listing an item for sale:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu.

(2) On a menu board, including a drive-through menu board:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board.

(3)(A) In a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the following nutrition information:

(i) the total number of calories in each serving size or other unit of measure of the food that are:

(I) derived from any source; and

(I) derived from the total fat; and

(ii) the amount of each of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure;

(B) To the extent that federal statutes or regulations require disclosure of different or additional nutrition information, a restaurant or similar retail establishment that follows the federal law shall be deemed to be in compliance with the requirements of this subdivision (3).

(4) On the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in subdivision (3) of this subsection.

§ 4087. SELF-SERVICE FOOD AND FOOD ON DISPLAY

Except as otherwise provided in section 4091 of this title, in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

§ 4088. REASONABLE BASIS

For the purposes of this chapter, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in Section 101.10 of Title 21, Code of Federal Regulations, or any successor regulation, or in a related guidance of the United States Food and Drug Administration.

§ 4089. MENU VARIABILITY AND COMBINATION MEALS

Except as otherwise provided by federal law or regulation, the commissioner of health shall establish by rule, pursuant to chapter 25 of Title 3, standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children's combination meals, through means determined by the commissioner, including ranges, averages, or other methods.

§ 4090. ADDITIONAL INFORMATION

Except as otherwise provided by federal law or regulation, if the commissioner of health determines that a nutrient, other than a nutrient required under subdivision 4086(b)(3) of this title, should be disclosed for the

purpose of providing information to assist consumers in maintaining healthy dietary practices, the commissioner may require, by rule, disclosure of such nutrient in the written form required under subdivision 4086(b)(3).

§ 4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders; or

(3) such other food that is part of a customary market test appearing on the menu for less than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule.

§ 4092. VOLUNTARY PROVISION OF NUTRITION INFORMATION

(a) An authorized official of any restaurant or similar retail food establishment not subject to the requirements of this chapter may elect to be subject to such requirements by registering biannually the name and address of such restaurant or similar retail food establishment with the Secretary of the U.S. Department of Health and Human Services and the commissioner of health, as specified by the Secretary by regulation and the commissioner by rule.

(b) To the extent allowed by federal law, within 120 days following the effective date of this chapter, the commissioner of health shall engage in rulemaking pursuant to chapter 25 of Title 3 specifying the terms and conditions for implementation of subsection (a) of this section.

(c) Nothing in this section shall be construed to authorize the commissioner of health to require an application, review, or licensing process for any entity to register with the Secretary pursuant to subsection (a) of this section.

§ 4093. RULEMAKING

(a) To the extent permitted under federal law, within one year after the effective date of this chapter, the commissioner of health shall adopt rules pursuant to chapter 25 of Title 3 to carry out the purposes of this chapter.

(b) In adopting rules, the commissioner shall:

(1) consider standardization of recipes and methods of preparation, reasonable variation in serving size and formulation of menu items, space on menus and menu boards, inadvertent human error, training of food service

workers, variations in ingredients, and other factors, as the commissioner shall determine;

(2) specify the format and manner of the nutrient content disclosure requirements under this chapter; and

(3) reasonably align the rules, to the extent practicable, with federal and other states' laws on menu labeling.

(c) No later than January 15, 2011, the commissioner shall report to the house committee on human services and the senate committee on health and welfare a report on the commissioner's progress toward adopting rules under this section.

§ 4094. DEFINITIONS

To the extent not inconsistent with federal law, as used in this chapter:

(1) "Menu" or "menu board" means the primary writing of the restaurant or other similar retail food establishment from which a consumer makes an order selection.

(2) "Restaurant" or "other similar retail food establishment" means an establishment from which food or beverage of the type for immediate consumption is sold, whether such food is consumed on the premises or not.

(A) "Restaurant" shall not include any school, hospital, nursing home, assisted living facility, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, nursing home, or assisted living facility providing food for students, patients, visitors, and their families.

(B) "Restaurant" shall not include grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in a grocery store. For purposes of this subdivision, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. The term "grocery store" includes convenience stores.

(C) "Restaurant" shall not include any fraternal organization or any organization whose members consist solely of veterans of the armed forces of the United States.

§ 4095. ENFORCEMENT; LIABILITY; PENALTY

(a) The commissioner of health or duly authorized agents or employees who inspect restaurants and food establishments on behalf of the department of health shall be required to determine that the nutrition information required under this subchapter is listed on the menu or menu board, and that any

additional required information is available for customers upon request. If, upon inspection, the required information is not clearly visible on a menu or menu board or the additional required information is not available upon request, the commissioner or inspector shall note such fact on the inspection report and cause a corresponding reduction in points from the restaurant's or other food establishment's rating score.

(b) Nothing in this section shall be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state or federal law or to limit any claim, right of action, or civil liability that otherwise exists under state or federal law.

(c) No private right of action shall arise from this subchapter. The sole enforcement authority for this subchapter shall be the state of Vermont.

§ 4096. RELATION TO OTHER LAWS

(a) To the extent any provision of this chapter is inconsistent with or preempted by federal law or regulation, the federal provision shall apply.

(b) To the extent permitted by federal law, nothing in this chapter shall be construed to restrict the ability of cities or towns to impose labeling requirements in excess of those required by this chapter.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and pending the question, Shall the bill be read a third time?, Senators Ayer, Campbell, Giard, Mazza, McCormack, Nitka, Scott, and Shumlin moved to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. by striking out § 4091 in its entirety and inserting a new § 4091 to read as follows:

§ 4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for fewer than 60 days per calendar year, or custom orders;

(3) such other food that is part of a customary market test appearing on the menu for fewer than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule; or

(4) alcoholic beverages.

Second: In Sec. 2, 18 V.S.A. § 4094, by inserting a subdivision (3) to read as follows:

(3) “Standard menu item” means any item listed on a menu or menu board by a restaurant, but excluding alcoholic beverages.

Third: In Sec. 2, 18 V.S.A. § 4096, by striking subsection (a) in its entirety and removing the subsection designation from subsection (b)

Which was agreed to.

Thereupon, third reading of the bill was ordered.

S. 182.

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

An act relating to determining unemployment compensation experience rating for successor businesses.

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

Sec. 1. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS;
DISCLOSURE TO SUCCESSOR ENTITY

* * *

(b)(1) **Disclosure of contribution rate to successor entity.** Any individual or employing unit who in any manner succeeds to or acquires the organization, trade, or business or substantially all of the assets of any employer who has been operating ~~his or her~~ the business within two weeks prior to the acquisition, except any assets retained by the employer incident to the liquidation of ~~his or her~~ the employer’s obligations, and who thereafter continues the acquired business shall be considered to be a successor to the predecessor from whom the business was acquired and, if not already an employer before the acquisition, shall become an employer on the date of the acquisition. The commissioner shall transfer the experience-rating record of the predecessor employer to the successor employer. If the successor was not an employer before the date of acquisition, ~~his or her~~ the successor’s rate of contribution for the remainder of the rate year shall be the rate applicable to the predecessor employers with respect to the period immediately preceding the date of acquisition if there was only one predecessor or there were only predecessors with identical rates. If the predecessors’ rates were not identical,

the commissioner shall determine a rate based on the combined experience of all the predecessor employers. If the successor was an employer before the date of acquisition, the contribution rate which was assigned to the successor for the rate year in which the acquisition occurred will remain assigned to the successor for the remainder of the rate year, after which the experience-rating record of the predecessor shall be combined with the experience rating of the successor to form the single employer experience-rating record of the successor. At any time prior to the issuance of the certificate required by subsection 1322(b) of this chapter, an employing unit shall, upon request of a potential successor, disclose to the potential successor its current experience rating record.

* * *

And that when so amended the bill ought to pass.

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

Recommendation of Amendment; Consideration Interrupted by Recess

S. 279.

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

An act relating to nonunanimous jury verdicts in civil actions.

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

Sec. 1. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

(a) In a civil action, the verdict or finding of at least eleven jurors out of the twelve jurors serving on a jury shall constitute the verdict or finding of the jury

(b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 2. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation

and identifiable effects of this act. The report shall address whether the number of hung juries or the average amount of damages awarded has changed since adoption of this act, whether there are any discernable impacts on the frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 3 of this act.

Sec. 3. SUNSET

On January 15, 2015, Sec. 1 of this act (nonunanimous jury verdicts in civil actions) is repealed.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Campbell requested and was granted leave to withdraw the recommendation of amendment of the Committee on Judiciary.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Campbell, on behalf of the Committee on Judiciary, moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 1950 is added to read:

§ 1950. NUMBER OF JURORS REQUIRED FOR A VERDICT IN A CIVIL ACTION

(a) In a civil action, unless the parties stipulate otherwise, the verdict or finding of the jury shall be unanimous or with not more than one juror dissenting.

(b) This section shall not affect the ability of the parties to stipulate that the jury may consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury as provided by Rule 48 of the Vermont Rules of Civil Procedure.

Sec. 2. REPORT FROM COURT ADMINISTRATOR

On or before January 15, 2014, the office of the court administrator shall report to the senate and house committees on judiciary on the implementation and the identifiable effects of this act. The report shall address whether the number of hung juries or the average amount of damages awarded has changed since adoption of this act, whether there are any discernible impacts on the

frequency and duration of medical malpractice litigation, whether there are any positive or negative impacts on the court system itself, and any appropriate recommendations, including whether this act should be repealed as provided in Sec. 3 of this act.

Sec. 3. SUNSET

On January 15, 2015, Sec. 1 of this act (nonunanimous jury verdicts in civil actions) is repealed.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Campbell, on behalf of the Committee on Judiciary?, the Senate recessed in order to attend the joint assembly.

Joint Assembly

At ten o'clock and thirty minutes in the morning, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

J.R.S. 51. Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Environmental Judge.

The Senate repaired to the hall of the House.

Having returned therefrom, at eleven o'clock and twenty minutes in the morning, the President *pro tempore* assumed the Chair.

Called to Order

At 11:20 P.M. the Senate was called to order by the President *pro tempore*.

Consideration Resumed; Consideration Postponed

S. 279.

Consideration was resumed on Senate bill entitled:

An act relating to nonunanimous jury verdicts in civil actions.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Campbell, on behalf of the Committee on Judiciary?, action on the bill was postponed until the next legislative day.

Bills Amended; Third Readings Ordered

S. 263.

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

An act relating to job creation and economic development.

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

Sec. 1. 11A V.S.A. chapter 21 is added to read:

CHAPTER 21. BENEFIT CORPORATIONS

§ 21.01. SHORT TITLE

§ 21.02. LAW APPLICABLE

§ 21.03. DEFINITIONS

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

§ 21.06. MERGER AND SHARE EXCHANGE

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

§ 21.08. CORPORATE PURPOSE

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

§ 21.10. BENEFIT DIRECTOR

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

§ 21.12. BENEFIT OFFICER

§ 21.13. RIGHT OF ACTION

§ 21.14. ANNUAL BENEFIT REPORT

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the “Vermont Benefit Corporations Act.”

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to a domestic corporation meeting the definition of a benefit corporation in subdivision 21.03(a)(1) of this title. The provisions of this title other than those set forth in this chapter shall apply to a benefit corporation in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

(b) The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a benefit corporation.

(c) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with any provision of this chapter.

(d) Terms that are defined in other chapters of this title shall have the same meaning when used in this chapter, except that in this chapter, “corporation” shall have the meaning set forth in section 1.40 of this title.

§ 21.03. DEFINITIONS

(a) As used in this chapter:

(1) “Benefit corporation” means a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement “This corporation is a benefit corporation.”

(2) “Benefit director” means the director designated as the benefit director of a benefit corporation as provided in section 21.10 of this title.

(3) “Benefit officer” means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 21.12 of this title.

(4) “General public benefit” means a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

(5) “Independent” means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as an owner or manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(A) the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(B) an immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(C) the person, or an entity of which the person is a manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.

(6) “Specific public benefit” includes:

(A) providing low income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health

(E) promoting the arts or sciences or the advancement of knowledge;

(F) increasing the flow of capital to entities with a public benefit purpose; and

(G) the accomplishment of any other identifiable benefit for society or the environment.

(7) “Subsidiary” of a person means an entity in which the person owns beneficially or of record 50 percent or more of the equity interests.

(8) “Third-party standard” means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(A) is developed by a person that is independent of the benefit corporation; and

(B) is transparent because the following information about the standard is publicly available:

(i) the factors considered when measuring the performance of a business;

(ii) the relative weightings of those factors; and

(iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) For purposes of subdivisions (a)(5)(C) and (7), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

A benefit corporation shall be formed in accordance with sections 2.01, 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall also contain the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation.

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

Any corporation organized under this title may become a benefit corporation by amending its articles of incorporation to add the statement required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.06. MERGER AND SHARE EXCHANGE

(a) A plan of merger or share exchange that if effected would terminate the benefit corporation status of a corporation shall be adopted and shall become effective in accordance with chapter 11 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

(b) If a corporation that is not a benefit corporation is a party to a plan of merger or share exchange in which the surviving corporation is a benefit corporation, the plan of merger shall be adopted and shall become effective in accordance with chapter 11 of this title, except that the plan shall be approved in the case of the corporation that is not a benefit corporation by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

A corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation, in addition to the provisions required by section 2.02 of this title to be stated in the articles of incorporation of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of:

(1) the vote required by the articles of incorporation; or

(2) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.08. CORPORATE PURPOSE

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and subsection (a) of this section. The adoption of a specific public benefit purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of

this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to its specific public benefit purpose in its articles of incorporation; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of section 8.30 of this title.

(c) A director is not liable for the failure of a benefit corporation to create general or specific public benefit.

(d) A director is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the director performed the duties of his or her office in compliance with section 8.30 of this title and with this section.

(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.10. BENEFIT DIRECTOR

(a) The board of directors of a benefit corporation shall include one director who shall be designated the "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director shall be elected and may be removed in the manner provided by subchapter 1 of chapter 8 of this title and shall be an individual who is independent of the benefit corporation. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c)(1) The benefit director shall be responsible for the preparation of the annual benefit report required under section 21.14 of this title.

(2) The benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the benefit corporation's social and environmental performance.

(3) The benefit director shall prepare and shall include in the annual benefit report a statement whether, in the opinion of the benefit director:

(A) the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(B) the directors and officers acted in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively.

(4) If in the opinion of the benefit director the benefit corporation failed to act in accordance with its general and any specific public benefit purposes or if its directors or officers failed to act in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to so act.

(d) The acts and omissions of an individual in the capacity of a benefit director shall constitute for all purposes acts and omissions of that individual in the capacity of a director of the benefit corporation.

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that the persons who perform the duties of a board of directors shall include a person with the powers, duties, rights, and immunities of a benefit director.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by subdivision 2.02(b)(4) of this title, a benefit director shall not be personally liable for any act or omission taken in his or her official capacity as a benefit director unless the act or omission is not in good faith, involves intentional misconduct or a knowing violation of law, or involves a transaction from which the director directly or indirectly derived an improper personal benefit.

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

(a) An officer of a benefit corporation shall consider the interests and factors described in subsection 21.09(a) of this title in the manner provided in that subsection when:

(1) the officer has discretion in how to act or not act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on:

(A) the creation of general or specific public benefit by the benefit corporation; or

(B) any of the interests or factors referred to in section 21.09(a)(1) of this title.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of the fiduciary duty of an officer to the benefit corporation.

(c) An officer is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the officer performed the duties of the position in compliance with section 8.41 of this title and with this section.

(d) An officer is not liable for the failure of a benefit corporation to create general or specific public benefit.

(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.12. BENEFIT OFFICER

A benefit corporation may have an officer designated the "benefit officer" who shall have the authority and shall perform the duties in the management of the benefit corporation relating to the purpose of the corporation to create public benefit as set forth with respect to the office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to the office by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of the office.

§ 21.13. RIGHT OF ACTION

(a) The duties of directors and officers under this chapter and the general and specific public benefit purposes of a benefit corporation may be enforced only in a benefit enforcement proceeding, and no person may bring such an action or claim against a benefit corporation or its directors or officers except as provided in this section.

(b) A benefit enforcement proceeding may be commenced or maintained only by:

(1) a shareholder that would otherwise be entitled to commence or maintain a proceeding in the right of the benefit corporation on any basis;

(2) a director of the corporation;

(3) a person or group of persons that owns beneficially or of record 10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) such other persons as may be specified in the articles of incorporation of the benefit corporation.

(c) As used in this chapter, “benefit enforcement proceeding” means a claim or action against a director or officer for:

(1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or

(2) violation of a duty or standard of conduct under this chapter.

§ 21.14. ANNUAL BENEFIT REPORT

(a) A benefit corporation shall deliver to each shareholder, in a format approved by the directors, an annual benefit report, which shall include:

(1)(A) a statement of the specific goals or outcomes identified by the benefit corporation for creating general public benefit and any specific public benefit for the period of the benefit report;

(B) a description of the actions taken by the benefit corporation to attain the identified goals or outcomes and the extent to which the goals or outcomes were attained;

(C) a description of any circumstances that hindered the attainment of the identified goals or outcomes and the creation of general public benefit or any specific public benefit; and

(D) specific actions the benefit corporation can take to improve its social and environmental performance and attain the goals or outcomes identified for creating general public benefit and any specific public benefit.

(2) an assessment of the social and environmental performance of the benefit corporation prepared in accordance with a third-party standard that has been applied consistently with prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(3) a statement of specific goals or outcomes identified by the benefit corporation and approved by the shareholders for creating general public benefit and any specific public benefit for the period of the next benefit report.

(4) the name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(5) the compensation paid by the benefit corporation during the year to each director in that capacity;

(6) the name of each person that owns beneficially or of record five percent or more of the shares of the benefit corporation; and

(7) the statement of the benefit director described in subsection 21.10(c) of this title.

(b) A benefit corporation shall annually deliver the benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) After reasonable opportunity for review, the shareholders of the benefit corporation shall approve or reject the annual benefit report by majority vote at the annual meeting of shareholders or at a special meeting held for that purpose.

(d) A benefit corporation shall post its most recent benefit report endorsed by its shareholders on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a benefit corporation does not have a public website, it shall deliver a copy of its most recent benefit report on demand and without charge to any person who requests a copy.

Sec. 2. 11A V.S.A. § 2.02(a) is amended to read:

(a) The articles of incorporation shall set forth:

* * *

(6) one or more classes of shares that together have unlimited voting rights; ~~and~~

(7) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution; and

(8) whether the corporation is a benefit corporation under chapter 21 of this title.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

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

“An act relating to the Vermont Benefit Corporations Act.”

And that when so amended the bill ought to pass.

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

S. 205.

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

An act relating to the Revised Uniform Anatomical Gift Act.

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

Sec. 1. 18 V.S.A. chapter 151 is added to read:

CHAPTER 151. REVISED UNIFORM ANATOMICAL GIFT ACT

§ 6001. SHORT TITLE

This chapter may be cited as the “Revised Uniform Anatomical Gift Act.”

§ 6002. DEFINITIONS

As used in this chapter:

(1) “Adult” means an individual who is at least 18 years of age.

(2) “Agent” means an individual:

(A) authorized to make health care decisions on the principal’s behalf by an advance directive executed pursuant to chapter 231 of this title or by a health care power of attorney executed pursuant to the laws of this or another state; or

(B) expressly authorized to make an anatomical gift on the principal’s behalf by any other record signed by the principal.

(3) “Anatomical gift” means a donation of all or part of a human body to take effect after the donor’s death for the purpose of transplantation, therapy, research, or education.

(4) “Decedent” means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(5) “Disinterested witness” means a witness other than the spouse, reciprocal beneficiary, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 6011 of this title.

(6) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver’s license or nondriver identification card or an inclusion in a donor registry.

(7) “Donor” means an individual whose body or part is the subject of an anatomical gift.

(8) “Donor registry” means a database that identifies donors and complies with the provisions of section 6020 of this title.

(9) “Driver’s license” means a license or permit issued by the Vermont department of motor vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) “Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) “Know” means to have actual knowledge.

(14) “Minor” means an individual who is under 18 years of age.

(15) “Nondriver identification card” means a nondriver identification card issued by the Vermont department of motor vehicles pursuant to 23 V.S.A. § 115.

(16) “Organ procurement organization” means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

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

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, an organ procurement organization, or a tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under section 6007 of this title that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

§ 6003. APPLICABILITY

This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

§ 6004. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR’S DEATH

Subject to section 6008 of this title, an anatomical gift of a donor’s body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 6005 of this title by:

(1) the donor, if the donor is an adult or if the donor is a minor and is either:

(A) emancipated; or

(B) authorized under state law to apply for a driver’s license or nondriver identification card and is at least 16 years of age;

(2) an agent of the donor, unless the advance directive or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor; or

(4) the donor’s guardian.

§ 6005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR’S DEATH

(a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or nondriver identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under section 6004 of this title may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or nondriver identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

§ 6006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH

(a) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

§ 6007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in subsection (a) of this section for making a refusal;

(2) by subsequently making an anatomical gift pursuant to section 6005 of this title that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subsection 6008(h) of this title, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

§ 6008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an anatomical gift of the donor's body or part under section 6006 of this title.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 6006 of this title is not a refusal and does not bar another person specified in section 6004 or 6009 of this title from making an anatomical gift of the donor's body or part under section 6005 or 6010 of this title.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an

anatomical gift of the donor's body or part under section 6006 of this title, another person may not make, amend, or revoke the gift of the donor's body or part under section 6010 of this title.

(d) A revocation of an anatomical gift of a donor's body or part under section 6006 of this title by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 6005 or 6010 of this title.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part for one or more of the purposes set forth in that section is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 6005 or 6010 of this title.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

§ 6009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) Subject to subsections (b) and (c) of this section and unless barred by section 6007 or 6008 of this title, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under subdivision 6004(2) of this title immediately before the decedent's death;

(2) the spouse of the decedent;

(3) the decedent's reciprocal beneficiary, as defined in 15 V.S.A. § 1302;

- (4) adult children of the decedent;
- (5) parents of the decedent;
- (6) adult siblings of the decedent;
- (7) adult grandchildren of the decedent;
- (8) grandparents of the decedent;
- (9) an adult who exhibited special care and concern for the decedent;
- (10) the persons who were acting as the guardians of the person of the decedent at the time of death; and
- (11) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (4), (5), (6), (7), (8), or (10) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 6011 of this title knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

§ 6010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) A person authorized to make an anatomical gift under section 6009 of this title may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 6009 of this title may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 6009 of this title may be:

- (1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

§ 6011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT;
PURPOSE OF ANATOMICAL GIFT

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable for those purposes. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or statement of similar import, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

(g) For purposes of subsections (b), (e), and (f) of this section, the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h), inclusive, of this section, or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 6005 or 6010 of this title or if the person knows that the decedent made a refusal under section 6007 of this title

that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

§ 6012. SEARCH AND NOTIFICATION

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) if no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

§ 6013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 6011 of this title.

§ 6014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Vermont donor registry and any other donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to the Vermont donor registry established pursuant to section 6020 of this title to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to assess the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 6011 of this title may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under subsection (c) or (d) of this section may include serological and blood and tissue compatibility testing, as well as an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 6009 of this title having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection 6011(i) and section 6023 of this title, the rights of the person to which a part passes under section 6011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 6011 of this title, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent. As used in this section, "procedures" include actual physical removal and transplantation of a part but do not include the consent, process, disposal, preservation, quality measures, storage, transportation, or research involving a part.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

§ 6015. COORDINATION OF PROCUREMENT AND USE

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

§ 6016. SALE OR PURCHASE OF PARTS PROHIBITED

(a) Except as otherwise provided in subsection (b) of this section, no person shall, for valuable consideration, knowingly purchase or sell a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(c) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6017. OTHER PROHIBITED ACTS

(a) No person shall, in order to obtain a financial gain, intentionally falsify, forge, conceal, deface, or obliterate a document of gift, an amendment or revocation of a document of gift, or a refusal.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6018. IMMUNITY

(a) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. An act that relies upon a document of gift in a donor registry, a signed statement by a donor in an advance directive, or a donor card shall be presumed to be in good faith.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in subdivision 6009(a)(2), (3), (4), (5), (6), (7), (8), or (9) of this title relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

§ 6019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY

(a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

§ 6020. DONOR REGISTRY

(a) The department of health shall ensure that a registry is developed and maintained to identify people who have authorized a document of gift and shall oversee the operation of the registry.

(b) The department of motor vehicles is authorized to enter into a data use agreement with an organ procurement organization for the purpose of

transmitting information identifying persons who have authorized a document of gift at the time of issuance of a driver's license or driver's license renewal and incorporating such information into a donor registry maintained by the organ procurement organization. Such information shall constitute the Vermont donor registry. The department of motor vehicles may secure grants from public and private sources, and receive and disburse funds that are assigned, donated, or bequeathed to the department to cover the costs of receiving and transmitting the document of gift data. As funds become available, documents of gift may be accepted and data forwarded from persons 16 and 17 years of age and persons being issued nondriver identification cards.

(c) The Vermont donor registry shall:

(1) contain a database that includes donors who have authorized an anatomical gift and provide a mechanism for an anatomical gift to be removed from the database;

(2) be accessible to other organ procurement organizations to allow them to obtain relevant information from the donor registry to determine, at or near the time of the death of the donor or a prospective donor, whether the donor or prospective donor has authorized an anatomical gift; and

(3) be accessible 24 hours per day, seven days per week for the purposes specified in subdivisions (1) and (2) of this subsection.

(d) No later than January 15, 2011, the department of motor vehicles shall submit a report on its implementation of a data use agreement with a qualified organ procurement organization to the house and senate committees on government operations, the house committee on human services, and the senate committee on health and welfare.

(e) Personally identifiable information contained in a donor registry about a donor or prospective donor may not be used or disclosed by any organ procurement organization except with the express consent of the donor, prospective donor, or other person making the anatomical gift for any purpose other than to determine, at or near the time of the death of the donor or prospective donor, whether such donor or prospective donor has made, amended, or revoked an anatomical gift.

(f) Nothing in this section shall be construed to prohibit any person from creating or maintaining a donor registry that is not established under this section, provided that any such registry shall comply with the provisions of subsections (c) and (e) of this section.

§ 6021. [Reserved.]

§ 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND
PROCUREMENT ORGANIZATION

The chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

§ 6023. [Reserved.]

§ 6024. HONORING DONOR INTENT

A person's decision to make a donation of that person's own organ or tissue after death shall be honored. In the absence of a revocation or amendment of an anatomical gift, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

§ 6025. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 6026. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Sec. 2. 15 V.S.A. § 1204(e) is amended to read:

(e) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

* * *

(19) laws relating to the making, revoking and objecting to anatomical gifts by others under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

* * *

Sec. 3. 15 V.S.A. § 1301(a) is amended to read:

(a) The purpose of this chapter is to provide two persons who are blood-relatives or related by adoption the opportunity to establish a consensual reciprocal beneficiaries relationship so they may receive the benefits and protections and be subject to the responsibilities that are granted to spouses in the following specific areas:

(1) Hospital visitation and medical decision-making under 18 V.S.A. § 1853;

(2) Decision-making relating to anatomical gifts under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

* * *

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(3) “Anatomical gift” shall have the same meaning as provided in subdivision ~~5238(1)~~ 6002(3) of this title.

* * *

Sec. 5. 18 V.S.A. § 9702 is amended to read:

§ 9702. ADVANCE DIRECTIVE

(a) An adult may do any or all of the following in an advance directive:

* * *

(15) make, limit, or refuse to make an anatomical gift pursuant to chapter ~~109~~ 151 of this title;

* * *

Sec. 6. 18 V.S.A. § 9715(b) is amended to read:

(b) Nothing in this chapter shall be construed to limit or abrogate an individual’s ability to create a document of anatomical gift pursuant to chapter ~~109~~ 151 of this title.

Sec. 7. 23 V.S.A. § 618a is amended to read:

§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM

The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter ~~109~~ 151 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.

Sec. 8. 33 V.S.A. § 2302(a) is amended to read:

(a) When requested in writing by a practicing physician, licensed and resident in this state, the officer having charge of the burial shall deliver the body of a deceased person to be buried under section 2301 of this title to the physician to be used by him or her for the advancement of anatomical science, unless:

* * *

(6) The deceased person is known to have executed an anatomical gift document in accordance with the provisions of the Revised Uniform Anatomical Gift Act.

Sec. 9. REPEAL

Chapter 109 of Title 18 (Uniform Anatomical Gift Act) is repealed.

Sec. 10. EFFECTIVE DATE

This act shall take effect July 1, 2010.

And that when so amended the bill ought to pass.

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

Rules Suspended; Bills Messaged

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

S. 77, S. 222, S. 283, H. 761.

Rules Suspended; Resolution Messaged

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

J.R.H. 34.

Adjournment

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