Journal of the Senate

FRIDAY, APRIL 23, 2010

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Ann Grady of Montpelier.

Message from the House No. 59

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

Mr. President:

I am directed to inform the Senate that:

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

S. 237. An act relating to operational standards for salvage yards.

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

The House has adopted joint resolution of the following title:

J.R.H. 47. Joint resolution urging the United States Commodity Futures Trading Commission to limit rampant speculation in the energy futures market.

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. 50. Joint resolution urging expedited federal initiation of the National Environmental Policy Act process relating to the proposed federal acquisition of Eagle Point Farm in Derby, Vermont.

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

Recess

On motion of Senator Shumlin the Senate recessed until 10:30 A.M.

Called to Order

At 10:30 A.M. the Senate was called to order by the President.

House Requested to Return Bill to Custody of Senate

H. 788.

On motion of Senator White, the Senate requested the House to return to the custody of the Senate, House bill entitled:

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

Joint Resolution Referred

J.R.H. 47.

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

Joint resolution urging the United States Commodity Futures Trading Commission to limit rampant speculation in the energy futures market.

Whereas, more than half of the homes in Vermont are heated with oil, and

Whereas, the more than 150 retail providers of heating oil in Vermont purchase the product after it is traded on the unregulated futures market, and

Whereas, the rampant speculation in oil futures has artificially increased the cost of heating oil at the expense of both the retailers and the more than 340,000 people in Vermont who depend on oil for heat and hot water, and

Whereas, the federal government agency responsible for overseeing energy trading, the Commodity Futures Trading Commission (CFTC), has proposed a new rule placing speculative position limits on energy contracts in order to limit risky trades and prevent big banks from dominating the oil market, and

Whereas, this rule, in combination with passage of federal derivatives market reform legislation, will close loopholes and help return the prices of gasoline, diesel fuel, and heating oil to levels that more accurately reflect supply and demand fundamentals, and

Whereas, by federal law, the CFTC must consider public comments before it decides whether or not to implement the proposed trading rule, and it is important that this legislature express its opinion on this critical public policy matter affecting a large number of Vermont families, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Commodity Futures Trading Commission to implement speculative position limits in order to reduce volatility in the energy futures market, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commodity Futures Trading Commission and the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Economic Development, Housing and General Affairs.

Bill Passed in Concurrence with Proposal of Amendment

H. 725.

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

An act relating to farmers' markets.

Proposals of Amendment; Third Readings Ordered

H. 507.

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

An act relating to fostering connections to success in guardianships.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: Before Sec. 6, by striking out the heading "* * * Technical Corrections * * *"

Second: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 33 V.S.A. § 5307(h) is added to read as follows:

(h) The department shall provide information to relatives and others with a significant relationship with the child about options to take custody or participate in the care and placement of the child, about the advantages and disadvantages of the options, and about the range of available services and supports.

Third: By inserting a new section to be numbered Sec. 9 to read as follows:

Sec. 9. 14 V.S.A. § 2671 is amended to read:

§ 2671. VOLUNTARY GUARDIANSHIP

(a) Any person of at least ~~eighteen~~ 18 years of age, who desires assistance with the management of his or her affairs, may file a petition with the probate court requesting the appointment of a guardian.

(b) The petition shall:

(1) state that the petitioner ~~is not mentally ill or mentally retarded~~ understands the nature, extent, and consequences of the guardianship;

* * *

(d) ~~A petition for voluntary guardianship shall be granted if the court finds that:~~

~~(1) the petitioner is not mentally ill or mentally retarded; and~~

~~(2) the petitioner is uncoerced; and~~

~~(3) the petitioner understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.~~

(1) The court shall hold a hearing on the petition, with notice to the petitioner and the proposed guardian.

(2) At the hearing, the court shall explain to the petitioner the nature, extent, and consequences of the proposed guardianship and determine if the petitioner agrees to the appointment of the named guardian.

(3) At the hearing, the court shall explain to the petitioner the procedures for terminating the guardianship.

(4) After the hearing, the court shall make findings on the following issues:

(A) whether the petitioner is uncoerced;

(B) whether the petitioner understands the nature, extent, and consequences of the proposed guardianship; and

(C) whether the petitioner understands the procedures for terminating the guardianship.

(e) ~~In its discretion, the~~ The court may order that the petitioner be evaluated by ~~a qualified mental health professional~~ a person who has specific training

and demonstrated competence to evaluate the petitioner. The scope of the evaluation shall be limited to~~:~~

~~(1)~~ whether the petitioner ~~is mentally ill or mentally retarded; and~~

~~(2) the capacity of the petitioner to understand~~ understands the nature, extent and consequences of the guardianship requested and the procedures for revoking the guardianship.

(f) If after the hearing the court finds that the petitioner ~~meets the criteria set forth in subsection (d) of this section~~ is uncoerced, understands the nature, extent and consequences of the proposed guardianship, and understands the procedures for terminating the guardianship, it shall enter judgment specifying the powers of the guardian as requested in the petition. The court shall mail a copy of its order to the petitioner and the guardian, and it shall attach to the order a notification to the petitioner setting forth the procedures for terminating the guardianship.

(g) If the court finds that the petitioner does not meet the criteria set forth in subsection (d) of this section, it shall dismiss the petition; provided, however, that if the court finds that the petitioner ~~is mentally ill or mentally retarded~~ does not understand the nature, extent, and consequences of the guardianship and in the court's opinion requires assistance with the management of his or her personal or financial affairs, the court may treat the petition as if filed pursuant to section 3063 of this title.

(h) The ~~ward~~ person under guardianship may, at any time, file a motion to revoke the guardianship. Upon receipt of the motion, the court shall give notice as provided by the rules of probate procedure. Unless the guardian files a motion pursuant to section 3063 of this title within ten days from the date of the notice, the court shall enter judgment revoking the guardianship and shall provide the ward and the guardian with a copy of the judgment.

(i)(1) Any person interested in the welfare of the ~~ward~~ person under guardianship, as defined by section 3061 of this chapter, may petition the court where venue lies for termination of the guardianship. Grounds for termination of the guardianship shall be:

~~(1)~~(A) failure to render an account after having been duly cited by the court;

~~(2)~~(B) failure to perform an order or decree of the court;

~~(3)~~(C) a finding that the guardian has become incapable of or unsuitable for exercising his or her powers; or

~~(4)~~(D) the death of the guardian.

(2) The court may also consider termination of the guardianship on the court's own motion.

(j) The guardian shall file an annual report with the appointing court ~~on~~ within 30 days of the anniversary date of appointment containing the information required by section 3076 of this title.

(k) The court shall mail an annual notice on the anniversary date of the appointment of the guardian to the person under a guardianship setting forth the procedure for terminating the guardianship and the right of the person under guardianship to receive and review the annual reports filed by the guardian.

(l) At the termination of a voluntary guardianship, the guardian shall render a final accounting as required by section 2921 of this title.

~~(l)~~(m) The guardian shall not be paid any fees to which the guardian may be entitled from the estate of the ~~ward~~ person under guardianship until the annual reports or final accounting required by this section have been filed with the court.

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

"An act relating to voluntary guardianship and children in foster care."

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

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

H. 590.

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

An act relating to mediation in foreclosure proceedings.

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

Sec. 1. Rule 80.1 of the Vermont Rules of Civil Procedure is amended to read:

RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS

* * *

(b) Complaint; Process.

(1) Complaint. The complaint in an action for foreclosure shall set forth the name of the mortgagor and mortgagee, the date of the mortgage deed, the description of the premises, the debt or claim secured by the mortgage, any attorney's fees claimed under an agreement in the mortgage or other instrument evidencing indebtedness, any assignment of the mortgage, the condition contained in the mortgage deed alleged to have been breached, the names of all parties in interest and, as to each party in interest, the date of record of the instrument upon which the interest is based, shall pray that defendants' equity of redemption in the premises be foreclosed and explain that the defendant or defendants must enter their appearance in order to receive notice of the foreclosure judgment which will set forth the amount of money they must deposit to redeem the premises and the period of time allowed them to deposit this amount. The plaintiff shall attach to the complaint copies of the original note and mortgage deed and proof of ownership thereof, including copies of all original endorsements and assignments of the note and mortgage deed. The plaintiff shall plead in its complaint that the originals are in the possession and control of the plaintiff or that the plaintiff is otherwise entitled to enforce the mortgage note pursuant to the Uniform Commercial Code. All parties in interest shall be joined as parties defendant. Failure to join any party in interest shall not invalidate the action nor any subsequent proceedings as to those joined. A claim for foreclosure in an action under this paragraph may not be joined with a claim for a deficiency except when a defendant in the answer has requested foreclosure pursuant to a power of sale in the mortgage.

* * *

Sec. 2. 12 V.S.A. § 4523(b) is amended to read:

(b) The plaintiff shall file a copy of the complaint, without supporting attachments, in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

Sec. 3. 12 V.S.A. § 4531a is amended to read:

§ 4531a. FORECLOSURE; POWER OF SALE

(a) When a power of sale is contained in a mortgage and the plaintiff in the foreclosure complaint, or the defendant in his or her answer requests a sale, the court may upon entry of judgment of foreclosure order that if the property is not redeemed within the time period allowed by the court, the property be sold pursuant to such power and the court may further determine the time and manner of the sale. If a sale is ordered with respect to any property other than farmland or a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence, the redemption period shall be eliminated or reduced by the court to no more than 30 days. If the property is not redeemed, the plaintiff shall thereupon execute the power of sale and do all things required by it or by the court. No sale of a dwelling house of ~~two~~ four units or less when currently occupied by the owner as his or her principal residence may take place within seven months of service of the foreclosure complaint, unless the court finds that the occupant is making waste of the property or the parties mutually agree after suit to a shorter period.

(b) When a power of sale is contained in a mortgage relating to any property except for a dwelling house of ~~two~~ four units or less that is occupied by the owner as a principal residence, or farmland, instead of a suit and decree of foreclosure, the mortgagee or assignee may, upon breach of mortgage condition, exercise the power of sale without first commencing a foreclosure action or obtaining a foreclosure decree, and may give notices and do all such acts as are authorized or required by the power, including the giving of a foreclosure deed upon the completion of the foreclosure sale; but no sale under and by virtue of a power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of sections 4532 and 4533a of this title are complied with.

* * *

Sec. 4. 12 V.S.A. chapter 163, subchapter 9 is added to read:

Subchapter 9. Mediation in Foreclosure Actions

§ 4701. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of the federal Home Affordable Modification Program ("HAMP") requirements in actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) The requirements of this subchapter shall apply only to foreclosure actions involving loans that are subject to the federal HAMP guidelines.

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken a specialized, continuing legal education training course on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

§ 4702. OPPORTUNITY TO MEDIATE

(a) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, whenever the mortgagor enters an appearance in the case or requests mediation prior to four months after judgment is entered, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:

(1) for good cause, shorten the four-month period or thereafter decline to order mediation; or

(2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.

(b) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.

(c) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

(d) The notice required by subsection (c) of this section shall:

(1) be on a form approved by the court administrator;

(2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;

(3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;

(4) provide contact information for legal services; and

(5) incorporate a form that can be used by the homeowner to request mediation from the court.

(e) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:

(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and

(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

§ 4703. MEDIATION

(a) During all mediations under this subchapter:

(1) the mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related "net present value" calculations in considering a loan modification conducted under this subchapter;

(2) the mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related "net present value" calculation; and

(3) where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator's report.

(b) In all mediations under this subchapter, the mortgagor shall make a good faith effort to provide to the mediator 20 days prior to the first mediation, or within a time determined by the mediator to be appropriate in order to allow for verification of the information provided by the mortgagee, information on his or her household income and any other information required by HAMP unless already provided.

(c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by

subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

(d)(1) The following persons shall participate in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mortgagee or mortgagee's servicing agent, if present, shall have:

(A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions (a)(1) and (2) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(C) the ability and authority to perform necessary HAMP-related "net present value" calculations and to consider other options available in subdivisions (a)(1) and (2) of this section during the mediation.

(e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or videoconferencing.

(f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.

(g) All mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection 4523(a) of this title.

§ 4704. MEDIATION REPORT

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties. The mediation report shall be confidential.

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information related to the requirements in subsection 4703(a) of this title.

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

(6)(A) A statement as to whether any person required by subsection (d) of this section to participate in the mediation failed to:

(i) attend the mediation;

(ii) make a good faith effort to mediate; or

(iii) supply documentation, information, or data as required by subsections 4703(a)–(c) of this title.

(B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

§ 4705. COMPLIANCE WITH OBLIGATIONS

(a) Upon receipt of a mediator's report required by subsection 4704(a) of this title, the court shall determine whether the servicer has complied with all of its obligations under subsection 4703(a) of this title, and, at a minimum, with any modification obligations under HAMP.

(b) If the mediator's report includes a statement under subdivision 4704(b)(6) of this title, or if the court makes a determination of noncompliance with the obligations under subsection 4705(a) of this title, the court may impose appropriate sanctions, including prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.

(c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4706. EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE

The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period.

§ 4707. NO WAIVER OF RIGHTS; COSTS OF MEDIATION; EXEMPTIONS

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter. The mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) No mortgagee may shift to the mortgagor the costs of the mortgagee's or the servicing agent's attorney's fees or travel costs related to mediation or more than one-half of the costs of the mediator unless judgment in foreclosure is granted, in which case the full cost of the mediation shall be recoverable to the extent there is a surplus after the sale of the property.

Sec. 5. 12 V.S.A. § 4532a is amended to read:

§ 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

(1) the name ~~and~~, current mailing address, and current telephone number, if any, of the mortgagor;

(2) the address of the property being foreclosed;

(3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage;

(4) the name of the original lender, if different;

(5) the name, address, and telephone number of the mortgage servicer, if applicable; and

(6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

(c) Acceptance of a foreclosure complaint by the court clerk that, due to a good faith error or omission by the plaintiff or the clerk, does not contain the certification required in subsection (a) of this section, shall not invalidate the foreclosure proceeding, provided that the plaintiff files the required notice with the commissioner within 10 days of obtaining knowledge of the error or omission.

(d) The commissioner may disclose the information from the notice of foreclosure to the office of the attorney general.

Sec. 6. 27 V.S.A. § 305 is amended to read:

§ 305. CONVEYANCES EFFECTED THROUGH POWER OF ATTORNEY

(a) A deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall not be of any effect or admissible in evidence, unless such power of attorney is signed, witnessed by one or more witnesses, acknowledged and recorded in the office where such deed is required to be recorded.

(b) Nothing in subsection (a) of this section shall limit the enforceability of a power of attorney which is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. This subsection shall apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2010.

Sec. 7. 27 V.S.A. § 348 is amended to read:

§ 348. INSTRUMENTS CONCERNING REAL PROPERTY VALIDATED

(a) When an instrument of writing shall have been on record in the office of the clerk in the proper town for a period of 15 years, and there is a defect in the instrument because it omitted to state any consideration therefor or was not sealed, witnessed, acknowledged, validly acknowledged, or because a license to sell was not issued or is defective, the instrument shall, from and after the expiration of 15 years from the filing thereof for record, be valid. Nothing herein shall be construed to affect any rights acquired by grantees, assignees or

encumbrancers under the instruments described in the preceding sentence, nor shall this section apply to conveyances or other instruments of writing, the validity of which is brought in question in any suit now pending in any courts of the state.

* * *

Sec. 8. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after.

Sec. 9. 12 V.S.A. § 2903 is amended to read:

§ 2903. DURATION AND EFFECTIVENESS

(a) A judgment lien shall be effective for eight years from the issuance of a final judgment on which it is based except that ~~a petition for foreclosure filed~~ an action to foreclose the judgment lien during the eight-year period shall extend the period until the termination of the foreclosure suit if a copy of the complaint is filed in the land records on or before eight years from the issuance of the final judgment.

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter.

(c) Interest on a judgment lien shall accrue at the rate of 12 percent per annum.

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

Sec. 10. 19 V.S.A. § 1111 is amended to read:

§ 1111. PERMITTED USE OF THE RIGHT-OF-WAY

* * *

(h) Restraining prohibited acts. Whenever the secretary believes that any person is in violation of the provisions of this chapter he or she may also bring an action in the name of the agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this

section and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectmen have the same authority for town highways. The court may issue temporary or permanent injunctions without bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

* * *

Sec. 11. 14A V.S.A. § 102 is amended to read:

§ 102. SCOPE

(a) This title applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. ~~This~~ Except as provided in subsection (b) of this section, this title shall not apply to trusts described in the following provisions of Vermont Statutes Annotated: chapter 16 of Title 3, chapter 151 of Title 6, chapters 103, 204, and 222 of Title 8, chapters 11A, 12, and 59 of Title 10, chapter 7 of Title 11A, chapter 11 of Title 15, chapters 55, 90, and 131 of Title 16, chapters 121, 177, and 225 of Title 18, chapter 9 of Title 21, chapters 65, 119, 125, and 133 of Title 24, ~~chapters 5 and~~ chapter 7 of Title 27, chapter 11 of Title 28, chapter 16 of Title 29, and chapters 84 and 91 of Title 30.

(b) Section 1013 of this title (certification of trust) shall apply to all trusts described in subsection (a) of this section.

Sec. 12. EFFECTIVE DATE

(a) Secs. 1–5 and 13 of this act shall take effect on July 1, 2010.

(b) This section and Secs. 6–11 of this act shall take effect upon passage.

Sec. 13. SUNSET

Secs. 1, 2, 3, 4, and 5 of this act shall be repealed on the same day as the expiration date of the federal Home Affordability Modification Program ("HAMP").

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

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

Proposals of Amendment; Consideration Interrupted by Recess

H. 783.

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

An act relating to miscellaneous tax provisions.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 1 in its entirety (tax expenditure report).

Second: By striking out Sec. 9 in its entirety (VAST trails).

Third: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. 32 V.S.A. § 9605(a) is amended to read:

(a) The tax imposed by this chapter shall be paid to ~~a town clerk~~ the commissioner at the time of ~~the delivery to that clerk for recording of a deed evidencing a~~ transfer of title to property subject to the tax.

Fourth: By striking out Sec. 16 in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 32 V.S.A. § 9608(a) is amended to read:

(a) Except as to transfers which are exempt pursuant to subdivision 9603(17) of this title, no town clerk shall record~~, or receive for recording,~~ any deed to which has not been affixed an acknowledgment of return ~~and tax payment~~ under section 9607 of this title and a certificate in the form prescribed by the land use panel of the natural resources board and the commissioner of the department of taxes signed under oath by the seller or the seller's legal representative, that the conveyance of the real property and any development thereon by the seller is in compliance with or exempt from the provisions of chapter 151 of Title 10. The certificate shall indicate whether or not the conveyance creates the partition or division of land. If the conveyance creates a partition or division of land, there shall be appended the current "Act 250 Disclosure Statement," required by 10 V.S.A. § 6007. A town clerk who violates this section shall be fined $50.00 for the first such offense and $100.00 for each subsequent offense. A person who purposely or knowingly falsifies

any statement contained in the certificate required is punishable by fine of not more than $500.00 or imprisonment for not more than one year, or both.

Fifth: By striking out Secs. 19–24 in their entirety and inserting in lieu thereof the following:

Sec. 19. 32 V.S.A. § 6061(5) is amended to read:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;

(B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of $6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, ~~and~~ all benefits under Veterans' Acts, ~~and~~ federal pension and annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; ~~and~~

(C) without the inclusion of: any gifts from nongovernmental sources other than those described in subdivision (B) of this subdivision (5); surplus food or other relief in kind supplied by a governmental agency; or the first $6,500.00 of income earned by a full-time student who qualifies as a dependent of the claimant under the federal Internal Revenue Code; the first $6,500.00 of income received by a person who qualifies as a dependent of the

claimant under the Internal Revenue Code and who is the claimant's parent or disabled adult child; or payments made by the state pursuant to chapters 49 and 55 of Title 33 for foster care, or payments made by the state or an agency designated in ~~section~~ 18 V.S.A. § 8907 ~~of Title 18~~ for adult foster care or to a family for the support of an eligible person with a developmental disability. If the commissioner determines, upon application by the claimant, that a person resides with a claimant who is disabled or was at least 62 years of age as of the end of the year preceding the claim, for the primary purpose of providing attendant care services (as defined in ~~section~~ 33V.S.A. § 6321 ~~of Title 33~~) or homemaker or companionship services, with or without compensation, which allow the claimant to remain in his or her home or avoid institutionalization, the commissioner shall exclude that person's modified adjusted gross income from the claimant's household income. The commissioner may require that a certificate in a form satisfactory to the commissioner be submitted which supports the claim; and

(D) with the addition of an asset adjustment of two times the sum of interest and dividend income above $5,000.00, regardless of whether that dividend or interest income is included in adjusted gross income.

Sec. 20. 32 V.S.A. § 6061(4), (5), and (7) are amended to read:

(4) "Household income" means modified adjusted gross income, but not less than zero, received in a calendar year by:

(5) "Modified adjusted gross income" means "federal adjusted gross income":

(A) before the deduction of any trade or business loss, loss from a partnership, loss from a small business or "subchapter S" corporation, loss from a rental property, or capital loss, except that in the case of a business which sells a business property with respect to which it is required, under the Internal Revenue Code, to report a capital gain, a business loss incurred in the same tax year with respect to the same business may be netted against such capital gain;

(B) with the addition of the following, to the extent not included in adjusted gross income: alimony, support money other than gifts, gifts received by the household in excess of a total of $6,500.00 in cash or cash-equivalents, cash public assistance and relief (not including relief granted under this subchapter), cost of living allowances paid to federal employees, allowances received by dependents of servicemen and women, the portion of Roth IRA distributions representing investment earnings and not included in adjusted gross income, railroad retirement benefits, payments received under the federal Social Security Act, all benefits under Veterans' Acts, federal pension and

annuity benefits not included in adjusted gross income; nontaxable interest received from the state or federal government or any of its instrumentalities, workers' compensation, the gross amount of "loss of time" insurance, amounts deducted pursuant to 26 U.S.C. § 199, and the amount of capital gains excluded from adjusted gross income, less the net employment and self-employment taxes withheld from or paid by the individual (exclusive of any amounts deducted to arrive at adjusted gross income or deducted on account of excess payment of employment taxes) on account of income included under this section, less any amounts paid as child support money if substantiated by receipts or other evidence that the commissioner may require; ~~and~~

* * *

(7) ~~"Rent constituting property taxes"~~ "Allocable rent" means for any housesite and for any taxable year~~, at the claimant's option, (A)~~ 21 percent of the gross rent ~~or (B) that portion of the gross rent which equals the property tax assessed for payment in the calendar year allocable to the claimant's rental unit for the period rented by the claimant~~. "Gross rent" means the rent actually paid during the taxable year by the individual or other members of the household solely for the right of occupancy of the housesite during the taxable year. ~~If a claimant's rent is government-subsidized, the property tax allocable to the claimant's rental unit shall be reduced in the same proportion as the rent is reduced by the subsidy. "Rent constituting property taxes"~~ "Allocable rent" shall not include payments made under a written homesharing agreement pursuant to a nonprofit homesharing program, or payments for a room in a nursing home in any month for which Medicaid payments have been made on behalf of the claimant to the nursing home for room charges.

Sec. 21. 32 V.S.A. § 6066(a) is amended to read:

(a) An eligible claimant who owned the homestead on April 1 of the year in which the claim is filed shall be entitled to an adjustment amount determined as follows:

(1)(A) For a claimant with household income of $90,000.00 or more:

(i) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year;

(ii) minus (if less) the sum of:

* * *

~~(D) A claimant whose household income does not exceed $90,000.00 shall also be entitled to an additional adjustment amount under this section of $10.00 per acre, up to a maximum of five acres, for each additional acre of~~

~~homestead property in excess of the two-acre housesite. The adjustment amount under this section shall be shown separately on the notice of property tax adjustment to the claimant.~~

* * *

(4) Credit limitation. In no event shall the credit provided for in subdivision (3) of this subsection exceed the amount of the reduced property tax.

Sec. 22. 32 V.S.A. § 6069 is amended to read:

§ 6069. LANDLORD CERTIFICATE

~~(a) Upon written request by a tenant before January 1, the owner of the rental unit shall provide to that tenant, by January 31, a certificate of rent constituting property tax for the preceding calendar year, which shall include a certificate of property tax allocable to the rental unit indicating the proportion of total property tax on that unit or parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.~~

~~(b)~~(a) By January 31 of each year, the owner of land rented as a portion of a homestead in the prior calendar year shall furnish a certificate of rent to each claimant who owned a portion of the homestead and rented that land as a portion of a homestead in the prior calendar year. The certificate shall indicate the proportion of total property tax on that parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.

~~(c)~~(b) The owner of each rental property consisting of more than ~~four~~ one rented homestead shall, not later than January 31 of each year, furnish a certificate of rent to each person who rented a homestead from the owner at any time during the preceding calendar year. All other owners of rented homestead units shall furnish such certificate upon request of the renter. If a renter moves prior to December 31, the owner may either provide the certificate to the renter at the time of moving or mail the certificate to the forwarding address if one has been provided by the renter or in the absence of a forwarding address, to the last known address. ~~An owner is not required to furnish a certificate under this section to a tenant who, at the time he or she entered into the rental agreement, or any later date, signed a waiver of the right to receive the certificate. The waiver shall not be a part of any written lease, but shall be a separate document. The tenant may revoke the written waiver at any time by providing the owner with written notice of the revocation. An owner shall not demand or require a tenant to sign a waiver as a condition of entering into or continuing a rental agreement. An owner shall not charge a~~

~~higher rent, change any other condition of a rental agreement, or terminate a rental agreement because a tenant has failed or refused to sign a waiver or has revoked a waiver previously signed.~~

~~(d)~~(c) A certificate under this section shall be in a form prescribed by the commissioner and shall include the name of the renter, the address and any property tax parcel identification number of the homestead, notice of the requirements for eligibility for the property tax adjustment provided by this chapter, and any additional information which the commissioner determines is appropriate.

~~(e)~~(d)(1) An owner who knowingly fails to furnish a certificate to a renter as required by this section shall be liable to the commissioner for a penalty of ~~$100.00~~ $200.00 for each failure to act. An owner shall be liable to the commissioner for a penalty equal to the greater of ~~$100.00~~ $200.00 or the excess amount reported who:

~~(1)~~(A) willfully furnishes a certificate that reports total ~~rent constituting property taxes~~ allocable rent in excess of the actual amount paid; or

~~(2)~~(B) reports a total amount of ~~rent constituting property taxes~~ allocable rent that exceeds by ten percent or more the actual amount paid.

(2) Penalties under this subsection shall be assessed and collected in the manner provided in chapter 151 for the assessment and collection of the income tax.

~~(f)~~(e) Failure to receive a rent certificate shall not disqualify a renter from the benefits provided by this chapter.

Sec. 23. STATUTORY REVISION

The legislative council is directed to revise the Vermont Statutes Annotated to reflect the change from "rent constituting property taxes" to "allocable rent."

Sec. 24. FISCAL YEAR 2011 EDUCATION PROPERTY TAX RATE

(a) For fiscal year 2011 only, the education property tax imposed under 32 V.S.A. § 5402(a) shall be reduced from the rate of $1.59 and $1.10 and shall instead be at the following rates:

(1) the tax rate for nonresidential property shall be $1.37 per $100.00; and

(2) the tax rate for homestead property shall be $0.88 multiplied by the district spending adjustment for the municipality per $100.00 of equalized property value as most recently determined under 32 V.S.A. § 5405.

(b) For claims filed in 2011 only, "applicable percentage" in 32 V.S.A. § 6066(a)(2) shall be reduced from 2.0 percent and instead shall be 1.8 percent multiplied by the fiscal year 2011 district spending adjustment for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than 1.8 percent.

Sixth: By striking out Secs. 27 and 28 in their entirety (capital gains).

Seventh: By adding a new section to be numbered Sec. 31A immediately after the heading "* * * Petroleum Cleanup Fund * * *" to read as follows:

Sec. 31A. 10 V.S.A. § 1941(b)(1)(A) is amended to read:

(A) an underground storage tank defined as a category one tank after the first $10,000.00 of the cleanup costs have been borne by the owners or operators of tanks used for commercial purposes, or after the first $250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for farms or residential purposes. Disbursements on any site shall not exceed ~~$990,000.00~~ $1,240,000.00. These disbursements shall be made from the motor fuel account;

Eighth: By striking out Secs. 34, 35, 36, and 37 in their entirety (state collection of education property tax; education finance study; tax on nonprescription dietary supplements).

Ninth: By striking out Secs. 41 and 42 in their entirety and inserting in lieu thereof the following:

Sec. 41. 32 V.S.A. chapter 151, subchapter 11M is added to read:

Subchapter 11M. Machinery and Equipment Investment Tax Credit

§ 5930ll. MACHINERY AND EQUIPMENT TAX CREDIT

(a) Definitions.

(1) "Full-time job" has the same meaning as defined in subdivision 5930b(a)(9) of this title.

(2) "Investment period" means the period commencing January 1, 2010, and ending December 31, 2014.

(3) "Qualified capital expenditures" means expenditures properly chargeable to a capital account by a qualified taxpayer during the investment period, totaling at least $20 million for machinery and equipment to be located and used in Vermont for creating, producing, or processing tangible personal property for sale.

(4) "Qualified taxpayer" means a taxpayer that:

(A) is an existing business on January 1, 2010 with an aggregate average annual employment, including all employees of its related business units with which it files a combined or consolidated return for Vermont income tax purposes, during the investment period of no fewer than 200 full-time jobs in Vermont;

(B) is a taxable corporation under Subchapter C of the Internal Revenue Code;

(C) is a business whose operations at the time of application to the Vermont economic progress council are located in a Rural Economic Area Partnership (REAP) zone designated by the United States Department of Agriculture Rural Development Authority, engaged primarily in the creation, production, or processing of tangible personal property for sale; and

(D) proposes to make qualified capital expenditures in a Vermont REAP zone and such expenditures will contribute substantially to the REAP zone's economy.

(5) "Qualified taxpayer's Vermont income tax liability" means the corporate income tax otherwise due on the qualified taxpayer's Vermont net income after reduction for any Vermont net operating loss as provided for under section 5382 of this title. For a qualified taxpayer that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group, its Vermont net income includes the allocable share of the combined net income of the group.

(b) Certification.

(1) A qualified taxpayer may apply to the Vermont economic progress council for a machinery and equipment investment tax credit certification for all qualified capital expenditures in the investment period on a form prescribed by the council for this purpose.

(2) The council shall issue a certification upon determining that the applicant meets the requirements set forth in subsection (a) of this section.

(c) Amount of credit. Except as limited by subsections (e) and (f) of this section, a qualified taxpayer shall be entitled to claim against its Vermont income tax a credit in an amount equal to ten percent of the total qualified capital expenditures.

(d) Availability of credit.

(1) The credit earned under this section with respect to qualified capital expenditures shall be available to reduce the qualified taxpayer's Vermont income tax liability for its tax year beginning on or after January 1, 2012, or, if later, the first tax year within which the qualified taxpayer's aggregate qualified capital expenditures exceed $20,000,000.00. A taxpayer claiming a credit under this subchapter shall submit with the first return on which a credit is claimed a copy of the qualified taxpayer's certification from the Vermont economic progress council.

(2) The credit may be used in the year earned or carried forward to reduce the qualified taxpayer's Vermont income tax liability in succeeding tax years ending on or before December 31, 2026.

(e) Limitations.

(1) The credit earned under this section, either alone or in combination with any other credit allowed by this chapter, may not be applied to reduce the qualified taxpayer's Vermont income tax liability in any one year by more than 80 percent, and in no event shall the credit reduce the taxpayer's income tax liability below any minimum tax imposed by this chapter.

(2) The total amount of credit authorized under this section shall be $8,000,000.00 and in no event shall the credit in any one tax year exceed $1,000,000.00. The credit shall be available on a first-come first-served basis by certification of the Vermont economic progress council pursuant to subsection (b) of this section.

(f) Recapture.

(1) A qualified taxpayer who has earned credit under this section with respect to its qualified capital expenditures shall notify the Vermont economic progress council in writing within 60 days if the taxpayer's trade or business is substantially curtailed in any calendar year prior to December 31, 2023.

(2) A qualified taxpayer's business shall be considered to be substantially curtailed when the average number of the taxpayer's full-time jobs in Vermont for any calendar year prior to December 31, 2023, is less than 60 percent of the highest average number of its full-time jobs in Vermont for any calendar year in the investment period. For purposes of the preceding calculation, the qualified taxpayer's full-time jobs in Vermont shall include all full-time jobs of its related business units with which it files a combined or consolidated return for Vermont income tax purposes. A business shall not be considered to be substantially curtailed when the assets of the business have been sold but the business continues to be located in Vermont provided that the employment test of this subdivision is met.

(3) In the event that a qualified taxpayer has substantially curtailed its trade or business, then:

(A) the credit certification for such tax year and all succeeding tax years of the taxpayer shall be terminated;

(B) any credit previously earned and carried forward shall be disallowed; and

(C) any credit which has been previously used by the taxpayer to reduce its Vermont income tax liability shall be subject to recapture in accordance with the following table:

Years between the close of the tax year when credit was earned and year when business was substantially curtailed:	Percent of credits to be repaid (%):
2 or less	100
More than 2, up to 4	80
More than 4, up to 6	60
More than 6, up to 8	40
More than 8, up to 10	20
More than 10	0

(4) The recapture shall be reported on the income tax return of the taxpayer who claimed the credit for the tax year in which the taxpayer's trade or business was substantially curtailed, or the commissioner may assess the recapture in accordance with the assessment and appeal provisions provided for in subchapter 8 of this chapter.

(5) Within 60 days of the close of the qualified taxpayer's tax year in which the taxpayer's trade or business was substantially curtailed, the taxpayer may petition the commissioner for a reduction in the amount of the credit subject to recapture and the disallowance of credit previously earned and carried forward. The commissioner shall hold a hearing within 45 days of the receipt of the taxpayer's petition. The commissioner shall have the discretion to reduce the amount of the credit subject to recapture and disallowance upon a showing of circumstances that contributed to the substantial curtailment of the taxpayer's trade or business. The decision of the commissioner shall be final and shall not be subject to judicial review.

(g) Reporting.

(1) Any qualified taxpayer who has been certified under subsection (b) of this section shall file a report with the Vermont economic progress council on a form prescribed by the council for this purpose and provide a copy of the report to the commissioner of the department of taxes.

(2) The report shall be filed for each year following the certification until the year following the last year the taxpayer claims the credit to reduce its Vermont income tax liability, or 2027, whichever occurs first.

(3) The report shall be filed by February 28 each year for activity the previous calendar year and include, at a minimum:

(A) The number of full-time jobs in each quarter and the average number of hours worked per week.

(B) The level of qualifying capital investments made if reporting on a year within an investment period; and

(C) The amount of tax credit earned and applied during the previous calendar year.

Sec. 42. REPEAL

Subchapter 11M of chapter 151 of Title 32 is repealed July 1, 2026, and no credit under that section shall be available for any taxable year beginning after June 30, 2026; provided, however, that if no qualified capital expenditures are made during the investment period, both terms as defined in 32 V.S.A. § 5930ll(a) of this act, the subchapter shall be repealed effective January 1, 2015.

Tenth: By striking out Secs. 43, 44, 45, and 46 in their entirety (homestead appeal and one-time declaration).

Eleventh: By striking out Sec. 47 in its entirety and inserting in lieu thereof a new Sec. 47 to read as follows:

Sec. 47. 20 V.S.A. § 1548 is added to read:

§ 1548. VERMONT VETERANS' FUND

(a) There is created a special fund to be known as the Vermont veterans' fund. This fund shall be administered by the state treasurer and shall be paid out in grants on the recommendations of a seven-member committee comprised of:

(1) The adjutant general or designee;

(2) The Vermont veterans home administrator or designee;

(3) The commissioner of the department of labor or designee;

(4) The secretary of the agency of human resources or designee;

(5) The commissioner of buildings and general services or designee;

(6) The director of the White River Junction VA medical center or designee; and

(7) The director of the White River Junction VA benefits office, or designee.

(b) The purpose of this fund shall be to provide grants or other support to individuals and organizations:

(1) For the long-term care of veterans.

(2) To aid homeless veterans.

(3) For transportation services for veterans.

(4) To fund veterans' service programs.

(c) The Vermont veterans' fund shall consist of revenues paid into it from the Vermont veterans' fund checkoff established in 32 V.S.A. § 5862e and from any other source.

(d) For purposes of this section, "veteran" means a resident of Vermont who served on active duty in the United States armed forces or the Vermont national guard or Vermont air national guard and who received an honorable discharge.

Twelfth: By adding 11 new sections to be numbered Secs. 48A-48K to read as follows:

* * * Campaign Finance Checkoff * * *

Sec. 48A. REPEAL

32 V.S.A. § 5862c (providing for a checkoff on Vermont income tax returns for the Vermont campaign fund) is repealed effective for taxable years beginning on and after January 1, 2010.

* * * Transferability of Downtown Tax Credits * * *

Sec. 48B. 32 V.S.A. § 5930dd(f) is added to read:

(f) In lieu of using a tax credit to reduce its own tax liability, an applicant may request the credit in the form of an insurance credit certificate that an insurance company may accept in return for cash and for use in reducing its tax liability under subchapter 7 of chapter 211 of this title in the first tax year in which the qualified building is placed back in service after completion of the qualified project or in the subsequent nine years. The amount of the insurance

credit certificate shall equal the unused portion of the credit allocated under this subchapter, and an applicant requesting an insurance credit certificate shall provide to the state board a copy of any returns on which any portion of the allocated credit under this section was claimed.

Sec. 48C. 32 V.S.A. § 5930ff is amended to read:

§ 5930ff. RECAPTURE

If, within five years after completion of the qualified project, either of the following events occurs, the applicant shall be liable for a recapture penalty in an amount equal to the total tax credit claimed plus an amount equal to any value received from a bank for a bank or insurance credit certificate; and any credit allocated but unclaimed shall be disallowed to the applicant:

* * *

* * * Rutland-Clarendon Municipal Agreement * * *

Sec. 48D. REPEAL

No. M-4 of 1981 of the Acts of 1981 (relating to the agreement between Rutland City and Clarendon) is repealed effective upon passage of this act.

* * * Property Tax Exemption for Certain Skating Rinks * * *

Sec. 48E. Sec. 40 of No. 190 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

Sec. 40. EDUCATION PROPERTY TAX EXEMPTION FOR SKATING RINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from education property taxes for fiscal years 2009 ~~and~~, 2010, and 2011 only.

* * *Current Use Advisory Board * * *

Sec. 48F. CURRENT USE ADVISORY BOARD USE VALUE CALCULATION

The current use advisory board established pursuant to 32 V.S.A. § 3753 has provided to the general assembly a document entitled" Methodology and Criteria used in the Determination of Vermont's Use Values for the Current Use Program" and dated April 12, 2010. The general assembly hereby deems that as of the date of passage of this act the document shall have the force and effect of administrative rules adopted pursuant to chapter 25 of Title 3 of the

Vermont Statutes Annotated. The document shall be filed no later than July 1, 2010, as an adopted rule with the secretary of state and the legislative committee on administrative rules and any proposed changes to the methodology or criteria as set forth in the document shall be subject to all of the provisions of chapter 25 of Title 3.

Sec. 48G. 32 V.S.A. § 7771 is amended to read:

§ 7771. RATE OF TAX

(a) A tax is imposed on all cigarettes, little cigars, and roll-your-own tobacco held in this state by any person for sale, unless such products shall be:

(1) in the possession of a licensed wholesale dealer;

(2) in the course of transit and consigned to a licensed wholesale dealer or retail dealer; or

(3) in the possession of a retail dealer who has held the products for 24 hours or less.

(b) Payment of the tax on cigarettes under this ~~subsection~~ section shall be evidenced by the affixing of stamps to the packages containing the cigarettes. Where practicable, the commissioner may also require that stamps be affixed to packages containing little cigars or roll-your-own tobacco. Any cigarette, little cigar, or roll-your-own tobacco on which the tax imposed by this ~~subsection~~ section has been paid, such payment being evidenced by the affixing of such stamp or such evidence as the commissioner may require, shall not be subject to a further tax under this chapter. Nothing contained in this chapter shall be construed to impose a tax on any transaction the taxation of which by this state is prohibited by the constitution of the United States. The amount of taxes advanced and paid by a licensed wholesale dealer or a retail dealer as herein provided shall be added to and collected as part of the retail sale price on the cigarettes, little cigars, or roll-your-own tobacco.

~~(b)~~(c) A tax is also imposed on all cigarettes, little cigars, and roll-your-own tobacco possessed in this state by any person for any purpose other than sale, as follows:

(1) This tax shall not apply to:

(A) products bearing a stamp affixed pursuant to this chapter; or

(B) products bearing a tax stamp affixed pursuant to the laws of another jurisdiction with a tax rate equal to or greater than the rate set forth in subsection (c) of this section; or

(C) products purchased outside the state by an individual in quantities of 400 or fewer cigarettes, little cigars, and ~~0.09~~ 0.0325 ounce units of roll-your-own tobacco, and brought into the state for that individual's own use or consumption. Products that are ordered from a source outside the state and delivered into this state are not "purchased outside the state" within the meaning of this subsection.

(2) There is allowed a credit against the tax under this subsection for cigarette, little cigars, or roll-your-own tobacco tax paid to another jurisdiction and evidenced by tax stamps affixed to the subject products pursuant to the laws of that jurisdiction.

(3) A person taxable under this ~~subsection~~ section shall, within 30 days of first possessing the products in this state, file a return with the commissioner, showing the quantity of products brought into the state. The return must be made in the form and manner prescribed by the commissioner and be accompanied by remittance of the tax due.

~~(c)~~(d) The tax imposed under this section shall be at the rate of 112 mills per cigarette or little cigar and for each ~~0.09~~ 0.0325 ounces of roll-your-own tobacco. The interest and penalty provisions of section 3202 of this title shall apply to liabilities under this section.

Sec. 48H. 32 V.S.A. § 7811 is amended to read:

§ 7811. IMPOSITION OF TOBACCO PRODUCTS TAX

There is hereby imposed and shall be paid a tax on all tobacco products except roll-your-own tobacco and little cigars taxed under section 7771 of this title possessed in the state of Vermont by any person for sale on and after July 1, 1959 which were imported into the state or manufactured in the state after said date, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States. Such tax is intended to be imposed only once upon the wholesale sale of any tobacco product and shall be at the rate of 92 percent of the wholesale price for all tobacco products except snuff, which shall be taxed at ~~$1.66~~ $1.87 per ounce, or fractional part thereof, and new smokeless tobacco, which shall be taxed at the greater of ~~$1.66~~ $1.87 per ounce or, if packaged for sale to a consumer in a package that contains less than 1.2 ounces of the new smokeless tobacco, at the rate of ~~$1.99~~ $2.24 per package. Provided, however, that upon payment of the tax within 10 days, the distributor or dealer may deduct from the tax two percent of the tax due. It

shall be presumed that all tobacco products within the state are subject to tax until the contrary is established and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof. Wholesalers of tobacco products shall state on the invoice whether the price includes the Vermont tobacco products tax.

Sec. 48I. 32 V.S.A. § 7814 is amended to read:

§ 7814. FLOOR STOCK TAX

(a) Snuff and new smokeless tobacco. A floor stock tax is hereby imposed upon every retailer of snuff or new smokeless tobacco in this state in the amount by which the new tax exceeds the amount of the tax already paid on the snuff or new smokeless tobacco. The tax shall apply to snuff and new smokeless tobacco in the possession or control of the retailer at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006,~~ following enactment of this act but shall not apply to retailers who hold less than $500.00 in wholesale value of ~~such~~ snuff and new smokeless tobacco. Each retailer subject to the tax shall, on or before July 25~~, 2006~~ following enactment of this act file a report to the commissioner in such form as the commissioner may prescribe showing the snuff on hand at 12:01 a.m. ~~o'clock~~ on July 1~~, 2006,~~ following enactment of this act and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before ~~August 25, 2006~~ July 25 following enactment of this act, and thereafter shall bear interest at the rate established under ~~section~~ 32 V.S.A. § 3108 ~~of this title~~. In case of timely payment of the tax, the retailer may deduct from the tax due two percent of the tax. Any snuff or new smokeless tobacco with respect to which a floor stock tax has been imposed and paid under this section shall not again be subject to tax under section 7811 of this title.

(b) ~~Cigarettes, little cigars, or roll~~ Roll-your-own tobacco. Notwithstanding the prohibition against further tax on ~~stamped cigarettes, little cigars, or~~ roll-your-own tobacco under section 7771 of this title, a floor stock tax is hereby imposed upon every dealer of ~~cigarettes, little cigars, or~~ roll-your-own tobacco in this state who is either a wholesaler, or a retailer who at 12:01 a.m. on July 1 following enactment of this act, has ~~more than 10,000 cigarettes or little cigars or who has~~ $500.00 or more of wholesale value of roll-your-own tobacco, for retail sale in his or her possession or control. The amount of the tax shall be the amount by which the new tax exceeds the amount of the tax already paid for ~~each cigarette, little cigar, or~~ the roll-your-own tobacco in the possession or control of the wholesaler or retailer at 12:01 a.m. on July 1 following enactment of this act~~, and on which cigarette stamps have been affixed before July 1 following enactment of this act. A~~

~~floor stock tax is also imposed on each Vermont cigarette stamp in the possession or control of the wholesaler at 12:01 a.m. on July 1 following enactment of this act, and not yet affixed to a cigarette package, and the tax shall be at the rate of $0.25 per stamp.~~ Each wholesaler and retailer subject to the tax shall, on or before July 25 following enactment of this act, file a report to the commissioner in such form as the commissioner may prescribe showing the ~~cigarettes, little cigars, or~~ roll-your-own tobacco ~~and stamps~~ on hand at 12:01 a.m. on July 1 following enactment of this act, and the amount of tax due thereon. The tax imposed by this section shall be due and payable on or before July 25 following enactment of this act, and thereafter shall bear interest at the rate established under ~~section~~ 32 V.S.A. § 3108 ~~of this title~~. In case of timely payment of the tax, the wholesaler or retailer may deduct from the tax due two and three-tenths of one percent of the tax. Any ~~cigarettes, little cigars, or~~ roll-your-own tobacco with respect to which a floor stock tax has been imposed under this section shall not again be subject to tax under section 7771 of this title.

Sec. 48J. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent. The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.

Sec. 48K. 32 V.S.A. § 5402b(b) is amended to read:

§ 5402B. STATEWIDE EDUCATION TAX RATE ADJUSTMENTS

(b) If the commissioner makes a recommendation to the general assembly to adjust the education tax rates under section 5402 of this title, the commissioner shall also recommend a proportional adjustment to the

applicable percentage base and for homestead income-based adjustments under section 6066 of this title, but the applicable percentage base shall not be adjusted below 1.8 percent. ~~The commissioner shall include in the recommendation specific information on the total amount of annual education property tax adjustments, the percentage of Vermont households that are provided an education property tax adjustment or renter rebate based on household income, and the dollar limitations that are used for each of the computations under this chapter. Based on the foregoing information, the commissioner shall make a recommendation regarding the dollar limitations provided for in statute and whether such limitations should be increased or decreased in order to maintain the same percentage level of households from the previous fiscal year that are eligible for an education property tax adjustment or renter rebate based on household income.~~

Thirteenth: By striking out Sec. 49 in its entirety and inserting in lieu thereof a new Sec. 49 to read as follows:

Sec. 49. EFFECTIVE DATES

This act shall take effect upon passage, except:

(1) Sec. 3 (collection assistance fees) shall apply to fees assessed on or after July 1, 2010.

(2) Sec. 5 (local option tax administration fee) shall apply to all returns filed with the department on or after July 1, 2010.

(3) Sec. 7 (Vermont economic growth incentive recapture) shall take effect retroactively on January 1, 2010.

(4) Secs. 11–15 (property transfer tax) shall apply to transfers occurring on or after January 1, 2011.

(5) Secs. 17 and 19 (definition of modified adjusted gross income; computation) shall apply to homestead property tax adjustments claims made in 2010 and after and shall apply to renter rebate claims made in 2011 and after.

(6) Secs. 18 and 20 (definitions of household income, modified adjusted gross income, and allocable rent; landlord certificate) shall apply to property tax adjustment and renter rebate claims made in 2011 and after.

(7) Sec. 23 (estate tax petition for refund) shall apply to decedents dying after December 31, 2009.

(8) Sec. 25 (link to Internal Revenue Code) shall apply to taxable years beginning on and after January 1, 2009.

(9) Sec. 27 (compensating use tax percentage) shall apply to taxable years beginning on and after January 1, 2010.

(10) Sec. 28 (increasing the per-site disbursement cap) shall apply to any remediation currently in progress and all future remediation.

(11) Sec. 29 (petroleum cleanup fund) shall take effect on July 1, 2010.

(12) Sec. 30 (fuel gross receipts tax) shall apply to sales of fuels on or after July 1, 2010.

(13) Sec. 31 (add-back of one-third of production activity deduction) shall apply to tax years beginning on and after January 1, 2010, and before January 1, 2012.

(14) Sec. 32 (full flow-through of production activity deduction) shall apply to tax years beginning on and after January 1, 2012.

(15) Sec. 34 (machinery and equipment investment tax credit) shall apply to taxable years beginning on and after January 1, 2012.

(16) Sec. 37 (income tax return checkoff for Vermont veterans' fund) shall apply to income tax returns for taxable years 2010 and after.

(17) Secs. 39 and 40 of this act (insurance credit certificates) shall take effect upon passage and shall apply to tax years beginning on or after January 1, 2010.

(18) Secs. 43–45 (tobacco taxes) shall take effect on July 1, 2010.

(19) Sec. 48K shall take effect on April 15, 2011.

And by renumbering all sections and cross-references to be numerically correct.

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

Senator Shumlin Assumes the Chair

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 Finance?, Senator Racine requested that the *fifth* proposal of amendment with respect to Sec. 24 be voted on separately.

Which was agreed to.

Senator Mazza Assumes the Chair

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first*

through *fourth, fifth (Secs. 19-23)* and *sixth* through *thirteenth* proposals of amendment?, on motion of Senator Campbell the Senate recessed until 1:00 P.M.

Called to Order

At 1:00 P.M. the Senate was called to order by the President *pro tempore*.

Consideration Resumed; Proposals of Amendment; Third Reading Ordered

H. 783.

Consideration was resumed on Senate bill entitled:

An act relating to miscellaneous tax provisions.

Thereupon, pending the question Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first* through *fourth, fifth (Secs. 19-23),* and *sixth* through *thirteenth* proposals of amendment?, Senator Flory moved to strike out the *third* and *fourth* proposals of amendment of the Committee on Finance.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Finance be amended as recommended by Senator Flory?, Senator Cummings requested and was granted leave to withdraw the *third* and *fourth* proposals of amendment of the Committee on Finance.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first, second, fifth (Secs. 19-23),* and *sixth* through *thirteenth* proposals of amendment?, Senator Sears requested that the *tenth* proposal of amendment be voted on separately, which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first, second, fifth (Secs. 19-23), sixth* through *ninth* and *eleventh* through *thirteenth* proposals of amendment?, Senator Kittell requested that the *twelfth* proposal of amendment with respect to Sec. 48F be voted on separately, which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance in the *first, second, fifth (Secs. 19-23), sixth* through *ninth, eleventh, twelfth (Secs. 48A-48E* and *Secs. 48G-48K)* and *thirteenth* proposals of amendment?, were collectively agreed to.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by the Committee on Finance in the *fifth* proposal of amendment with respect to Sec. 24?, Senator Cummings, on behalf of the Committee on Finance, moved to amend its *fifth* proposal of amendment in Sec. 24(a)(1), by striking out the figure "$1.37" and inserting in lieu thereof the figure $1.36, and in Sec 24(a)(2) by striking out the figure "$0.88" and inserting in lieu thereof the figure 0.87

Which was agreed to.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by the Committee on Finance in the *fifth* proposal of amendment with respect to Sec. 24?, was decided in the affirmative on a roll call, Yeas 22, Nays 6.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Campbell, Carris, Choate, Cummings, Doyle, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Scott, Sears, Snelling, Starr, White.

Those Senators who voted in the negative were: Brock, Flanagan, Flory, McCormack, Nitka, Racine.

Those Senators absent or not voting were: Mullin, Shumlin (presiding).

President Assumes the Chair

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by the Committee on Finance in the *twelfth (Sec. 48F*) proposal of amendment?, Senator Cummings requested and was granted leave to withdraw the *twelfth (Sec. 48F*) proposal of amendment of the Committee on Finance.

Thereupon, the pending question, Shall the Senate proposal of amendment be amended as recommended by the Committee on Finance in the *tenth* proposal of amendment?, was decided in the affirmative on a roll call, Yeas 16, Nays 13.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Carris, Cummings, Doyle, Flanagan, Giard, Hartwell, MacDonald, McCormack, Nitka, Racine, Scott, Snelling, White.

Those Senators who voted in the negative were: Brock, Campbell, Choate, Flory, Illuzzi, Kitchel, Kittell, Lyons, Mazza, Miller, Sears, Shumlin, Starr.

The Senator absent and not voting was: Mullin.

Thereupon, Senator Campbell moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 48G to read as follows:

Sec. 48G. 32 V.S.A. § 7702 is amended to read:

* * *

(6) "Little ~~cigars~~ cigar" means any ~~rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) and as to which 1,000 units weigh not more than three pounds~~ roll for smoking made wholly or in part of tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) which includes a cellulose acetate filter or other integrated filter, or as to which 1,000 units weigh not more than three pounds.

* * *

(21) "Integrated filter" means a component attached to the mouth end of a roll of tobacco, typically consisting of cellulose acetate, but which may incorporate or consist of other materials, which filters smoke prior to the smoke's entering the mouth.

And by renumbering Sec. 48G-48K to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the bill be read the third time?, Senators Scott, Brock, Choate, Doyle, Flory, Mazza, Miller, Mullin and Starr moved to amend the bill by striking out Secs. 38, 39 and 40 (requiring temporary income tax add-back of one-third of production activity deduction) in their entirety and by striking out Sec. 49(17) in its entirety.

Which was disagreed to on a roll call, Yeas 12, Nays 17.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Brock, Choate, Doyle, Flory, Giard, Illuzzi, Mazza, Miller, Nitka, Scott, Starr.

Those Senators who voted in the negative were: Ayer, Bartlett, Campbell, Carris, Cummings, Flanagan, Hartwell, Kitchel, Kittell, Lyons, MacDonald, McCormack, Racine, Sears, Shumlin, Snelling, White.

The Senator absent and not voting was: Mullin.

*Senator Snelling explained her vote as follows:

"The budget choices this year have been extremely difficult, and in January the task seemed impossible. Later today we will present a balanced budget. Sometimes in this building there are issues that become politically black and white. I am an advocate for business, and I am also an advocate for vulnerable Vermonters. Some are asking me to choose as if this is now my only opportunity to demonstrate my loyalty to a positive business climate. I disagree. What we need is balance. I look at the recent 8.6 million jobs bill and the millions of ARRA funds that are all investments in business and jobs. Vermont must do many things to improve its image to business. However, I cannot abandon my responsibility to all Vermonters."

Thereupon, third reading of the bill was ordered.

Rules Suspended; Proposal of Amendment; Third Reading Ordered

H. 647.

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

An act relating to misclassification of employees to lower premiums for workers' compensation and unemployment compensation.

Was taken up for immediate consideration.

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

Sec. 1. DEPARTMENT OF LABOR MISCLASSIFICATION; ENFORCEMENT PERSONNEL; FUNDING

(a) No later than August 1, 2010, the department of labor shall have a total of four limited service workers' compensation fraud investigator employees to investigate classifications and enforce the laws relating to worker, business, and job duty classifications.

(b) In addition to the percentage of premiums to be paid by employers into the workers' compensation administration fund pursuant to 21 V.S.A. § 711, employers shall pay an additional 0.055 percent to fund one of the investigator positions required pursuant to subsection (a) of this section.

Sec. 2. 13 V.S.A. § 2024 is amended to read:

§ 2024. WORKERS' COMPENSATION FRAUD; CRIMINAL PENALTIES

Any person, including an employee, employer, medical case manager, health care provider, vocational rehabilitation provider, or workers' compensation insurance carrier who, knowingly and with intent to defraud makes a false statement or representation for the purpose of obtaining, affecting, or denying any benefit or payment under the provisions of chapter 9 of Title 21 or the provisions of Part 3, relating to Insurance, of Title 8, either for ~~her~~ herself or himself or for any other person, shall forfeit all benefits or payments obtained as a result of the false statement or representation and all or a portion of any right to compensation under the provisions of chapter 9 of Title 21 as determined by the commissioner and:

(1) For fraud involving $10,000.00 or more, be fined not more than $100,000.00 or imprisoned not more than three years, or both.

(2) For fraud involving less than $10,000.00, be fined not more than $10,000.00 or imprisoned not more than two years, or both.

Sec. 3. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

(a) Failure to insure. If after hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than $100.00 for every day the employer neglected to secure liability.

(b) Stop work orders. ~~Additionally,~~ If an employer ~~who~~ fails to comply with the provisions of section 687 of this title ~~for a period of five days~~ after ~~notice from~~ investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the

public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day ~~after five days~~ that the employer fails to secure workers' compensation coverage as required in section 687 of this title. ~~The~~ When a stop work order is issued, the commissioner ~~may, after giving notice and after the expiration of the five-day period,~~ shall post a notice at a conspicuous place on the ~~premises~~ worksite of the employer informing the employees that their employer ~~has~~ failed to comply with the provisions of section 687 of this title and ~~ordering the premises closed~~ that work at the worksite has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title.

(c) ~~If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.~~

Penalty for violation of stop work order. An employer who violates a stop work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than $5,000.00 for the first violation and a civil penalty of not more than $10,000.00 for a second or subsequent violation; or

(2) A criminal fine of not more than $10,000.00 or imprisonment for not more than 30 days, or both.

Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(19) Violations of 21 V.S.A. § 692(c)(1).

Sec. 5. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or

payment under the provisions of this chapter, either for ~~her~~ herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $5,000.00 ~~total~~, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.

(b) When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

(c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

(d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024.

Sec. 6. 21 V.S.A. § 1314 is amended to read:

§ 1314. —REPORTS AND RECORDS; FAILURE TO REPORT EMPLOYMENT INFORMATION

* * *

(h) Any employing unit ~~which~~ that fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~$35.00~~ $100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may~~, in his or her discretion,~~ waive the penalty.

Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow

individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the department to ensure that this information is distributed to appropriate departments and agencies.

Sec. 8. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

* * *

(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified one or more employees, the department shall not include the individual's name or contact information in any publication or public report, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance and conducting civil investigations in accordance with the procedures established in ~~sections 2458-2461 of Title 9~~ 9 V.S.A. §§ 2458–2461 as though discrimination under this section were an unfair act in commerce.

Sec. 9. 21 V.S.A. § 1314a is amended to read:

§ 1314a. ~~—~~QUARTERLY WAGE REPORTING ~~REQUIRED~~ ; MISCLASSIFICATION; PENALTIES

* * *

(f)(1) Any employing unit or employer ~~which~~ that fails to ~~file~~:

(A) File any report required by this section shall be subject to a penalty of ~~$35.00~~ $100.00 for each ~~such~~ report not received by the prescribed due dates~~, which~~.

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than $5,000.00 for each improperly classified employee.

(2) Penalties under this subsection shall be collected in the manner provided for the collection of contributions in section 1329 of this title and

shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

* * *

Sec. 10. 21 V.S.A. § 1328 is amended to read:

§ 1328. FILING EMPLOYER QUARTERLY TAX CONTRIBUTION REPORTS; FAILURE

The commissioner shall impose a penalty of ~~$35.00~~ $100.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.

Sec. 11. 21 V.S.A. § 1369 is amended to read:

§ 1369. FALSE STATEMENTS TO AVOID ~~CHAPTER~~ UNEMPLOYMENT PROGRAM OBLIGATIONS

A person ~~shall not~~ who wilfully ~~and intentionally make~~ makes a material false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter for either herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $5,000.00.

Sec. 12. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY; CIVIL

A person who violates a provision of this chapter or any lawful rule or regulation of the board, for which no other penalty is provided, shall be ~~fined~~ assessed an administrative penalty of not more than ~~$50.00~~ ~~or be imprisoned not more than 30 days, or both~~ $5,000.00.

Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT

The department of banking, insurance, securities, and health care administration and the department of labor shall report on or before January 15, 2011, and again on January 15, 2012, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and

enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards, including all the following:

(1) The number and outcome of departmental audits and investigations.

(2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.

(3) The financial costs of misclassification and miscoding.

(4) The success of the employee misclassification public education and outreach program.

Sec. 14. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance ~~and~~, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the commissioner and the employee. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, ~~upon~~ after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce

~~such~~ a repayment order in any court of law having jurisdiction ~~of the amount involved~~.

Sec. 15. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The commissioner shall promptly review requests for payment under this section and, consistent with ~~the criteria in department rule 10.13~~ subsection 678(d) of this title, shall allow for the recovery of reasonable attorney fees associated with an employee's successful request for payment under this subsection.

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of $10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

Sec. 16. 21 V.S.A. § 655 is amended to read:

§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL EXAMINATION; VIDEO AND AUDIO RECORDING

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the commissioner, the employee shall submit ~~himself or herself~~ to examination, at reasonable times and places, ~~to~~ by a duly licensed physician or surgeon designated and paid by the employer. The employee ~~shall have the right to~~ may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a ~~physician or surgeon~~ licensed health care provider designated and paid by ~~himself or herself~~ the employee present at ~~such~~ the examination. ~~Such~~ The employer may make an audio recording of the examination. The right~~,~~ ~~however,~~ of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit ~~himself or herself~~ to or in any way obstructs ~~such~~ the examination, ~~his or her~~ the employee's right to ~~take or~~ prosecute any proceeding under the provisions of this chapter shall be suspended until ~~such~~ the refusal or obstruction ceases, and compensation shall not be payable for the period during which ~~such~~ the refusal or obstruction continues.

Sec. 17. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS; COMPLIANCE WITH DAVIS-BACON

(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide, at a minimum, all the following:

* * *

(3) For construction and transportation projects over $250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.

* * *

(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies or any project for which the state granted, allocated, or awarded ARRA monies shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law. In the event that the most recently updated Davis-Bacon wages cannot be determined due to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, and 17, which shall take effect on passage.

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

Senator Carris, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass in concurrence when so amended.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senators Illuzzi, Campbell, Choate and Shumlin moved that the Senate propose to the House to amend the bill as follows:

First: By adding a new section to be numbered Sec. 17b to read as follows:

Sec. 17b. 18 V.S.A. § 906(8) is amended to read:

(8) Establishing, by rule, levels of individual certification and application forms for advanced emergency medical care. The commissioner ~~may~~ shall use the guidelines established by the National Highway ~~Transportation~~ Traffic Safety Administration (NHTSA) in the U.S. Department of Transportation as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:

(A) An individual may apply for and obtain one or more additional certifications, including certification as an advanced emergency medical technician or as a paramedic.

(B) An individual certified by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is affiliated with a licensed ambulance service, fire department, or rescue service, shall be able to practice fully within the ~~statewide~~ scope of practice for such level of certification as ~~established by the commissioner by rule, which shall be adopted and implemented on a statewide basis no later than January 1, 2011, provided that such person is affiliated with a rescue service, fire department, or licensed ambulance service, or other state licensed medical facility~~ defined by NHTSA's National EMS Scope of Practice Model, and subject to the medical direction of the commissioner or designee, and notwithstanding any law or rule to the contrary.

(C) ~~An~~ Unless otherwise provided under this section, an individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification.

(D) If there is a hardship imposed on any applicant for a certification under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary or permanent waiver of one or more of the certification requirements, which the commissioner may ~~waive~~ grant for good cause.

(E) An applicant who ~~has served as an advanced emergency medical technician, such as a hospital corpsman or a medic in the United States Armed Forces, or who~~ is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification, and further provided that the applicant is affiliated with a rescue service, fire department, or licensed ambulance service.

(F) An applicant who is certified on the National Registry of Emergency Medical Technicians as an EMT-basic, EMT-intermediate, or a paramedic shall be granted certification as a Vermont EMT-basic, EMT-intermediate, or paramedic without the need for further testing, provided he or she is affiliated with an ambulance service, fire department, or rescue service, or is serving as a medic with the Vermont National Guard.

~~(E)~~(G) No advanced certification shall be required for a trainee in established advanced training programs leading to certification as an advanced

emergency medical technician, provided that the trainee is supervised by an individual holding a level of certification for which the trainee is training and the student is enrolled in an approved certification program.

Second: By adding a new section to be numbered Sec. 17c to read as follows:

Sec. 17c. UPDATED RULES FOR ADVANCE EMERGENCY MEDICAL CARE

No later than March 1, 2011, the commissioner of health shall repeal or amend any existing departmental rules on emergency medical care to ensure they are in compliance with the provisions of 18 V.S.A. § 906(8).

Third: By adding a new section to be numbered Sec. 17d to read as follows:

Sec. 17d. STUDY; STATEWIDE LICENSING OF EMS PROVIDERS

The commissioner of health, in consultation with the Vermont secretary of state's office of professional regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, a representative from the Initiative for Rural Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's existing 13 EMS districts chosen jointly by the speaker of the house and the president pro tempore of the senate, one of whom shall be a medical director and one of whom shall be a volunteer certified emergency medical technician, shall develop a proposal for a statewide licensing mechanism for emergency medical services (EMS) providers, and shall assess the state's EMS capabilities and training requirements. The commissioner of health shall prepare a proposal on a statewide licensing mechanism in the form of draft legislation, and submit that proposal along with other findings and recommendations on Vermont's EMS services to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2012.

Fourth: By striking out Sec. 18 in its entirety and by inserting in lieu thereof a new Sec. 18 to read as follows:

Sec. 18. EFFECTIVE DATES

This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, 17, 17b, 17c and 17d which shall take effect on passage.

Which was agreed to on a roll call, Yeas 21, Nays 5.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Bartlett, Brock, Campbell, Carris, Doyle, Flory, Giard, Hartwell, Illuzzi, Kitchel, MacDonald, Mazza, McCormack, Miller, Nitka, Scott, Sears, Shumlin, White.

Those Senators who voted in the negative were: Flanagan, Kittell, Lyons, Racine, Snelling.

Those Senators absent and not voting were: Choate, Cummings, Mullin, Starr.

Thereupon, pending the question, Shall the bill be read a third time?, Senator Ashe, on behalf of the Committee on Economic Development, Housing and General Affairs, moved to amend the proposal of amendment of the Committee on Economic Development, Housing and General Affairs in Sec. 3, 21 V.S.A. § 692 (c), subdivision (2), by striking out the words "30 days" and inserting in lieu thereof the following: 180 days

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Thereupon, Senator Campbell, moved that the rules be suspended and the bill be placed on all remaining stages of its passage forthwith.

Thereupon, pending the question. Shall the bill be placed on all remaining stages of passage forthwith?, Senator Campbell requested and was granted leave to withdraw his motion.

Message from the House No. 60

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

Mr. President:

I am directed to inform the Senate that:

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

S. 287. An act relating to the licensing and regulation of loan servicers.

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

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate bill of the following title:

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

The Speaker has appointed as members of such committee on the part of the House

Rep. Brennan of Colchester
Rep. Aswad of Burlington
Rep. Courcelle of Rutland City

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

H. 759. An act relating to executive branch fees.

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

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

Rep. Branagan of Georgia
Rep. Masland of Thetford
Rep. Zuckerman of Burlington

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

H. 784. An act relating to the state's transportation program.

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

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

Rep. Brennan of Colchester
Rep. Corcoran of Bennington
Rep. Potter of Clarendon

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

S. 264. An act relating to stop and hauling charges.

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

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

Rep. Malcolm of Pawlet
Rep. McAllister of Highgate
Rep. Ainsworth of Royalton

The Governor has informed the House that on the April 23, 2010, he approved and signed bills originating in the House of the following titles:

H. 539. An act relating to amending the charter of the town of Hartford.

H. 658. An act relating to the issuance of certificates of need for home health agencies and addressing patient transportation services in certificate of need applications.

Pursuant to Senate request, the House returns custody of a bill originating in the House of the following title:

H. 788. An act relating to approval of amendments to the charter of the town of Berlin.

Message from the Governor

A message was received from His Excellency, the Governor, by David Coriell, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the twenty-first day of April, 2010 he approved and signed a bill originating in the Senate of the following title:

S. 28. An act relating to the regulation of landscape architects.

Adjournment

On motion of Senator Campbell, the Senate adjourned, to reconvene on Monday, April 26, 2010, at one o'clock in the afternoon pursuant to J.R.S. 62.