

House Calendar

Thursday, February 02, 2012

31st DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

TABLE OF CONTENTS

	Page No.
ACTION CALENDAR	
Third Reading	
H. 629 Reapportioning the initial districts of the House of Representatives Rep. Sweaney amendment.....	130 130
Favorable with amendment	
H. 51 Expanding the issuance of gold star registration plates Rep. Bohi for Transportation Rep. Helm for Appropriations.....	130 131
H. 327 The uniform principal and income act Rep. Koch for Judiciary	131
H. 403 Foreclosure of mortgages Rep. Koch for Judiciary	134
H. 413 Creating a civil action against those who abuse, neglect, or exploit a vulnerable adult Rep. Wizowaty for Judiciary	152
NOTICE CALENDAR	
Favorable with Amendment	
H. 630 Reforming Vermont’s mental health system..... Rep. Pugh for Human Services Rep. Emmons for Corrections and Institutions Rep. Johnson for Appropriations.....	154 154 158
Consent Calendar	
H.C.R. 252 Recognizing the essential health care role of licensed pharmacists in Vermont.....	161
H.C.R. 253 Congratulating the Community College of Vermont on the opening of its new Rutland City campus.....	161

ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 629

An act relating to reapportioning the initial districts of the House of Representatives

Amendment to be offered by Rep. Sweaney of Windsor to H. 629

First: In Sec. 1, by redesignating RUTLAND-1 to be RUTLAND-BENNINGTON and by redesignating the subsequent RUTLAND-2 through RUTLAND-7 districts to be RUTLAND-1 through RUTLAND-6 respectively

Second: In Sec. 1, in district WINDHAM-2-2, by striking the second reference to "Strand Avenue" and by inserting in lieu thereof "West Street"

Favorable with Amendment

H. 51

An act relating to expanding the issuance of gold star registration plates

Rep. Bohi of Hartford, for the Committee on **Transportation**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 304(k) is amended to read:

(k)(1) The commissioner of motor vehicles shall, upon proper application, issue special gold star and next-of-kin plates ~~to gold star family members, as defined for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, as follows:~~

(A) Gold star plates shall be issued to the widow or widower, parents, and next of kin as defined in 10 U.S.C. § 1126(d) of members of the armed forces who lost their lives under the circumstances described in 10 U.S.C. § 1126, for use only on vehicles registered at the pleasure car rate and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan 1126(a).

(B) Next-of-kin plates shall be issued to the widow or widower, parents, and next of kin as defined in 10 U.S.C. § 1126(d) of members of the armed forces not eligible for gold star plates under subdivision (A) of this

subdivision (1) who lost their lives while serving on active duty or on active duty for training, or while assigned in a reserve or national guard unit in drill status, or as a result of injury or illness incurred during such service or assignment.

(2) The type and style of the gold star ~~plate~~ and next-of-kin plates shall be determined by the commissioner and the Vermont office of veterans' affairs, except that a gold star shall appear on one side of ~~the plate~~ gold star plates and a distinct emblem shall be approved for next-of-kin plates. An applicant shall apply on a form prescribed by the commissioner, and the applicant's eligibility will be certified by the office of veterans' affairs. A plate shall be reissued only to the original holder of the plate. The commissioner may adopt rules to implement the provisions of this subsection. Except for new or renewed registrations, applications for the issuance of gold star or next-of-kin plates shall be processed in the order received by the department subject to normal workflow considerations.

and that after passage the title of the bill be amended to read: "An act relating to gold star and next-of-kin registration plates".

(**Committee Vote: 10-0-1**)

Rep. Helm of Fair Haven, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Transportation**.

(**Committee Vote: 11-0-0**)

H. 327

An act relating to the uniform principal and income act

Rep. Koch of Barre Town, for the Committee on **Judiciary**, recommends the bill be amended as follows:

First: In Sec. 1, 14 V.S.A. § 3351, by striking subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money, excluding reinvested cash dividends, provided that if the trustee may elect between money and other property as a distribution, property so elected and distributed shall retain its character as income;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity;

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes; and

(5) capital gains and capital gains distributions.

Second: In Sec. 1, 14 V.S.A. § 3355, after the word “income” by striking out “and” and inserting in lieu thereof “an”

Third: In Sec. 1, 14 V.S.A. chapter 118, by striking § 3359 in its entirety and inserting in lieu thereof a new § 3359 to read as follows:

§ 3359. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR
PAYMENTS

(a) In this section:

(1) “Payment” means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) “Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock ownership plan.

(b) To the extent that payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section , subsections (f) and (g) of this section apply and subsections (b) and (c) of this section do not apply in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revue Code of 1986, as amended.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments and determined under Section 7520 of the Infernal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section 3360 of this title applies.

Fourth: In Sec. 1, 14 V.S.A. § 3361(d), by striking out “2011” where it thrice appears and inserting in lieu thereof “2012”

Fifth: In Sec. 1, 14 V.S.A. § 3362(d), by striking out “2011” where it thrice appears and inserting in lieu thereof “2012”

Sixth: In Sec. 3, by striking out “2011” where it twice appears and inserting in lieu thereof “2012”

(**Committee Vote: 11-0-0**)

H. 403

An act relating to foreclosure of mortgages

Rep. Koch of Barre Town, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. chapter 172 is added to read:

CHAPTER 172. FORECLOSURE OF MORTGAGES

Subchapter 1. General Provisions

§ 4931. DEFINITIONS

As used in this chapter:

(1) “Agricultural activity” includes the growing, raising, and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay, and dairy products.

(2) “Dwelling house” means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives, each of which is used or intended to be used as a residence.

(3) “Farmland” means land devoted primarily to commercial agricultural activities.

(4) “Value” means market value less all reasonable expenses that would be incurred in selling the property. Market value for purposes of this section may be determined based on evidence of market value deemed by the court to be reasonably reliable, which may include grand list valuation and the common level of appraisal used in the town where the property is located, if the court finds such evidence to be reasonably reliable.

§ 4932. VENUE; JOINDER OF PARTIES; RECORDING

(a) Actions to foreclose a mortgage under subchapter 2 or 3 of this chapter shall be brought in the civil division of the superior court for the county where the land lies, or, if the land described in the mortgage lies in more than one county, then in one of the counties in which the land lies.

(b) The plaintiff shall file a copy of the complaint 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.

(c) If the mortgaged property is subject to a residential rental agreement, as defined in 9 V.S.A. § 4451:

(1) The plaintiff shall join as a party defendant any person occupying the mortgaged property pursuant to a residential rental agreement as of the date the copy of the complaint is recorded in the land records. Service of the complaint on the tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the rental agreement, if the agreement is recorded, or to the "occupant" at the address of the leased premises if the agreement is not recorded.

(2) The summons and complaint served on any person occupying the premises pursuant to a residential rental agreement shall contain the following notice, written in at least 14-point type:

THE PROPERTY IN WHICH YOU LIVE IS BEING
FORECLOSED UPON. YOU ARE NAMED AS A DEFENDANT
IN THE FORECLOSURE BECAUSE YOUR RIGHT TO REMAIN
ON THE PREMISES MAY END WHEN THE FORECLOSURE IS
COMPLETED. YOU MUST NOTIFY THE COURT OF YOUR
NAME AND ADDRESS IN ORDER TO BE KEPT INFORMED OF
THE STATUS OF THE FORECLOSURE.

(3) Upon receipt of the complaint, the owner of the mortgaged property shall notify each tenant who enters into a residential rental agreement that the premises are the subject of a pending foreclosure action and that, in the event the owner is unable to redeem the premises, the tenant may be required to vacate the premises upon 30 days' notice, or upon such other notice as is required by federal law, whichever is longer. The failure of the owner to provide notice under this subsection shall not affect or invalidate the foreclosure action.

(d) All proceedings shall be before the superior judge alone, and trial shall be without jury.

§ 4933. NOTICE TO COMMISSIONER OF BANKING, INSURANCE,
SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) When the mortgage holder files an action under subchapter 2 or 3 of this chapter to foreclose upon an owner-occupied dwelling house, the mortgage holder shall simultaneously file a notice of foreclosure with the commissioner 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 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.

§ 4934. SUPPLEMENTAL JUDGMENT JOINING PARTIES; RECORDING

At any time, without further notice or service on the purchaser or mortgagor or lienholder whose interest in the property being foreclosed first arose after the filing of the complaint in the town clerk's office, and upon filing certified copies of the deed, mortgage, or attachment with the clerk of the court by the plaintiff in the foreclosure action, any superior judge may sign a supplemental judgment specifically naming that party. Reference to the deed, mortgage, or lien and the supplemental judgment may be filed in the town clerk's office for record, and it shall have the same force and effect as though that person had been made a party defendant in the original action.

§ 4935. TAXES PAID BY MORTGAGEE

A tax assessed upon mortgaged real estate in this state may be paid by the mortgagee or assignee of the mortgage upon such property. The amount so paid, including costs, if any, shall thereupon be added to and become a part of the debt or obligation secured by such mortgage.

§ 4936. FORECLOSURE OF REAL OR PERSONAL PROPERTY

A mortgage or a security agreement constituting a lien on both real and personal property to secure the payment of a debt, whether evidenced by one or more instruments, may be foreclosed in an action under subchapter 2 or 3 of this chapter.

§ 4937. ATTORNEY'S FEES

When a mortgage contains an agreement on the part of the mortgagor to pay the mortgagee, in the event of foreclosure, the attorney's fees incident thereto, and claim is made therefor in the complaint, upon hearing, the court in which the complaint is brought shall allow such fee as in its judgment is just.

§ 4938. EFFECT ON BANKRUPTCY PROCEEDINGS

Nothing in this chapter shall be construed to supersede any provision of Title 11 of the United States Code.

§ 4939. APPEALS

When a judgment is for the foreclosure of a mortgage, permission of the court shall be required for review.

Subchapter 2. Strict Foreclosure

§ 4941. DECREE FORECLOSING EQUITY OF REDEMPTION; WRIT OF POSSESSION

(a) In any action for foreclosure with regard to any mortgage encumbering property, the court may, if no sale is requested by the plaintiff or ordered by the court pursuant to subsection (b) of this section, issue a judgment and decree of foreclosure without requiring a judicial sale of the premises.

(b) In an action brought under subsection (a) of this section, any party may by written motion request, or the court in its discretion may order, that property be sold at a judicial foreclosure sale, whether or not the mortgage contains a power of sale.

(c) No decree foreclosing the right of redemption without sale shall be issued absent a finding by the court that there is no substantial value in the property in excess of the mortgage debt found by the court to be due to the

plaintiff and any other lienholder, plus assessed but unpaid property taxes due on the property. The court shall include in its order a summary of the evidence upon which its finding is based.

(d) If a decree is issued foreclosing the right of redemption without sale, the time of redemption shall be six months from the date of the decree unless a shorter time is ordered, or the mortgagor and mortgagee plaintiff agree to a shorter period. The court shall fix the period of redemption taking into consideration whether there is value in the property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the property, and any other equities.

(e) If the premises are not redeemed agreeably to the decree, the clerk of the court shall issue a writ of possession at the plaintiff's request. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the premises are occupied by a residential tenant, the writ shall be served on the tenant, and the plaintiff shall be placed in possession of the property without further proceedings no sooner than 30 days after the writ is served, or upon such other time as is required by federal law, whichever is longer.

(f)(1) In an action for foreclosure under this section, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, the court shall proceed in accordance with subchapter 3 of this chapter.

(2) In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if the premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of any proceeds.

(g) In an action for foreclosure under this section, where the time of redemption has expired, the party obtaining the foreclosure shall cause a certified copy of the judgment and the certificate of nonredemption to be recorded in the office where by law a deed of the lands is required to be recorded.

(h) If the plaintiff complies with subsection (g) of this section, the expiration of the right of redemption under the decree shall foreclose the interest of subsequent purchasers, mortgagees, or attaching creditors whose interest in the property being foreclosed first arose after the filing of the

complaint for foreclosure in the land records as provided in section 4932 of this chapter.

Subchapter 3. Foreclosure by Judicial Sale

§ 4945. JUDICIAL SALE FORECLOSURE

(a) All liens and mortgages affecting real property may, on the written motion of any party to any suit for foreclosure of such liens or mortgages, or at the discretion of the court before which the foreclosure proceedings are pending, be foreclosed by a judicial foreclosure sale, even if the mortgage does not contain a sale provision instead of a strict foreclosure.

(b) In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for a sale of the mortgaged premises at the conclusion of such period if said premises are not redeemed, and for the time, manner, and notice of sale, if required, and the application of the proceeds therefrom.

1. § 4946. PROCEDURE

2. (a) Order for judicial sale. Upon entry of a decree of judicial sale foreclosure, the court shall order that the mortgaged property be sold at a public sale if it is not redeemed within the time period allowed by the court. The public sale shall be conducted on or before six months from the expiration of the last redemption date set forth in the decree unless extended by the court or stayed by a bankruptcy filing. The time and manner of the sale shall be specified in the notice of sale required by section 4952 of this title.

3. (b) Time for redemption; owner-occupied dwelling house or farmland. If a decree is made foreclosing the right of redemption by judicial sale with respect to farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the time of redemption shall be established by the court and shall be six months from the date of the decree, unless a shorter time is ordered by the court. The court shall fix the period of redemption taking into consideration whether there is value in the mortgaged property in excess of the mortgage debt and debt owed to junior lienholders, any assessed but unpaid property taxes, the condition of the mortgaged property, and any other equities. No sale of a dwelling house when occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment may take place within seven months of service of the foreclosure complaint, unless the court orders a shortened redemption period pursuant to this section or the plaintiff and the mortgagor mutually agree to a shorter period after commencement of the action to foreclose the mortgage.

4. (c) Time for redemption; other property. If a decree is made foreclosing the right of redemption by judicial sale with respect to any property other than farmland or a dwelling house that is occupied by the owner as his or her principal residence at the time the plaintiff applies for entry of judgment, the redemption period shall be eliminated or reduced by the court to no more than 30 days.

5. (d) Writ of possession. Upon expiration of the period of redemption in the decree, other than farmland or a dwelling house when currently occupied by the owner as his or her principal residence, if the mortgagor or the mortgagor's successors, heirs, or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession shall terminate, and the clerk of the court shall issue a writ of possession at the plaintiff's request and upon court approval. In the case of farmland or a dwelling house currently occupied by the owner as his or her principal residence when the period of redemption in the decree expires, the clerk shall issue a writ of possession at the plaintiff's request and upon approval of the court. Such writ shall have the same force and effect and be executed in the same manner as similar writs issued after judgment by a court of law in ejectment proceedings. Where the mortgaged property is occupied by a residential tenant, the writ shall be served on the tenant, and the plaintiff shall be placed in possession of the mortgaged property without further proceedings no sooner than 30 days after the writ is served, or upon such other time as is required by federal law, whichever is longer.

§ 4947. FORECLOSURE OF EQUITY OF REDEMPTION; RECORDING

(a) In an action for foreclosure under this subchapter where the time of redemption has expired, the party obtaining the foreclosure shall cause a certified copy of the judgment and the certificate of nonredemption to be recorded in the office where by law a deed of the lands is required to be recorded.

(b) If the plaintiff complies with subsection (a) of this section, the expiration of the right of redemption under the decree shall foreclose the interest of subsequent purchasers, mortgagees, or attaching creditors whose interest in the property being foreclosed first arose after the filing of the complaint for foreclosure in the land records as provided in section 4932 of this chapter.

6. § 4948. REINSTATEMENT OF MORTGAGE PRIOR TO SALE

7. (a) Upon agreement of the mortgagor and mortgagee, the mortgagor may reinstate or modify the loan after the expiration of the redemption period set forth in the judgment order but before the public sale. Upon reinstatement or modification of the loan, the mortgagee shall execute a waiver of foreclosure and, after receiving court approval, record it in the land records of

the city or town where the mortgaged property lies. Upon recording, the waiver of foreclosure shall operate to terminate the foreclosure and restore the parties and all junior lienholders to the positions they held prior to the filing of the foreclosure, as amended by any modification agreement between the mortgagor and mortgagee.

8. (b) The following form of waiver of foreclosure may be used. Nothing herein shall be construed to prevent the use of other forms or to prevent alteration of the form as circumstances require:

9. WAIVER OF FORECLOSURE

10. MORTGAGEE, holder of record of a mortgage deed dated _____, 20____ and of record in Book _____ at Page _____ of the City/Town of _____ Land Records (“the Mortgage”) executed and delivered to it by MORTGAGOR(S) covering real estate located in the Town of _____, Vermont hereby acknowledges and agrees:

11. For the breach of the condition of the Mortgage, MORTGAGEE initiated a foreclosure action against MORTGAGOR by Complaint for Foreclosure dated _____, 20____ which is of record in Book _____ at Page _____ of the Town of _____ Land Records.

12. That MORTGAGOR(S) has/have now cured the default and requested reinstatement of the Mortgage and the MORTGAGEE agrees to reinstate the mortgage, as amended by any modification agreement between the mortgagor and mortgagee.

13. NOW THEREFORE, MORTGAGEE does hereby acknowledge that it has received payment of the arrearages due it under the Mortgage and the promissory note which it secures, and in consideration thereof, does hereby waive the above-entitled foreclosure action and release unto said MORTGAGOR, his/her/its heirs, personal representatives, successors, and assigns, all claims asserted in the foreclosure action. THE MORTGAGE IS NOT DISCHARGED.

14. This waiver is given pursuant to 12 V.S.A. § 4948. This waiver shall have no effect on the Mortgage referenced above other than to reinstate the same, as amended by any agreement between the mortgagor and mortgagee, and the rights of all parties named in the foreclosure action, as well as the rights of any junior lienholders, remain intact, except as amended by any agreement between the mortgagor and mortgagee, as if no foreclosure had been commenced.

15. IN WITNESS WHEREOF, the said MORTGAGEE has caused this instrument to be executed by its duly authorized agent this _____ day of _____, 20____.

16. MORTGAGEE
By: _____

Its Duly Authorized Agent

Printed Name: _____

State of _____

County of _____

At _____ in said County and State, then personally appeared the above-named duly authorized agent who acknowledged the foregoing waiver of foreclosure to be his/her free act and deed and the free act and deed of the MORTGAGEE.

Before me, _____

Printed Name: _____

Notary Public

My Commission expiration _____

17. *****
The request for waiver of foreclosure is SO ORDERED this _____ day
of _____, 20_____.

Superior Court Judge

18. § 4949. MORTGAGOR'S REDEMPTION PRIOR TO JUDICIAL SALE

19. (a) The mortgagor is entitled to redeem the premises at any time prior to the public sale by paying the full amount due under the judgment order and such other amounts, including costs and expenses of sale, accruing postjudgment as agreed upon by the mortgagor and mortgagee or ordered by the court.

20. (b) Upon agreement of the parties, the mortgagor may redeem the premises at any time prior to the public sale by paying less than the full amount due under the judgment order. In such case, the parties to the foreclosure shall, with court approval, amend the redemption amount. Upon payment of the amended redemption amount, the court shall issue a Supervening Certificate of Redemption as evidence that the judgment amount was redeemed. Upon the recording of a certified copy of the Supervening Certificate of Redemption in the land records, the foreclosed mortgage shall be of no further force or effect and any junior lienholder shall return to the position it held prior to the filing of the foreclosure.

21. (c) The redemption right established by this section shall be in addition to the redemption right set forth in the decree.

22. § 4950. [Reserved.]

§ 4951. JUDGMENT VACATED

Notwithstanding any provision to the contrary in this chapter or other law, the mortgagor and mortgagee may stipulate and move to vacate the judgment at any time prior to the public sale. If the court approves the motion, the judgment shall be vacated and all parties, the property, and any lienholders of record in the land records will be restored to their original positions as if no foreclosure had been commenced and no judgment entered. Notwithstanding any other provision of law, this section will apply retroactively and apply to orders to vacate in existence on the effective date of this section.

§ 4952. SALE PROCEDURES

(a) Generally. If the mortgaged property is not redeemed, the plaintiff shall sell the mortgaged property in accordance with this section, complying with all court orders and applicable power of sale provisions.

(b) Notice of sale; publication. Notice of sale shall be published once in each of three successive weeks in a newspaper of general circulation in the town where the land lies, the first publication to be no fewer than 21 days before the day of sale.

(c) Notice of sale; service. A copy of the notice of sale shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record. If the mortgagor has not appeared in the foreclosure action, a copy of the notice of sale shall also be mailed by first class mail, postage prepaid, to the mortgagor at the mortgagor's last known address. The notice of sale shall include the specific date, time, and location of the sale and shall be mailed after the last date of redemption in the decree but no fewer than 30 days before the date of the sale.

(d) Notice of sale; waiver. Any party entitled to be sent notice under this section may, either before or after the foreclosure sale, waive the party's right to receive notice, in which case no foreclosure sale shall be invalid or ineffectual to foreclose that party's rights under the mortgage. This subsection shall not apply to farmland or to a dwelling house unless approved by the court at or before the confirmation of sale.

(e) Notice of sale; form. The following form of notice of sale may be used and may be altered as circumstances require, but nothing herein shall be construed to prevent the use of other forms:

By virtue and in execution of the Power of Sale contained in a certain mortgage given by _____ to _____ dated _____ and recorded in Volume _____, Page _____ of the land records of the municipality of _____, of which

mortgage the undersigned is the present holder (if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ (place) at _____ o'clock, _____ M. on the _____ day of _____, 20____ all and singular the premises described in said mortgage.

(In case of partial releases, state exceptions.)

To wit: (Legal description of the premises.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance and other terms of sale.)

The mortgagor is entitled to redeem the premises at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

Signed: _____

Mortgagee (may be signed by mortgagee's attorney)

Dated: _____, 20____.

§ 4953. CONDUCT AND LOCATION OF SALE

(a) Location. The sale shall be held at the mortgaged property unless another place for sale is directed by the court. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the notice of sale.

(b) Adjournments. The public sale may be adjourned one or more times for a total time not exceeding 30 days, without further court order, and without publication or service of a new notice of sale, by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous place at the location of the sale. Notice of the new sale date shall also be sent by first class mail, postage prepaid, to the mortgagor at the mortgagor's last know address at least five days before the new sale date. The public sale may be adjourned for a period of time in excess of 30 days by agreement of the mortgagor and mortgagee or by order of the court.

(c) Permitted bidders. Any person may bid at the sale. All bidders, except for the mortgagee plaintiff or designee, shall meet the requirements set forth in the notice of sale in order to bid at the sale.

§ 4954. PROCEDURE FOLLOWING SALE

(a) Confirmation order. Following the sale, the plaintiff shall file with the court a report on oath of the sale, together with a request for confirmation of the sale, which shall include an accounting of the sale proceeds, and a proposed order confirming the sale. Copies of the report of the sale and request for confirmation shall be mailed by first class mail, postage prepaid, to all parties who appeared in the foreclosure action or to their attorneys of record and to the mortgagor at the mortgagor's last known address. The court may issue an order of confirmation of the sale without hearing, unless the court in its discretion determines that a hearing is necessary. The order of the court confirming the sale shall be conclusive evidence as against all persons that the foreclosure and sale were conducted in accordance with this section.

(b) Transfer of title. The confirmation order shall be recorded in the land records of the town where the mortgaged property is located and shall transfer title to the mortgaged property to the purchaser upon recording.

(c) Disbursement of proceeds. In the event that the proceeds of the sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to the plaintiff at the time of sale, the confirmation order shall provide for the payment of the surplus to other lienholders of record in the order of the priority of their liens. In the event that the proceeds of the sale exceed the amount due to the plaintiff and the amount due to the other defendants, the excess shall be paid to the defendant mortgagor.

(d) Deficiency. The plaintiff may request a deficiency judgment in the foreclosure complaint. The court may assess a judgment against the mortgagor for the deficiency if the proceeds of sale are insufficient to meet the expenses incurred in making the sale and the amount due to the plaintiff. If the plaintiff seeks a deficiency judgment, it shall be requested prior to issuance of the confirmation order. Failure to request a deficiency judgment shall be deemed a waiver of any deficiency judgment against a mortgagor.

(e) Failure of sale; resale. In the event that the purchaser fails to pay the balance of the purchase price according to the terms of the sale, then, upon the request of the plaintiff, the down payment shall be forfeited and the court shall issue an order vacating the confirmation order. Upon motion and after hearing, the court may issue a confirmation order to the second highest bidder.

Subchapter 4. Foreclosure by Nonjudicial Sale

§ 4961. POWER OF NONJUDICIAL SALE

Whether or not a power of sale is contained in a mortgage relating to any property, except for farmland or a dwelling house owned by a natural person,

instead of a suit and decree of foreclosure, the mortgagee may, upon breach of mortgage condition, foreclose upon the property without first commencing a foreclosure action or obtaining a foreclosure decree by complying with the terms of this subchapter. No sale under and by virtue of a nonjudicial power of sale shall be valid and effectual to foreclose the mortgage unless the conditions of this subchapter are complied with.

§ 4962. NOTICE OF INTENTION TO FORECLOSE

(a) At least 30 days prior to service of a notice of sale pursuant to subsection 4952(c) of this title, notice of intention to foreclose in a writing complying with this section shall be sent to the mortgagor by registered or certified mail at his or her last known address.

(b) The writing required by this section shall state, in a manner calculated to make the mortgagor aware of the situation:

(1) the mortgage to be foreclosed;

(2) the mortgage condition claimed to have been breached;

(3) that the mortgagee has accelerated maturity of the debt secured by the mortgage, if that is the case;

(4) the amount to be paid or other action necessary to cure, and the time within which the cure must take place, which shall be not less than 30 days after the date of the notice of intention to foreclose;

(5) the intention of the mortgagee to foreclose by exercising the power of sale contained in the mortgage, if the breach of the mortgage condition is not cured within the time and in the manner specified in the notice; and

(6) that the mortgagor will be entitled to be sent notice of the foreclosure sale at least 60 days prior to the sale and to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

(c)(1) The following notice of intent to foreclose form may be used and may be altered as circumstances require:

PLEASE TAKE NOTICE that you have defaulted under Loan No. _____ by [mortgage condition breached] required by your Promissory Note dated _____, 20 ____ . This default also constitutes a breach of the Mortgage, dated _____, 20 ____ , recorded in Volume _____ at Page _____ of the Land Records, which secures the Loan. As a result of your default, we have accelerated the maturity of all indebtedness due on the Loan and secured by the Mortgage, totaling \$ _____ as of today's date. In order to cure this default, you must pay to us on or before _____ [a date not less than

thirty (30) days after the date of this Notice] the sum of \$ _____, plus interest at the rate of \$ _____ per day to the date of payment. If you do not cure this default by making the payments required, it is our intention to foreclose by exercising the power of sale contained in the above Mortgage. You will be sent notice of the foreclosure sale at least sixty (60) days prior to the sale, and you will be entitled to redeem your interest in the mortgaged property at any time prior to the sale by paying the full amount due under the Mortgage, including the costs and expenses of the sale. If you do not cure the default or redeem your interest, your ownership of the mortgaged property will be terminated.

(2) This subsection shall not be construed to prevent the use of other forms except that all notices shall comply with the provisions of subsection (b) of this section.

§ 4963. PUBLICATION OF NOTICE OF SALE

Notice of a sale conducted pursuant to this subchapter shall be published once in each of three successive weeks, in a newspaper of general circulation in the town where the land lies, the first publication to be not less than 21 days before the day of sale.

§ 4964. RECORDING

The mortgagee shall record the notice of sale in the land records of the town or city where the land lies not less than 60 days prior to the sale. The filing of the notice of the sale shall be in lieu of filing a foreclosure complaint under section 4932 of this title and shall be sufficient notice of the pendency of the nonjudicial foreclosure by power of sale to all persons who acquire any interest or lien in the mortgaged property between the dates of recording the notice of sale and recording the foreclosure deed. Without further notice or service, those persons shall be bound by the power of sale and the foreclosure deed and shall be foreclosed from all rights or equity in the mortgaged property.

§ 4965. SERVICE; FORM

(a)(1) In all cases, unless service is waived under subsection 4966(g) of this title, a copy of the notice of sale shall be served on the mortgagor or his or her representative in interest by:

(A) sending the notice by registered or certified mail addressed to the mortgagor or such representative at his or her last known address, or to such person and address as may be agreed upon in said mortgage, at least 60 days before said sale; or

(B) serving the notice in any manner authorized by the Vermont Rules of Civil Procedure.

(2) As used in the section, "mortgagor" shall mean the mortgagor or the then record owner of the mortgaged property.

(b)(1) A copy of the notice of sale shall be sent to any tenant lawfully occupying the mortgaged property and to any person having a recorded interest in the mortgaged property of record which will be foreclosed by the sale, provided that the interest is recorded in the applicable land records prior to the recording of the notice of sale. The notice required by this subsection shall be sent not less than 60 days before the sale. Notice to a tenant shall be sufficient if mailed to the tenant by first class mail at the address specified in the lease, if recorded, or to the occupant at the address of the mortgaged property, if the lease is not recorded.

(2) Compliance with this subsection shall be sufficient with respect to persons entitled to receive notice under subdivision (1) of this subsection, and the failure to give additional notice shall not be grounds to invalidate the sale. Any mortgagor or junior lienholder who refuses to accept or claim mailed or served notice or who frustrates attempts by the mortgagee to give notice of the sale by failing to give or leave a forwarding address or by other acts or omissions shall be deemed to be notified of the sale, provided that such mortgagee shall have made a good faith effort to provide such notice.

(c)(1) The following notice of sale form may be used and may be altered as circumstances require:

By virtue and in execution of the Power of Sale contained in a certain mortgage given by _____ to _____ dated _____ and recorded in Volume _____ Page _____ of the land records of the town of _____, of which mortgage the undersigned is the present holder, (if by assignment, or in any fiduciary capacity, give reference) for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at _____ o'clock, _____ M. on the _____ day of _____ 20____, (place) _____ at the mortgaged property.

To wit: (Legal description of the mortgaged property and in case of partial releases, state exceptions.)

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time of the sale, and the schedule for payment of the balance.)

The mortgagor and all junior lienholders are entitled to redeem the mortgaged property at any time prior to the sale by paying the full amount due under the mortgage, including the costs and expenses of the sale.

Other terms to be announced at the sale or inquire at _____

(Signed) _____

Mortgagee (may be signed by mortgagee's attorney)

20

(2) This subsection shall not be construed to prevent the use of other forms. A notice of sale shall be sufficient if it fully sets forth the date, time, and place of sale; the town, county, street or highway and street number, if any, of the mortgaged premises; the date of the mortgage; the volume and page of the recording of the mortgage; the terms of the sale; the statement language required by subdivision (d)(1) of this section; and notice of the right to redeem.

(d)(1) The notice of the sale shall include the following statement: "The mortgagor and all junior lienholders are hereby notified that at any time before the foreclosure sale, the mortgagor and all junior lienholders have a right to petition the civil division of the superior court for the county in which the mortgaged property is situated, with service upon the mortgagee, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale. Failure to institute such petition and complete service upon the foreclosing party, or the party's agent, conducting the sale prior to sale shall thereafter bar any action or right of action of the mortgagor or any junior lienholder based on the validity of the foreclosure, the right of the mortgagee to conduct the foreclosure sale, or compliance by the mortgagee with the notice requirements and other conditions of this section. An action to recover damages resulting from the sale of the mortgaged property on the date of the sale may be commenced at any time within one year following the date of the sale, but not thereafter."

(2) The mortgagor and all junior lienholders shall have the rights contained in the notice provided for in this subsection.

§ 4966. CONDUCT AND LOCATION OF SALE

(a) The sale shall be held at the mortgaged property except that it may be held elsewhere if agreed to in writing by the mortgagor and the mortgagee not less than 60 days nor more than 90 days before the sale. At the sale, the mortgaged property shall be sold to the highest bidder in conformance with the terms of sale set forth in the foreclosure notice.

(b) The mortgagor shall be entitled to redeem the mortgaged property at any time prior to the sale by paying to the mortgagee the full amount due under the mortgage, including the costs and expenses of the sale.

(c) The public sale may be adjourned one or more times for a total time not exceeding 60 days by announcement of the new sale date to those present at each adjournment or by posting notice of the adjournment in a conspicuous

place at the location of the sale. Written notice of the new sale date shall also be given by first class mail, postage prepaid, to any person who received notice of the sale pursuant to section 4965 of this title.

(d) Any person may bid at the sale. All bidders, except for the mortgagee plaintiff or designee, shall meet the requirements set forth in the notice of sale in order to bid at the sale.

(e) In the event that the proceeds of sale, after first deducting the reasonable expenses incurred in making the sale, exceed the amounts due to the mortgagee at the time of sale, the surplus shall be paid to other lien holders of record in the order of the priority of their liens. In the event that the proceeds of sale exceed the amount due to the mortgagee and the amounts due to the other lien holders, the excess shall be paid to the mortgagor. The mortgagee or person conducting the sale may interplead any sale proceeds in excess of the indebtedness and expenses secured by the mortgage in the event there are any liens of record against the real estate.

(f) This section shall not preclude the mortgagee from maintaining a subsequent action against the mortgagor for any deficiency.

(g) Any party entitled to be sent notice under this section may, either before or after the foreclosure sale, waive the party's right to receive notice, in which case no foreclosure sale shall be invalid or ineffectual to foreclose that party's rights under the mortgage. A waiver of notice authorized or validated under this section shall be recorded in the land records in the town or city where the property is located.

§ 4967. RECORDING FOLLOWING SALE

(a) Within 90 days after the sale, the mortgagee selling pursuant to the power shall cause the foreclosure deed and an accompanying affidavit to be recorded in the land records of the town where the property is situated. The affidavit setting forth fully and particularly the mortgagee's acts with respect to the sale of the mortgaged property, including the dates that notices of the sale were published, and shall set forth facts showing that no person in interest is in the military service as defined in the Service Members Civil Relief Act of 2003. The affidavit or a duly certified copy thereof shall be admissible in evidence on the issue of whether the power of sale was duly executed.

(b) If the recording required by this section is prevented by an order or stay of any court, the time for such recording shall be extended until 10 days after the expiration or removal of such order or stay.

(c) If the recording required by this section is made more than 60 days after the sale, the affidavit shall state why the recording was not made earlier.

(d) Failure to record the deed and affidavit within the statutory period required by this subsection shall render the sale void and of no effect only as to liens or other encumbrances of record intervening between the day of the sale and the time of recording of said deed and affidavit.

(e) Correction of error. In case of an alleged error or omission in the affidavit, the court, on petition and after notice to interested parties, may validate the affidavit or authorize the recording of an affidavit amending, correcting or in substitution for an affidavit so recorded, and the affidavit so authorized to be recorded or a certified copy of the record thereof shall have the same effect and shall be admitted in evidence as if it had been recorded within the 90-day period required by this section.

§ 4968. TRANSFER OF TITLE

Title to the foreclosed mortgaged property under this section shall not pass to the purchaser until the time of the recording of the deed and affidavit. Upon such recording, title to the mortgaged property shall pass to the purchaser free and clear of all interests and encumbrances which do not have priority over such mortgage.

§ 4969. FAILURE OF SALE; RESALE

If the purchaser does not pay the balance of the purchase price according to the terms of the sale, and at the option of the mortgagee, the down payment, if any, shall be forfeited and the foreclosure sale shall be void.

§ 4970. FORM AND EFFECT OF FORECLOSURE DEED

(a) The foreclosure deed shall be in substantially the following form:

_____ of _____ County, _____ State of _____, holder of a mortgage from _____ to _____ dated _____, recorded in _____ Book _____ at Page _____ of the Town of _____ Land Records, by the power conferred by said mortgage and every other power, for _____ dollars paid, grant to _____, (complete mailing address) _____, of _____ Street, Town (City) of _____, _____ County, State of _____, the premises conveyed by said mortgage.

(Here add acknowledgment)

(b) A deed substantially in the form set forth in subsection (a) of this section shall, when duly executed and delivered, have the force and effect of a deed in fee simple to the grantee, heirs, successors and assigns, to their own use, with covenants on the part of the mortgagee, for himself or herself, that, at the time of the delivery of such deed, the mortgagee was duly authorized to make sale of the mortgaged property; that in all of the mortgagee's proceedings in the sale thereof, the mortgagee has complied with the

requirements of this subchapter; and that the mortgagee will warrant and defend the same to the grantee, heirs, successors, and assigns against the lawful claims of all persons claiming by, from, or under him or her.

Sec. 2. REPEAL

12 V.S.A. chapter 163, subchapter 6 (foreclosure of mortgages) is repealed.

Sec. 3. EFFECTIVE DATE; APPLICABILITY

This act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(**Committee Vote: 11-0-0**)

H. 413

An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult

Rep. Wizowaty of Burlington, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 1384 is added to read:

§ 1384. CIVIL ACTION; RECOVERY BY ATTORNEY GENERAL

(a) The attorney general may bring an action for damages on behalf of the state against a person or caregiver who, with reckless disregard or with knowledge, violates section 1376 (abuse of a vulnerable adult), 1377 (abuse by unlawful restraint or confinement), 1378 (neglect of a vulnerable adult), 1380 (financial exploitation), or 1381 (exploitation of services) of this title, in addition to any other remedies provided by law, not to exceed the following:

- (1) \$5,000.00 if no bodily injury results;
- (2) \$10,000.00 if bodily injury results;
- (3) \$20,000.00 if serious bodily injury results; and
- (4) \$50,000.00 if death results.

(b) In a civil action brought under this section, the defendant shall have a right to a jury trial.

(c) A good faith report of abuse, neglect, exploitation, or suspicion thereof pursuant to 33 V.S.A. § 6902 or federal law shall not alone be sufficient evidence that a person acted in reckless disregard for purposes of subsection (a) of this section.

Sec. 2. 13 V.S.A. § 1385 is added to read:

§ 1385. CIVIL INVESTIGATION

(a)(1) If the attorney general has reason to believe a person or caregiver has violated section 1376, 1377, 1378, 1380, or 1381 of this title or an administrative rule adopted pursuant to those sections, he or she may:

(A) examine or cause to be examined any books, records, papers, memoranda, and physical objects of whatever nature bearing upon each alleged violation.

(B) demand written responses under oath to questions bearing upon each alleged violation.

(C) require the attendance of such person or of any other person having knowledge on the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state.

(D) take testimony and require proof material for his or her information and administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(2) The attorney general shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses at least ten days prior to the date of such examination, personally or by certified mail, upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same. This subsection shall not apply to any criminal investigation or prosecution.

(b) A person upon whom a notice is served pursuant to this section shall comply with the terms thereof unless otherwise provided by the court order. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject of any such notice or mistakes or conceals any information shall be subject to a civil fine of not more than \$5,000.00.

(c) If a person fails to comply with a notice served pursuant to subsection (b) of this section or if satisfactory copying or reproduction of

any such material cannot be done and such person refuses to surrender such material, the attorney general may file a petition with the superior court for enforcement of this section. Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter such orders as may be required to effectuate the provisions of this section. Failure to comply with an order issued pursuant to this section shall be punished as contempt.

Sec. 3. 33 V.S.A. § 6911(a)(1) is amended to read:

(1) The investigative report shall be disclosed only to: the commissioner or person designated to receive such records; persons assigned by the commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the office of professional regulation when deemed appropriate by the commissioner; a law enforcement agency, the state's attorney, or the office of the attorney general, when the department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(**Committee Vote: 11-0-0**)

NOTICE CALENDAR

Favorable with Amendment

H. 630

An act relating to reforming Vermont's mental health system.

(**Rep. Pugh of South Burlington** will speak for the Committee on **Human Services**.)

Rep. Emmons of Springfield, for the Committee on **Corrections and Institutions**, recommends the bill be amended as follows:

First: In Sec. 2, Principles for Mental Health Care Reform, by striking subdivisions (1) and (3) and inserting in lieu thereof the following:

(1) The state of Vermont shall meet the needs of individuals with mental health conditions, including the needs of individuals in the custody of the

commissioner of corrections, and the state's mental health system shall reflect excellence, best practices, and the highest standards of care.

(3) Vermont's mental health system shall provide a coordinated continuum of care by the departments of mental health and of corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with mental health conditions receive care in the most integrated and least restrictive settings available. Individuals' treatment choices shall be honored to the extent possible.

Second: In Sec. 9, Inpatient Hospital Beds, by striking out the section in its entirety and inserting in lieu thereof the following:

Sec. 9. INPATIENT HOSPITAL BEDS

(a) To replace the services provided at the Vermont State Hospital, the department of mental health shall oversee the delivery of emergency examination and involuntary inpatient treatment services at four acute inpatient hospitals throughout the state:

(1) The department of mental health shall enter into contracts that meet the requirements of subdivision (2) of this subsection with a hospital in southeastern Vermont and a hospital in southwestern Vermont for the establishment of a 14-bed unit and a six-bed unit, respectively, contingent upon receipt by the hospitals of certificates of need pursuant to 18 V.S.A. chapter 221, subchapter 5.

(2) Initial contract terms for the 14-bed unit and the six-bed unit shall require participation in the no refusal system for at least four years and until the facility has recouped its initial investment. Contracts referenced in subdivision (1) of this subsection shall apply to participating hospitals, notwithstanding their status as designated hospitals, and shall contain the following requirements:

(A) Funding shall be based on the ability to treat patients with high acuity levels;

(B) Units shall be managed as part of a statewide no refusal system;

(C) Reimbursement by the state shall cover agreed costs for enhanced programming and staffing;

(D) Units shall be managed to ensure access to peer supports;

(E) Participating hospitals shall maintain a stakeholder advisory group with open membership to ensure high quality and appropriate levels of care; and

(F) The state shall retain the option to renew the contract upon expiration of the initial four-year term.

(3) Provided that the conditions of subdivisions (1) and (2) of this subsection are met, the following capital and annual state costs are estimated:

(A) To renovate and operate a 14-bed unit:

Capital costs \$4,000,000.00

Annual operating cost \$7,000,000.00

(B) To renovate and operate a six-bed unit:

Capital costs \$6,000,000.00

Annual operating cost \$3,000,000.00

(b)(1) The department of buildings and general services, with broad involvement from the department of mental health and stakeholders, shall design a 25-bed hospital owned and operated by the state in central Vermont and proximate to an existing hospital. Using fast track methods, the department of buildings and general services shall supervise the construction of the hospital. The hospital shall be under the jurisdiction of the commissioner of mental health.

Capital costs estimated at \$25,000,000.00

Annual operating cost estimated at \$12,500,000.00

(2) To foster coordination between the judiciary and mental health systems, the hospital owned and operated by the state shall contain:

(A) adequate capacity to accept individuals receiving a court order of hospitalization pursuant to 18 V.S.A. chapter 181; and

(B) a private room used and outfitted for the purpose of judicial proceedings.

(3) The commissioner of buildings and general services may purchase, lease for a period up to 99 years, or enter into a lease-purchase agreement for property in central Vermont for the purpose described in this subsection.

(4) The commissioner of buildings and general services shall inform the chairs and vice chairs of the senate committee on institutions and house committee on corrections and institutions prior to entering into an agreement pursuant to subdivision (3) of this subsection, upon substantial completion of a design pursuant to this section, prior to the commencement of construction, and when any other substantial step is taken in furtherance of this section.

(c)(1) The commissioner is authorized to contract for seven to 12 involuntary acute inpatient beds at Fletcher Allen Health Care until the state-managed hospital described in subsection (b) of this section is operational, to cover the increased cost of care, at an estimated annual cost of \$8,000,000.00; and

(2) If a viable setting is identified by the commissioner and licensed by the department of health, the commissioner is authorized to provide acute inpatient services at a temporary location until the hospital owned and operated by the state described in subsection (b) of this section is operational. The department shall pursue Medicare and Medicaid certification for any such hospital or facility.

(d) To the extent amounts of potential funding from various sources are not clear upon passage of this act, the legislative intent for funding the capital costs of this section is to the extent practicable first through insurance funds that may be available for these purposes; second through the Federal Emergency Management Agency (FEMA) funds that may be available for these purposes and any required state match; third through a rate payment with clearly defined terms of services; and last with state capital or general funds. It is also the intent of the general assembly that, notwithstanding 32 V.S.A. §§ 134 and 135, any capital funds expended for projects described in this act that are reimbursed at a later date by insurance or FEMA shall be reallocated to fund capital projects in a future act relating to capital construction and state bonding.

Third: In Sec. 10, subsection (a), by striking out the subsection in its entirety and inserting in lieu thereof the following:

(a) The commissioner of mental health is authorized to establish and oversee a secure five-bed residential facility owned and operated by the state for individuals no longer requiring acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents:

Capital costs estimated at \$1,800,000.00

Annual operating cost estimated at \$2,000,000.00

Fourth: By striking Sec. 22 in its entirety

Fifth: By adding Sec. 37a before Sec. 37b (Legislative Intent) to read:

**Sec. 37a. REDUCTION IN FORCE OF VERMONT STATE HOSPITAL
EMPLOYEES**

(a) Permanent status classified employees who were officially subjected to a reduction in force (RIF) from their positions with the Vermont State Hospital, and who have not been reemployed with the state during the two-year reduction in force reemployment rights period, shall be granted reduction in force reemployment rights, in accordance with the provisions of the applicable collective bargaining agreement, but solely to vacant classified bargaining unit positions at any new state-owned and -operated psychiatric hospital, until the opening of such facility. All other contractual reduction in force reemployment terms and conditions shall apply.

(b) Permanent status classified employees who were officially subjected to a RIF from their positions with the Vermont State Hospital, and who have been reemployed with the state during the two-year reduction in force reemployment rights period, shall each be granted one mandatory offer of reemployment, in accordance with the provisions of the applicable collective bargaining agreement, solely to the positions that they occupied at the Vermont State Hospital at the time they were subject to the reduction in force. An employee who accepts the mandatory offer of reemployment shall be transferred in accordance with the provisions of the applicable collective bargaining agreement.

Sixth: By adding Sec. 37b before Sec. 38 (Effective Dates) to read:

Sec. 37b. LEGISLATIVE INTENT

(a) It is the intent of the general assembly that the department of mental health contract with the Brattleboro Retreat for a 14-bed unit and with Rutland Regional Medical Center for a six-bed facility pursuant to Sec. 9 (a) of this act.

(b) It is the understanding of the general assembly that the proposal in Sec. 10(c)(2) of this act, the Brattleboro Retreat, Rutland Regional Medical Center, and an interim secure residential facility are to temporarily meet the immediate needs of the state.

(Committee Vote 9-0-2)

Rep. Johnson of South Hero, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Corrections and Institutions** and when further amended as follows:

First: By striking the words “state-managed mental health hospital” in each instance in which it appears in the bill and inserting in lieu thereof the words “mental health hospital owned and operated by the state”

Second: In Sec. 9, INPATIENT HOSPITAL BEDS, subdivision (a)(2), in the first sentence, by striking out the words “at least”

Third: In Sec. 9, INPATIENT HOSPITAL BEDS, subdivision (b)(1), in the last sentence, before the word “hospital”, by adding the words “operations of the”

Fourth: In Sec. 9, INPATIENT HOSPITAL BEDS, subdivision (c)(1), by striking the words “state-managed hospital”, and inserting in lieu thereof the words “hospital owned and operated by the state”

Fifth: In Sec. 9, INPATIENT HOSPITAL BEDS, subsection (d), in the first sentence, by striking the word “is” after the words “capital costs of this section” and by adding the word “is” after the words “to the extent practicable”

Sixth: In Sec. 9, INPATIENT HOSPITAL BEDS, subsection (d), in the last sentence, by striking the words “is also”, and by inserting in lieu thereof the words “also is”

Seventh: In Sec. 14, 13 V.S.A. § 1501, by striking out the section in its entirety and inserting in lieu thereof the following:

Sec. 14. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

* * *

(b) A person who, while in lawful custody:

* * *

(4) escapes or attempts to escape from the Vermont ~~state hospital~~ State Hospital, or its successor in interest or a participating hospital, when confined by court order pursuant to chapter 157 of ~~Title 13 or chapter 199 of Title 18~~ this title, or when transferred there pursuant to ~~section 28 V.S.A. § 703 of Title 28~~ and while still serving a sentence, shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

* * *

(d) As used in this section:

(1) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(2) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

Eighth: In Sec. 21, 18 V.S.A. § 7206, by adding subsection (c) to read as follows:

(c) The commissioner of mental health shall report on or before January 15, 2013 to the senate committee on health and welfare and the house committee on human services using data collected under subsection (b) of this section, regarding whether the state should move forward with the plan for reforming Vermont’s mental health care system as proposed or whether alterations should be made to the plan and regarding the financial impacts of implementing the plan to date.

Ninth: In Sec. 33, REPORTS, in the first sentence, by striking the word “committee” after the word “house” and inserting in lieu thereof “committees”, and after the words “human services” adding the words “and on judiciary”

Tenth: In Sec. 34, APPROPRIATIONS, in the first sentence, after the word “duties”, by striking the comma

Eleventh: In Sec. 34, APPROPRIATIONS, in the first sentence, after the number “\$20,000.00” by striking “is appropriated from the general fund”, and inserting in lieu thereof “of the general funds appropriated to the department of mental health shall be transferred”

Twelfth: By striking Sec. 35 in its entirety and inserting in lieu thereof:

Sec. 35. Sec. B.301 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 14 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

Sec. B.301 Secretary’s office - global commitment

Grants	1,080,785,264	1,107,604,567
Total	1,080,785,264	1,107,604,567
Source of funds		
General fund	139,267,121	135,947,833
Special funds	18,630,961	19,052,361
Tobacco fund	36,978,473	36,978,473
State health care resources fund	221,579,040	234,205,524
Catamount fund	23,948,700	25,226,979
Federal funds	639,692,834	655,505,262
Interdepartmental transfers	<u>688,135</u>	<u>688,135</u>
Total	1,080,785,264	1,107,604,567

Thirteenth: In Sec. 36, by striking “Sec. X”, and inserting in lieu thereof “Sec. 24”

Fourteenth: In Sec. 37, by striking “Sec. X”, and inserting in lieu thereof “Sec. 25”

Fifteenth: In Sec. 37b, subsection (b), by striking out “10(c)(2)” and inserting in lieu thereof “9(c)(2)”

(**Committee Vote: 10-1-0**)

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary’s office and/or the House Clerk’s office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 252

House concurrent resolution recognizing the essential health care role of licensed pharmacists in Vermont

H.C.R. 253

House concurrent resolution congratulating the Community College of Vermont on the opening of its new Rutland City campus

Public Hearings

PUBLIC HEARING

Public Hearing on the Governor’s proposed Fiscal Year 2013 state budget

For Advocates

House Committee on Appropriations

Tuesday, February 14, 2012, 2:30 - 3:30 p.m. or Wednesday, February 15, 2012, 9:30 – 10:30 a.m. – The House Committee on Appropriations will hold a public hearing for advocates in room 10 of the State House on the Governor’s proposed FY2013 state budget. Please sign up in advance, if possible, with Theresa Utton-Jerman at (802) 828-5767 or tutton@leg.state.vt.us or room 40.

The Governor’s budget proposal can be viewed at the Department of

Finance's website: http://finance.vermont.gov/state_budget/rec.

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(b) of the Rules and Orders of the Vermont House of Representatives, during the second year of the biennium, except with the prior consent of the Committee on Rules, no member may introduce a bill into the House drafted in standard form after the last day of January. Bills may be introduced in Short Form until the second Friday after Town Meeting Day.

In order to meet this deadline all sign out sheets must be submitted to the Legislative Council no later than the close of business on Friday, January 27, 2012. Requests for short form bills may be made until Wednesday, February 15, 2012.

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March. The Committees on Appropriations, Ways and Means bills may be drafted in standard form at any time, and Government Operations bills, pertaining to city or town charter changes, may be drafted in standard form at any time.

PUBLIC HEARING

Joint Public Hearing on Fiscal Year 2013 state budget on Vermont Interactive Television House and Senate Committees on Appropriations

Monday, February 13, 2012, 4:00 - 6:30 p.m. – The House and Senate Committees on Appropriations will hold a joint public hearing on Vermont Interactive Television (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2013. All 14 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Castleton, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

For the first time, the budget hearing will be VIEWABLE via the internet if your computer has flash-based streaming capabilities.

Go to www.vtlink.org/streamingmedia/vtcvitopen.php

Some mobile devices may require additional software.

The Governor's budget proposal can be viewed at the Department of Finance's website: http://finance.vermont.gov/state_budget/rec. For information about the format of this event or to submit written testimony, call the House Appropriations Committee office at 802/828-5767 or email tutton@leg.state.vt.us. Requests for interpreters should be made to the office by 12:00 noon on Monday, January 30, 2012.

Joint Assembly

NOTICE OF JOINT ASSEMBLY

Thursday, February 16, 2012 - 10:30 A.M. - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 9, 2012, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.