Senate Calendar

FRIDAY, MARCH 18, 2011

SENATE CONVENES AT: 11:30 A.M.

TABLE OF CONTENTS

ORDERS OF THE DAY

ACTION CALENDAR

UNFINISHED BUSINESS OF THURSDAY, MARCH 17, 2011

Third Reading

S. 30.

An act relating to enhancing the penalty for assault of a nurse.

AMENDMENT TO S. 30 TO BE OFFERED BY SENATOR GALBRAITH BEFORE THIRD READING

Senator Galbraith moves that the bill be amended as follows:

First: In Sec. 1, 13 V.S.A. § 1028, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A person convicted of a simple or aggravated assault against a law enforcement officer, a firefighter, ~~emergency room personnel~~ a health care worker, or a member of emergency ~~services~~ medical personnel as defined in ~~subdivision~~ 24 V.S.A. § 2651(6) ~~of Title 24~~ while the officer, firefighter, health care worker, or emergency medical personnel member is performing a lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) For the first offense, be imprisoned not more than one year;

(2) For the second offense and subsequent offenses, be imprisoned not more than 10 years.

Second: In Sec. 1, 13 V.S.A. § 1028, by adding a new subsection (c) to read as follows:

(c) For purposes of this section:

(1) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

(2) "Health care facility" shall have the same meaning as defined in 18 V.S.A. § 9432(8)

S. 67.

An act relating to the open meeting law.

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 16, 2011

Committee Bills for Second Reading

S. 91.

An act relating to motor vehicle operation and entertainment pictures.

By the Committee on Transportation. (Senator Kitchel for the committee.)

S. 92.

An act relating to the protection of students' health by requiring the use of safe cleaning products in schools.

By the Committee on Education. (Senator Lyons for the committee.)

UNFINISHED BUSINESS OF THURSDAY, MARCH 17, 2011

Committee Bills for Second Reading

S. 93.

An act relating to labeling maple products.

By the Committee on Agriculture. (Senator Kittell for the committee.)

AMENDMENT TO S. 93 TO BE OFFERED BY SENATOR KITTELL ON BEHALF OF THE COMMITTEE ON AGRICULTURE

Senator Kittell, on behalf of the Committee on Agriculture, moves to amend the bill in Sec. 1, 6 V.S.A. § 495(e) after the word: "display" by striking out the following: ", co-locate,"

S. 96.

An act relating to technical corrections to the workers' compensation statutes.

By the Committee on Economic Development, Housing and General Affairs. (Senator Ashe for the committee.)

S. 97.

An act relating to the study of carbon monoxide detectors in school buildings.

By the Committee on Economic Development, Housing and General Affairs. (Senator Illuzzi for the committee.)

S. 98.

An act relating to authorizing owner-financed property sales.

By the Committee on Economic Development, Housing and General Affairs. (Senator Ashe for the committee.)

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 16, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 38.

An act relating to the Uniform Collateral Consequences of Conviction Act.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 231 is added to read:

CHAPTER 231. UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION

§ 8001. SHORT TITLE

This act may be cited as the Uniform Collateral Consequences of Conviction Act.

§ 8002. DEFINITIONS

As used in this chapter:

(1) "Collateral consequence" means a collateral sanction or a disqualification.

(2) "Collateral sanction" means a penalty, disability, or disadvantage imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

(3) "Conviction" includes an adjudication for delinquency for purposes of this chapter only, unless otherwise specified. "Convicted" has a corresponding meaning.

(4) "Decision-maker" means the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance.

(5) "Disqualification" means a penalty, disability, or disadvantage that

an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

(6) "Offense" means a felony, misdemeanor, or delinquent act under the laws of this state, another state, or the United States.

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

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

§ 8003. LIMITATION ON SCOPE

(a) This chapter does not provide a basis for:

(1) invalidating a plea, conviction, or sentence;

(2) a cause of action for money damages; or

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with this subchapter.

(b) This chapter shall not affect:

(1) the duty an individual's attorney owes to the individual;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy under law other than this subchapter available to an individual convicted of an offense.

§ 8004. IDENTIFICATION, COLLECTION, AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES

(a)(1) The attorney general shall:

(A) Identify or cause to be identified any provision in this state's constitution, statutes, and administrative rules which imposes a collateral sanction or authorizes the imposition of a disqualification and any provision of law that may afford relief from a collateral consequence.

(B) Prepare a collection of citations to and the text or short descriptions of the provisions identified under subdivision (a)(1)(A) of this section not later than August 1, 2012.

(C) Update the collection provided under subdivision (B) of this

subdivision (1) annually by July 1.

(2) In complying with subdivision (a)(1) of this section, the attorney general may rely on the study of this state's collateral sanctions, disqualifications, and relief provisions prepared by the National Institute of Justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. 110-177.

(b) The attorney general shall include or cause to be included the following statements in a prominent manner at the beginning of the collection required by subsection (a) of this section:

(1) This collection has not been enacted into law and does not have the force of law.

(2) An error or omission in this collection or any reference work cited in this collection is not a reason for invalidating a plea, conviction, or sentence or for not imposing a collateral sanction or authorizing a disqualification.

(3) The laws of other jurisdictions which impose additional collateral sanctions and authorize additional disqualifications are not included in this collection.

(4) This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [insert date the collection was prepared or last updated].

(c) The attorney general shall publish or cause to be published the collection prepared and updated as required by subsection (a) of this section. The attorney general shall publish or cause to be published as part of the collection the title and Internet address, if available, of the most recent collection of:

(1) the collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

(d) An agency that adopts a rule pursuant to 3 V.S.A. §§ 836–844 which implicates collateral consequences to a conviction shall forward a copy of the rule to the attorney general.

§ 8005. NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING

When an individual receives formal notice that the individual is charged with an offense, the court shall cause information substantially similar to the following to be communicated to the individual:

NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

(a) If you plead guilty or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, home confinement, probation, and fines. These consequences may include:

- Being unable to get or keep some licenses, permits, or jobs.
- Being unable to get or keep benefits such as public housing or education.
- Receiving a harsher sentence if you are convicted of another offense in the future.
- Having the government take your property.
- Being unable to possess a firearm.

If you are not a United States citizen, a guilty plea or conviction may also result in your deportation, removal, exclusion from admission to the United States, or denial of citizenship.

The law may provide ways to obtain some relief from these consequences.

Further information about the consequences of conviction is available on the Internet at [insert Internet address of the collection of laws published under this subchapter].

(b) Before the court accepts a plea of guilty or nolo contendere from an individual, the court shall confirm that the individual received the notice required by subsection (a) of this section and had an opportunity to discuss the notice with counsel, if represented, and understands that there may be collateral consequences to a conviction.

§ 8006. NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE

(a) An individual convicted of an offense shall be given notice, as provided in subsections (b) and (c) of this section, of the following:

(1) That collateral consequences may apply because of the conviction.

(2) The Internet address of the collection of laws published under this subchapter.

(3) That there may be ways to obtain relief from collateral consequences.

(4) Contact information for government or nonprofit agencies, groups, or organizations, if any, offering assistance to individuals seeking relief from collateral consequences.

(5) That conviction of a crime in this state does not prohibit an individual from voting in this state.

(b) The court shall provide the notice in subsection (a) of this section as a part of sentencing.

(c) If an individual is sentenced to imprisonment or home confinement, the department of corrections shall provide the notice in subsection (a) of this section not more than 30 days and at least 10 days before discharge or release to community supervision.

§ 8007. AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION; AMBIGUITY

(a) A collateral sanction may be imposed only by statute or ordinance or by a rule adopted in the manner provided in 3 V.S.A. §§ 836–844.

(b) A law creating a collateral consequence that is ambiguous as to whether it imposes an automatic collateral sanction or whether it authorizes a decision-maker to disqualify a person based upon his or her conviction shall be construed as authorizing a disqualification.

§ 8008. DECISION TO DISQUALIFY

In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself may not be considered except as having established the elements of the offense. The decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief or a certificate of restoration of rights.

§ 8009. EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES; RELIEVED OR PARDONED CONVICTION

(a) For purposes of authorizing or imposing a collateral consequence in this state, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in this state with the same elements. If there is no offense in this state with the same elements, the conviction is deemed a conviction of the most serious offense in this state which is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction may not be deemed a felony in this state, and an offense lesser than a misdemeanor in the jurisdiction of conviction may not be deemed a

conviction of a felony or misdemeanor in this state.

(b) For purposes of authorizing or imposing a collateral consequence in this state, a juvenile adjudication in another state or the United States may not be deemed a conviction of a felony, misdemeanor, or offense lesser than a misdemeanor in this state, but may be deemed a juvenile adjudication for the delinquent act in this state with the same elements. If there is no delinquent act in this state with the same elements, the juvenile adjudication is deemed an adjudication of the most serious delinquent act in this state which is established by the elements of the offense.

(c) A conviction that is reversed, overturned, or otherwise vacated by a court of competent jurisdiction of this state, another state, or the United States on grounds other than rehabilitation or good behavior may not serve as the basis for authorizing or imposing a collateral consequence in this state.

(d) A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing, and relieving a collateral consequence in this state as it has in the issuing jurisdiction.

(e) A conviction that has been relieved by expungement, sealing, annulment, set-aside, or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in this state as it has in the jurisdiction of conviction. However, such relief or restoration of civil rights does not relieve collateral consequences applicable under the law of this state for which relief could not be granted under section 8012 of this title or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief under section 8010 or 8011 of this title from any collateral consequence for which relief was not granted in the issuing jurisdiction, other than those listed in section 8012 of this title, and the court shall consider that the conviction was relieved or civil rights restored in deciding whether to issue an order of limited relief or certificate of restoration of rights.

(f) A charge or prosecution in any jurisdiction which has been finally terminated without a conviction and imposition of sentence based on successful participation in a deferred adjudication or diversion program may not serve as the basis for authorizing or imposing a collateral consequence in this state. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

§ 8010. ORDER OF LIMITED RELIEF

(a) An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. After notice, the petition may be presented to the sentencing court at or before sentencing or to the superior court at any time after sentencing.

(b) Except as otherwise provided in section 8012 of this title, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in this subchapter if, after reviewing the petition, the individual's criminal history record, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to section 8018 of this title.

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

§ 8011. CERTIFICATE OF RESTORATION OF RIGHTS

(a) An individual convicted of an offense may petition the court for a certificate of restoration of rights relieving collateral sanctions not sooner than five years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

(b) Except as otherwise provided in section 8012 of this title, the court may issue a certificate of restoration of rights if, after reviewing the petition, the

individual's criminal history, any filing by a victim under section 8015 of this title or a prosecuting attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) the individual is engaged in or seeking to engage in a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support;

(2) the individual is not in violation of the terms of any criminal sentence or that any failure to comply is justified, excused, involuntary, or insubstantial;

(3) a criminal charge is not pending against the individual; and

(4) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or to any individual.

(c) A certificate of restoration of rights must specify any restriction imposed and collateral sanction from which relief has not been granted under section 8013 of this title.

(d) A certificate of restoration of rights relieves all collateral sanctions, except those listed in section 8012 of this title and any others specifically excluded in the certificate.

(e) If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in section 8008 of this title.

§ 8012. COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF OR CERTIFICATE OF RESTORATION OF RIGHTS

An order of limited relief or certificate of restoration of rights may not be issued to relieve the following collateral sanctions:

(1) Requirements imposed by chapter 167, subchapter 3 of this title (sex offender registration; law enforcement notification).

(2) A motor vehicle license suspension, revocation, limitation, or ineligibility pursuant to Title 23 for which restoration or relief is available, including occupational, temporary, and restricted licensing provisions.

(3) Ineligibility for employment by law enforcement agencies, including the attorney general's office, state's attorney, police departments, sheriff's departments, state police, or the department of corrections.

§ 8013. ISSUANCE, MODIFICATION, AND REVOCATION OF ORDER OF LIMITED RELIEF AND CERTIFICATE OF RESTORATION OF

RIGHTS

(a) When a petition is filed under section 8010 or 8011 of this title, including a petition for enlargement of an existing order of limited relief or certificate of restoration of rights, the court shall notify the office that prosecuted the offense giving rise to the collateral consequence from which relief is sought and, if the conviction was not obtained in a court of this state, the attorney general. The court may issue an order or certificate subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking an order or certificate, the court may impose conditions for a subsequent petition.

(b) The court may restrict or revoke an order of limited relief or certificate of restoration of rights if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony in this state or of an offense in another jurisdiction that is deemed a felony in this state. An order of restriction or revocation may be issued:

(1) on motion of the court, the prosecuting attorney who obtained the conviction, or a government agency designated by that prosecutor;

(2) after notice to the individual and any prosecutor that has appeared in the matter; and

(3) after a hearing if requested by the individual or the prosecutor that made the motion or any prosecutor that has appeared in the matter.

(c) The court shall order any test, report, investigation, or disclosure by the individual it reasonably believes necessary to its decision to issue, modify, or revoke an order of limited relief or certificate of restoration of rights. If there are material disputed issues of fact or law, the individual and any prosecutor notified under subsection (a) of this section or another prosecutorial agency designated by a prosecutor notified under subsection (a) of this section may submit evidence and be heard on those issues.

(d) The court shall maintain a public record of the issuance, modification, and revocation of orders of limited relief and certificates of restoration of rights. A criminal history record as defined in 20 V.S.A. § 2056a and a criminal conviction record as defined in 20 V.S.A. § 2056c shall include issuance, modification, and revocation of orders and certificates.

(e) The court may adopt rules for application, determination, modification, and revocation of orders of limited relief and certificates of restoration of rights.

§ 8014. RELIANCE ON ORDER OR CERTIFICATE AS EVIDENCE OF DUE CARE

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order was issued, if the person knew of the order or certificate at the time of the alleged negligence or other fault.

§ 8015. VICTIM'S RIGHTS

A victim of an offense may participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding pursuant to section 5321 of this title to the extent permitted by rules adopted by the court.

§ 8016. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 8017. SAVINGS AND TRANSITIONAL PROVISIONS

(a) This subchapter applies to collateral consequences whenever enacted or imposed, unless the law creating the collateral consequence expressly states that this subchapter does not apply.

(b) This subchapter does not invalidate the imposition of a collateral sanction on an individual before July 1, 2012, but a collateral sanction validly imposed before July 1, 2012 may be the subject of relief under this subchapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

S. 42.

An act relating to art galleries serving malt or vinous beverages.

Reported favorably with recommendation of amendment by Senator Galbraith for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 5 is added to read:

§ 5. BOOKSTORES AND ART GALLERIES; WINE TASTING; EXEMPTION; LIABILITY

(a) For purposes of this section, "art gallery" means a building or room primarily devoted to the creation, exhibition, or sale of works of art.

(b) Bookstores and art galleries may serve free of charge malt or vinous beverages by the individual glass to a person for consumption on the premises at an event open to the public and advertised as such for no longer than five hours per day and on no more than four days per month. No license or permit shall be required. A bookstore or art gallery shall not serve malt or vinous beverages to: (1) a minor; (2) a person apparently under the influence of intoxicating liquor; (3) a person after legal serving hours; or (4) a person whom it would be reasonable to expect would be under the influence of intoxicating liquor as a result of the amount of liquor served to that person. The owner of a bookstore or art gallery may be held liable for damages pursuant to sections 501(a), (b), (e) and (f) of this title, even though the owner is not licensed by the board.

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

"An act relating to bookstores and art galleries serving malt or vinous beverages."

(Committee vote: 5-0-0)

S. 52.

An act to protect employees from abuse at work.

Reported favorably with recommendation of amendment by Senator Doyle for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as "workplace bullying."

(4) The Vermont office of attorney general's civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee's membership in a category protected by antidiscrimination laws.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.

Sec. 2. STUDY

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of "workplace bullying" or "abusive conduct" in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

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

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

and that after passage the title of the bill be amended to read: "An act relating to workplace bullying".

(Committee vote: 5-0-0)

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 36.

An act relating to the surplus lines insurance multi-state compliance compact.

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

*** * * Authorization to Enter into Compact or Agreement * * ***

Sec. 1. 8 V.S.A. § 5020 is added to read:

§ 5020. AUTHORIZATION TO ENTER INTO COMPACT OR OTHER AGREEMENT; NON-ADMITTED INSURANCE

(a) The general assembly finds that:

(1) The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010. Title V, Subtitle B of that act is known as the Non-Admitted and Reinsurance Reform Act of 2010 (NRRA). NRRA states that:

(A) the placement of non-admitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state; and

(B) any law, regulation, provision, or action of any state that applies or purports to apply to non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application; except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a non-admitted insurer shall not be preempted.

(2) In compliance with NRRA, no state other than the home state of an insured may require any premium tax payment for non-admitted insurance; and

no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate non-admitted insurance with respect to such insured.

(3) NRRA intends that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state; and that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for non-admitted insurance.

(4) By July 21, 2011, if Vermont does not enter into a compact or other reciprocal agreement with other states for the purpose of collecting, allocating, and disbursing premium taxes and fees attributable to multi-state risks, the state could lose up to 20 percent of its surplus lines premium tax collected annually. In fiscal year 2010, Vermont's surplus lines premium tax was $938,636.54. A revenue loss of 20 percent would be $187,727.31.

(b) In accordance with NRRA and by July 21, 2011, the commissioner of banking, insurance, securities, and health care administration, subject to the prior approval required in subsection (c) of this section, may enter into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states to provide for the reporting, payment, collection, and allocation of premium fees and taxes imposed on non-admitted insurance. The commissioner may also enter into other cooperative agreements with surplus lines stamping offices and other similar entities located in other states related to the capturing and processing of insurance premium and tax data. The commissioner is further authorized to participate in any clearinghouse established under any such agreement or agreements for the purpose of collecting and disbursing to reciprocal states any funds collected and applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the insured properties, risks, or exposures are located have failed to enter into a compact or reciprocal allocation procedure with Vermont, the net premium tax collected shall be retained by Vermont.

(c) Prior to entering into a compact, cooperative agreement, reciprocal agreement, or multistate agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall obtain the prior approval of the joint fiscal committee, in consultation with the chairs of the senate committee on finance and the house committees on ways and means and on commerce and economic development.

(d) By July 1, 2011, if a clearinghouse is not established or otherwise in operation in order to implement NRRA, all payments and taxes that otherwise

would be payable to such a clearinghouse shall be submitted to the commissioner or with a voluntary domestic organization of surplus lines brokers with which the commissioner has contracted for the purpose of collecting and allocating all payments and taxes.

(e) The commissioner may adopt rules deemed necessary to carry out the purposes of this section.

*** * * NRRA Conforming Amendments to Existing VT Laws * * ***

Sec. 2. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

~~For the purposes of this chapter:~~

~~(1) "Surplus lines insurance" means coverage not procurable from admitted insurers.~~

~~(2) "Surplus lines broker" means an individual licensed pursuant to this chapter and chapter 131 of this title.~~

~~(3) "Surplus lines insurer" means a non-admitted insurer with which insurance coverage may be placed under this chapter.~~

~~(4) "Domestic risk" means a subject of insurance which is resident, located or to be performed in this state.~~

~~(5) "To export" means to place surplus lines insurance with a non-admitted insurer.~~

~~(6) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.~~

~~(7) "Admitted insurer" means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.~~

(a) Notwithstanding subsection (b) of this section, as used in this chapter, unless the context requires otherwise, words and phrases shall have the meaning given under Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, as amended.

(b) For purposes of this chapter:

(1) "Admitted insurer" means an insurer possessing a certificate of authority to transact business in this state issued by the commissioner pursuant to section 3361 of this title.

(2) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.

(3) "Domestic risk" means a subject of insurance which is resident, located, or to be performed in this state.

(4) "To export" means to place surplus lines insurance with a non-admitted insurer.

(5) "Home state" means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term "home state" means the home state, as determined pursuant to subdivision (A) of this subdivision (5), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6) "NAIC" means the national association of insurance commissioners.

(7) "Surplus lines broker" means an individual licensed under this chapter and chapter 131 of this title.

(8) "Surplus lines insurance" means coverage not procurable from admitted insurers.

(9) "Surplus lines insurer" means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 3. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a nonadmitted insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this state; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

(b) Notwithstanding any other provision of this section, the commissioner may order eligible for export any class or classes of insurance coverage or risk for which he or she finds there to be an inadequate competitive market among

admitted insurers either as to acceptance of the risk, contract terms or premium or premium rate.

(c) The due diligence search for reasonably procurable insurance coverage required under subsection (a) of this section is not required for an exempt commercial purchaser, provided:

(1) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may be available from an admitted insurer and may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place such insurance from a nonadmitted insurer.

Sec. 4. 8 V.S.A. § 5025 is amended to read:

§ 5025. EXCEPTIONS CONCERNING PLACEMENT OF INSURANCE WITH NONADMITTED INSURERS; RECORDS

The provisions of this chapter controlling the placement of insurance with nonadmitted insurers shall not apply to life insurance, health insurance, annuities, or reinsurance, nor to the following insurance when so placed by any licensed producer in this state:

(1) insurance on subjects ~~located, resident, or to be performed wholly outside this state~~ whose home state is other than Vermont;

* * *

Sec. 5. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) ~~Surplus~~ Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

(1) ~~has paid to the commissioner an initial fee of $100.00 and an annual listing fee of $300.00, payable before March 1 of each year;~~

~~(2) has furnished the commissioner with a certified copy of its current annual statement; and~~

~~(3)~~ has and maintains capital~~, surplus or both to policyholders in an amount not less than $10,000,000.00;~~ and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of:

(A) the minimum capital and surplus requirements under the law of this state; or

(B) $15,000,000.00; and

~~(4)~~(2) if an alien insurer, ~~in addition to the requirements of subdivisions (1), (2), and (3) of this subsection, has established a trust fund in a minimum amount of $2,500,000.00 within the United States maintained in and administered by a bank that is a member of the Federal Reserve System and held for the benefit of all of its insurer's policyholders and beneficiaries in the United States. In the case of an association of insurers, which association includes unincorporated individual insurers, they shall maintain in a bank that is a member of the Federal Reserve System assets held in trust for all their policyholders and beneficiaries in the United States of not less than $50,000,000.00 in lieu of the foregoing trust fund requirement. These trust funds or assets held in trust shall consist of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance~~ is listed on the quarterly listing of alien insurers maintained by the NAIC international insurers department.

(b) Notwithstanding the capital and surplus requirements of this section, a non-admitted insurer may receive approval upon an affirmative finding of acceptability by the commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $4,500,000.00.

(c) The commissioner may from time to time publish a list of all nonadmitted insurers deemed by him or her to be currently eligible surplus lines insurers under the provisions of this section, and shall mail a copy of such list to each surplus lines broker. ~~The commissioner may satisfy this subsection by adopting the list of approved surplus lines insurers published by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners.~~ This subsection shall not be deemed to cast upon the commissioner the duty of determining the actual financial condition or claims practices of any nonadmitted insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary. While any such list is in effect, the surplus lines broker shall restrict to the insurers so listed all

surplus lines insurance business placed by him or her. However, upon the request of a surplus lines broker or an insured, the commissioner may deem a nonadmitted insurer to be an eligible surplus lines insurer for purposes of this subsection prior to publication of the name of such surplus lines insurer on the list.

Sec. 6. 8 V.S.A. § 5027(a) is amended to read:

(a) ~~Upon~~ Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, ~~the surplus lines broker~~ shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

Sec. 7. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, "The company issuing this policy has not been licensed by the state of Vermont and the rates charged have not been approved by the commissioner of insurance. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."

Sec. 8. 8 V.S.A. § 5033(a) is amended to read:

(a) ~~Each~~ Where Vermont is the home state of the insured, each surplus lines broker shall keep in his or her office a full and true record of each surplus lines insurance contract covering a domestic risk placed by or through him or her with a surplus lines insurer, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

* * *

Sec. 9. 8 V.S.A. § 5035(a) is amended to read:

(a) ~~Gross~~ Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with nonadmitted insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:

(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus

(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.

Sec. 10. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

(a) Every insured and every self-insurer in this state for whom this is their home state, who procures or causes to be procured or continues or renews insurance from any non-admitted insurer, covering a subject located or to be performed within this state, other than insurance procured through a surplus lines broker pursuant to this chapter, shall, before March 1 of the year after the year in which the insurance was procured, continued or renewed, file a written report with the commissioner on forms prescribed and furnished by the commissioner. The report shall show:

* * *

Sec. 11. 8 V.S.A. § 5037(7) is amended to read:

(7) ~~Violation~~ Material violation of any provision of this chapter; or

Sec. 12. 8 V.S.A. § 4807 is amended to read:

§ 4807. SURPLUS LINES INSURANCE BROKER

(a) Every surplus lines insurance broker who solicits an application for insurance of any kind, in any controversy between the insured or his or her beneficiary and the insurer issuing any policy upon such application, shall be regarded as representing the insured and his or her beneficiary and not the insurer; except any insurer which directly or through its agents delivers in this state to any surplus lines insurance broker a policy or contract for insurance pursuant to the application or request of the surplus lines insurance broker, acting for an insured other than himself or herself, shall be deemed to have authorized the surplus lines insurance broker to receive on its behalf payment of any premium which is due on the policy or contract for insurance at the time of its issuance or delivery.

(b) [Repealed.]

(c) Notwithstanding any other provision of this title, a person licensed as a surplus lines insurance broker in his or her home state shall receive a nonresident surplus lines insurance broker license pursuant to section 4800 of this chapter.

(d) Not later than July 1, 2012, the commissioner shall participate in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 7-0-0)

NOTICE CALENDAR

Committee Bill for Second Reading

S. 99.

An act relating to agricultural economic development.

By the Committee on Agriculture.

Second Reading

Favorable

S. 18.

An act relating to the disclosure of tax administration information to tax representatives.

Reported favorably by Senator Brock for the Committee on Finance.

(Committee vote: 7-0-0)

Favorable with Recommendation of Amendment

S. 15.

An act relating to insurance coverage for midwifery services and home births.

Reported favorably with recommendation of amendment by Senator Miller for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4099d is added to read:

§ 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

(a) A health insurance plan or health benefit plan providing maternity benefits shall also provide coverage for services rendered by a midwife licensed pursuant to chapter 85 of Title 26 or an advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife for services within the licensed midwife's or certified nurse midwife's scope of practice and provided in a hospital or other health care facility or at home.

(b) Coverage for services provided by a licensed midwife or certified nurse midwife shall not be subject to any greater co-payment, deductible, or coinsurance than is applicable to any other similar benefits provided by the plan.

Sec. 2. DATA SUBMISSION

Each midwife licensed pursuant to chapter 85 of Title 26 and each advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife shall submit data to the database maintained by the Division of Research of the Midwives Alliance of North America regarding each home birth in Vermont for which he or she is the attending midwife.

Sec. 3. DEPARTMENT OF HEALTH; REPORTING REQUIREMENT

(a) The department of health shall access the database maintained by the Division of Research of the Midwives Alliance of North America to obtain information relating to care provided in Vermont by midwives licensed

pursuant to chapter 85 of Title 26 and by advanced practice registered nurses licensed pursuant to chapter 28 of Title 26 who are certified as nurse midwives.

(b) No later than March 15 of each year from 2012 through 2016, inclusive, the commissioner of health or designee shall provide testimony to the house committee on health care and the senate committee on health and welfare regarding the activities of licensed midwives and certified nurse midwives performing home births and providing prenatal and postnatal care in a nonmedical environment during the preceding year. The testimony shall include the number of home births in Vermont, the number of hospital transports associated with home births, the treatment of high-risk patients, and other relevant data, as well as the level of compliance of the licensed midwives and certified nurse midwives with the laws and rules governing their scope of practice.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 of this act shall take effect on October 1, 2011, and shall apply to all health insurance plans and health benefit plans on and after October 1, 2011, on such date as a health insurer issues, offers, or renews the plan, but in no event later than October 1, 2012.

(b) The remaining sections of this act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Fox for the Committee on Finance.

The Committee recommends that the bill be amended in Sec. 1. by adding a subsection (c) to read as follows:

(c) As used in this section, "health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term shall not include policies or plans providing coverage for specific disease or other limited benefit coverage.

(Committee vote: 6-1-0)

S. 34.

An act relating to the collection and disposal of mercury-containing lamps.

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Covered entity" means any person who presents 10 or fewer mercury-containing lamps for collection at a collection facility included in an approved plan.

(3) "Lamp" means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.

(4) "Manufacturer" means a person who:

(A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;

(D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;

(E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (A) through (E) of this subdivision (4) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(5) "Mercury-containing lamp" means a lamp designed for residential or commercial use to which mercury is intentionally added during the manufacturing process, including linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet, and neon lamps.

"Mercury-containing lamp" does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) "Program year" means the period from July 1 through June 30.

(7) "Retailer" means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) "Secretary" means the secretary of natural resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

§ 7152. SALE OF MERCURY-CONTAINING LAMPS

Sale prohibited. Beginning on January 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid its annual registration fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer's brand are designated on the agency of natural resources' website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

§ 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.

(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Two years after the initial plan approval and every two years thereafter, the manufacturer shall hire an independent third party to audit the plan and plan implementation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

§ 7154. COLLECTION PLANS

(a) Collection plan required. Prior to October 1, 2011, a manufacturer shall submit a collection plan to the secretary for review. The collection plan shall include a collection program that meets the following requirements:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

§ 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(e) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link

to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

§ 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. No retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the manufacturer's collection plan expired or was revoked; and

(2) the retailer took possession of the mercury-containing lamp prior to the expiration or revocation of the manufacturer's collection plan, and the unlawful sale occurred within six months of the expiration or revocation of the collection plan.

§ 7158. FEES

A manufacturer or stewardship organization shall pay $10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

§ 7159. RULEMAKING; MERCURY CONTENT STANDARDS

(a) Mercury and lead content standards for lamps. The secretary may adopt rules to implement the requirements of this chapter. The secretary shall adopt rules establishing mercury content standards for lamps. Rules governing mercury content in lamps under this section shall rely upon content standards established in other states, including the standards set by the states of California and Maine. If one or more categories of lamps are not covered by the mercury content standards adopted by the state of California or of Maine, the secretary may adopt rules minimizing the mercury content of lamps within such categories, including adoption of mercury-free standards when mercury-free alternatives are available at comparable cost and with comparable performance. The secretary may adopt, by rule, exemptions from the mercury content standards adopted under this section.

(b) Certificate of compliance.

(1) Within 90 days of adoption of rules under subsection (a) of this section, the secretary may request a manufacturer of lamps to submit a certification, supported by technical information, that the manufacturer's lamps

that are sold or offered for sale in the state comply with rules adopted under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 28 days of the secretary's request. If a manufacturer fails to provide a requested certification within 28 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamps comply with the rules adopted under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 28 days of the retailer's request. The certification must specify that the lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

§ 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing mercury-containing lamps, provided that all other applicable laws are met.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 4-1-0)

Reported favorably by Senator Westman for the Committee on Finance.

(Committee vote: 6-0-1)

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 82-98 (For text of Resolutions, see Addendum to Senate and House Calendar for March 17, 2011)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore,* for

confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of

Children and Families – By Sen. Fox for the Committee on Health and Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

Deb Markowitz of Montpelier – Secretary of the Agency of Natural Resources – By Sen. Lyons for the Committee on Natural Resources and Energy. (3/17/11)

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2011 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 11, 2011.

(2) Senate bills referred pursuant to Senate Rule 31, must be reported out of the Committees on Appropriations and Finance on or before March 18, 2011.

(3) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).

PUBLIC HEARINGS

Thursday, March 24, 2011 – Room 11 – 6:00-8:00 P.M. – Re: S. 57 – Health reform bill, business and provider hearing – Senate Committee on Health and Welfare.

Thursday, April 7, 2011 – Room 11 – 6:00-8:00 P.M. – Re: S. 57 – Health reform bill, business and provider hearing – Senate Committee on Health and Welfare.

SENATE APPROPRIATIONS COMMITTEE

FY 2012 Budget

ADVOCATES TESTIMONY

On **Tuesday**, **March 22** beginning at **1:30 pm**, the Senate Appropriations Committee will be taking testimony from advocates regarding the Fiscal Year 2012 Budget in the Senate Chamber of the State House. All time slots have been filled. To submit written testimony to the Committee contact Becky Buck at the Legislative Joint Fiscal Office located at 1 Baldwin Street (phone: 828-5969) or via e-mail at: rbuck@leg.state.vt.us