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UNFINISHED BUSINESS OF FRIDAY, APRIL 22, 2011

Third Reading

H. 11.

An act relating to the discharge of pharmaceutical waste to state waters.

PROPOSAL OF AMENDMENT TO H. 11 TO BE OFFERED BY SENATOR CARRIS BEFORE THIRD READING

Senator Carris moves that the Senate propose to the House to amend the bill by adding Sec. 2a to read as follows:

Sec. 2a. 10 V.S.A. § 1251 is amended to read:

§ 1251. DEFINITIONS

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

* * *

(13) "Waters" includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it. "Waters" shall not include an artificial impoundment at a dimensional stone quarry that is contained in an active excavation and that is not a "water of the United States," as that term is defined in 40 C.F.R. § 122.2.

* * *

(18) "Active excavation" means:

(A) a quarry registered under 10 V.S.A. §6081(j)–(l); or

(B) an excavation that is under way at a dimensional stone quarry; or

(C) a dormant dimensional stone quarry where remaining mineral deposits are held in reserve for potential future extraction, processing, and sale by the quarry operator or owner.

Committee Bill for Second Reading

S. 95.

An act relating to exemptions for newspaper deliverers from the unemployment statutes; relieving an employer's experience rating record of charges; studying the receipt of unemployment compensation between

academic terms; allowing school employees to be paid wages over the course of a year; and requiring employers to furnish required work apparel.

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

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

The Committee recommends that the bill be amended as follows:

First: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committee on commerce and economic development by January 15, 2012.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read:

Sec. 3. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in

subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

* * *

(C) The term "employment" shall not include:

* * *

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of weekly or monthly newspapers, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

* * *

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

An employer that requires its employees to wear apparel which displays the employer's trademark, logo, or other identifying characteristic, or that requires its employees to wear apparel sold or produced by the employer shall furnish and replace as necessary at least one week's worth of apparel free of charge to the employees. An employee shall be responsible for maintaining the apparel in good condition.

Fourth: By adding a Sec. 8 to read:

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~15~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

(Committee vote: 6-0-1)

AMENDMENT TO S. 95 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves that the bill be amended by striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

An employer that requires its employees to wear apparel which displays the employer's trademark, logo, or other identifying characteristic, or that requires its employees to wear apparel sold or produced by the employer shall furnish and replace as necessary at least one week's worth of apparel free of charge to the employees. An employee shall be responsible for maintaining the apparel in good condition. This requirement shall not apply to the state of Vermont or any of its political subdivisions.

Second Reading

Favorable

H. 428.

An act relating to requiring supervisory unions to perform common duties.

Reported favorably by Senator Kittell for the Committee on Education.

(Committee vote: 5-0-0)

PROPOSAL OF AMENDMENT TO H. 428 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof two new sections to be numbered Sec. 3 and Sec. 4 to read as follows:

Sec. 3. SUPERINTENDENT VACANCY; STRUCTURAL CHANGES

(a) The state board of education shall require that any supervisory union, including a supervisory district, that wishes to hire a superintendent shall:

(1) operate without a superintendent or hire a superintendent for a period that does not extend beyond the last day of the next fiscal year; and

(2) explore structural changes that will result in real dollar efficiencies, operational efficiencies, expanded student learning opportunities, and improved student outcomes. The supervisory union shall report the results of its exploration to the state board within 24 months after the meeting at which the board instructs the supervisory union to begin the exploration.

Sec. 4. EFFECTIVE DATES

Sec. 1 and Sec. 2 shall take effect on passage. Sec. 3 shall take effect on passage and shall apply to all supervisory unions that are not employing a permanent superintendent on that date.

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Favorable with Proposal of Amendment

H. 46.

An act relating to youth athletes with concussions participating in athletic activities.

PENDING QUESTION: Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?

(Text of Report of the Committee on Education)

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word "or" and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ; or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words "and the Vermont School Boards Association" and by striking out the words "those associations" and inserting in lieu thereof the words that association

(For House amendments, see House Journal for February 9, 2011, page 207.)

PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves that the Senate propose to the House that the bill be amended in Sec. 2, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Participation in athletic activity. A coach shall not permit a youth athlete to train or compete with a school athletic team if the athlete has been removed, prohibited, or otherwise discontinued from participating in any training session or competition associated with a school athletic team due to symptoms of a concussion or other head injury, until the athlete has been examined by and received written permission to participate in athletic activities from a licensed health care provider trained in the evaluation and management of concussions and other head injuries.

CONSIDERATION POSTPONED

H. 420.

An act relating to the office of professional regulation.

PENDING QUESTION: Shall the Senate propose to the House to amend the bill as moved by Sen. White?

PROPOSAL OF AMENDMENT TO H. 420 TO BE OFFERED BY SENATOR WHITE

Senator White moves to amend the Senate proposal of amendment by striking out Sec. 15 (effective date) as renumbered in its entirety and inserting in lieu thereof the following:

Sec. 15. 17 V.S.A. § 2121 is amended to read:

§ 2121. ELIGIBILITY OF VOTERS

(a) Any person may register to vote in the town of his or her residence in any election held in a political subdivision of this state in which he or she resides who, on election day:

(1) is a citizen of the United States;

(2) is a resident of the state of Vermont;

(3) has taken the voter's oath; and

(4) is 18 years of age or more

~~may register to vote in the town of his residence in any election held in a political subdivision of this state in which he resides~~.

(b) Any person meeting the requirements of subdivisions (a)(1)–(3) of this section who will be 18 years of age on or before the date of a general election may register and vote in the primary election immediately preceding that general election.

Sec. 16. 17 V.S.A. § 2702 is amended to read:

§ 2702. NOMINATING PETITION

The name of any person shall be printed upon the primary ballot as a candidate for nomination by any major political party if petitions signed by at least one thousand voters in accordance with sections 2353, 2354, and 2358 of this title are filed with the secretary of state, together with the written consent of the person to the printing of the person's name on the ballot. Petitions shall be filed not later than 5:00 p.m. on the ~~third~~ first Monday after the first Tuesday of January preceding the primary election. The petition shall be in a form prescribed by the secretary of state. A person's name shall not be listed as a candidate on the primary ballot of more than one party in the same election. Each petition shall be accompanied by a filing fee of $2,000.00 to be paid to the secretary of state and deposited by the secretary of state into the general fund. However, if the petition of a candidate is accompanied by the affidavit of the candidate, which shall be available for public inspection, that the candidate and the candidate's campaign committee are without sufficient funds to pay the filing fee, the secretary of state shall waive all but $300.00 of the payment of the filing fee by that candidate.

Sec. 17. EFFECTIVE DATE

This act shall take effect on passage.

H. 438.

An act relating to the department of banking, insurance, securities, and health care administration.

PENDING QUESTION: Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Finance?

(Text of Report of the Committee on Finance)

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By adding a Sec. 14a to read as follows:

Sec. 14a. REPEAL

8 V.S.A. § 4089f(e) (decisions relating to mental health shall be reviewed under 8 V.S.A. § 4089a) is repealed.

Second: In Sec. 17, 8 V.S.A. § 9456(e) (hospital budget reviews; waiver), in the second sentence, by striking out the words "The rule shall permit the commissioner to waive" in their entirety and inserting in lieu thereof the following: The ~~rule shall permit the~~ commissioner ~~to~~ may waive

Third: By adding a Sec. 19a to read as follows:

Sec. 19a. MEDICAL LOSS RATIOS; EMPLOYER DEFINITIONS

For purposes of medical loss ratio calculations only, pursuant to Section 10101(f) of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), the term "small employer" means an employer with 50 or fewer employees and the term "large employer" means an employer with 51 or more employees.

(Committee vote: 5-0-2)

(For House amendments, see House Journal for April 13, 2011, page 947.)

PROPOSAL OF AMENDMENT TO H. 438 TO BE OFFERED BY SENATOR BROCK ON BEHALF OF THE COMMITTEE ON FINANCE

Senator Brock, on behalf of the committee on Finance, moves that the Senate propose to the House that the bill be amended by adding a new Sec. 11a to read:

Sec. 11a. 8 V.S.A. § 12603 is amended to read:

§ 12603. MERCHANT BANKS

* * *

(f) The minimum amount of initial capital for a merchant bank is ~~$10,000,000.00~~ $1,000,000.00, all of which ~~at least $5,000,000.00~~ shall be common stock or equity interest in the merchant bank. ~~The balance may be composed of qualifying subordinated or similar debt~~ A merchant bank may use qualified subordinated debt or senior debt as part of its capital structure above $1,000,000.00, provided that the amount of subordinated debt or senior debt used as capital above $1,000,000.00 is not greater than the amount of common stock or equity interest used as capital above $1,000,000.00. The commissioner, in his or her discretion, may increase the minimum capital required for a merchant bank.

* * *

(m) Any acquisition or change in control of ~~five~~ ten percent or more of the common stock or equity interests in a merchant bank shall be subject to the prior approval by the commissioner. The acquiring person shall file an application with the commissioner for approval. The application shall be subject to the provisions of subchapter 7 of chapter 201 of this title.

(n) The commissioner ~~may~~ shall examine the merchant bank and any person who controls it to the extent necessary to determine the soundness and viability of the merchant bank in the same manner as required by subchapter 5 of chapter 201 of this title.

(o) A merchant bank shall include on all its advertising a prominent disclosure that deposits are not accepted by a merchant bank.

(p) For purposes of this section, "control" means that a person:

(1) directly, indirectly, or acting through another person owns, controls, or has power to vote ten percent or more of any class of equity interest of the merchant bank;

(2) controls in any manner the election of a majority of the directors of the merchant bank; or

(3) directly or indirectly exercises a controlling influence over the management or policies of the merchant bank.

NEW BUSINESS

Third Reading

H. 201.

An act relating to hospice and palliative care.

PROPOSAL OF AMENDMENT TO H. 201 TO BE OFFERED BY SENATOR MILLER BEFORE THIRD READING

Senator Miller moves to amend the *Eighth* proposal of amendment in Sec. 11, subsection (c) by inserting a new subdivision to be subdivision (4) to read:

(4) an examination of the relationship between the wishes expressed in an advance directive and the DNR/COLST order.

And by making the subsection grammatically correct.

Second Reading

H. 153.

An act relating to human trafficking.

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

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

Sec. 1. FINDINGS

The general assembly finds that:

(1) According to the report of the Vermont Human Trafficking Task Force:

(A) the number of human beings estimated to be enslaved today has reached over 27 million worldwide, the highest in recorded history; and

(B) Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

(2) As a result of the efforts of the Vermont Human Trafficking Task Force and numerous national organizations dedicated to combating human trafficking, Vermont will with the passage of this act make substantial progress toward protecting citizens of this state and persons everywhere from the dangers and tragic consequences of human trafficking.

Sec. 2. 13 V.S.A. chapter 60 is added to read:

CHAPTER 60. HUMAN TRAFFICKING

Subchapter 1. Criminal Acts

§ 2651. DEFINITIONS

As used in this subchapter:

(1) "Blackmail" means the extortion of money, labor, commercial sexual activity, or anything of value from a person through use of a threat to expose a secret or publicize an asserted fact, whether true or false, that would tend to subject the person to hatred, contempt, ridicule, or prosecution.

(2) "Coercion" means:

(A) threat of serious harm, including physical or financial harm, to or physical restraint against any person;

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

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

(D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;

(E) providing a drug, including alcohol, to another person with the intent to impair the person's judgment or maintain a state of chemical dependence;

(F) wrongfully taking, obtaining, or withholding any property of another person;

(G) blackmail;

(H) asserting control over the finances of another person;

(I) debt bondage; or

(J) withholding or threatening to withhold food or medication.

(3) "Commercial sex act" means any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

(4) "Debt bondage" means a condition or arrangement in which a person requires that a debtor or another person under the control of a debtor perform labor, services, sexual acts, sexual conduct, or a sexually explicit performance in order to retire, repay, or service a real or purported debt which the person has caused with the intent to defraud the debtor.

(5) "Family member" means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.

(6) "Human trafficking" means:

(A) to subject a person to a violation of section 2652 of this title; or

(B) "severe form of trafficking" as defined by 21 U.S.C. § 7105.

(7) "Labor servitude" means labor or services performed or provided by a person which are induced or maintained through force, fraud, or coercion. "Labor servitude" shall not include labor or services performed by a family member of a person who is engaged in the business of farming as defined in 10 V.S.A. § 6001(22) unless force, fraud, or coercion is used.

(8) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.

(9) "Sexual act" shall have the same meaning as in subdivision 3251(1) of this title.

(10) "Sexual conduct" shall have the same meaning as in subdivision 2821(2) of this title.

(11) "Sexually explicit performance" means a public, live, photographed, recorded, or videotaped act or show which:

(A) Depicts a sexual act or sexual conduct;

(B) Is intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers; and

(C) Lacks literary, artistic, political, or scientific value.

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

(13) "Victim of human trafficking" means a victim of a violation of section 2652 of this title.

§ 2652. HUMAN TRAFFICKING

(a) No person shall knowingly:

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

(2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion for the purpose of having the person engage in a commercial sex act;

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

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

(5) subject a person to labor servitude;

(6) recruit, entice, harbor, transport, provide, or obtain a person for the purpose of subjecting the person to labor servitude; or

(7) benefit financially or by receiving anything of value from participation in a venture, knowing that a person will be subject to labor servitude as part of the venture.

(b) A person who violates subsection (a) of this section shall be imprisoned for a term up to and including life or fined not more than $500,000.00, or both.

(c)(1)(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter 59 (lewdness and

prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provision of law, a person under the age of 18 charged with a violation of this section shall be immune from prosecution for a violation of chapter 59 (lewdness and prostitution) of this title and may be referred to the department for children and families for treatment under Chapter 53 of Title 33.

(2) If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)–(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

(d) In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

§ 2653. AGGRAVATED HUMAN TRAFFICKING

(a) A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

(1) The offense involves a victim of human trafficking who is a child under the age of 18;

(2) The person has previously been convicted of a violation of section 2652 of this title;

(3) The victim of human trafficking suffers serious bodily injury or death; or

(4) The actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

(b) A person who violates this section shall be imprisoned not less than 20 years and a maximum term of life or fined not more than $100,000.00, or both.

(c) The provisions of this section do not limit or restrict the prosecution for murder or manslaughter.

§ 2654. PATRONIZING OR FACILITATING HUMAN TRAFFICKING

(a) No person shall knowingly:

(1) Permit a place, structure, or building owned by the person or under the person's control to be used for the purpose of human trafficking;

(2) Receive or offer or agree to receive or offer a person into a place, structure, or building for the purpose of human trafficking; or

(3) Permit a person to remain in a place, structure, building, or conveyance for the purpose of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

§ 2655. SOLICITATION

(a) No person shall knowingly solicit a commercial sex act from a victim of human trafficking.

(b) A person who violates this section shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

§ 2656. HUMAN TRAFFICKING BY A BUSINESS ENTITY; DISSOLUTION

If a business entity, including a corporation, partnership, association, or any other legal entity, is convicted of violating this chapter, the attorney general may commence a proceeding in the civil division of the superior court to dissolve the entity pursuant to 11A V.S.A. § 14.30–14.33.

§ 2657. RESTITUTION

(a) A person convicted of a violation of this subchapter shall be ordered to pay restitution to the victim pursuant to section 7043 of this title.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Subchapter 2. Resource Guide Posting; Private Cause of Action for Victims; Victim Protection

§ 2661. RESOURCE GUIDE POSTING

(a) A notice offering help to victims of human trafficking shall be accessible on the official website of the Vermont department of labor and may be posted in a prominent and accessible location in workplaces.

(b) The notice should provide contact information for at least one local law enforcement agency and provide information regarding the National Human Trafficking Resource Center (NHTRC) hotline as follows:

> "If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity – call the toll-free National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. The toll-free hotline is:
>
> - Available 24 hours a day, 7 days a week
> - Operated by a nonprofit, nongovernmental organization
> - Anonymous and confidential
> - Accessible in 170 languages
> - Able to provide help, referral to services, training, and general information."

(c) The notice described in this section should be made available in English, Spanish, and, if requested by an employer, another language.

(d) The Vermont department of labor shall develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before January 15, 2013, the department shall report to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

§ 2662. PRIVATE CAUSE OF ACTION

(a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and

attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 of this chapter.

(b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.

(c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

§ 2663. CLASSIFICATION OF VICTIMS; IMMIGRATION ASSISTANCE

(a) Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a state's attorneys' office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:

(1) notify the victim's compensation program at the center for crime victim services that such person may be eligible for services under this chapter; and

(2) make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code (Trafficking Victims Protection Act) or appears to be otherwise eligible for any federal, state, or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is under the age of 18 or is a vulnerable adult, the agency or office shall also notify the family services division of the department for children and families or the office of adult protective services in the department of disabilities, aging, and independent living.

(b) Law enforcement assistance with respect to immigration. After the agency or office makes a preliminary assessment pursuant to subdivision (a)(2) of this section that a victim of human trafficking or a possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code and upon the request of such victim, the agency or office shall provide the victim of human trafficking with a completed and executed United States citizenship and immigration service (USCIS) form I-914 supplement B declaration of law enforcement officer for victim of human trafficking in persons or a USCIS form I-918, supplement B, U nonimmigrant status certification, or both. These endorsements shall be completed by the

certifying officer in accordance with the forms' instructions and applicable rules and regulations. The victim of human trafficking may choose which form to have the certifying officer complete.

Sec. 3. SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

(a) The Vermont center for crime victim services may convene a task force to assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the office of the attorney general, and other agencies and nongovernmental organizations as necessary to develop a statewide protocol to provide services for victims of human trafficking in Vermont. The protocol may include a public awareness and education campaign.

(b) The Vermont center for crime victim services may enter into contracts with individuals and nongovernmental organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking, insofar as funds are available for that purpose. Such services may include:

(1) Case management;

(2) Emergency temporary housing;

(3) Health care;

(4) Mental health counseling;

(5) Drug addiction screening and treatment;

(6) Language interpretation and translation services;

(7) English language instruction;

(8) Job training and placement assistance;

(9) Post-employment services for job retention; and

(10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

(c) Nothing in this section precludes the Vermont center for crime victim services or any local social services organization from providing victims of human trafficking in Vermont with any benefits or services for which they may otherwise be eligible.

Sec. 4. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN FELONIES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, human trafficking, aggravated human trafficking, murder, arson

causing death, and kidnapping may be commenced at any time after the commission of the offense.

* * *

Sec. 5. 13 V.S.A. § 9 is amended to read:

§ 9. ATTEMPTS

(a) A person who attempts to commit an offense and does an act toward the commission thereof, but by reason of being interrupted or prevented fails in the execution of the same, shall be punished as herein provided unless other express provision is made by law for the punishment of the attempt. If the offense attempted to be committed is murder, aggravated murder, kidnapping, arson causing death, human trafficking, aggravated human trafficking, aggravated sexual assault, or sexual assault, a person shall be punished as the offense attempted to be committed is by law punishable.

* * *

Sec. 6. 13 V.S.A. § 5301 is amended to read:

§ 5301. DEFINITIONS

* * *

(7) For the purpose of this chapter, "listed crime" means any of the following offenses:

* * *

(CC) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(DD) ~~sex trafficking of children or sex trafficking by force, fraud, or coercion as defined in section 2635a of this title~~ human trafficking in violation of section 2652 of this title; and

(EE) aggravated human trafficking in violation of section 2653 of this title.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

(a)(1) Restitution shall be considered in every case in which a victim of a crime, as defined in subdivision 5301(4) of this title, has suffered a material loss.

(2) For purposes of this section, "material loss" means uninsured property loss, uninsured out-of-pocket monetary loss, uninsured lost wages, and uninsured medical expenses.

(3) In cases where restitution is ordered to the victim as a result of a human trafficking conviction under chapter 60 of this title, "material loss" shall also mean:

(A) attorney's fees and costs; and

(B) the greater of either:

(i) the gross income or value of the labor performed for the offender by the victim; or

(ii) the value of the labor performed by the victim as guaranteed by the minimum wage and overtime provisions of 21 V.S.A. § 385.

* * *

Sec. 8. 13 V.S.A. § 3255 is amended to read:

§ 3255. EVIDENCE

(a) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse of ~~an~~ a vulnerable adult under chapter 28 of this title or chapter 69 of Title 33:

(1) Neither opinion evidence of, nor evidence of the reputation of the complaining witness' sexual conduct shall be admitted.

(2) Evidence shall be required as it is for all other criminal offenses and additional corroborative evidence heretofore set forth by case law regarding sexual assault shall no longer be required.

(3) Evidence of prior sexual conduct of the complaining witness shall not be admitted; provided, however, where it bears on the credibility of the complaining witness or it is material to a fact at issue and its probative value outweighs its private character, the court may admit:

(A) Evidence of the complaining witness' past sexual conduct with the defendant;

(B) Evidence of specific instances of the complaining witness' sexual conduct showing the source of origin of semen, pregnancy or disease;

(C) Evidence of specific instances of the complaining witness' past false allegations of violations of this chapter.

(b) In a prosecution for a crime defined in this chapter and in a prosecution pursuant to sections 2601 and 2602 of this title, for human trafficking or aggravated human trafficking under chapter 60 of this title, or for abuse or exploitation of ~~an~~ a vulnerable adult under subsection 6913(b) of Title 33, if a defendant proposes to offer evidence described in subdivision (a)(3) of this

section, the defendant shall prior to the introduction of such evidence file written notice of intent to introduce that evidence, and the court shall order an in camera hearing to determine its admissibility. All objections to materiality, credibility and probative value shall be stated on the record by the prosecutor at the in camera hearing, and the court shall rule on the objections forthwith, and prior to the taking of any other evidence.

(c) In a prosecution for a crime defined in this chapter and in sections 2601 and 2602 of this title or for human trafficking or aggravated human trafficking under chapter 60 of this title, if the defendant takes the deposition of the complaining witness, questions concerning the evidence described in subdivisions (a)(1) and (3) of this section shall not be permitted.

Sec. 9. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

* * *

(10) "Sex offender" means:

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

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

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

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

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

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

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

(vii) aggravated sexual assault of a child in violation of section 3253a of this title; ~~and~~

(viii) human trafficking in violation of subdivisions 2652(a)(1)–(4) of this title;

(ix) aggravated human trafficking in violation of subdivision 2653(a)(4) of this title; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(XVI) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

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

* * *

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

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

(1) Sex offenders who have been convicted of:

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

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

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

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

(E) Lewd or lascivious conduct with child (13 V.S.A. § 2602).

(F) A second or subsequent conviction for voyeurism (13 V.S.A. § 2605(b) or (c)).

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

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

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

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

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

(L) Human trafficking as defined in subdivisions 2652(a)(1)–(4) of this title.

(M) Aggravated human trafficking as defined in subdivision 2653(a)(4) of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvi) Trafficking in persons as defined in 18 U.S.C. sections 2251–2252(a), 2260, or 2421–2423 if the violation included sexual abuse, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse.

~~(M)~~(O) An attempt to commit any offense listed in this subdivision (a)(1).

* * *

Sec. 11. STATE'S ATTORNEYS; FORFEITURE ATTORNEY; REPORT

On or before January 15, 2012, the department of state's attorneys and sheriffs shall report to the general assembly a plan for funding and hiring a forfeiture attorney in this state.

Sec. 12. 13 V.S.A. § 5322 is added to read:

§ 5322. CONFIDENTIALITY

When responding to a request for public records, or on any state website or state payment report, the state of Vermont shall not disclose to the public the name or any other identifying information, including the town of residence or the type or purpose of the payment, of an applicant to the victim's compensation program, a victim named in a restitution judgment order, or a

recipient of the domestic and sexual violence survivors' transitional employment program.

Sec. 13. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

* * *

(d)(1) The restitution unit is authorized to advance up to $10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(2) The restitution unit may make advances of up to $10,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the restitution unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the restitution unit with the documentation necessary to support the victim's claim for restitution; or

(B) violated a criminal law of this state which caused or contributed to the victim's material loss.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

* * *

Sec. 14. 13 V.S.A. § 7043(n) is amended to read:

(n)~~(1) All restitution orders made or modified on or after January 1, 2008 shall include an order for wage withholding unless the court in its discretion finds good cause not to order wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated~~

~~in the order. The wage withholding order shall direct current and subsequent employers of the offender to pay a portion of the offender's wages directly to the restitution unit until the offender's restitution obligation is satisfied. The wages of the offender shall be exempt as follows:~~

~~(A) to the extent provided under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or~~

~~(B) if the court finds the weekly expenses reasonably incurred by the debtor for his or her maintenance and that of dependents exceed the amounts exempted by subdivision (1)(A) of this subsection, such greater amount of earnings as the court shall order.~~

~~(2) The court shall transmit all wage withholding orders issued under this section to the restitution unit, which shall forward the orders to the offender's employers. Upon receipt of a wage withholding order from the restitution unit, an employer shall:~~

~~(A) withhold from the wages paid to the offender the amount specified in the order for each wage period;~~

~~(B) forward the withheld wages to the restitution unit within seven working days after wages are withheld, specifying the date the wages were withheld;~~

~~(C) retain a record of all withheld wages;~~

~~(D) cease withholding wages upon notice from the restitution unit; and~~

~~(E) notify the restitution unit within 10 days of the date the offender's employment is terminated.~~

~~(3) In addition to the amounts withheld pursuant to this section, the employer may retain not more than $5.00 per month from the offender's wages as compensation for administrative costs incurred.~~

~~(4) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the employee, whichever is later, shall be liable to the restitution unit in the amount of the wages required to be withheld.~~

~~(5) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.~~

~~(6) For purposes of this subsection, "wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses, or otherwise, and shall include periodic payments under pension or retirement programs and workers' compensation or insurance policies of any type.~~

After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 15. 13 V.S.A. § 7043(d)(3) is added to read:

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense.

Sec. 16. PILOT PROJECT; REPORT

(a) The restitution unit shall develop and implement a pilot project in Chittenden County which permits the unit to require a crime victim who may be eligible for an advance payment of restitution from the crime victims' restitution special fund pursuant to section 5363(d) of this title to submit a request for restitution to the restitution unit prior to sentencing. The unit shall investigate the victim's request and may require that the victim submit supporting documentation in order to verify the claimed material loss. If the unit determines that the victim appears to be eligible for an advance payment, the unit shall notify the victim and the court of the amount that appears eligible to be advanced to the victim from the fund.

(b) The restitution unit shall report the results of the pilot project established by this section to the senate and house committees on judiciary on or before January 15, 2012.

Sec. 17. REPEALS

(a) Sec. 9 (repeal of 13 V.S.A. § 7282(a)(9), 15 percent assessment on criminal penalties for the crime victims' restitution special fund) and Sec. 13 (July 1, 2012 effective date of repeal of 13 V.S.A. § 7289(a)(9)) of No. 40 of the Acts of 2007 are repealed.

(b) Sec. 27a of No. 1 of the Acts of 2009 (July 1, 2011 sunset of amendment to Rule 15 of Vermont Rules of Criminal Procedure related to depositions of minors in sexual assault cases) is repealed.

(c) Sec. 1 (amendment to Rule 15 of Vermont Rules of Criminal Procedure) and Sec. 5(a) (July 1, 2011 effective date of amendment to Rule 15 of Vermont Rules of Criminal Procedure) of No. 66 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

(d) 13 V.S.A. § 2635a (sex trafficking of children; sex trafficking of any person by force, fraud, or coercion) is repealed.

Sec. 18. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 19, 2011, page 979.)

PROPOSAL OF AMENDMENT TO H. 153 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves that the bill be amended, in Sec.2, 13 V.S.A. § 2652(c)(1), by striking out subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children and families for treatment under chapter 53 of Title 33.

PROPOSAL OF AMENDMENT TO H. 153 TO BE OFFERED BY SENATOR FLORY

Senator Flory moves that the Senate propose to the House to amend the bill as follows

First: In Sec. 17, by striking out subsection (a) in its entirety and relettering the remaining subsections to be alphabetically correct

Second: By adding a new Sec. 19 to read as follows:

Sec. 19. Sec. 13 of No. 40 of the Acts of 2007 is amended to read:

Sec. 13. EFFECTIVE DATE

Sec. 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2014.

H. 198.

An act relating to a transportation policy to accommodate all users.

Reported favorably with recommendation of proposal of amendment by Senator Flory for the Committee on Transportation.

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

Sec. 1. PURPOSE

The purpose of this bill is to ensure that the needs of all users of Vermont's transportation system—including motorists, bicyclists, public transportation

users, and pedestrians of all ages and abilities—are considered in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These "complete streets" principles shall be integral to the transportation policy of Vermont.

Sec. 2. 19 V.S.A. § 10b is amended to read:

§ 10b. STATEMENT OF POLICY; GENERAL

(a) The agency shall be the responsible agency of the state for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that state transportation policy ~~encompassing, coordinating, and integrating~~ shall be to encompass, coordinate, and integrate all modes of transportation~~,~~ and to consider "complete streets" principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the state's economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways.

(b) The agency shall coordinate planning and education efforts with those of the Vermont climate change oversight committee and those of local and regional planning entities:

(1) to assure that the transportation system as a whole is integrated, that access to the transportation system as a whole is integrated, and that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) to support employer or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative transportation advances, especially employer-based incentives.

~~(b)~~(c) In developing the state's annual transportation program, the agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 as amended by No. 200 of the Acts of the 1987 Adj. Sess. (1988) and with appropriate consideration to local, regional, and state agency plans:

(1) Develop or incorporate designs that provide integrated, safe, and efficient transportation ~~and promote~~.

(2)(A) Consider the safety and accommodation of all transportation system users—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—in all state and municipally managed transportation projects and project phases, including planning, development,

construction, and maintenance, except in the case of projects or project components involving unpaved highways. If, after the consideration required under this subdivision, a state-managed project does not incorporate complete streets principles, the project manager shall make a written determination, supported by documentation and available for public inspection at the agency, that one or more of the following circumstances exist:

(i) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(ii) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors including land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The agency shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.

(iii) Incorporating complete streets principles is outside the scope of a project because of its very nature.

(B) The written determination required under subdivision (A) of this subdivision (2) shall be final and shall not be subject to appeal or further review.

(3) Promote economic opportunities for Vermonters and the best use of the state's environmental and historic resources.

~~(2)~~(4) Manage available funding to:

(A) give priority to preserving the functionality of the existing transportation infrastructure, including bicycle and pedestrian trails regardless of whether they are located along a highway shoulder; and

(B) adhere to credible project delivery schedules.

~~(c)~~(d) The agency of transportation, in developing each of the program prioritization systems schedules for all modes of transportation, shall include the following throughout the process:

(1) The agency shall annually solicit input from each of the regional planning commissions and the Chittenden County metropolitan planning organization on regional priorities within each schedule, and those inputs shall be factored into the prioritizations for each program area and shall afford the opportunity of adding new projects to the schedules.

(2) Each year the agency shall provide in the front of the transportation program book a detailed explanation describing the factors in the prioritization system that creates each project list.

Sec. 3. 19 V.S.A. § 309d is added to read:

§ 309d. POLICY FOR MUNICIPALLY MANAGED TRANSPORTATION PROJECTS

(a) Except in the case of projects or project components involving unpaved highways, for all transportation projects and project phases managed by a municipality, including planning, development, construction, or maintenance, it is the policy of this state for municipalities to consider "complete streets" principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference. If, after the consideration required under this section, a project does not incorporate complete streets principles, the municipality managing the project shall make a written determination, supported by documentation and available for public inspection at the office of the municipal clerk and at the agency of transportation, that one or more of the following circumstances exist:

(1) Use of the transportation facility by pedestrians, bicyclists, or other users is prohibited by law.

(2) The cost of incorporating complete streets principles is disproportionate to the need or probable use as determined by factors such as land use, current and projected user volumes, population density, crash data, historic and natural resource constraints, and maintenance requirements. The municipality shall consult local and regional plans, as appropriate, in assessing these and any other relevant factors.

(3) Incorporating complete streets principles is outside the scope of a project because of its very nature.

(b) The written determination required by subsection (a) of this section shall be final and shall not be subject to appeal or further review.

Sec. 4. REPORTING AND TRANSITION RULE

(a) By March 15, 2012, the agency of transportation shall report to the house and senate committees on transportation on its activities to comply with this act.

(b) The agency shall make available to the public upon request and in an easily understandable format a list of all state and municipally managed projects that have incorporated complete streets principles, accompanied by a description of each project and its location.

(c) The agency shall make available to the public upon request and in an easily understandable format a list of all state and municipally managed projects that have not incorporated complete streets principles pursuant to an exemption of Sec. 2, 19 V.S.A. § 10b(c)(2)(A), or Sec. 3, 19 V.S.A. § 309d(a), of this act. This list shall specify which exemption applied.

(d) The agency and municipalities shall be exempt from the requirement to assign exemptions pursuant to Sec. 2, 19 V.S.A. § 10b(c)(2)(A), or Sec. 3, 19 V.S.A. § 309d(a), of this act and from the reporting requirements of this section with respect to any project for which preliminary engineering is complete as of the effective date of this act.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 19, 2011, page 979.)

House Proposal of Amendment

S. 36

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

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

*** * * Surplus Lines Insurance Multi-state Compliance Compact * * ***

Sec. 1. 8 V.S.A. chapter 138A is added to read:

CHAPTER 138A. SURPLUS LINES INSURANCE MULTI-STATE COMPLIANCE COMPACT

§ 5050. FINDINGS

The general assembly makes the following findings of fact:

(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) After the expiration of the two-year period beginning on the date of the enactment of NRRA, a state may not collect any fees relating to licensing of an individual or entity as a surplus lines licensee in the state unless the state has in effect at such time laws or regulations that provide for participation by the state in the national insurance producer database of the National Association of Insurance Commissioners (NAIC), or any other equivalent uniform national database, for the licensure of surplus lines licensees and the renewal of such licenses.

(5) A need exists for a system of regulation that will provide for surplus lines insurance to be placed with reputable and financially sound non-admitted insurers, and that will permit orderly access to surplus lines insurance in this state and encourage insurers to make new and innovative types of insurance available to consumers in this state.

(6) Protecting the revenue of this state and other compacting states may be accomplished by facilitating the payment and collection of premium tax on non-admitted insurance and providing for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas.

(7) The efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the states, and by promoting and protecting the interests of surplus lines licensees who assist such insureds and non-admitted insurers, thereby ensuring the continued availability of non-admitted insurance to consumers.

(8) Regulatory compliance with respect to non-admitted insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers.

(9) Coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to non-admitted insurance will be improved under the surplus lines insurance multi-state compliance compact.

(10) 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.

§ 5051. INTENT; AUTHORITY TO ENTER OTHER AGREEMENT

(a) It is the intent of the general assembly to enact the surplus lines insurance multi-state compliance compact as provided under this chapter, and also to authorize the commissioner of banking, insurance, securities, and health care administration to enter into another agreement pursuant to subsections (b) and (c) of this section if the compact does not take effect.

(b) During the interim of the 2011–2012 legislative biennium and subject to subsection (c) of this section, if the surplus lines insurance multi-state compliance compact does not take effect under section5065 of this title then, in accordance with NRRA, the commissioner of banking, insurance, securities, and health care administration may enter into a cooperative agreement, reciprocal agreement, or multi-state 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 cooperative agreement, reciprocal agreement, or multi-state agreement with another state or states pursuant to subsection (b) of this section, the commissioner shall:

(1) Determine that the agreement is in Vermont's financial best interest; does not create an undue administrative burden on the state; and is consistent with the requirements of NRRA.

(2) 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 21, 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.

§ 5052. PURPOSES

The purposes of this compact are to:

(1) implement the express provisions of NRRA;

(2) protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted insurance; protect the interests of the compacting states by supporting the continued availability of such insurance to consumers; and provide for allocation of premium tax for non-admitted insurance of multi-state risks among the states in accordance with uniform allocation formulas to be developed, adopted, and implemented by the commission;

(3) streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states; and promote and protect the interest of surplus lines licensees who assist such insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers;

(4) streamline regulatory compliance with respect to non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multi-state risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers;

(5) establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to non-admitted insurance of multi-state risks, in accordance with rules adopted by the commission;

(6) improve coordination of regulatory resources and expertise between state insurance departments and other state agencies as well as state surplus lines stamping offices with respect to non-admitted insurance;

(7) adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multi-state risks and single-state risks, in accordance with rules adopted by the commission, thereby promoting the overall efficiency of the non-admitted insurance market;

(8) adopt uniform mandatory rules with respect to regulatory compliance requirements for:

(A) foreign insurer eligibility requirements; and

(B) surplus lines policyholder notices;

(9) establish the surplus lines insurance multi-state compliance compact commission;

(10) coordinate reporting of clearinghouse transaction data on non-admitted insurance of multi-state risks among compacting states and contracting states; and

(11) perform these and such other related functions as may be consistent with the purposes of the compact.

§ 5053. DEFINITIONS

For purposes of this chapter:

(1) "Admitted insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the laws of the home state. It shall not include a domestic surplus lines insurer as may be defined by applicable state law.

(2) "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) "Allocation formula" means the uniform methods adoptd by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due.

(4) "Bylaws" means the bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(5) "Clearinghouse" means the commission's operations involving the acceptance, processing, and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for non-admitted insurance of multi-state risks, in accordance with this compact and rules adopted by the commission.

(6) "Clearinghouse transaction data" means the information regarding non-admitted insurance of multi-state risks required to be reported, accepted, collected, processed, and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state.

(7) "Commission" means the surplus lines insurance multi-state compliance compact commission established by this compact.

(8) "Commissioner" means the chief insurance regulatory official of a state including, commissioner, superintendent, director, or administrator, or their designees.

(9) "Compact" means the surplus lines insurance multi-state compliance compact established under this chapter.

(10) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection 5065(a), or been terminated pursuant to subsection 5065(b), of this chapter.

(11) "Contracting state" means any state which has not enacted this compact legislation but has entered into a written contract with the commission to use the services of and fully participate in the clearinghouse.

(12) "Control." An entity has "control" over another entity if:

(A) the entity directly or indirectly or acting through one or more other persons own, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

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

(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 out of 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 subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(14) "Independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other non-admitted insurer as permitted by the laws of the home state.

(15) "Insurer eligibility requirements" means the criteria, forms, and procedures established to qualify as a surplus lines insurer under the law of the home state provided that such criteria, forms, and procedures are consistent with the express provisions of NRRA on and after July 21, 2011.

(16) "Member" means the person or persons chosen by a compacting state as its representative or representatives to the commission provided that each compacting state shall be limited to one vote.

(17) "Multi-state risk" means a risk with insured exposures in more than one state.

(18) "Non-admitted insurance" means surplus lines insurance and independently procured insurance.

(19) "Non-admitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state.

(20) "Noncompacting state" means any state which has not adopted this compact.

(21) "NRRA" means the Non-Admitted and Reinsurance Reform Act of 2010 which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203.

(22) "Policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement.

(23) "Premium tax" means with respect to non-admitted insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(24) "Principal place of business" means with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.

(25) "Purchasing group" means any group formed pursuant to the Liability Risk Retention Act of 1986, Pub.L. 99-63, which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities

are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations and is domiciled in any state.

(26) "Rule" means a statement of general or particular applicability and future effect adopted by the commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission which shall have the force and effect of law in the compacting states.

(27) "Single-state risk" means a risk with insured exposures in only one state.

(28) "State" means any state, district, or territory of the United States of America.

(29) "State transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance.

(30) "Surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state. It shall also mean excess lines insurance as may be defined by applicable state law.

(31) "Surplus lines insurer" means a non-admitted insurer eligible under the law of the home state to accept business from a surplus lines licensee. It shall also mean an insurer which is permitted to write surplus lines insurance under the laws of the state where such insurer is domiciled.

(32) "Surplus lines licensee" means an individual, firm, or corporation licensed under the law of the home state to place surplus lines insurance.

§ 5054. ESTABLISHMENT OF THE COMMISSION; VENUE

(a) The compacting states hereby create and establish a joint public agency known as the surplus lines insurance multi-state compliance compact commission.

(b) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules which establish exclusive home state authority regarding non-admitted insurance of multi-state risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data, and uniform rulemaking procedures and rules for the purpose of financing, administering, operating, and enforcing compliance with the provisions of this compact, its bylaws, and rules.

(c) Pursuant to section 5055 of this chapter, the commission shall have the power to adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

(d) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(e) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(f) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

§ 5055. AUTHORITY TO ESTABLISH MANDATORY RULES

The commission shall adopt mandatory rules establishing:

(1) allocation formulas for each type of non-admitted insurance coverage, which allocation formulas must be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the compact commission. Such allocation formulas will be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus line licensee as a material consideration.

(2) Uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse.

(3) Methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including processing clearinghouse transaction data through state stamping and service offices, state insurance departments, or other state designated agencies or entities.

(4)(A) That non-admitted insurance of multi-state risks shall be subject to all of the regulatory compliance requirements of the home state exclusively. Home state regulatory compliance requirements applicable to surplus lines insurance shall include but not be limited to:

(i) persons required to be licensed to sell, solicit, or negotiate surplus lines insurance;

(ii) insurer eligibility requirements or other approved non-admitted insurer requirements;

(iii) diligent search; and

(iv) state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission.

(B) Home state regulatory compliance requirements applicable to independently procured insurance placements shall include but not be limited to providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules adopted by the commission.

(5) That each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula provided that the state establishes one single rate of taxation applicable to all non-admitted insurance transactions and no other tax, fee assessment, or other charge by any governmental or quasi-governmental agency be permitted. Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

(6) That any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than 90 days' advance notice to the compact commission.

(7) That each compacting state and contracting state shall require premium tax payments either annually, semiannually, or quarterly using one or more of the following dates only: March 1, June 1, September 1, and December 1.

(8) That each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof.

(9) The obligation of the home state by itself, through a designated agent, surplus lines stamping or service office, to collect clearinghouse transaction data from surplus line licensee and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse.

(10) A method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees and insureds who independently procure insurance, all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due and a method to pay them through the clearinghouse.

(11) That each surplus line licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured.

(12) That a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states, and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay to every other compacting state and contracting state premium taxes on each multi-state risk through the clearinghouse at such tax rate charged on surplus lines transactions in such other compacting states and contracting states on the portion of the risk in each such compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state shall be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multi-state risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission.

(13) Uniform foreign insurer eligibility requirements as authorized by NRRA.

(14) A uniform policyholder notice.

(15) Uniform treatment of purchasing group surplus lines insurance placements.

§ 5056. POWERS OF THE COMMISSION

The commission shall have the powers to:

(1) adopt rules and operating procedures, pursuant to section 5059 of this chapter, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(2) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(3) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the commission is not empowered to demand or subpoena records or data from non-admitted insurers;

(4) establish and maintain offices including the creation of a clearinghouse for the receipt of premium tax and clearinghouse transaction data regarding non-admitted insurance of multi-state risks, single-state risks for states which elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse and tax reporting forms;

(5) purchase and maintain insurance and bonds;

(6) borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state or stamping office, pursuant to an open, transparent, objective, competitive process and procedure adopted by the commission;

(7) hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission; and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;

(8) accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, use and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(9) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(10) sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(11) provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:

(A) Minimum audit standards, including sampling methods.

(B) Review of internal controls.

(C) Cooperation and sharing of audit responsibilities between compacting states.

(D) Handling of refunds or credits due to overpayments or improper allocation of premium taxes.

(E) Taxpayer records to be reviewed including a minimum retention period.

(F) Authority of compacting states to review, challenge, or re-audit taxpayer records.

(12) enforce compliance by compacting states and contracting states with rules, and bylaws pursuant to the authority set forth in section 5065 of this chapter;

(13) provide for dispute resolution among compacting states and contracting states;

(14) advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents or brokers domiciled or doing business in non-compacting states, consistent with the purposes of this compact;

(15) make available advice and training to those personnel in state stamping offices, state insurance departments or other state departments for record keeping, tax compliance, and tax allocations; and to be a resource for state insurance departments and other state departments;

(16) establish a budget and make expenditures;

(17) borrow money;

(18) appoint and oversee committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(19) establish an executive committee of not less than seven nor more than 15 representatives, which shall include officers elected by the commission and such other representatives as provided for herein and determined by the bylaws. Representatives of the executive committee shall serve a one year term. Representatives of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session. The executive committee shall oversee the day to day activities of the administration of the compact, including the activities of the operations committee created under this section and compliance and enforcement of the provisions of the compact, its bylaws and rules, and such other duties as provided herein and as deemed necessary.

(20) establish an operations committee of not less than seven and not more than 15 representatives to provide analysis, advice, determinations, and recommendations regarding technology, software, and systems integration to be acquired by the commission and to provide analysis, advice, determinations and recommendations regarding the establishment of mandatory rules to be adopted to be by the commission.

(21) enter into contracts with contracting states so that contracting states can use the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;

(22) adopt and use a corporate seal; and

(23) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

§ 5057. ORGANIZATION OF THE COMMISSION

(a)(1) Membership, voting, and bylaws. Each compacting state shall have and be limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation which enacts this compact. In the absence of such a provision the member shall be appointed by the governor of such compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists.

(2) Each member shall be entitled to one vote and shall otherwise have an opportunity to participate in the governance of the commission in accordance with the bylaws.

(3) The commission shall, by a majority vote of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact including:

(A) establishing the fiscal year of the commission;

(B) providing reasonable procedures for holding meetings of the commission, the executive committee, and the operations committee;

(C) providing reasonable standards and procedures for the establishment and meetings of committees, and for governing any general or specific delegation of any authority or function of the commission;

(D) providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and surplus lines licensees' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting *in toto* or in part. As soon as practicable, the commission must make public:

(i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and

(ii) votes taken during such meeting;

(E) establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(F) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(G) adopting a code of ethics to address permissible and prohibited activities of commission members and employees;

(H) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations;

(4) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(b)(1) Executive committee, personnel, and chairperson. An executive committee of the commission shall be established. All actions of the executive committee, including compliance and enforcement are subject to the review and ratification of the commission as provided in the bylaws.

(2) The executive committee shall have no more than 15 representatives, or one for each state if there are less than 15 compacting states, who shall serve for a term and be established in accordance with the bylaws.

(3) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

(A) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of rules and operating procedures.

(C) overseeing the offices of the commission; and

(D) planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(4) The commission shall annually elect officers from the executive committee, with each having such authority and duties, as may be specified in the bylaws.

(5) The executive committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other persons as may be authorized by the commission.

(c)(1) Operations committee. An operations committee shall be established. All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and must be approved by the commission. The executive committee will accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee shall be resolved by the majority vote of the commission.

(2) The operations committee shall have no more than 15 representatives or one for each state if there are less than 15 compacting states, who shall serve for a term and shall be established as set forth in the bylaws.

(3) The operations committee shall have responsibility for:

(A) evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the clearinghouse;

(B) making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems;

(C) evaluating the most suitable proposals for adoption as mandatory rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the executive committee its determinations and recommendations; and

(D) such other duties and responsibilities as are delegated to it by the bylaws, the executive committee, or the commission.

(4) All representatives of the operations committee shall be individuals who have extensive experience or employment in the surplus lines insurance

business, including executives and attorneys employed by surplus line insurers, surplus line licensees, law firms, state insurance departments, or state stamping offices. Operations committee representatives from compacting states which use the services of a state stamping office must appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.

(d)(1) Legislative and advisory committees. A legislative committee comprised of state legislators or their designees shall be established to monitor the operations of and make recommendations to, the commission, including the executive committee. The manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the executive committee shall consult with and report to the legislative committee.

(2) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(e) Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

(f)(1) Qualified immunity, defense, and indemnification. The members, officers, executive director, employees, and representatives of the commission, the executive committee, and any other committee of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. Nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission, the executive committee, or any other committee of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act error or omission did not result from that person's intentional or willful or wanton misconduct. Nothing herein shall be construed to prohibit that person from retaining his or her own counsel.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission, executive committee, or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

§ 5058. MEETINGS AND ACTS OF THE COMMISSION

(a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(b) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(d) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or otherwise provided in the compact.

(e) The commission shall adopt rules concerning its meetings consistent with the principles contained in the "Government in the Sunshine Act," 5 U.S.C. § 552b, as may be amended.

(f) The commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:

(1) relate solely to the commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by federal and state statute;

(3) disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) involve accusing a person of a crime, or formally censuring a person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes; or

(7) specifically relate to the commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(g) For a meeting, or a portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

§ 5059. RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF THE COMMISSION

(a) Rulemaking authority. The commission shall adopt reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force or effect.

(b) Rulemaking procedure. Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.

(c) Effective date. All rules and amendments, thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) Not later than 30 days after a rule is adoptd, any person may file a petition for judicial review of the rule, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the commission's authority.

§ 5060. COMMISSION RECORDS; ENFORCEMENT

(a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds, or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this compact and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets, or personal data. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state member of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any member, and the commission shall maintain the confidentiality of any information provided by a member that is confidential under that member's state law.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws or rules. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 5065 of this chapter.

§ 5061. DISPUTE RESOLUTION

(a) Before a member may bring an action in a court of competent jurisdiction for violation of any provision, standard, or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, contracting states or

noncompacting states, and the commission shall adopt a rule providing alternative dispute resolution procedures for such disputes.

(b) The commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues which are the subject of this compact.

(c) Any alternative dispute resolution procedures shall be used in circumstances where a dispute arises as to which state constitutes the home state.

§ 5062. REVIEW OF COMMISSION DECISIONS

(a) Except as necessary for adopting rules to fulfill the purposes of this compact, the commission shall not have authority to otherwise regulate insurance in the compacting states.

(b) Not later than 30 days after the commission has given notice of any rule or allocation formula, any third party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection 5054(f) of this chapter.

(c) The commission shall have authority to monitor, review and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in subsection (b) of this section.

§ 5063. FINANCE

(a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations the commission may accept contributions, grants, and other forms of funding from the state stamping offices, compacting states, and other sources.

(b) The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse, to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(c) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section 5059 of this chapter.

(d) The commission shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by any state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.

(e) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner, the controller, or the stamping office of any compacting state upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

(f) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

(g) The commission shall not make any political contributions to candidates for elected office, elected officials, political parties, nor political action committees. The commission shall not engage in lobbying except with respect to changes to this compact.

§ 5064. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting rules, and creating

the clearinghouse when there are a total of 10 compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium set forth in section 5069 of this chapter. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. Notwithstanding the foregoing, the clearinghouse operations and the duty to report clearinghouse transaction data shall begin on the first January 1 or July 1 following the first anniversary of the commission effective date. For states which join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data shall be set by the commission provided surplus lines licensees and all other interested parties receive not less than 90 days advance notice.

(c) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

§ 5065. WITHDRAWAL; DEFAULT; TERMINATION

(a)(1) Withdrawal. Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the commission.

(3) The member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(4) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice thereof.

(5) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations prior to the effective date of withdrawal

shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the commission.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(b)(1) Default. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly adoptd rules then after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Decisions of the commission that are issued on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subdivision (1) of this subsection.

(3) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(c)(1) Dissolution of compact. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall have no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the rules and bylaws.

§ 5066. SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Throughout this compact the use of the singular shall include the plural and vice-versa.

(d) The headings and captions of articles, sections, and subsections used in this compact are for convenience only and shall be ignored in construing the substantive provisions of this compact.

§ 5067. BINDING EFFECT OF COMPACT AND OTHER LAWS

(a)(1) Other laws. Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subdivision (2) of this subsection.

(2) Decisions of the commission, and any rules, and any other requirements of the commission shall constitute the exclusive rule or determination applicable to the compacting states. Any law or regulation regarding non-admitted insurance of multi-state risks that is contrary to rules of the commission is preempted with respect to the following:

(A) clearinghouse transaction data reporting requirements;

(B) the allocation formula;

(C) clearinghouse transaction data collection requirements;

(D) premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multi-state risks and single-state risks;

(E) exclusive compliance with surplus lines law of the home state of the insured;

(F) rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multi-state risks;

(G) uniform foreign insurers eligibility requirements;

(H) uniform policyholder notice; and

(I) uniform treatment of purchasing groups procuring non-admitted insurance.

(3) Except as stated in subdivision (2) of this subsection, any rule, uniform standard, or other requirement of the commission shall constitute the exclusive provision that a commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

(A) the access of any person to state courts;

(B) the availability of alternative dispute resolution under section 5061 of this chapter;

(C) the remedies available under state law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations;

(D) state law relating to the construction of insurance contracts; or

(E) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(b)(1) Binding effect of this compact. All lawful actions of the commission, including all rules adoptd by the commission, are binding upon the compacting states, except as provided herein.

(2) All agreements between the commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by rule at the discretion of the commission.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that state and those obligations duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§ 5068. VERMONT COMMISSION MEMBER; SELECTION

The Vermont member of the commission shall be the commissioner of banking, insurance, securities, and health care administration or designee.

§ 5069. SURPLUS LINE INSURANCE PREMIUMS BY STATE

State	Premiums based on taxes paid ($)	Share of Total Premiums (%)
Alabama	445,746,000	1.47
Alaska	89,453,519	0.29
Arizona	663,703,267	2.18
Arkansas	201,859,750	0.66

California	5,622,450,467	18.49
Colorado	543,781,333	1.79
Connecticut	329,358,800	1.08
Delaware	92,835,950	0.31
Florida	2,660,908,760	8.75
Georgia	895,643,150	2.95
Hawaii	232,951,489	0.77
Idaho	74,202,255	0.24
Illinois	1,016,504,629	3.34
Indiana	412,265,320	1.36
Iowa	135,130,933	0.44
Kansas	160,279,300	0.53
Kentucky	167,996,133	0.55
Louisana	853,173,280	2.81
Maine	60,111,200	0.20
Maryland	434,887,600	1.43
Massachusetts	708,640,225	2.33
Michigan	703,357,040	2.31
Minnesota	393,128,400	1.29
Mississippi	263,313,175	0.87
Missouri	404,489,860	1.33
Montana	64,692,873	0.21
Nebraska	92,141,167	0.30
Nevada	354,271,514	1.17
New Hampshire	102,946,250	0.34
New Jersey	1,087,994,033	3.58
New Mexico	67,608,458	0.22
New York	2,768,618,083	9.11
North Carolina	514,965,060	1.69
North Dakota	36,223,943	0.12

Ohio	342,000,000	1.12
Oklahoma	319,526,400	1.05
Oregon	312,702,150	1.03
Pennsylvania	780,666,667	2.57
Rhode Island	71,794,067	0.24
South Carolina	412,489,825	1.36
South Dakota	38,702,120	0.13
Tennessee	451,775,240	1.49
Texas	3,059,170,454	10.06
Utah	142,593,412	0.47
Vermont	41,919,433	0.14
Virginia	611,530,667	2.01
Washington	739,932,050	2.43
West Virginia	130,476,250	0.43
Wisconsin	248,758,333	0.82
Wyoming	40,526,967	0.13
Total	30,400,197,251	100.00

*** * * 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.

*** * * Effective Date * * ***

Sec. 13. EFFECTIVE DATE

This act shall be effective on passage.

House Proposal of Amendment

S. 90

An act relating to respectful language in state statutes in referring to people with disabilities.

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

Sec. 1. RESPECTFUL LANGUAGE STUDY

(a) The agency of human services shall convene a working group to recommend guidelines for using respectful language when referring to people with disabilities. In convening the working group, the agency shall designate at least one employee of the agency to serve on the working group and shall invite the participation of two representatives from the Vermont coalition for disability rights, two representatives from Green Mountain self-advocates, one representative from the Vermont center for independent living, one representative from Vermont psychiatric survivors, one representative from the human rights commission, one representative from the disability law project, one representative from disability rights Vermont, and two people appointed by the governor, at least one of whom shall be a high school student. The agency shall provide administrative services to the working group. In preparing its recommendations, the working group shall:

(1) identify words that should not be used in Vermont statutes, regulations, and policies and suggest in their place words that reflect positive views of people with disabilities;

(2) avoid using any language that changes the meaning or intent of state statutes;

(3) identify specific statutes that should be addressed by the general assembly;

(4) select wording that does not conflict with federal law; and

(5) recommend guidelines to support state government agencies and departments to use respectful language.

(b) By November 1, 2011, the working group shall report to the house committees on government operations and on human services and the senate committees on government operations and on health and welfare the group's findings and recommendations, including any recommended legislation to address its findings and recommendations.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment

S. 94

An act relating to miscellaneous amendments to the motor vehicle laws.

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

* * * Dealer Records Custodian * * *

Sec. 1. 23 V.S.A. § 466 is amended to read:

§ 466. RECORDS; CUSTODIAN

(a) On a form prescribed or approved by the commissioner, every licensed dealer shall maintain and retain for six years a record containing the following information, which shall be open to inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours:

(1) Every motor vehicle which is bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange;

(2) Every motor vehicle which is bought or otherwise acquired and dismantled by the licensee;

(3) The name and address of the person from whom such motor vehicle was purchased or acquired, the date thereof, name and address of the person to whom any such motor vehicle was sold or otherwise disposed of and the date thereof, a sufficient description of every such motor vehicle by name and identifying numbers thereon to identify the same;

(4) If the motor vehicle is sold or otherwise transferred to a consumer, the cash price. For purposes of this section, "consumer" shall be as defined in ~~subsection 2451a(a) of Title~~ 9 V.S.A. § 2451a(a) and "cash price" shall be as defined in ~~subdivision 2351(6) of Title~~ 9 V.S.A. § 2351(6).

(b) Every licensed dealer shall designate a custodian of documents who shall have primary responsibility for administration of documents required to be maintained under this title. In the absence of the designated custodian, the dealer shall have an ongoing duty to make such records available for inspection by any law enforcement officer or motor vehicle inspector or other agent of the commissioner during reasonable business hours.

* * * Surrender of License or Registration * * *

Sec. 2. 23 V.S.A. § 204 is amended to read:

§ 204. ~~PROCEDURE FOR REVOCATION~~ SURRENDER OF LICENSE OR REGISTRATION

(a) A person whose license to operate a motor vehicle, nondriver identification card, or motor vehicle registration has been issued in error ~~or is suspended or revoked by the commissioner under the provisions of this title~~ shall surrender forthwith his or her license or registration upon demand of the commissioner or his or her authorized inspector or agent. The demand shall be made in person or by notice in writing sent by first class mail to the last known address of the person.

(b) The commissioner or his or her authorized inspector or agent, and all enforcement officers are authorized to take possession of any certificate of title, nondriver identification card, registration, or license issued by this or any other jurisdiction, which has been revoked, canceled, or suspended, or which is fictitious, stolen, or altered.

* * *

* * * Vanity and Other Special Plates * * *

Sec. 3. 23 V.S.A. § 304 is amended to read:

§ 304. REGISTRATION CERTIFICATES; NUMBER PLATES; VANITY AND OTHER SPECIAL PLATES

* * *

(b) The authority to issue ~~special~~ vanity motor vehicle number plates or ~~receive applications or petitions for~~ special number plates for safety organizations and service organizations shall reside with the commissioner. Determination of compliance with the criteria contained in this ~~subsection~~ section shall be within the discretion of the commissioner. Series of number plates for safety and service organizations which are authorized by the commissioner shall be issued in order of approval, subject to the operating considerations in the department as determined by the commissioner. The commissioner shall issue vanity and special organization number plates ~~marked with initials, letters, or combination of numerals and letters,~~ in the following manner:

(1) ~~Except as otherwise provided,~~ Vanity plates. Subject to the restrictions of this section, vanity plates shall be issued at the request of the registrant of ~~any motor vehicle,~~ a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan) upon application and upon payment of an annual fee of $38.00 in addition to the annual fee for registration. ~~He or she may~~ The commissioner shall not issue two sets of ~~special number~~ plates bearing the same initials or letters unless the plates also contain a distinguishing number. ~~Special number~~ Vanity plates are subject to reassignment if not renewed within 60 days of expiration of the registration.

(2) Special organization plates.

(A) For the purposes of this ~~subdivision, "safety~~ section:

(i) "Safety organizations" ~~shall include groups which have at least 100 instate members in good standing and~~ are groups that provide police and fire protection, rescue squads, the Vermont national guard, ~~together with those~~ organizations required to respond to public emergencies~~. It shall include~~, and amateur radio operators licensed by the U.S. Federal Communications Commission. ~~For purposes of this subdivision,~~ To qualify for a special organization plate, safety organizations must have at least 100 in-state members in good standing.

(ii) ~~"service~~ "Service organization" includes congressionally chartered or noncongressionally chartered United States military service veterans' groups, and any group which:

~~(i)~~(I) has as a primary purpose~~,~~ service to the community through specific programs for the improvement of public health, education, or environmental awareness and conservation, and ~~are~~ is not limited to social activities;

~~(ii)~~(II) has nonprofit status under Section 501(c)(3) or (10) of the United States Internal Revenue Code, as amended;

~~(iii)~~(III) is registered as a nonprofit corporation with the office of the secretary of state; and

~~(iv)~~(IV) except for a military veterans group, has at least 100 ~~instate~~ in-state members in good standing. ~~"Service organization" also includes congressionally chartered and noncongressionally chartered United States military service veterans groups.~~

~~(A) At the request of the leader~~ (B) The officer of a safety organization or service organization~~, upon application and payment of a fee of $15.00 for each set of plates in addition to the annual fee for registration,~~ may apply to the commissioner to approve special plates indicating membership in ~~one of the "safety organizations" or "service organizations" may be issued to registrants of vehicles registered at the pleasure car rate and of trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan, who are members of these organizations. The applicant must provide a written statement from the appropriate official of the organization, authorizing the issuance of the plates~~ a qualifying organization to be issued to organization members for a $15.00 special fee for each set of plates in addition to the annual fee for registration. The application shall include designation of an officer or member to serve as the principal contact with the department and a distinctive name or emblem or both for use

on the proposed special plate. The name and emblem shall not be objectively obscene or confusing to the general public and shall not promote, advertise, or endorse a product, brand, or service provided for sale. The organization's name and emblem must not infringe on or violate a trademark, trade name, service mark, copyright, or other proprietary or property right, and the organization must have the right to use the name and emblem. After consulting with the principal contact, the commissioner shall determine the design of the special plate on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization may have only one design, regardless of the number of individual organizational units, squads, or departments within the state that may conduct the same or substantially similar activities.

~~(B) At the time that an organization requests the plates, it~~ (C) After the plate design is finalized and an officer or the principal contact provides the commissioner a written statement authorizing issuance of the plates, the organization shall deposit $2,000.00 with the commissioner. Of this deposit, $500.00 shall be retained by the department to recover costs of developing the organization plate. Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and the balance shall be deposited in the transportation fund. Upon application, special plates shall be issued to a registrant of a vehicle registered at the pleasure car rate or of a truck registered for less than 26,001 pounds (but excluding trucks registered under the International Registration Plan) who furnishes the commissioner satisfactory proof that he or she is a member of an organization that has satisfied the requirements of this subdivision (b)(2). For each of the first 100 applicants to whom sets of plates are issued, the $15.00 special plate fee shall not be collected and shall be subtracted from the balance of ~~this~~ the deposit ~~shall be deemed to be the safety organization or service organization special plate fee for each authorized applicant. Of this deposit, $500.00 shall be retained by the department to recover costs of developing the organization plate~~. When the ~~initial deposit of~~ $1,500.00 balance of the deposit is depleted, applicants shall be required to pay the $15.00 fee as provided for in subdivision ~~(1)~~(2)(B) of this subsection. ~~Notwithstanding 32 V.S.A. § 502, the commissioner may charge the actual costs of production of the plates against the fees collected and shall remit the balance to the transportation fund.~~ No organization shall charge its members any additional fee or premium charge for the authorization, right, or privilege to display ~~these~~ special number plates~~. This provision shall not prevent~~, but any organization ~~from recovering~~ may recover up to $1,500.00 from applicants for the special plates.

~~(C) After consulting with representatives of the safety or service organization, the commissioner shall determine the design of the special plates,~~

~~on the basis that the primary purpose of motor vehicle number plates is vehicle identification. An organization applying for a special plate under this subsection shall present the commissioner with a name and emblem that is not obscene, offensive or confusing to the general public and does not promote, advertise or endorse a product, brand, or service provided for sale, or promote any specific religious belief or political party. The organization's name and emblem must not infringe or violate trademarks, trade names, service marks, copyrights, or other proprietary or property rights and the organization must have the right to use the name and emblem. The organization shall designate an officer or member to act as the principal contact and to submit a distinctive emblem for use on a special number plate, if authorized. An organization may have only one design, regardless of the number of individual organizational units within the state that may provide the same or substantially similar services. Nothing herein shall be construed as authorizing any individual squad, department, or unit to request a unique or specially designed plate different than the plate designed by the commissioner.~~

(D) When an individual's membership in a qualifying organization ceases or is terminated, the individual shall surrender any special registration plates issued under this subsection to the commissioner forthwith. However, a retired member of the Vermont national guard may ~~retain~~ renew or, upon payment of a $10.00 fee, acquire, the special guard plates after notification of eligibility for retired pay has been received.

* * *

(d) ~~Special~~ Vanity or special organization number plates, whether new or renewed, shall be issued in any combination or succession of numerals and letters, provided the total of the numbers and letters on any plate taken together does not exceed seven, and further provided the requested combination of letters and numerals does not duplicate or resemble a regular issue registration plate. The commissioner may adopt rules for the issuance of vanity or special organization number plates to ensure that all plates serve the primary purpose of vehicle identification. The commissioner may revoke any plate described in ~~subdivisions (1) through (7) of~~ this subsection and shall not issue ~~special number~~ plates with ~~the following combination~~ combinations of letters or numbers that objectively, in any language:

(1) ~~Combinations of letters or numbers with any connotation, in any language, that is~~ are vulgar, ~~derogatory, profane, racial epithets,~~ scatological, or obscene~~.~~, or constitute racial or ethnic epithets, or are "fighting words" inherently likely to provoke violent reaction when addressed to an ordinary citizen;

(2) ~~Combinations of letters or numbers that~~ connote~~, in any language,~~ breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory

functions. Additionally, "69" formats are prohibited unless used in combination with the vehicle make, for example, "69 CHEV.";

(3) Combinations of letters or numbers that connote, in any language:

(A) any illicit drug, narcotic, intoxicant, or related paraphernalia;

(B) the sale, the user, or the purveyor of such substance;

(C) the physiological state produced by such a substance. refer to any intoxicant or drug; to the use, nonuse, distribution, or sale of an intoxicant or drug; or to a user, nonuser, or purveyor of an intoxicant or drug;

(4) Combinations of letters or numbers that refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, gender identity, sexual orientation, or disability status, or political affiliation; provided, however, the commissioner shall not refuse a combination of letters or numbers that is a generally accepted reference to a race or ethnic heritage (for example, IRISH).;

(5) Combinations of letters or numbers that suggest, in any language, a government or governmental agency.;

(6) Combinations of letters or numbers that suggest, in any language, a privilege not given by law in this state.; or

(7) Combinations of letters or numbers that form, in any language, a slang term, abbreviation, phonetic spelling, or mirror image of a word described in subdivisions (1) through (6) of this subsection.

* * *

(j) The commissioner of motor vehicles shall, upon proper application, issue special plates to Vermont veterans, as defined in 38 U.S.C. § 101(2), and to members of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), for use only on vehicles registered at the pleasure car rate, on vehicles registered at the motorcycle rate, and on trucks registered for less than 26,001 pounds and excluding vehicles registered under the International Registration Plan. The type and style of the veterans' plate shall be determined by the commissioner, except that an American flag, or a veteran- or military-related emblem selected by the commissioner and the Vermont office of veterans' affairs shall appear on one side of the plate. At a minimum, emblems shall be available to recognize recipients of the Purple Heart, Pearl Harbor survivors, former prisoners of war, and disabled veterans. An applicant shall apply on a form prescribed by the commissioner, and the applicant's status both as a veteran and eligibility as a member of one of the groups recognized will be certified by the office of veterans' affairs. The plates shall be reissued only to the original holder of the plates or the surviving spouse. The commissioner may adopt rules to implement the provisions of this subsection. Except for new or renewed registrations, applications for the

issuance of ~~veterans'~~ plates under this subsection shall be processed in the order received by the department subject to normal workflow considerations. The costs associated with developing new emblems shall be borne by the department of motor vehicles.

* * *

* * * Replacement Number Plates * * *

Sec. 4. 23 V.S.A. § 514 is amended to read:

§ 514. REPLACEMENT NUMBER PLATES

* * *

(b) Any replacement number plate shall be issued at a fee of $10.00. However, if the commissioner, in his or her discretion, determines that a plate has become illegible as a result of deficiencies in the manufacturing process or by use of faulty materials, the replacement fee shall be waived.

* * * Issuance of Licenses to Foreign Citizens * * *

Sec. 5. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

* * *

(d) In addition to any other requirement of law or rule, a citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. Notwithstanding any other law or rule to the contrary, an operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay. ~~A license or permit issued under this section may not be issued to be valid for a period of less than 180 days.~~

* * * Penalty for Failure to Maintain Financial Responsibility * * *

Sec. 6. 23 V.S.A. § 800 is amended to read:

§ 800. MAINTENANCE OF FINANCIAL RESPONSIBILITY

(a) No owner of a motor vehicle required to be registered, or operator ~~of a motor vehicle~~ required to be licensed or issued a learner's permit, shall operate or permit the operation of the vehicle upon the highways of the state without having in effect an automobile liability policy or bond in the amounts of at least $25,000.00 for one person and $50,000.00 for two or more persons killed or injured and $10,000.00 for damages to property in any one accident. In lieu thereof, evidence of self-insurance in the amount of $115,000.00 must be filed

with the commissioner of motor vehicles~~. Such financial responsibility~~, and shall be maintained and evidenced in a form prescribed by the commissioner. The commissioner may require that evidence of financial responsibility be produced before motor vehicle inspections are performed pursuant to the requirements of section 1222 of this title.

(b) A person who violates this section shall be assessed a civil penalty of not less than $250.00 and not more than ~~$100.00~~ $500.00, and such violation shall be a traffic violation within the meaning of chapter 24 of this title.

* * * Proof of Financial Responsibility * * *

Sec. 7. 23 V.S.A. § 801 is amended to read:

§ 801. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED

(a) The commissioner shall require proof of financial responsibility to satisfy any claim for damages, by reason of personal injury to or the death of any person, of at least $25,000.00 for one person and $50,000.00 for two or more persons killed or injured and $10,000.00 for damages to property in any one accident, as follows:

* * *

(3) From the operator of a motor vehicle involved in an accident which has resulted in bodily injury or death to any person or whereby the motor vehicle then under his or her control or any other property is damaged in an aggregate amount to the extent of ~~$1,000.00~~ $3,000.00 or more, excepting, however~~,~~:

(A) an operator furnishing the commissioner with satisfactory proof that a standard provisions automobile liability insurance policy, issued by an insurance company authorized to transact business in this state insuring the person against public liability and property damage, in the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident~~,~~; or

(B) ~~if the operator was~~ a nonresident operator holding a valid license issued by the state of his or her residence at the time of the accident~~,~~ who furnishes satisfactory proof, in the form of a certificate issued by an insurance company authorized to transact business in the state of his or her residence, when accompanied by a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon the policy arising out of the accident, certifying that insurance covering the legal liability of the operator to satisfy any claim or claims for damage to person or property, in an amount equal to the amounts required under this section with respect to proof of financial responsibility, was in effect at the time of the accident.

* * * Civil Suspensions for DUI Violations * * *

Sec. 8. 23 V.S.A. § 1205 is amended to read:

§ 1205. CIVIL SUSPENSION; SUMMARY PROCEDURE

(a) Refusal; alcohol concentration of 0.08 or more; suspension periods. For a first suspension under this chapter:

* * *

(2) Upon affidavit of a law enforcement officer that the officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control, the commissioner shall suspend the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle for a period of 90 days and until the person complies with section 1209a of this title. However, a person may operate under the terms of an ignition interlock RDL issued pursuant to section 1213 of this title after 30 days of this 90-day period unless the alleged offense involved a collision resulting in serious bodily injury or death to another.

(b) Form of officer's affidavit. A law enforcement officer's affidavit in support of a suspension under this section shall be in a standardized form for use throughout the state and shall be sufficient if it contains the following statements:

* * *

(5) The officer obtained an evidentiary test (noting the time and date the test was taken) and the test indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, or the person refused to submit to an evidentiary test.

* * *

(c) Notice of suspension. On behalf of the commissioner of motor vehicles, a law enforcement officer requesting or directing the administration of an evidentiary test shall serve notice of intention to suspend and of suspension on a person who refuses to submit to an evidentiary test or on a person who submits to a test the results of which indicate that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was

operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title. The notice shall be signed by the law enforcement officer requesting the test. ~~The notice shall also serve as a temporary operator's license and shall be valid until the effective date of suspension indicated on the notice. At the time the notice is given to the person, the person shall surrender, and the law enforcement officer shall take possession and custody of, the person's license or permit and forward it to the commissioner.~~ A copy of the notice shall be sent to the commissioner of motor vehicles and a copy shall be mailed or given to the defendant within three business days of the date the officer receives the results of the test. If mailed, the notice is deemed received three days after mailing to the address provided by the defendant to the law enforcement officer. A copy of the affidavit of the law enforcement officer shall also be mailed first class mail or given to the defendant within seven days of the date of notice.

* * *

(h) Final hearing.

(1) If the defendant requests a hearing on the merits, the court shall schedule a final hearing on the merits to be held within 21 days of the date of the preliminary hearing. In no event may a final hearing occur more than 42 days after the date of the alleged offense without the consent of the defendant or for good cause shown. The final hearing may only be continued by the consent of the defendant or for good cause shown. The issues at the final hearing shall be limited to the following:

* * *

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with rules adopted by the department of health shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

* * *

(i) Finding by the court. The court shall electronically forward a report of the hearing to the commissioner. Upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person refused to submit to a test, or upon a finding by the court that the law enforcement officer had reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title and that the person submitted to a test and the test results indicated that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, at the time the person was operating, attempting to operate or in actual physical control, the person's operating license, or nonresident operating privilege, or the privilege of an unlicensed operator to operate a vehicle shall be suspended or shall remain suspended for the required term and until the person complies with section 1209a of this title. Upon a finding in favor of the person, the commissioner shall cause the suspension to be canceled and removed from the record, without payment of any fee.

* * *

(n) Presumption. In a proceeding under this section, if ~~there was~~ at any time within two hours of operating, attempting to operate, or being in actual physical control of a vehicle a person had an alcohol concentration of 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, it shall be a rebuttable presumption that the person's alcohol concentration was 0.08 or more, or 0.02 or more if the person was operating a school bus as defined in subdivision 4(34) of this title, or 0.04 or more if the person was operating a commercial motor vehicle as defined in subdivision 4103(4) of this title, respectively, at the time of operating, attempting to operate, or being in actual physical control.

* * *

(p) Suspensions to run concurrently. Suspensions imposed under this section or any comparable statute of any other jurisdiction and sections 1206 ~~and~~, 1208, and 1216 of this title or any comparable statutes of any other jurisdiction, or any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, shall run concurrently and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for

suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

* * *

(s) ~~A person who has received a notice of suspension under this section shall not apply for or receive a duplicate operator's license while the matter is pending. A person who violates this subsection shall be fined not more than $500.00.~~ [Repealed.]

* * *

* * * Civil and Criminal Suspensions – Same Incident * * *

Sec. 9. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

* * *

(i) Suspensions imposed under this section or any comparable statute of any other jurisdiction shall run concurrently with suspensions imposed under sections 1205, 1206, and 1208 of this title or any comparable statutes of any other jurisdiction or with any suspension resulting from a conviction for a violation of section 1091 of this title from the same incident, and a person shall receive credit for any elapsed period of a suspension served in Vermont against a later suspension imposed in this state. In order for suspension credit to be available against a later suspension, the suspension issued under this section must appear and remain on the individual's motor vehicle record.

* * * Prohibition on Reaffixing Inspection Stickers * * *

Sec. 10. 23 V.S.A. § 1223 is amended to read:

§ 1223. PROHIBITIONS

A person shall not affix or cause to be affixed to a motor vehicle, trailer, or semi-trailer a certification of inspection that was not assigned by an official inspection station to such motor vehicle, trailer, or semi-trailer. No person shall reaffix or cause to be reaffixed an official sticker once removed; instead, replacement stickers shall be affixed as prescribed by the rules for replacement sticker agents. A person shall not knowingly operate a motor vehicle, trailer, or semi-trailer to which a certification of inspection is affixed if the certification of inspection was not assigned by an official station to that vehicle, trailer, or semi-trailer.

* * * Titling Exemptions * * *

Sec. 11. 23 V.S.A. § 2012 is amended to read:

§ 2012. EXEMPTED VEHICLES

No certificate of title need be obtained for:

* * *

(6) A motorcycle which has less than 300 cubic centimeters of engine displacement or a motorcycle powered by electricity with less than 20 kilowatts of engine power;

* * *

Sec. 12. 23 V.S.A. § 3807 is amended to read:

§ 3807. EXEMPTED VESSELS, SNOWMOBILES, AND ALL-TERRAIN VEHICLES

No certificate of title need be obtained for:

(1) any vessel under 16 feet in length;

(2) any snowmobile or all-terrain vehicle of a model year prior to 2004 or that is more than 15 years old;

* * *

* * * Satisfaction and Release of Security Interests * * *

Sec. 13. 23 V.S.A. § 2023 is amended to read:

§ 2023. TRANSFER OF INTEREST IN VEHICLE

(a) ~~f~~ If an owner transfers his or her interest in a vehicle, other than by the creation of a security interest, he or she shall, at the time of delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate or as the commissioner prescribes, and of the odometer reading or hubometer reading or clock meter reading of the vehicle at the time of delivery in the space provided therefor on the certificate, and cause the certificate and assignment to be mailed or delivered to the transferee or to the commissioner. Where title to a vehicle is in the name of more than one person, the nature of the ownership must be indicated by one of the following on the certificate of title:

(1) TEN ENT (tenants by the entirety);

(2) JTEN (joint tenants);

(3) TEN COM (tenants in common);

(4) PTNRS (partners); or

(5) TOD (transfer on death).

(b) Upon request of the owner or transferee, a lienholder in possession of the certificate of title shall, unless the transfer was a breach of his or her security agreement, either deliver the certificate to the transferee for delivery to the commissioner or, upon receipt of notice from the transferee of the owner's assignment, the transferee's application for a new certificate, and the required fee, mail or deliver ~~them~~ the certificate, application, and fee to the commissioner. The delivery of the certificate does not affect the rights of the lienholder under his or her security agreement. If a dealer accepts a vehicle with a preexisting security interest as part of the consideration for a sale or trade from the dealer, the dealer shall mail or otherwise tender payment to satisfy the security interest within five days of the sale or trade.

* * *

(e) Notwithstanding other provisions of the law, whenever the estate of an individual who dies intestate consists principally of an automobile, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the same shall automatically and by virtue hereof pass to said surviving spouse. Registration and titling of the vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(1) Notwithstanding other provisions of the law, and except as provided in subdivision (2) of this subsection, whenever the estate of an individual consists in whole or in part of a motor vehicle, and the person's will or other testamentary document does not specifically address disposition of motor vehicles, the surviving spouse shall be deemed to be the owner of the motor vehicle and title to the motor vehicle shall automatically pass to the surviving spouse. Registration and ~~title~~ titling of the motor vehicle in the name of the surviving spouse shall be effected by payment of a transfer fee of $7.00. This transaction is exempt from the provisions of the purchase and use tax on motor vehicles.

(2) This subsection shall apply to no more than two motor vehicles, and shall not apply if the motor vehicle is titled in the name of one or more persons other than the decedent and the surviving spouse.

* * *

Sec. 14. 23 V.S.A. § 2045 is amended to read:

§ 2045. RELEASE OF SECURITY INTEREST

(a) Upon ~~the~~ satisfaction of a security interest in a vehicle for which the lienholder possesses the certificate of title ~~is in the possession of the lienholder~~, ~~he or she~~ the lienholder shall, within ~~10~~ 15 business days after ~~demand and, in any event, within 30 days,~~ a request for release of the security interest, fully

execute a release of ~~his or her~~ the security interest~~,~~ in the space provided therefor on the certificate or ~~as~~ in the form the commissioner prescribes, and mail or deliver the certificate and release to the next lienholder named therein, or, if none, to the owner or any person ~~who delivers to the lienholder an authorization from~~ authorized by the owner to receive the certificate (hereafter, "owner's designee"). The owner or the owner's designee, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the commissioner, who shall release the lienholder's rights on the certificate or issue a new certificate.

(b) Upon ~~the~~ satisfaction of ~~a~~ the security interest ~~in a vehicle for which~~ of a subordinate lienholder who does not possess the certificate of title ~~is in the possession of a prior lienholder~~, the subordinate lienholder ~~whose security interest is satisfied~~ shall, within ~~10~~ 15 business days after ~~demand and, in any event, within 30 days,~~ a request for release of the security interest, fully execute a release in the form the commissioner prescribes and deliver the release to the owner or ~~any person who delivers to the lienholder an authorization from~~ the ~~owner to receive it~~ owner's designee. The lienholder in possession of the certificate of title shall either deliver the certificate to the owner~~,~~ or the ~~person authorized by him,~~ owner's designee for delivery to the commissioner or, ~~upon receipt of~~ if the lienholder in possession receives the release, mail or deliver it with the certificate to the commissioner, who shall release the subordinate lienholder's rights on the certificate or issue a new certificate. A subordinate lienholder whose security interest is fully satisfied but receives the certificate of title pursuant to subsection (a) of this section shall, within three business days of its receipt, mail or deliver the title to the owner or the owner's designee.

(c) For purposes of subsections (a) and (b) of this section, a release not sent by electronic means is deemed fully executed when it is completed and placed in the United States mail postage prepaid or delivered to the person requesting the release as shown on the form so requesting it.

(d) A lienholder that fails to satisfy the requirements of subsection (a) or (b) of this section shall, upon written demand sent by certified mail, be liable to pay the owner or the owner's designee $25.00 per day for each day that the requirements of subsection (a) or (b) remain unsatisfied, up to a maximum of $2,500.00, in addition to any other remedies that may be available at law or equity. If the lienholder fails to pay the amount owed under this subsection within 60 days following the written demand, the owner or the owner's designee may bring a civil action and, if the lienholder is found to have violated subsection (a) or (b) of this section, the amount owed under this subsection shall be trebled, resulting in an award of up to $7,500.00, and reasonable attorney's fees and costs shall be awarded.

* * * Title-related Offenses * * *

Sec. 15. 23 V.S.A. § 2083 is amended to read:

§ 2083. OTHER OFFENSES

(a) A person who:

(1) ~~With fraudulent intent, permits another, who~~ Knowing that another person is not entitled~~,~~ to use or ~~have possession of~~ possess a certificate of title, knowingly permits that person to use or possess the certificate, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(2) ~~Willfully~~ Knowingly fails to mail or deliver a certificate of title or application for a certificate of title to the commissioner within 20 days after the transfer or creation or satisfaction of a security interest shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(3) ~~Willfully~~ Knowingly fails to deliver to his or her transferee a certificate of title within 20 days after the transfer shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(4) ~~Willfully~~ Knowingly and without authority signs a name other than his or her own on any title, or ~~inaccurately states or~~ knowingly alters or inaccurately states the chain of ownership or other information required on any title, or knowingly fails to return a certificate of title that has been fraudulently made, or knowingly has unauthorized possession of blank certificates of title or manufacturer's certificates of origin, shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(5) ~~Willfully~~ Knowingly violates any provision of this chapter, except as provided in subdivision (6) of this subsection or section 2082 of this title, shall be fined not more than $2,000.00, or imprisoned for not more than two years, or both; or

(6) ~~Willfully~~ Knowingly represents as his or her own~~,~~ or sells or transfers a motor vehicle or vessel ~~on~~ to which he or she does not hold legal title ~~to~~ or is not authorized ~~to sell or transfer the vehicle or vessel~~ by the titleholder to sell or transfer shall be fined not more than $5,000.00, or imprisoned for not more than five years, or both, for each offense.

(b) ~~A~~ Absent a showing of a knowing failure to deliver as provided in subdivision (a)(3) of this section, a person ~~shall not willfully fail~~ who fails to deliver to his or her transferee a certificate of title within 10 days after the transfer~~. A person who violates this subsection~~ commits a traffic violation and shall be assessed a civil penalty of not more than $1,000.00.

* * * Taxable Cost Definition * * *

Sec. 16. 32 V.S.A. § 8902 is amended to read:

§ 8902. DEFINITIONS

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

* * *

(5) "Taxable cost" means the purchase price as defined in subdivision (4) of this section or the taxable cost as determined under section 8907 of this title. For any purchaser who has paid tax on the purchase or use of a motor vehicle that was sold or traded by the purchaser or for which the purchaser received payment under a contract of insurance, the taxable cost of the replacement motor vehicle other than a leased vehicle shall exclude:

* * *

(B) the amount received from the sale of a motor vehicle last registered in his or her name, the amount not to exceed the average book value of the same make, type, model, and year of manufacture as designated by the manufacturer and as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition), or any comparable publication, provided such sale occurs within three months of the taxable purchase. However, this three-month period shall be extended day-for-day for any time that a member of a guard unit or of the United States Armed Forces, as defined in 38 U.S.C. § 101(10), spends outside Vermont due to activation or deployment, and an additional 60 days following the person's return from activation or deployment. Such amount shall be reported on forms supplied by the commissioner of motor vehicles;

* * *

* * * Repeal of Zone Registration * * *

Sec. 17. REPEAL

23 V.S.A. § 412a (zone registration) is repealed.

* * * Renewal Notice for Nondriver Identification Cards * * *

Sec. 18. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the commissioner and be issued an identification card which is attested by the commissioner as to true name, correct age, and any other identifying data as the commissioner may require which shall include, in the case of minor applicants, the written consent

of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the commissioner may require. The commissioner shall require payment of a fee of $17.00 at the time application for an identification card is made.

(b) Every identification card shall expire, unless earlier canceled, on the fourth birthday of the applicant following the date of original issue, and may be renewed every four years upon payment of a $20.00 fee. At least 30 days before an identification card will expire, the commissioner shall mail first class to the cardholder an application to renew the identification card.

* * *

* * * Record Retention and Record Formats * * *

Sec. 19. 23 V.S.A. § 102(c) is amended to read:

(c) ~~The original records enumerated in subsection (a) of this section shall be maintained for two years and may thereafter be maintained on microfilm or by electronic imaging.~~ [Repealed.]

Sec. 20. 23 V.S.A. § 2027(c) is amended to read:

(c) The commissioner shall file and retain for five years every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the vehicle designated therein. ~~The original records shall be maintained for two years and may thereafter be maintained on microfilm.~~

Sec. 21. 23 V.S.A. § 3810(b) is amended to read:

(b)(1) The commissioner shall maintain at his or her central office, a record of all certificates of title issued by him or her:

(A) under a distinctive title number assigned to the vessel, snowmobile, or all-terrain vehicle;

(B) under the identification number of the vessel, snowmobile, or all-terrain vehicle;

(C) alphabetically, under the name of the owner; and, in the discretion of the commissioner, by any other method he or she determines.

(2) ~~The original records may be maintained on microfilm.~~ [Repealed.]

Sec. 22. 23 V.S.A. § 3820(c) is amended to read:

(c) The commissioner shall file and retain every surrendered certificate of title for five years. The file shall be maintained so as to permit the tracing of title of the vessel, snowmobile, or all-terrain vehicle designated. ~~The records may be maintained on microfilm.~~

* * * Ignition Interlock Restricted Driver's Licenses; Fees * * *

Sec. 23. 23 V.S.A. § 1213(a), (b), and (c) are added to read:

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(2), 1206(a), or 1216(a)(1) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for

initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(b), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

Sec. 24. REPEAL

23 V.S.A. § 1213(a), (b), and (c) within Sec. 9 of No. 126 of the Acts of the 2009 Adj. Sess. (2010) are repealed.

Sec. 25. EFFECTIVE DATES

(a) This section and Sec. 16 (taxable cost definition) of this act shall take effect on passage. Sec. 16 shall apply retroactively to October 1, 2009.

(b) Sec. 24 (repeal of ignition interlock subsections (a)–(c)) shall take effect on June 30, 2011.

(c) Sec. 5 (foreign citizen licenses) shall take effect on January 1, 2012.

(d) Secs. 8 (DUI civil suspension) and 9 (under age 21 civil violation) shall take effect on July 2, 2011.

(e) Sec. 18 (nondriver identification renewal) shall take effect on July 1, 2012.

(f) All other sections shall take effect on July 1, 2011.

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 73.

An act relating to establishing a government transparency office to enforce the public records act.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

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

Sec. 1. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed ~~with the view towards carrying out the above declaration of public policy~~ to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

Sec. 2. 1 V.S.A. § 316 is amended to read:

§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

(a) Any person may inspect or copy any public record ~~or document~~ of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the state, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; ~~provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made~~

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the state, a person may inspect a public record during customary ~~office~~ business hours.

(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) In the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.

(d) The secretary of state, after consultation with the secretary of administration, shall establish the actual cost of providing a copy of a public record that may be charged by state agencies. The secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost" the secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record and any utility charges directly associated with copying a record. The secretary of state shall adopt, by rule, a uniform schedule of public record charges for state agencies.

(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the secretary of state. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the secretary of state until the local legislative body establishes

such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.

* * *

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

(a) As used in this subchapter~~,~~:

(1) "Business day" means a day that a public agency is open to provide services.

(2) "~~public~~ Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the state or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

* * *

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, that records relating to management and direction of a law enforcement agency ~~and~~; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2301; and records reflecting the charge of a person shall be public;

* * *

Sec. 4. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a) Upon request, the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, the custodian shall so certify in writing. Such certification shall identify the records withheld and the basis for the denial. ~~The~~ A record shall be produced for inspection or a certification shall be made that a record is exempt within ~~two~~ three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also notify the person of his or her right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days~~, excepting Saturdays, Sundays, and legal public holidays,~~ after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten ~~working~~ business days from receipt of the request. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the

determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person's administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal. A written determination shall include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial.

(2) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.

(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.

(f) If a person making the request has a disability which requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide

accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.

(g) The secretary of state may provide municipal public agencies and members of the public information and advice regarding the requirements of the public records act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice.

Sec. 5. 1 V.S.A. § 319 is amended to read:

§ 319. ENFORCEMENT

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the civil division of the superior court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the civil division of the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden ~~is~~ of proof shall be on the public agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the civil division of the superior court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d)(1) ~~The~~ Except as provided in subdivision (2) of this section, the court ~~may~~ shall assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(2) The court may, in its discretion, assess against a public agency reasonable attorney fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under Rule 12(a)(1) of the Vermont Rules of Civil Procedure:

(A) concedes that a contested record or contested records are public; and

(B) provides the record or records to the complainant.

(3) The court may assesses against the complainant reasonable attorney fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated Rule 11 of the Vermont Rules of Civil Procedure.

Sec. 6. 1 V.S.A. § 320(b) is amended to read:

(b) In the event of noncompliance with the order of the court, the civil division of the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.

Sec. 7. 1 V.S.A. § 313(a)(6) is amended to read:

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

Sec. 8. 3 V.S.A. § 218(d) is amended to read:

(d) The head of each state agency or department shall designate a member of his or her staff as the records officer for his or her agency or department, and shall notify the Vermont state archives and records administration in writing of the name and title of the person designated, and shall post the name and contact information of the person on the agency or department website, if one exists.

Sec. 9. 9 V.S.A. § 4113(b) is amended to read:

(b) Reports filed pursuant to this section shall be an exempt record and confidential pursuant to ~~subdivision 317(b)(1) of Title 1~~ 1 V.S.A. § 317(c)(1) and shall be maintained for the sole and confidential use of the commissioner, except that the reports may be disclosed to the federal government or to the appropriate energy agency or department of another state with substantially similar confidentiality statutes for regulations with respect to such reports. However, the commissioner shall make available to appropriate committees of the general assembly statistical information derived from the reports required by this section, provided that this may be done in a manner which preserves the confidentiality of the reports submitted by particular persons.

Sec. 10. 32 V.S.A. § 3755(e) is amended to read:

(e) Any applicant for appraisal under this subchapter bears the burden of proof as to his or her qualification. Any documents submitted by an applicant as evidence of income shall be held in confidence by any person accepting or reviewing them pursuant to provisions of this subchapter, and shall not be made available for public examination, whether or not such person is subject to the provisions of ~~subdivision 317(a)(6) of Title 1~~ 1 V.S.A. § 317(c)(6).

Sec. 11. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term "personal documents" referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function;

(5) Whether or not to authorize a public agency to charge for staff time

associated with responding to a request to inspect or copy a public record, including whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record; and

(6) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public's interest in the public record protected by the exemption.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet no more than three times each year during the interim between sessions of the general assembly.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

Sec. 12. LEGISLATIVE COUNCIL; LIST OF PUBLIC RECORDS ACT EXEMPTIONS

The legislative council, under its statutory revision authority set forth in 2 V.S.A. § 421, shall compile a list of all known Vermont statutory exemptions to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Legislative council shall publish the list of exemptions compiled under this section as a statutory revision note to 1 V.S.A. § 317 and shall update the list as necessary.

Sec. 13. STATE AGENCY PUBLIC RECORDS REQUEST SYSTEM

(a) Beginning July 1, 2011, all state agencies that receive a request to inspect or copy a public record shall catalogue the request in the public records request system that the secretary of administration established in response to the requirements of Sec. 3 of No. 132 of the Acts of the 2005 Adj. Sess. (2006).

(b) The secretary of administration shall revise and update the public records request system so that it includes: the date a public records request is

received; the state agency that received the request; the organization or individual that made the request, including a contact name; the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied; if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial; the estimated hours necessary to respond to the request; the date the state agency closed the request; and the elapsed time between receipt of the request and the date the agency closed the request.

(c) On or before January 15, 2012, and annually thereafter, the secretary of administration shall submit to the senate and house committees on government operations a copy of the records requests catalogued in the public records request system in the preceding calendar year.

(d)(1) As a part of the report issued on or before January 15, 2012 to the senate and house committees on government operations under subsection (c) of this section, the secretary of administration, after consultation with the department of information and innovation and the Vermont state archives and records administration, shall submit a report regarding implementation by state agencies of an electronic documents management system for the creation, management, archiving, redaction, and confidential designation of records produced or acquired by state agencies. The report shall include a recommendation as to whether a documents management system should be implemented by state agencies.

(2) If the secretary recommends implementation of a document management system, the recommendation shall:

(A) identify a specific document management system for implementation by state agencies. The report shall summarize the operation or application of the system, provide a short explanation of the basis for selection of the system, and describe how the system will improve efficiency of state agencies in managing public records;

(B) estimate the cost of implementation by state agencies of the recommended document system;

(C) propose a schedule for implementation of the recommended document management system by all state agencies.

Sec. 14. PUBLIC RECORDS REQUESTS; MUNICIPALITIES

(a) The secretary of state, after consultation with the Vermont League of Cities and Towns, annually shall survey municipalities in the state regarding whether municipalities are receiving an increased number of requests to inspect records, whether requests for inspection of public records are being used to circumvent copying of a record by a municipality, and whether

requests to inspect records pose any administrative burdens on municipalities. For purposes of this subsection, "municipality" shall mean a city, town, village, or school district of the state. On or before January 15, 2012 and annually thereafter, the secretary of state shall submit the results of the survey to the senate and house committees on government operations.

(b) As part of the report required under subsection (a) of this section to be submitted to the senate and house committees on government operations on January 15, 2012, the secretary of state, after consultation with the Vermont League of Cities and Towns and other interested parties, shall submit a recommendation for increasing municipal understanding and compliance with the requirements of the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4.

Sec. 15. COURT ADMINISTRATOR REPORT ON PUBLIC RECORDS CASES

On or before January 15, 2012 and annually thereafter, the Vermont court administrator's office shall report to the senate and house committees on government operations regarding contested cases filed in the civil division of the superior court involving disputes under the Public Records Act, as set forth in 1 V.S.A. chapter 5, subchapter 4. The report shall include the number of Public Records Act contested cases filed annually in the civil division of the superior court, the disposition of such cases, and whether attorney's fees were awarded in any of the cases. The court administrator shall submit a copy of a report required under this section to the secretary of state at the same time the report is submitted to the senate and house committees on government operations.

Sec. 16. REPEAL

Sec. 11 of this act (public records legislative study committee) is repealed on January 15, 2015.

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 4-1-0)

Reported favorably by Senator Nitka for the Committee on Appropriations.

(Committee vote: 4-0-3)

(For House amendments, see House Journal for April 6, 2011, page 799; April 9, 2011, page 813.)

H. 264.

An act relating to driving while intoxicated and to forfeiture and registration of motor vehicles .

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

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

Sec. 1. PURPOSE

This act is intended to help prevent the harm caused to Vermonters and their families and friends by chronic DUI offenders who repeatedly operate motor vehicles while under the influence of alcohol or other drugs.

* * * Permitting Unlicensed or Impaired Person to Operate * * *

Sec. 2. 23 V.S.A. § 1130 is amended to read:

§ 1130. PERMITTING UNLICENSED OR IMPAIRED PERSON TO OPERATE

(a) No person shall knowingly employ~~, as operator of a motor vehicle, a~~ another person as an operator of a motor vehicle knowing that the other person is not licensed as provided in this title.

(b) No person shall ~~knowingly~~ permit a motor vehicle owned by him or her or under his or her control to be operated by ~~a~~ another person ~~who~~ if the person who owns or controls the vehicle knows that the other person has no legal right to ~~do so, or in violation of a provision of this title~~ operate the vehicle.

(c)(1) No person who owns or is under control of a vehicle shall intentionally enable another person to operate the vehicle if the person who owns or controls the vehicle has actual knowledge that the operator is:

(A) under the influence of intoxicating liquor; or

(B) under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely.

(2) In a prosecution under this section, the state shall have the burden of proving beyond a reasonable doubt that the defendant was not placed under duress or subjected to coercion by the other person at the time the defendant enabled the other person to operate the motor vehicle.

(3) As used in this section, "intentionally enable another person to operate the motor vehicle" means to intentionally create a direct and immediate opportunity for another person to operate the motor vehicle.

(d)(1) A person who violates subsection (c) of this section shall be fined not more than $1,000.00 or imprisoned for not more than six months, or both.

(2) If the death or if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of subsection (c) of this section, the person convicted of the violation shall be fined not more than $5,000.00 or imprisoned not more than two years, or both. The provisions of this subdivision do not limit or restrict prosecutions for manslaughter.

* * * DUI penalties, alternative sanctions, and innovative responses * * *

Sec. 3. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL REFUSAL

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person's alcohol concentration is 0.08 or more, or 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title or has been convicted of a violation of this section within the preceding three years when the person's alcohol concentration was 0.16 or greater; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of driving safely; or

(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.

* * *

Sec. 4. 23 V.S.A. § 1210 is amended to read:

§ 1210. PENALTIES

* * *

(d) Third ~~or subsequent~~ offense. A person convicted of violating section 1201 of this title who has ~~twice~~ previously been convicted two times of a violation of that section shall be fined not more than $2,500.00 or imprisoned not more than five years, or both. At least ~~400 hours of community service shall be performed, or~~ ~~100~~ 96 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served

as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court may impose a sentence that does not include a term of imprisonment or that does not require that the 96 hours of imprisonment be served consecutively only if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

(e) Fourth or subsequent offense. A person convicted of violating section 1201 of this title who has previously been convicted three times of a violation of that section shall be fined not more than $5,000.00 or imprisoned not more than ten years, or both. At least 192 consecutive hours of the sentence of imprisonment shall be served and may not be suspended or deferred or served as a supervised sentence, except that credit for a sentence of imprisonment may be received for time served in a residential alcohol facility pursuant to sentence if the program is successfully completed. The court shall not impose a sentence that does not include a term of imprisonment unless the court makes written findings on the record that there are compelling reasons why such a sentence will serve the interests of justice and public safety.

~~(e)(1)~~(f)(1) Death resulting. If the death of any person results from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than $10,000.00 or imprisoned not less than one year nor more than 15 years, or both. The provisions of this subsection do not limit or restrict prosecutions for manslaughter.

(2) If the death of more than one person results from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each decedent.

(3)(A) If the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if the death of any person results from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of that section, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence

will serve the interests of justice and public safety.

~~(f)(1)~~(g)(1) Injury resulting. If serious bodily injury, as defined in 13 V.S.A. § 1021(2), results to any person other than the operator from a violation of section 1201 of this title, the person convicted of the violation shall be fined not more than $5,000.00, or imprisoned not more than 15 years, or both.

(2) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to more than one person other than the operator from a violation of section 1201 of this title, the operator may be convicted of a separate violation of this subdivision for each person injured.

(3)(A) If serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, a sentence ordered pursuant to this subsection shall, except as provided in subdivision (B) of this subdivision (3), include at least a five-year term of imprisonment. The five-year minimum term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year term of imprisonment.

(B) Notwithstanding subdivision (A) of this subdivision (3), if serious bodily injury as defined in 13 V.S.A. § 1021(2) results to any person other than the operator from a violation of section 1201 of this title and the person convicted of the violation has previously been convicted two times of a violation of section 1201, the court may impose a sentence that does not include a term of imprisonment or which includes a term of imprisonment of less than five years if the court makes written findings on the record that such a sentence will serve the interests of justice and public safety.

~~(g)~~(h) Determination of fines. In determining appropriate fines under this section the court may take into account the total cost to a defendant of alcohol screening, participation in the alcohol and driving education program and therapy and the income of the defendant.

~~(h)~~(i) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $60.00, which shall be added to any fine imposed by the court. The court shall collect and transfer such surcharge to the department of ~~health~~ public safety for deposit in the health department's laboratory services special fund.

~~(i)~~(j) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge

assessed under this subsection to the office of defender general for deposit in the public defender special fund specifying the source of the monies being deposited. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

~~(j)~~(k) A person convicted of violating section 1201 of this title shall be assessed a surcharge of $50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.

Sec. 5. REPEAL

23 V.S.A. § 1213(a),(b), and (c) within Sec. 9 of No. 126 of the Acts of 2009 Adj. Sess. (2010) are repealed.

Sec. 6. 23 V.S.A. § 1213(a), (b), and (c) are added to read:

(a) First offense. A person whose license or privilege to operate is suspended for a first offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(a)(2), 1206(a), or 1216(a)(1) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving education program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(a)(2), 1206(a), or 1216(a)(1) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

(b) Second offense. A person whose license or privilege to operate is suspended for a second offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(a), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL in any motor vehicle to be operated, financial

responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(a), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

(c) Third or subsequent offense. A person whose license or privilege to operate is suspended or revoked for a third or subsequent offense under this subchapter shall be permitted to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, if issued a valid ignition interlock RDL. The commissioner shall issue an ignition interlock RDL to a person eligible under section 1205(m), 1208(b), or 1216(a)(2) of this title upon receipt of a $125.00 application fee, and upon receipt of satisfactory proof of installation of an approved ignition interlock RDL in any motor vehicle to be operated, financial responsibility as provided in section 801 of this title, and enrollment in an alcohol and driving rehabilitation program. The RDL shall be valid after expiration of the applicable shortened period specified in section 1205(m), 1208(b), or 1216(a)(2) of this title. An ignition interlock RDL shall expire upon reinstatement of a person's regular license or privilege to operate or shall expire unless renewed yearly. The commissioner shall send by first class mail an application for renewal of the RDL at least 30 days prior to the day renewal is required and shall impose the same conditions for renewal as are required for initial issuance of an ignition interlock RDL. The renewal fee shall be $125.00.

Sec. 7. 23 V.S.A. § 1220a is amended to read:

§ 1220a. DUI ENFORCEMENT SPECIAL FUND

(a) There is created a DUI enforcement special fund which shall be a special fund established and managed pursuant to 32 V.S.A. chapter 7 subchapter 5. The DUI enforcement special fund shall be a continuation of and successor to the DUI enforcement special fund established under subsection 1205(r) of this title.

(b) The DUI enforcement special fund shall consist of:

(1) receipts from the surcharges assessed under section 206 and subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and 1210(j) of this title;

(2) beginning in fiscal year 2000 and thereafter, the first $150,000.00 of revenues collected from fines imposed under subchapter 13 of chapter 13 of this title pertaining to DUI related offenses;

(3) beginning in fiscal year 2000 and thereafter, two percent of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title; and

(4) any additional funds transferred or appropriated by the general assembly.

(c) The DUI enforcement special fund shall be used for the implementation and enforcement of this subchapter for purposes specified and in amounts appropriated by the general assembly. At least 40 percent of the money collected by the fund each year shall be awarded as grants to municipalities or law enforcement agencies for innovative programs designed to reduce DUI offenses. Priority shall be given to grants requested jointly by more than one law enforcement agency or municipality.

Sec. 8. DEDICATED BEDS FOR CHRONIC REPEAT DUI OFFENDERS

The department of corrections shall report to the joint committee on corrections oversight on or before November 15, 2011 on the feasibility of dedicating 25 beds at the southeast state correctional facility exclusively for chronic repeat DUI offenders. As used in this section, "chronic repeat DUI offender" means a person convicted three or more times of a violation of 23 V.S.A. § 1201.

Sec. 9. COMPREHENSIVE SYSTEM TO REDUCE REPEAT DUI OFFENSES

On or before January 15, 2012, the director of the governor's highway safety program, in consultation with the defender general and the departments of motor vehicles, of public safety, of health and of corrections shall report to the house and senate committees on judiciary a plan for implementation of a comprehensive system of penalties, alternative sanctions, and treatment to reduce the number of persons with repeat offenses of operating motor vehicles while under the influence of alcohol or other drugs. The system may include, among other measures, the following:

(1) a mandatory sobriety program for repeat DUI offenders similar to South Dakota's "24/7 Sobriety Program";

(2) increased penalties for operating a vehicle with an alcohol concentration substantially greater than the legal limit;

(3) methods of responding to DUI offenders who fail to complete the alcohol and driving education program (CRASH) required by 23 V.S.A. § 1209a(a)(1);

(4) enhanced use of ignition interlock devices, with respect to which the ignition interlock effectiveness study required by Sec. 14 of No. 126 of the Acts of 2009 shall be considered;

(5) mandatory alcohol and drug counseling and treatment for persons convicted of operating a motor vehicle while under the influence of alcohol or other drugs;

(6) establishment of a secure facility for housing and treatment of persons convicted of operating a motor vehicle while under the influence of alcohol or drugs;

(7) the circumstances under which the operator of a motor vehicle may be required to submit to a blood test to determine whether he or she has been operating the vehicle while under the influence of a drug other than alcohol;

(8) revisions that may be appropriate to the DUI statutes when the circumstances involve operating a motor vehicle under the influence of a drug that has been legally prescribed to the operator; and

(9) a proposal to permit conditional operator's licenses, which may be issued to a person who has been convicted of DUI for travel to limited places such as work, drug or alcohol treatment, school, or a doctor's office.

* * * Detention of operator * * *

Sec. 10. 23 V.S.A. § 1212 is amended to read:

§ 1212. CONDITIONS OF RELEASE AND PAROLE; ARREST UPON VIOLATION

* * *

(d) A law enforcement officer who observes a person violating a condition of parole requiring that the person not operate a motor vehicle may promptly arrest the person for violating the condition and may detain the person pursuant to 28 V.S.A. § 551. The officer shall immediately notify the parole board of the suspected violation. If the parole board determines pursuant to 28 V.S.A. § 552 that a parole violation has occurred, the board shall notify the state's attorney in the county where the violation occurred.

* * * Miscellaneous * * *

Sec. 11. REPORTS; STUDIES

(a) The court administrator shall report to the senate and house committees on judiciary on or before January 15, 2012 on the number of persons convicted of violating 23 V.S.A. § 1130(c) (permitting impaired person to operate motor vehicle) since the passage of this act.

(b) Notwithstanding any other provision of law, the court administrator shall conduct a weighted caseload study and analysis or equivalent study within the probate division of the superior court for use by the senate and house committees on appropriations during development of the fiscal year 2013 budget. The results of the study shall be reported to the senate and house committees on judiciary and on appropriations on or before January 15, 2012. The study may be used to review and consider adjustments to the compensation of probate judges.

(c)(1) A committee is established to study modifying the number of interested parties who must be served with notice when a probate proceeding is commenced involving a decedent's estate and reducing the amount of time notice by publication is required to be published in newspapers. The committee shall consider whether reducing the number of interested parties would reduce costs to the estate without unduly prejudicing the rights of potential beneficiaries, and whether constitutional issues would be raised if such changes were made. The committee shall report its findings, together with any recommendations for legislative action, to the senate and house committees on judiciary no later than December 15, 2011.

(2) The committee established by this subsection shall consist of the following members:

(A) one member appointed by the Vermont Probate Judges Association;

(B) one member with experience in probate practice appointed by the Vermont Bar Association; and

(C) one member appointed by the Committee on Vermont Elders.

(3) Members of the committee who are not employees of the state of Vermont shall be entitled to reimbursement at the per diem rate set in 32 V.S.A. § 1010.

Sec. 12. Sec. 22(a) of No. 157 of the Acts of the 2009 Adj. Sess. (2010), as amended by Sec. 1 of No. 5 of the Acts of 2011, is amended to read:

(a) Sec. 18 of this act shall take effect on ~~July 1, 2011~~ July 1, 2012.

Sec. 13. 13 V.S.A. § 5241 is added to read:

§ 5241. MALPRACTICE CLAIM AGAINST DEFENDER GENERAL; SUCCESSFUL INEFFECTIVE ASSISTANCE CLAIM REQUIRED

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance

of counsel against that criminal defense attorney in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

Sec. 14. 23 V.S.A. § 1203 is amended to read:

§ 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND VIDEOTAPE

* * *

(c) When a breath test which is intended to be introduced in evidence is taken with a crimper device or when blood is withdrawn at an officer's request, a sufficient amount of breath or blood, as the case may be, shall be taken to enable the person to have made an independent analysis of the sample, and shall be held for at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety shall adopt rules providing for the security of the sample. At no time shall the defendant or any agent of the defendant have access to the sample. A preserved sample of breath shall not be required when an infrared breath-testing instrument is used. A person tested with an infrared breath-testing instrument shall have the option of having a second infrared test administered immediately after receiving the results of the first test.

(d) In the case of a breath test administered using an infrared breath testing instrument, the test shall be analyzed in compliance with rules adopted by the department of ~~health~~ public safety. The analyses shall be retained by the state. A sample is adequate if the infrared breath testing instrument analyzes the sample and does not indicate the sample is deficient. Analysis of the person's breath or blood which is available to that person for independent analysis shall be considered valid when performed according to methods approved by the department of ~~health~~ public safety. The analysis performed by the state shall be considered valid when performed according to a method or methods selected by the department of ~~health~~ public safety. The department of ~~health~~ public safety shall use rule making procedures to select its method or methods. Failure of a person to provide an adequate breath sample constitutes a refusal.

(e) [Repealed.]

(f) When a law enforcement officer has reason to believe that a person may be violating or has violated section 1201 of this title, the officer may request the person to provide a sample of breath for a preliminary screening test using

a device approved by the commissioner of ~~health~~ public safety for this purpose. The person shall not have the right to consult an attorney prior to submitting to this preliminary breath alcohol screening test. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request an evidentiary test and shall not be used in any court proceeding except on those issues. Following the screening test additional tests may be required of the operator pursuant to the provisions of section 1202 of this title.

* * *

(i) The commissioner of ~~health~~ public safety shall adopt emergency rules relating to the operation, maintenance and use of preliminary alcohol screening devices for use by law enforcement officers in enforcing the provisions of this title. The commissioner shall consider relevant standards of the National Highway Traffic Safety Administration in adopting such rules. Any preliminary alcohol screening device authorized for use under this title shall be on the qualified products list of the National Highway Traffic Safety Administration.

* * *

Sec. 15. 23 V.S.A. § 1203a is amended to read:

§ 1203a. INDEPENDENT CHEMICAL TEST; BLOOD TESTS

* * *

(d) The physician, licensed nurse, medical technician, physician's assistant, medical technologist, or laboratory assistant drawing a sample of blood shall use a sample collection kit provided by the department of ~~health~~ public safety or another type of collection kit. The sample shall be identified as to donor, date, and time, sealed and mailed to the department of ~~health~~ public safety where it shall be held for a period of at least 45 days from the date the sample was taken. At any time during that period the person may direct that the sample be sent to an independent laboratory of the person's choosing for an independent analysis. The department of ~~health~~ public safety may recover its costs of supplies, handling and storage.

* * *

Sec. 16. 23 V.S.A. § 1205(h)(1)(D) is amended to read:

(D) whether the test was taken and the test results indicated that the person's alcohol concentration was 0.08 or more at the time of operating, attempting to operate or being in actual physical control of a vehicle in violation of section 1201 of this title, whether the testing methods used were valid and reliable and whether the test results were accurate and accurately evaluated. Evidence that the test was taken and evaluated in compliance with

rules adopted by the department of ~~health~~ public safety shall be prima facie evidence that the testing methods used were valid and reliable and that the test results are accurate and were accurately evaluated;

Sec. 17. 23 V.S.A. § 1216 is amended to read:

§ 1216. PERSONS UNDER 21; ALCOHOL CONCENTRATION OF 0.02 OR MORE

* * *

(d) If a law enforcement officer has reasonable grounds to believe that a person is violating this section, the officer may request the person to submit to a breath test using a preliminary screening device approved by the commissioner of ~~health~~ public safety. A refusal to submit to the breath test shall be considered a violation of this section. Notwithstanding any provisions to the contrary in sections 1202 and 1203 of this title:

* * *

Sec. 18. BLOOD ALCOHOL TESTING AND ALCOHOL SCREENING DEVICES; AUTHORITY OF DEPARTMENT OF PUBLIC SAFETY; RULEMAKING

(a) Notwithstanding any other provision of law, authority and supervision over operation, maintenance, and use of blood alcohol testing and alcohol screening devices shall be transferred from the department of health to the department of public safety. The department of public safety shall adopt emergency rules to establish a processes for the authority granted by this section, and to provide for transfer of the authority this section requires.

(b) The administration shall, in consultation with the Vermont state employees association, ensure that no reduction in positions occurs as a result of the transfer required by this section.

(c) On or before January 15, 2012, and on or before January 15 of each of the following two years, the department of public safety shall report to the senate and house committees on judiciary on progress toward identifying and implementing an accreditation process for the blood alcohol testing and alcohol screening program transferred to the department by this section.

Sec. 19. EFFECTIVE DATES

This act shall take effect on passage, except as follows:

(1) Sec. 5 shall take effect on June 30, 2011.

(2) Sec. 6 shall take effect on July 1, 2011.

(3) Secs. 14, 15, 16, and 17 shall take effect on March 1, 2012.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 18, 2011, page 462.)

H. 369.

An act relating to health professionals regulated by the board of medical practice.

Reported favorably with recommendation of proposal of amendment by Senator Flory for the Committee on Government Operations.

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

Sec. 1. 26 V.S.A. chapter 7 is amended to read:

CHAPTER 7. PODIATRY

Subchapter 1. General Provisions

§ 321. DEFINITIONS

In this chapter, unless the context requires another meaning:

(1) "Board" means the state board of medical practice established by chapter 23 of this title.

(2) "Disciplinary action" means any action taken against a licensee or an applicant by the board~~, the appellate officer~~, or on appeal ~~therefrom~~ from that action, when that action suspends, revokes, limits, or conditions licensure in any way, ~~and~~ or when it includes reprimands or an administrative penalty.

* * *

§ 324. PROHIBITIONS; PENALTIES

* * *

(c) A person who violates a provision of this ~~chapter~~ section shall be imprisoned not more than two years or fined not more than ~~$100.00 for the first offense and not more than $500.00 for each subsequent offense~~ $10,000.00.

* * *

§ 371. ELIGIBILITY

To be eligible for licensure as a podiatrist, an applicant must:

* * *

(3) have received a diploma or certificate of graduation from an accredited school of podiatric medicine approved by the board; ~~and~~

(4) successfully complete the examinations given by the National Board of Podiatry Examiners; and

(5) if the applicant has not engaged in practice as a podiatrist within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 373. RENEWAL OF LICENSURE

(a) ~~Licenses shall be renewable every two years without examination and on payment of the required fee~~ A person licensed by the board to practice podiatry shall apply biennially for the renewal of his or her license. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee; however, any podiatrist while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a podiatrist at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the podiatrist's return from activation or deployment, provided the podiatrist notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license. The board shall register the applicant and issue the renewal license. Within one month following the date by which renewal is required, the board shall pay the license renewal fees into the medical practice board special fund.

(b) A license which has lapsed may be reinstated on payment of a renewal fee and a late renewal penalty. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

* * *

(d) All applicants shall demonstrate that the requirements for licensure are met.

§ 374. FEES; LICENSES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter,~~ $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter,~~ $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

§ 375. UNPROFESSIONAL CONDUCT

(a) ~~The term "unprofessional conduct" as used in this chapter shall mean the conduct prohibited by this chapter.~~

(b) The following conduct and the conduct described in section 1354 of this title by a licensed podiatrist constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of a license~~ misrepresentation in applying for or procuring a podiatry license or in connection with applying for or procuring a periodic renewal of a podiatry license;

* * *

(c) Unprofessional conduct includes the following actions by a licensee:

* * *

(3) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; and

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(7) administering, dispensing or prescribing any controlled substance other than as authorized by law;

(8) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the podiatrist's ability to practice.

* * *

§ 376. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any person including a state or federal agency and the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board charging any podiatrist practicing in the state with unprofessional conduct, specifying the grounds. The board ~~may~~ shall initiate ~~disciplinary action in any complaint against~~ an investigation of a podiatrist ~~and~~ when a complaint is received or may act without having received a complaint.

(c) After giving an opportunity for a hearing ~~and upon a finding of unprofessional conduct~~, the board ~~may suspend or revoke a license, refuse to issue or renew a license, issue a warning, or limit or condition a license~~ shall take disciplinary action described in subsection 1361(b) of this title against a podiatrist or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

Sec. 2. 26 V.S.A. chapter 23 is amended to read:

CHAPTER 23. MEDICINE ~~AND SURGERY~~

Subchapter 1. General Provisions

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) ~~A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters "Dr.," "Doctor," "Professor," "M.D.," or "M.B.," in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure or relief of any bodily injury, pain, infirmity or disease, or who follows the occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.~~ Practice of medicine means:

(A) using the designation "Doctor," "Doctor of Medicine," "Physician," "Dr.," "M.D.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Vermont;

(B) advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in the jurisdiction;

(C) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(D) offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;

(E) offering or undertaking to perform any surgical operation upon any person;

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the state by a physician located outside the state as a result of the transmission of individual patient data by electronic or other means from within the state to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

* * *

§ 1313. EXEMPTIONS

(a) ~~Except as to the provisions of sections 1398 and 1399 of this title, this chapter shall not apply to persons licensed to practice osteopathy under chapter~~

~~33 of this title; or to persons licensed to practice chiropractic under the laws of the state; or to persons licensed under the laws in force prior to December 9, 1904, or to commissioned officers~~ The provisions of this chapter shall not apply to the following:

(1) a health care professional licensed or certified by the office of professional regulation when that person is practicing within the scope of his or her profession;

(2) a member of the United States ~~army, navy or marine hospital service~~ military or national guard, including a national guard member in state status, or to any person ~~or persons~~ giving aid, assistance, or relief in emergency or accident cases pending the arrival of a regularly licensed physician ~~or surgeon.~~;

~~(b)~~(3) ~~This chapter shall not apply to a nonresident physician or surgeon who is called to treat a particular case in this state and who does not otherwise practice in this state, provided that such nonresident physician or surgeon is duly licensed where he resides and that the state of his residence grants the same privilege to duly licensed practitioners of this state. This chapter shall not prevent~~ a nonresident physician ~~or surgeon from~~ coming into this state ~~for consultation~~ to consult or using telecommunications to consult with a duly licensed practitioner herein ~~nor shall it prevent,~~; or

(4) a duly licensed physician ~~or surgeon of an adjoining~~ in another state, ~~or of the Dominion of~~ in Canada ~~from coming into a town bordering thereon, in this state for the purpose of treating a sick or disabled person therein~~, or in another nation as approved by the board who is visiting a medical school or a teaching hospital in this state to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that instruction and is under the supervision of a physician licensed by the board.

~~(c)~~(b) The provisions of sections 1311 and 1312 of this title shall not apply to a person, firm or corporation that manufactures or sells patent, compound or proprietary medicines, that are compounded according to the prescription of a physician who has been duly authorized to practice medicine, or to the domestic administration of family remedies.

* * *

(e) ~~Notwithstanding the provisions of subsection 1313(d) of this title, no physician's assistant shall engage in the practice of optometry as defined in section 1601 of this title.~~

* * *

§ 1314. ILLEGAL PRACTICE

(a) A person who, not being licensed, advertises or holds himself or herself out to the public as described in section 1311 of this title, or who, not being

licensed, practices medicine ~~or surgery~~ as defined in section 1311 of this title, or who practices medicine ~~or surgery~~ under a fictitious or assumed name, or who impersonates another practitioner or who is not a licensed health care provider as defined in 18 V.S.A. § 5202 and signs a certificate of death for the purpose of burial or removal, shall be imprisoned not more than ~~three months~~ two years or fined not more than ~~$200.00 nor less than $50.00~~ $10,000.00, or both.

* * *

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~commissioner of health~~ board, along with supporting information and evidence, any disciplinary action taken by it or its staff which significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The commissioner of health shall forward any such information or evidence he or she receives immediately to the board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the commissioner of mental health and the commissioner of disabilities, aging, and independent living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.

* * *

(e) A person who violates this section shall be subject to a civil penalty of not more than ~~$1,000.00~~ $10,000.00.

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY MATTERS

* * *

(c) The commissioner of health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

* * *

(2) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action, the following additional information, except for medical and other protected health

information contained therein pertaining to any identifiable person that is otherwise confidential by state or federal law:

* * *

(E) stipulations ~~filed with~~ presented to the board at a public meeting; and

* * *

(f) For the purposes of this section, "disciplinary action" means action that suspends, revokes, limits, or conditions licensure or certification in any way, and includes reprimands and administrative penalties.

(g) Nothing in this section shall prohibit the disclosure of information by the commissioner regarding disciplinary complaints to Vermont or other state or federal law enforcement or regulatory agencies in the execution of its duties authorized by statute or regulation, including the department of disabilities, aging, and independent living or the department of banking, insurance, securities, and health care administration in the course of its investigations about an identified licensee, provided the agency or department agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section.

(h) Nothing in this section shall prohibit the board, at its discretion, from sharing investigative and adjudicatory files of an identified licensee with another state, territorial, or international medical board at any time during the investigational or adjudicative process.

(i) Neither the commissioner nor any person who received documents, material, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

Subchapter 2. Board of Medical Practice

§ 1351. BOARD OF MEDICAL PRACTICE

(a) A state board of medical practice is created. The board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a ~~physician's~~ physician assistant ~~certified~~ licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist ~~as described in section 322~~ licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The governor, with the advice and consent of the senate, shall appoint the members of the board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term (originally or to fill

a vacancy) may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the board may be removed by the governor at any time. The board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The board shall meet upon the call of the chair or the commissioner of health, or at such other times and places as the board may determine. Except as provided in section 1360 of this title, nine members of the board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present shall be required to carry any motion or resolution, to adopt any rule, to pass any measure or to authorize any decision or order of the board.

(b) In the performance of their duties, members of the board shall be paid ~~$30.00~~ a per diem and their actual and necessary expenses as provided by 32 V.S.A. § 1010(b).

(c) The board of medical practice is established as an office within the department of health. With respect to the board, the commissioner shall have the following powers and duties to:

* * *

(4) act as custodian of the records of the board; ~~and~~

(5) prepare an annual budget and administer money appropriated to the board by the general assembly. The budget of the board shall be part of the budget of the department. A board of medical practice regulatory fee fund is created. All board regulatory fees received by the department shall be deposited into this fund and used to offset up to two years of the costs incurred by the board, and shall not be used for any purpose other than professional regulation and responsibilities of the board, as determined by the commissioner of health. To ensure that revenues derived by the department are adequate to offset the cost of regulation, the commissioner shall review fees from time to time, and present proposed fee changes to the general assembly;

(6) prepare and maintain a registry of all physicians licensed by the board; and

(7) make available an accounting of all fees and fines received by the board and all expenditures and costs of the board annually.

* * *

§ 1353. POWERS AND DUTIES OF THE BOARD

The board shall have the following powers and duties to:

(1) License and certify health professionals pursuant to this title.

(2) Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner practicing pursuant to section 1313 of this title, and to hold hearings to determine whether such charges are substantiated or unsubstantiated.

~~(2)~~(3) Issue subpoenas and administer oaths in connection with any investigations, hearings, or disciplinary proceedings held under this chapter.

~~(3)~~(4) Take or cause depositions to be taken as needed in any investigation, hearing or proceeding.

~~(4)~~(5) Undertake any such other actions and procedures specified in, or required or appropriate to carry out, the provisions of this chapter and chapters 7, 29, 31, and 52 of this title.

~~(5)~~(6) Require a licensee or applicant to submit to a mental or physical examination, and an evaluation of medical knowledge and skill by individuals or entities designated by the board if the board has a reasonable basis to believe a licensee or applicant may be incompetent or unable to practice medicine with reasonable skill and safety. The results of the examination or evaluation shall be admissible in any hearing before the board. The results of an examination or evaluation obtained under this subsection and any information directly or indirectly derived from such examination or evaluation shall not be used for any purpose, including impeachment or cross-examination against the licensee or applicant in any criminal or civil case, except a prosecution for perjury or giving a false statement. The board shall bear the cost of any examination or evaluation ordered and conducted pursuant to this subdivision in whole or in part if the licensee demonstrates financial hardship or other good cause. The licensee or applicant, at his or her expense, shall have the right to present the results or reports of independent examinations and evaluations for the board's due consideration. An order by the board that a licensee or applicant submit to an examination, test or evaluation shall be treated as a discovery order for the purposes of enforcement under ~~sections~~ 3 V.S.A. §§ 809a and 809b ~~of Title 3~~. The results of an examination or evaluation obtained under this subdivision shall be confidential except as provided in this subdivision.

(7) Investigate all complaints of illegal practice of medicine and refer any substantiated illegal practice of medicine to the office of the attorney general or the state's attorney in the county in which the violation occurred.

(8) Obtain, at the board's discretion, from the Vermont criminal information center a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation, for any applicant, licensee, or holder of certification. The board may also inquire of Interpol for any information on criminal history records of

an applicant, licensee, or holder of certification. Each applicant, licensee, or holder of certification shall consent to the release of criminal history records to the board on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c. When the board obtains a criminal history record, it shall promptly provide a copy of the record to the applicant, licensee, or holder of certification and inform him or her of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. When fingerprinting is required pursuant to this subdivision, the applicant, licensee, or holder of certification shall bear all costs associated with fingerprinting. The board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter. For purposes of this subdivision, "criminal history record" is as defined in 20 V.S.A. § 2056a.

(9) Inquire, at the board's discretion, of the Vermont department for children and families or of the Vermont department of disabilities, aging, and independent living to determine whether any applicant, licensee, or holder of certification who may provide care or treatment to a child or a vulnerable adult is listed on the child protection registry or the vulnerable adult abuse, neglect, and exploitation registry.

§ 1354. UNPROFESSIONAL CONDUCT

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

(1) ~~fraudulent~~ fraud or ~~deceptive procuring or use of a license~~ misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license;

* * *

(5) ~~addiction to narcotics,~~ habitual ~~drunkenness~~ or ~~rendering professional services to a patient if the physician is intoxicated or under the influence of drugs~~ excessive use or abuse of drugs, alcohol, or other substances that impair the licensee's ability to practice medicine;

* * *

(15) practicing medicine with a physician who is not legally practicing within the state, or aiding or abetting such physician in the practice of medicine; except that it shall be legal to practice in an accredited preceptorship or residency training program or pursuant to section 1313 of this title;

* * *

(23) revocation of a license to practice medicine or surgery in another jurisdiction on one or more of the grounds specified in ~~subdivisions (1) (25) of~~ this section;

* * *

(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession, or failure to report to the board a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title;

(33)(A) providing, prescribing, dispensing or furnishing medical services or prescription medication or prescription-only devices to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:

(i) a reasonable effort to verify that the person requesting medication is in fact the patient, and is in fact who the person claims to be;

(ii) establishment of documented diagnosis through the use of accepted medical practices; and

(iii) maintenance of a current medical record.

(B) For the purposes of this subdivision (33), an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.

(C) The following would not be in violation of this subdivision (33) if transmitted or received by computer or other electronic means:

(i) initial admission orders for newly hospitalized patients;

(ii) prescribing for a patient of another physician for whom the prescriber has taken the call;

(iii) prescribing for a patient examined by a licensed advanced practice registered nurse, physician assistant, or other advanced practitioner authorized by law and supported by the physician;

(iv) continuing medication on a short-term basis for a new patient, prior to the patient's first appointment; or

(v) emergency situations where life or health of the patient is in imminent danger;

(34) failure to provide to the board such information it may reasonably request in furtherance of its statutory duties. The patient privilege set forth in 12 V.S.A. § 1612 shall not bar the licensee's obligations under this subsection (a) and no confidentiality agreement entered into in concluding a settlement of a malpractice claim shall exempt the licensee from fulfilling his or her obligations under this subdivision;

(35) disruptive behavior which involves interaction with physicians, hospital personnel, office staff, patients, or support persons of the patient or others that interferes with patient care or could reasonably be expected to adversely affect the quality of care rendered to a patient;

(36) commission of any sexual misconduct which exploits the physician-patient relationship, including sexual contact with a patient, surrogates, or key third parties;

(37) prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for the licensee's own use or to an immediate family member as defined by rule;

(38) signing a blank or undated prescription form;

(39) use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of chapter 31 of this title.

* * *

§ 1355. COMPLAINTS; HEARING COMMITTEE

(a) Any person, firm, corporation, or public officer may submit a written complaint to the ~~secretary charging~~ board alleging any person practicing medicine ~~or surgery~~ in the state ~~with~~ committed unprofessional conduct, specifying the grounds therefor. ~~If the board determines that such complaint merits consideration, or~~ if the board shall have reason to believe, without a formal complaint, that any person practicing medicine or surgery in the state has been guilty of unprofessional conduct, and in the case of every formal complaint received, the chairman The board shall initiate an investigation of the physician when a complaint is received or may act on its own initiative without having received a complaint. The chairperson shall designate four members, including one public member to serve as a committee to hear or investigate and report upon such charges.

* * *

(c) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.

(d) The hearing committee may close portions of hearings to the public if the hearing committee deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

(e) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the board deems it appropriate in order to protect the identity of the victim and the confidentiality of his or her medical records.

* * *

§ 1357. TIME AND NOTICE OF HEARING

The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than 30 days after service of the charge upon the person complained against. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the person complained against that he or she may file with the secretary a written response within 20 days of the date of service. ~~Such~~ The notice shall also notify the person complained against that a stenographic record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her and to examine such documentary evidence as may be produced against him or her.

* * *

§ 1359. REPORT OF HEARING

Within 30 days after holding a hearing under the provisions of section 1357 ~~and section 1358~~ of this title, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence.

§ 1360. HEARING BEFORE BOARD

* * *

(d) The board may close portions of hearings to the public if the board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

§ 1361. DECISION AND ORDER

* * *

(b) In such order, the board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the board determines is proper, including imposing an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and licensees. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(c) If the person complained against is found not guilty, or the proceedings against him or her are dismissed, the board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.

* * *

§ 1365. NOTICE OF CONVICTION OF CRIME; INTERIM SUSPENSION OF LICENSE

(a) The board shall treat a certified copy of the judgment of conviction of a crime for which a licensee may be disciplined under ~~subdivision~~ section 1354~~(a)(3)~~ of this title as an unprofessional conduct complaint. The record of conviction shall be conclusive evidence of the fact that the conviction occurred. If a person licensed under this chapter is convicted of a crime by a court in this state, the clerk of the court shall within 10 days of such conviction transmit a certified copy of the judgment of conviction to the board.

* * *

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the department of health which will be responsible for the compilation of all data required under this section and any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or

registered by the department, pursuant to the provisions of this title, in a format created that shall be available for dissemination to the public:

* * *

(6)(A) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the last 10 years, and all settlements of medical malpractice claims in which a payment is made to a complaining party within the last 10 years. Dispositions of paid claims shall be reported in a minimum of three graduated categories, indicating the level of significance of the award or settlement, if valid comparison data are available for the profession or specialty. Information concerning paid medical malpractice claims shall be put in context by comparing an individual health care professional's medical malpractice judgment awards and settlements to the experience of other health care professionals within the same specialty within the New England region or nationally. The commissioner may, in consultation with the Vermont medical society, report comparisons of individual health care professionals covered under this section to all similar health care professionals within the New England region or nationally.

(B) Comparisons of malpractice payment data shall be accompanied by:

(i) an explanation of the fact that ~~physicians~~ professionals treating certain patients and performing certain procedures are more likely to be the subject of litigation than others;

(ii) a statement that the report reflects data for the last 10 years, and the recipient should take into account the number of years the ~~physicians~~ professional has been in practice when considering the data;

* * *

(iv) an explanation of the possible effect of treating high-risk patients on a ~~physician's~~ professional's malpractice history; and

* * *

(C) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the health care professional. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the licensing authority from providing further explanatory information regarding the significance of categories in which settlements are reported. Pending malpractice claims and actual

amounts paid by or on behalf of a ~~physician~~ professional in connection with a malpractice judgment, award or settlement shall not be disclosed by the commissioner of health or by the licensing authority to the public. Nothing herein shall be construed to prevent the licensing authority from investigating and disciplining a health care professional on the basis of medical malpractice claims that are pending.

* * *

(c) The profile shall include the following conspicuous statement: "This profile contains information which may be used as a starting point in evaluating the ~~physician~~ professional. This profile should not, however, be your sole basis for selecting a ~~physician~~ professional."

Subchapter 3. Licenses

§ 1391. ~~GENERAL PROVISIONS~~ QUALIFICATIONS FOR MEDICAL LICENSURE

* * *

(b) If a person successfully completes the examination, he or she may then apply for licensure to practice medicine ~~and surgery~~ in the state of Vermont. In addition, each applicant ~~must appear for a personal interview with one or more members of the~~ may be interviewed by a board member.

* * *

(e) An applicant for limited temporary license, who shall furnish the board with satisfactory proof that he or she has attained the age of majority, ~~and~~ is of good moral character, ~~that he or she~~ is a graduate of a legally chartered medical school of this country or of a foreign country ~~having~~ that is recognized by the board and which has power to grant degrees in medicine, that all other eligibility requirements for house officer status have been met, and that he or she has been appointed an intern, resident, fellow or medical officer in a licensed hospital or in a clinic which is affiliated with a licensed hospital, or in any hospital or institution maintained by the state, or in any clinic or outpatient clinic affiliated with or maintained by the state, may upon the payment of the required fee, be granted a limited temporary license by the board as a hospital medical officer for a period of up to 54 weeks and such license may be renewed or reissued, upon payment of the fee, for the period of the applicant's postgraduate training, internship, or fellowship program. Such limited temporary license shall entitle the said applicant to practice medicine only in the hospital or other institution designated on his or her certificate of limited temporary license and in clinics or outpatient clinics operated by or affiliated with such designated hospital or institution and only if such applicant is under the direct supervision and control of a licensed physician. Such licensed

physician shall be legally responsible and liable for all negligent or wrongful acts or omissions of the limited temporary licensee and shall file with the board the name and address both of himself or herself and the limited temporary licensee and the name of such hospital or other institution. Such limited temporary license shall be revoked upon the death or legal incompetency of the licensed physician or, upon ten days written notice, by withdrawal of his or her filing by such licensed physician. The limited temporary licensee shall at all times exercise the same standard of care and skill as a licensed physician, practicing in the same specialty, in the state of Vermont. Termination of appointment as intern, resident, fellow or medical officer of such designated hospital or institution shall operate as a revocation of such limited temporary license. An application for limited temporary license shall not be subject to ~~section~~ subsection 1391(d) of this title.

§ 1392. [Repealed.]

§ 1393. EXAMINATIONS

The examinations shall be wholly or partly in writing, in the English language, and shall be of a practical character, sufficiently strict to test the qualifications of the applicant. In its discretion the board may use multiple choice style examinations provided by the National Board of Medical Examiners or by the Federation of State Medical Boards ~~(The Federation Licensing Examination or FLEX)~~, or as determined by rule. The ~~examinations~~ examination shall embrace the general subjects of anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutics, and legal medicine. The subjects covered by the National Board ~~or FLEX~~ of Medical Examiners examination shall be considered to have met the requirements of this section. If the applicant passes the ~~National Board of Examiners test or FLEX~~ examination approved by the board and meets the other standards for licensure, he or she will qualify for licensure.

* * *

§ 1395. LICENSE WITHOUT EXAMINATION

(a) Without examination the board may, upon payment of the required fee, issue a license to a reputable physician ~~or surgeon~~ who personally appears and presents a certified copy of a certificate of registration or a license issued to him or her in a jurisdiction whose requirements for registration are deemed by the board as equivalent to those of this state, providing that such jurisdiction grants the same reciprocity to a Vermont physician or by the national board of medical examiners.

(b) Without examination the board may issue a license to a reputable physician ~~or surgeon~~ who is a resident of a foreign country and who shall

furnish the board with satisfactory proof that he or she has been appointed to the faculty of a medical college accredited by the Liaison Committee on Medical Education (LCME) and located within the state of Vermont. An applicant for a license under this subsection shall furnish the board with satisfactory proof that he or she has attained the age of majority, is of good moral character, is licensed to practice medicine in his or her country of residence, and that he or she has been appointed to the faculty of an LCME accredited medical college located within the state of Vermont. The information submitted to the board concerning the applicant's faculty appointment shall include detailed information concerning the nature and term of the appointment and the method by which the performance of the applicant will be monitored and evaluated. A license issued under this subsection shall be for a period no longer than the term of the applicant's faculty appointment and may, in the discretion of the board, be for a shorter period. A license issued under this subsection shall expire automatically upon termination for any reason of the licensee's faculty appointment.

(c) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a physician who holds an unrestricted license in all jurisdictions where the physician is currently licensed, and who certifies to the Vermont board of medical practice that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee health care clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee, or any other requirement for board licensure. The physician shall file with the board, on forms provided by the board and based on criteria developed by the board, information on medical qualifications, professional discipline, criminal record, malpractice claims, or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice medicine ~~or surgery~~ on a voluntary basis in Vermont.

§ 1396. REQUIREMENTS FOR ADMISSION TO PRACTICE

(a) The standard of requirements for admission to practice in this state, under section 1395 of this title, shall be as follows:

* * *

(4) Moral: Applicant shall present letters of reference as to moral character and professional competence from the chief of service and two other active physician staff members at the hospital where he or she was last affiliated. In the discretion of the board, letters from different sources may be presented.

* * *

(7) Practice: Applicant shall have practiced medicine within the last three years as defined in section 1311 of this title or shall comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1398. REFUSAL OR REVOCATION OF LICENSES

1. The board may refuse to issue the licenses provided for in section 1391 of this title to persons who ~~have been convicted of the practice of criminal abortion, or who~~, by false or fraudulent representations, have obtained or sought to obtain practice in their profession, or by false or fraudulent representations of their profession, have obtained or sought to obtain money or any other thing of value, or who assume names other than their own, or for any other immoral, unprofessional or dishonorable conduct. ~~For like cause, or when a licensee has been admitted to a mental hospital or has become incompetent by reason of senility, the board may suspend or revoke any certificate issued by it.~~ However, a certificate shall not be suspended, revoked, or refused until the holder or applicant is given a hearing before the board. In the event of revocation, the holder of any certificate so revoked shall forthwith relinquish the same to the secretary of the board.

§ 1399. [Repealed.]

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health~~.

(b) A licensee for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine expiring after August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to assure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be

appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) All licensees shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

~~(c)~~(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee ~~and~~, the late renewal penalty, and if applicable, by completion of the required continuing medical education requirement as established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

§ 1401. [Expired.]

§ 1401a. FEES

(a) The department of health shall collect the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter~~, $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter~~, $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

* * *

§ 1403. PROFESSIONAL CORPORATIONS; MEDICINE ~~AND SURGERY~~

A person licensed to practice medicine ~~and surgery~~ under this chapter may own shares in a professional corporation created under chapter 4 of Title 11 which provides professional services in the medical and nursing professions.

* * *

Subchapter 5. Quality Assurance Data

* * *

§ 1446. DIRECTORS OF CORPORATION

The board of directors of the Vermont Program for Quality in Health Care, Inc. shall include ~~without limitation~~ the commissioner of the department of health~~, the chair of the hospital data council~~ and two directors, each of whom represents at least one of the following populations: elderly, ~~handicapped~~ people with disabilities, or low income individuals.

* * *

Sec. 3. 26 V.S.A. chapter 29 is amended to read:

CHAPTER 29. ANESTHESIOLOGIST ASSISTANTS

* * *

§ 1654. ELIGIBILITY

To be eligible for certification as an anesthesiologist assistant, an applicant shall have:

(1) obtained a master's degree from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs, or their successor agencies, or graduated from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation or the Commission of Accreditation of Allied Health Education Programs, prior to January 1, 1984; ~~and~~

(2) satisfactorily completed the certification examination given by the NCCAA and be currently certified by the NCCAA; and

(3) if the applicant has not engaged in practice as an anesthesiologist assistant within the last three years, complied with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1656. RENEWAL OF CERTIFICATION

(a) Certifications shall be ~~renewable~~ renewed every two years ~~on payment of the required fee and submission of proof of current, active NCCAA certification~~. At least one month prior to the date on which renewal is required, the board shall send to each anesthesiologist assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the anesthesiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active NCCAA certification. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if such certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 1658. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified anesthesiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring an anesthesiologist assistant certificate or in connection with applying for or procuring a periodic renewal of an anesthesiologist assistant certificate;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the anesthesiologist assistant's ability to provide medical services; or

~~(19)~~(20) revocation of certification to practice as an anesthesiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1) (18)~~(1)–(19) of this subsection.

* * *

§ 1659. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, an anesthesiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging any anesthesiologist assistant practicing in the state is engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of an anesthesiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against an anesthesiologist assistant or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund and shall not be used for any other purpose other than professional regulation and other responsibilities of the board, as determined by the commissioner of health.

* * *

§ 1662. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification, $115.00;

(ii) Each additional application, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal, $115.00;

(ii) Each additional renewal, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the NCCAA.

* * *

§ 1664. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 4. 26 V.S.A. chapter 31 is amended to read:

CHAPTER 31. ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANTS

* * *

§ 1732. DEFINITIONS

2. As used in this chapter:

(1) "Accredited physician assistant program" means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) "Board" means the state board of medical practice established by chapter 23 of this title.

~~(2)~~(3) ~~"Contract" means a legally binding agreement, expressed in writing, containing the terms of employment of a physician's assistant.~~ "Delegation agreement" means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians.

~~(3)~~(4) "Physician" means an individual licensed to practice medicine pursuant to ~~chapters~~ chapter 23 ~~and~~ or 33 of this title.

~~(4)~~(5) "~~Physician's~~ Physician assistant" means an individual ~~certified~~ licensed by the state of Vermont who is qualified by education, training, experience, and personal character to provide medical ~~services under~~ care with the direction and supervision of a Vermont licensed physician.

~~(5) "Physician's assistant trainee" means a person who is not certified as a "physician's assistant" under this chapter but who assists a physician under the physician's direct supervision for the purpose of acquiring the basic knowledge and skills of a physician's assistant by the apprentice-preceptor mode of education.~~

(6) ~~"Protocol" means a detailed description of the duties and scope of practice delegated by a physician to a physician's assistant~~ "Supervising physician" means an M.D. or D.O. licensed by the state of Vermont who

oversees and accepts responsibility for the medical care provided by a physician assistant.

(7) "Supervision" means the direction and review by the supervising physician~~, as determined to be appropriate by the board,~~ of the medical ~~services~~ care provided by the ~~physician's~~ physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication.

(8) "Disciplinary action" means any action taken against a ~~certified physician's~~ physician assistant~~, a registered physician's assistant trainee~~ or an applicant by the board~~, the appellate officer,~~ or on appeal therefrom, when that action suspends, revokes, limits, or conditions ~~certification or registration~~ licensure in any way, and includes reprimands and administrative penalties.

§ 1733. ~~CERTIFICATION AND REGISTRATION~~ LICENSURE

(a) The state board of medical practice is responsible for the ~~certification~~ licensure of ~~physician's~~ physician assistants ~~and the registration of physician's assistant trainees,~~ and the commissioner of health shall adopt, amend, or repeal rules regarding the training, practice ~~and,~~ qualification, and discipline of ~~physician's~~ physician assistants.

(b) ~~All applications for certification shall be accompanied by an application by the proposed supervising physician which shall contain a statement that the physician shall be responsible for all medical activities of the physician's assistant~~ In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the board and copies shall be kept on file at each of the physician assistant's practice sites.

~~(c) All applications for certification shall be accompanied by a protocol signed by the supervising physician and a copy of the physician's assistant employment contract~~ All applicants and licensees shall demonstrate that the requirements for licensure are met.

~~(d) All physician's assistant trainees shall register biennially with the board. Registrants shall provide the board with such information as it may require, including a copy of an employment contract and description of the apprenticeship program involved~~

§ 1734. ELIGIBILITY

(a) ~~To be eligible for certification as a physician's assistant, an applicant shall:~~

~~(1) have graduated from a board-approved physician's assistant program sponsored by an institution of higher education and have satisfactorily completed the certification examination given by the National Commission on the Certification of Physicians' Assistants (NCCPA); or~~

~~(2) have completed a board-approved apprenticeship program, including an evaluation conducted by the board. The requirements of apprenticeship programs shall be set by the board to ensure continuing opportunity for nonuniversity trained persons to practice as physician's assistants consistent with ensuring the highest standards of professional medical care~~ The board may grant a license to practice as a physician assistant to an applicant who:

(1) submits a completed application form provided by the board;

(2) pays the required application fee;

(3) has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988;

(4) has passed the certification examination given by the NCCPA;

(5) is mentally and physically able to engage safely in practice as a physician assistant;

(6) does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction which is under current disciplinary action, or has been revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the board has considered the applicant's circumstances and determines that licensure is appropriate;

(7) is of good moral character;

(8) submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications; and

(9) has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by board rules. This requirement shall not apply to applicants who have graduated from an accredited physician assistant program within the last three years.

(b) ~~A person intending to practice as a physician's assistant and his or her supervising physician shall be responsible for designing and presenting an apprenticeship program to the board for approval. The program shall be approved in a timely fashion unless there is good reason to believe that the program would be inconsistent with the public health, safety and welfare.~~

(c) ~~Evaluation procedures followed by the board shall be fair and reasonable and shall be designed and implemented to demonstrate competence in the skills required of a physician's assistant and to reasonably ensure that all applicants are certified unless there is good reason to believe that certification of a particular applicant would be inconsistent with the public health, safety and welfare. An evaluation shall include reviewing statements of the supervising physician who has observed the applicant conduct a physical examination, render a diagnosis, give certain tests to patients, prepare and maintain medical records and charts, render treatment, provide patient education and prescribe medication. The evaluation shall be of activities appropriate to the applicant's approved training program. They shall not be designed or implemented for the purpose of limiting the number of certified physician's assistants.~~

(d) When the board intends to deny an application for ~~certification~~ licensure, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that ~~certification~~ licensure should be granted. After the hearing, the board shall affirm or reverse its preliminary denial.

(e) Failure to maintain competence in the knowledge and skills of a ~~physician's~~ physician assistant, as determined by the board, shall be cause for revocation of ~~certification~~ licensure. ~~Any person whose certification has been revoked for failure to maintain competence may practice for one year as a registered physician's assistant trainee, but shall be examined at the end of that period in the manner provided in subsection (a) of this section. Should the person fail upon reexamination, the person shall be enjoined from practice until meeting all requirements for certification under this chapter.~~

* * *

§ 1734b. RENEWAL OF ~~CERTIFICATION~~ LICENSE

(a) ~~Certifications~~ Licenses shall be ~~renewable~~ renewed every two years ~~without examination and~~ on payment of the required fee. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund. Any physician assistant while on extended active duty in the uniformed services of the United States or

member of the national guard, state guard, or reserve component who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the board of his or her activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(e) A ~~certification~~ license which has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when ~~certification~~ the license was lapsed. However, if ~~such certification~~ a license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

§ 1734c. EXEMPTIONS

Nothing herein shall be construed to require licensure under this chapter of:

(1) a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) a physician assistant employed in the service of the U.S. military or national guard, including national guard in-state status, while performing duties incident to that employment; or

(3) a technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying himself or herself as a physician assistant.

* * *

§ 1735a. SUPERVISION AND SCOPE OF PRACTICE

(a) It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(b) The information required in subsection (a) of this section shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board.

(c) The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide.

(d) A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician. A physician assistant who is authorized by a supervising physician to prescribe controlled substances must register with the federal Drug Enforcement Administration.

(e) A supervising physician and physician assistant shall report to the board immediately upon an alteration or the termination of the delegation agreement.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a ~~certified physician's~~ licensed physician assistant ~~or registered physician's assistant trainee constitutes~~ shall constitute unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of ~~certification or registration~~ licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification or registration~~ misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;

* * *

(b) Unprofessional conduct includes the following actions by a ~~certified physician's~~ licensed physician assistant ~~or a registered physician's assistant trainee~~:

* * *

(3) ~~professional negligence~~ practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the board;

* * *

(7) performing otherwise than at the direction and under the supervision of a physician licensed by the board or an osteopath licensed by the Vermont board of osteopathic physicians and surgeons;

(8) ~~accepting the delegation of, or~~ performing or offering to perform a task or tasks beyond the individual's delegated scope ~~as defined by the board~~ of practice;

(9) administering, dispensing, or prescribing any controlled substance otherwise than as authorized by law;

(10) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services;

(11) failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

* * *

§ 1737. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any member of the public, any physician, and any physician's assistant, any state or federal agency or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a physician assistant practicing in the state committed unprofessional conduct, specifying the grounds. The board may initiate disciplinary action in any complaint against a ~~physician's~~ physician assistant and may act without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a ~~physician's~~ physician assistant~~, physician's assistant trainee,~~ or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so.

Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

(1) a requirement that the individual submit to care or counseling;

(2) a restriction that the individual practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the individual participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(e) Upon application, the board may modify the terms of an order under this section and, if ~~certification or registration~~ licensure has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 1738. USE OF TITLE

Any person who is ~~certified~~ licensed to practice as a ~~physician's~~ physician assistant in this state shall have the right to use the title "~~physician's~~ physician assistant" and the abbreviation "P.A." and "PA-C". No other person may assume that title or use that abbreviation, or any other words, letters, signs, or devices to indicate that the person using them is a ~~physician's~~ physician assistant. ~~A physician's assistant shall not so represent himself or herself unless there is currently in existence, a valid contract between the physician's assistant and his or her employer supervising physician, and unless the protocol under which the physician's assistant's duties are delegated is on file with, and has been approved by, the board.~~

§ 1739. LEGAL LIABILITY

(a) The supervising physician delegating activities to a ~~physician's~~ physician assistant shall be legally liable for such activities of the ~~physician's~~ physician assistant, and the ~~physician's~~ physician assistant shall in this relationship be the physician's agent.

* * *

§ 1739a. INAPPROPRIATE USE OF SERVICES BY PHYSICIAN; UNPROFESSIONAL CONDUCT

Use of the services of a ~~physician's~~ physician assistant ~~or a physician's assistant trainee~~ by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate.

§ 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for ~~certification and registration $115.00 with each additional application at $50.00~~ licensure, $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$115.00 with each additional renewal at $50.00,~~ $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

~~(3) Transfer of certification or registration, $15.00.~~

§ 1741. NOTICE OF USE OF ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANT TO BE POSTED

A physician, clinic, or hospital that utilizes the services of a ~~physician's~~ physician assistant shall post a notice to that effect in a prominent place.

§ 1742. PENALTY

(a) Any person who, not being ~~certified or registered~~ licensed, holds himself or herself out to the public as being ~~so certified or registered~~ licensed under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

§ 1743. MEDICAID REIMBURSEMENT

The secretary of the agency of human services shall, pursuant to the Administrative Procedure Act, promulgate rules providing for a fee schedule for reimbursement under Title XIX of the Social Security Act and chapter ~~36~~ 19 of Title 33, relating to medical assistance which recognizes reasonable cost differences between services provided by physicians and those provided by ~~physician's~~ physician assistants under this chapter.

§ 1744. CERTIFIED PHYSICIAN ASSISTANTS

Any person who is certified by the board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734 of this title.

Sec. 5. 26 V.S.A. chapter 52 is amended to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

* * *

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

* * *

(3) be certified as a radiologic technologist in radiography by the ARRT; ~~and~~

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title; and

(5) if the applicant has not engaged in practice as a radiologist assistant within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 2856. RENEWAL OF CERTIFICATION

(a) ~~Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements~~ At least one month prior to the date on which renewal is required, the board shall send to each radiology assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the radiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active ARRT certification, including compliance with continuing education requirements. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of~~

~~renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring a certificate or in connection with applying for or procuring a periodic recertification as a radiologist assistant;

* * *

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession or failure to report to the board of medical practice a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the radiologist assistant's ability to provide medical services; or

(20) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1) (18)~~(1)–(19) of this subsection.

* * *

§ 2859. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a radiologist assistant practicing in the state engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

* * *

(d) After giving an opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification $115.00;

(ii) Each additional application $ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal $115.00;

(ii) Each additional renewal $ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

* * *

§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 6. 20 V.S.A. § 2060 is amended to read:

§ 2060. RELEASE OF RECORDS

The center is authorized to release records or information requested under ~~section 309 or 6914 of Title~~ 33 V.S.A. §§ 309 or 6914, 26 V.S.A. § 1353, ~~section 4010 of Title~~ 24 V.S.A. § 4010, or chapter 5, subchapter 4 of Title 16.

Sec. 7. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(10) To the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

* * *

Sec. 8. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

* * *

(c) The commissioner or the commissioner's designee may disclose registry information only to:

* * *

(6) the commissioner of health, or the commissioner's designee, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the department of health, including persons to whom a conditional offer of employment has been made; ~~and~~

(7) upon request or when relevant to other states' adult protective services offices; and

(8) the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

Sec. 9. REPEAL

The following sections of Title 26 are repealed:

(1) § 322 (podiatrist as member of board of medical practice);

(2) § 1352 (reports);

(3) § 1397 (recording license);

(4) § 1734a (temporary certification); and

(5) § 1735 (supervision and scope of practice).

Sec. 10. ADOPTION OF RULES

The state board of medical practice shall adopt maintenance of licensure rules for podiatrists, physicians, and physician assistants by September 1, 2012.

Sec. 11. REPORT

By January 15, 2012, the Vermont board of medical practice shall review the process for licensing physicians who seek to provide only pro bono services pursuant to 26 V.S.A. § 1395(c) and report to the house committee on health care regarding any changes to the criteria developed by the board for licensing those physicians pursuant to that subsection or, if no changes are made to the criteria, the reasons therefor.

Sec. 12. EFFECTIVE DATES

This act shall take effect on passage, except that, in Title 26:

(1) §§ 371(5)and 373(b) shall take effect 60 days after the adoption of the maintenance of licensure rule for podiatrists;

(2) §§ 1396(7) and 1400(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians;

(3) §§ 1654(3) and 1656(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 1654(3);

(4) § 1734b(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physician assistants; and

(5) §§ 2854(5) and 2856(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 2854(5).

(Committee vote: 5-0-0)

(For House amendments, see House Journal for April 19, 2011, page 1019.)

Reported favorably by Senator Fox for the Committee on Finance.

(Committee vote: 6-0-1)

H. 448.

An act relating to contributions to the state and municipal employees' retirement systems.

Reported favorably with recommendation of proposal of amendment by Senator Flory for the Committee on Government Operations.

The Committee recommends that the Senate propose to the House to amend the bill by striking out Secs. 1, 2, and 3 and by renumbering the remaining sections to be numerically correct

(Committee vote: 4-0-1)

Reported favorably by Senator Kitchel for the Committee on Appropriations.

(Committee vote: 4-0-3)

(For House amendments, see House Journal for April 12, 2011, page 832.)

House Proposal of Amendment

S. 30

An act relating to assault of a health care worker.

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

Sec. 1. 13 V.S.A. § 1028 is amended to read:

§ 1028. ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER, ~~EMERGENCY ROOM PERSONNEL, OR~~ EMERGENCY MEDICAL

PERSONNEL MEMBER, OR HEALTH CARE WORKER; ASSAULT WITH BODILY FLUIDS

(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.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a ~~law enforcement officer~~ person designated in subsection (a) of this section while the ~~officer~~ person is performing a lawful duty.

(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than $1,000.00, or both.

(c) In imposing a sentence under this section, the court shall take into consideration whether the defendant was a patient at the time of the offense and had a psychiatric illness, the symptoms of which were exacerbated by the surrounding circumstances, irrespective of whether the illness constituted an affirmative defense to the charge.

(d) For purposes of this section:

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

(2) "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.

Sec. 2. LAW ENFORCEMENT ADVISORY BOARD

The law enforcement advisory board shall adopt a model policy to address enforcement of the criminal code as it relates to an assault of a health care worker while he or she is engaged in his or her official duties providing patient care.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment

S. 37

An act relating to expungement of a nonviolent misdemeanor criminal history record.

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

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL RECORDS

§ 7601. DEFINITIONS

As used in this subchapter:

(1) "Court" means the criminal division of the superior court.

(2) "Charge or conviction record" means data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) "Investigation or prosecution record" means all information documenting the investigation or prosecution of the case that is maintained by law enforcement, the prosecuting attorney, or the defense attorney.

(4) "Predicate offense" means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(5) "Qualifying misdemeanor" means a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POST-CONVICTION; PROCEDURE

(a) A person who was convicted of a qualifying misdemeanor or qualifying misdemeanors arising out of the same incident or occurrence may file a petition with the court requesting expungement of the charge or conviction record and sealing of the investigation or prosecution record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(b) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(c) The court shall grant the petition, after hearing, if all of the following conditions are met:

(1) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction. If the person has successfully completed the terms and conditions of an indeterminate term of probation, the court may waive this 10-year wait period.

(2) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

(3) Any restitution ordered by the court has been paid in full.

(4) In the totality of the circumstances, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(d) The court may grant the petition, after hearing, if the following conditions are met:

(1) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(2) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying misdemeanor.

(3) The person has not been convicted of a misdemeanor during the past 15 years.

(4) Any restitution ordered by the court for any misdemeanor of which the person has been convicted has been paid in full.

(5) After considering the particular nature of any subsequent offense, the court finds that expungement of the charge or conviction record and sealing of the investigation or prosecution record for the qualifying misdemeanor serve the interest of justice.

(e) At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement at any hearing on the petition. The

respondent's inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(f) Upon granting a petition pursuant to this section, the court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence.

(g) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a criminal offense may petition the court to expunge the charge or conviction record, and seal the investigation or prosecution record, related to the citation or arrest if:

(1) No criminal charge is filed by the state and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.

(3) The charge is dismissed before trial:

(A) without prejudice and the statute of limitations has expired.

(B) with prejudice.

(4) The defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.

(b) The state's attorney or attorney general shall be the respondent in the matter. At the time the petition is filed, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any petition being granted. The petitioner and the respondent shall be the only parties in the matter.

(c) The court may grant the petition if it finds, in the totality of the circumstances, that expungement of the charge or conviction record and sealing of the investigation or prosecution record, serve the interest of justice.

(d) An order granting a petition pursuant to this section shall direct the recipient to expunge the charge or conviction record and to seal the investigation or prosecution record as provided in section 7604 of this title.

(e) An arresting or investigating agency's records are subject only to sealing, not expungement, under this section.

§ 7604. EFFECT OF EXPUNGEMENT AND SEALING

(a) Upon entry of an order of expungement of a charge or conviction record:

(1) The court shall provide a copy of the order of expungement to the respondent, Vermont criminal information center (VCIC), center for crime victim services, and any other entity that may possess a portion of the charge or conviction record of the criminal offense which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous charge or conviction record only with respect to arrests or convictions that have not been expunged. Upon receiving an inquiry from any person regarding an expunged record, any person or entity that has received a copy of the order of expungement shall respond that "NO RECORD EXISTS."

(3) The court may keep a special index of cases that have been expunged together with the order for expungement and the certificate issued pursuant to section 7602 of this title. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(4) The special index and related documents specified in subdivision (3) of this section shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access only to authorized persons.

(5) Inspection of the expungement order or the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The administrative judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(6) All other court documents in a case that is subject to an expungement order shall be destroyed.

(7) The court administrator shall establish policies for implementing subdivisions (3) – (6) of this subsection.

(b) Upon entry of an order to seal an investigation or prosecution record:

(1) The court shall provide a copy of the sealing order to the respondent, Vermont criminal information center (VCIC), center for crime victim services, the arresting agency, the investigating agency, and any other entity that may possess a portion of the investigation or prosecution record of the qualifying misdemeanor which is the subject of the order. The Vermont criminal information center shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(2) The person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous investigation or prosecution record only with respect to investigations, arrests, or convictions that have not been sealed.

(c) Upon receiving a sealing order, an entity shall:

(1) Seal the investigation or prosecution record;

(2) Enter a copy of the sealing order into the record;

(3) Flag the record as "SEALED" to prevent inadvertent disclosure of sealed information; and

(4) Upon receiving an inquiry from any person regarding a sealed record, respond that "NO RECORD EXISTS."

(d)(1) Notwithstanding a sealing order:

(A) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.

(B) An entity may use an investigation or a prosecution record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(2) An entity may use an investigation or prosecution record sealed in accordance with section 7602 of this title, regarding a person who was convicted, for future criminal investigations or prosecutions only upon an order of a superior court judge in the criminal division. The hearing on an application for such an order may be conducted in a confidential and

nonadversarial manner substantially similar to procedures for obtaining a search warrant.

(e) The person whose record has been sealed shall maintain his or her right to access the sealed record as if the record had not been sealed.

§ 7605. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7606. DENIAL OF PETITION

If a petition is denied by the court pursuant to this chapter, no further petition on that same matter shall be brought for at least five years.

Sec. 2. REPORT; COURT ADMINISTRATOR

On or before January 15, 2015, the court administrator shall report to the general assembly the total number of court orders for expungement of charge or conviction records and sealing of investigation or prosecution records which have been issued by the courts of this state and the types of offenses for which a court ordered expungement of charge or conviction records and sealing of investigation or prosecution records pursuant to this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

House Proposal of Amendment

S. 73

An act relating to raising the penalties for eluding a police officer.

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

Sec. 1. 23 V.S.A. § 1133 is amended to read:

§ 1133. ~~ATTEMPTING TO ELUDE~~ ELUDING A POLICE OFFICER

(a) No operator of a motor vehicle shall fail to bring his or her vehicle to a stop when signaled to do so by an enforcement officer:

(1) displaying insignia identifying him or her as such; or

(2) operating a law enforcement vehicle sounding a siren and displaying a flashing blue or blue and white signal lamp.

(b)(1) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than $1,000.00, or both.

(2)~~(A)~~ A person who violates subsection (a) of this section while operating a vehicle in a negligent or grossly negligent manner in violation of section 1091 of this title shall be imprisoned for not more than five years or fined not more than $1,000.00, or both.

(3)(A) In the event that ~~death or~~ serious bodily injury to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not more than ~~five~~ 15 years or fined not more than ~~$3,000.00~~ $5,000.00, or both.

(B) If ~~death or~~ serious bodily injury to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent or person injured.

(4)(A) In the event that death to any person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator shall be imprisoned for not less than one year nor more than 15 years or fined not more than $10,000.00, or both.

(B) If death to more than one person other than the operator is proximately caused by the operator's knowing violation of subsection (a) of this section, the operator may be convicted of a separate violation of this subdivision for each decedent.

* * *

House Proposal of Amendment

S. 101

An act relating to child support enforcement.

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

In Sec. 1, 15 V.S.A. § 606(d), in subdivision (2), by striking out "the obligated parent lacked the ability" and inserting in lieu thereof "since that date, the obligated parent became unable"

House Proposal of Amendment

S. 105

An act relating to miscellaneous agricultural subjects.

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

Sec. 1. 6 V.S.A. chapter 151 is amended to read:

CHAPTER 151. SUPERVISION, INSPECTION AND LICENSING OF DAIRY OPERATIONS

* * *

§ 2672. DEFINITIONS

As used in this part, the following terms have the following meanings:

* * *

(5) "Milk handler" or "handler" is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale within or without the state of Vermont. "Milk handler" or "handler" shall not mean a milk producer.

* * *

(7) "Milk": Unless preceded or succeeded by an explanatory term, means the pure lacteal secretion of a type of dairy livestock listed in this subdivision. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.

(A) "Cows' milk" is the colostrum-free, pure, lacteal product of healthy ~~cows~~ cattle which contains not less than 11.50 percentum of total milk solids (to which nothing has been added or taken away). Cows' milk sold in retail packages shall contain not less than 3.25 percent milk fat, and not less than 8.25 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to cows' milk. The additives used in cows' milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(B) "Goats' milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ goats which contains not less than 10 percentum of total milk solids (to which nothing has been added or taken away). Goats' milk sold in retail packages shall contain not less than 2.5 percent milk fat and not less than 7.5 percent nonfat milk solids. ~~The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to goats' milk. The additives used in goats' milk sold in retail packages shall be conspicuously stated in descending order of importance on the label of the package in a manner approved by the secretary. Such milk may be standardized by the addition of pure, fresh skim milk or cream as defined by regulation.~~

(C) "Sheep's milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ sheep which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

(D) "Water buffalo's milk" is the colostrum-free, pure, lacteal product of healthy ~~dairy~~ water buffalo which contains no less than 11.50 percent of total milk solids (to which nothing has been added or taken away).

~~(8) "Imitation dairy products" are those products containing no milk which by their texture, flavor, color, packaging, or other characteristics, could be confused by consumers with established and defined dairy products or are sold or offered for sale as substitutes for milk or fluid dairy products.~~

~~(9) "An imitation dairy product handler" is a person, firm, unincorporated association or corporation engaged in the business of buying, selling, packaging or processing imitation dairy products for sale within or without the state of Vermont.~~

~~(10) "An imitation dairy product handler's license" is a license issued by the secretary which authorizes the licensee to carry on the business of an imitation dairy products handler.~~

~~(11)~~(8) "Retail package of dairy product ~~or imitation dairy product~~" is a package to be sold to a consumer.

~~(12)~~(9) "Dairy ~~products~~ product" ~~are~~ is milk, or ~~the products~~ a product derived therefrom, which ~~conform~~ conforms to the appropriate legal standard or definition for the specific product as defined in this part and regulations made under this part.

~~(13)~~(10) "Fluid dairy products" are milk and fluid dairy products derived from milk, including cultured products, as defined by regulations made under this part.

~~(14)~~(11) "Licensed technician" is a person who has demonstrated by appropriate tests, to the satisfaction of the secretary, that he or she has the skill, experience, ability, and integrity to perform tests that are used as a basis for payment or acceptance of dairy products ~~or imitation dairy products~~, and who holds one or more licenses issued by the secretary authorizing ~~him~~ the person to carry on one or more of these activities.

~~(15)~~(12) "Approved dairy laboratory" is any place or premise which has been inspected and approved by the secretary or, those premises outside Vermont approved and listed by the National Conference on Interstate Milk Shipments in accordance with the most recent evaluation of milk laboratories as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, where tests are made on milk~~,~~ or dairy products~~, or imitation dairy products,~~ to determine the quality or

acceptance of the products. The laboratory shall meet recommendations as set forth in the latest edition of APHA "standard methods for the examination of dairy products." The secretary may terminate approval for cause.

~~(16)~~(13) "Adulteration" means an adulterated dairy product ~~or adulterated imitation dairy product~~ containing noxious, unwholesome, or deleterious material, preservative, drugs, or chemical in a quantity injurious to health; or which does not conform to the definition of the product; or which is not produced, processed, or distributed according to the provisions of this part.

~~(17)~~(14) "Commission" means the Vermont milk commission as constituted in section 2922 of this title.

~~(18)~~(15) "Charitable ~~uses~~ use" means the distribution of milk among poor and needy persons without charge or compensation therefor.

~~(19)~~(16) "Distributor" means any person who sells milk ~~or imitation dairy products~~ to consumers within the state, except those who sell milk ~~or imitation dairy products~~ for consumption on the premises. ~~A producer or person who delivers or sells milk to a distributor only shall not be deemed a distributor.~~

~~(20)~~(17) "Market" means any area designated by the board as a natural marketing area.

~~(21)~~(18) "School lunch milk" means milk sold, offered for sale, or distribution at school buildings, grounds, or other places used for school purposes.

~~(22)~~(19) "Person" means individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units or entities.

~~(23)~~(20) "Additional definitions": The secretary may~~,~~ (after due notice and public hearing) in accordance with chapter 25 of Title 3, promulgate, amend, or rescind definitions of other dairy products ~~and imitation dairy products,~~ including modified milk, dairy processes, and rules relating to specially trained personnel.

~~(24)~~(21) "Drug" or "drugs" mean:

(A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or supplement thereto; and

(B) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(D) articles intended for use as a component of any articles specified in subdivision ~~(24)~~(A), (B), or (C) of this ~~section~~ subdivision (21), but not including devices or their components, parts, or accessories.

~~(25)~~(22) Definitions and standards of milk products not herein defined shall be those established by federal agencies and published in the Code of Federal Regulations.

~~(26)~~(23) "Vermont fresh milk" means milk consisting entirely of fresh milk produced in Vermont.

~~(27)~~(24) "Northeastern fresh milk" means milk consisting entirely of fresh milk produced in Delaware, Maryland, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, or Maine.

(25) "National Conference on Interstate Milk Shipments" means the national nonprofit organization of that same name, or its successor in interest, that deliberates and votes on proposals submitted by individuals from state or local regulatory agencies, the U.S. Food and Drug Administration, the U.S. Department of Agriculture, producers, processors, and consumers who have an interest in the safety of dairy products.

* * *

§ 2677. FLUID DAIRY PRODUCTS FOR LIVESTOCK FEED

A milk plant or handler shall not dispense or deliver fluid dairy products other than whey for livestock feed including poultry except under regulations as may be promulgated by the secretary.

* * *

§ 2681. ADDITIVES

The secretary may, in accordance with chapter 25 of Title 3, promulgate a list of food grade additives which may be added to milk. The additives used in milk sold in retail packages shall be conspicuously stated in descending order of volume on the label of the package in a manner approved by the secretary.

* * *

§ 2701. REGULATIONS

(a) The secretary, in accordance with chapter 25 of Title 3, shall promulgate, and may amend and rescind, dairy sanitation regulations relating to dairy products ~~and imitation dairy products~~ to enforce this chapter, including but not limited to: labeling, weighing, measuring and testing facilities, buildings, equipment, methods, procedures, health of animals, health and capability of personnel, and quality standards. In addition, the uniform

regulation for sanitation requirements, as adopted by the National Conference on Interstate Milk Shippers, and published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Grade A Pasteurized Milk Ordinance (PMO), together with amendments, supplements and revisions thereto, are adopted as part of this chapter, except as modified or rejected by regulation. When adherence to the PMO is deemed unreasonable by the agency for non-Grade "A" products, the most current version of the Recommended Requirements of the United States Department of Agriculture, Agricultural Marketing Service, Milk for Manufacturing Purposes and its Production and Processing may be used.

* * *

§ 2721. HANDLERS' LICENSES

* * *

(c) ~~An imitation dairy products handler shall not transact business in the state unless he or she secures and holds an imitation dairy product handler's license from the secretary. The license shall terminate September 1 each year and shall be procured by August 15 of each year. The secretary shall furnish all forms for applications, licenses and bonds. The imitation dairy products handler shall pay a license fee of $200.00 for an initial application or a license fee of $50.00 for a renewal application at the time the application is delivered to the secretary.~~

* * *

§ 2722a. HEARINGS, AND ACTION UPON APPLICATIONS

(a) Upon receipt of an application for a milk handler's license the secretary shall examine it. If the application is deficient the secretary shall so notify the applicant and return the application together with one-half of the application fee within 30 days of the receipt of the application. If the application is not deficient, the secretary shall ~~set a date for a hearing on the application, shall notify the applicant of that date and shall cause public notice of the hearing to be published in three newspapers of general circulation within the state. The~~ publish notice of the application in one or more publications of general circulation within the state's dairy community at the applicant's expense. The secretary shall also publish notice of the handler's application on the agency's website. An interested party shall have 14 calendar days from the date of publication to request a hearing on the application. The secretary shall grant a request for a hearing when an interested party can demonstrate a reasonable belief that the applicant will not promote the general good of the dairy industry and the consuming public pursuant to Vermont rule 20-021-001 adopted by the agency of agriculture, food and markets. Where such a showing is made, a hearing ~~must~~ shall be held within 60 days of receipt of ~~an~~

~~application but not less than 10 days after public notice has been published~~ the request. In the absence of such a showing or where no request for a hearing is received, the secretary may hold a hearing at his or her discretion.

(b) In the ~~case of a new application~~ event a hearing is convened, the hearing shall be held in central Vermont unless requested by the applicant to be in the specific area ~~which the applicant intends principally to serve~~ where the applicant will be located. Additional hearings may be held at the discretion of the secretary.

§ 2723. EXEMPTIONS

Handlers' licenses shall not be required from the following persons:

(1) Producers, except producers who sell fluid dairy products at retail in Vermont.

(2) A hotel, restaurant, or other public eating place that sells ~~fluid~~ dairy products for consumption on the premises, or a store which sells packaged dairy products, provided the entire supply of ~~fluid~~ dairy products is purchased from licensed milk handlers.

(3) A person producing unpasteurized milk under chapter 152 of this title, with respect to the sale of that unpasteurized milk only.

(4) A person who holds a frozen dessert license that only utilizes pasteurized frozen dessert mix.

* * *

§ 2741. MILK PLANTS ~~AND IMITATION DAIRY PRODUCTS PLANTS~~

Before issuing a milk handler's license ~~or an imitation dairy products handler's license~~ and at least twice a year thereafter, the secretary shall inspect or cause to be inspected all milk plants ~~and imitation dairy products plants~~ as to their premises, equipment, procedures, and sanitary conditions. ~~He~~ The secretary may enter into reciprocal agreements with or accept the inspection reports of appropriate dairy sanitation agencies of other states, municipalities, or the federal government in lieu of inspection by the secretary, provided their standards and administration are substantially equal to the standards established by the secretary under the provisions of this chapter.

* * *

§ 2743. DAIRY LABORATORIES

(a) The secretary shall, at least annually, inspect or cause to be inspected all premises where dairy products are tested to determine the basis of payment or acceptance. Each handler shall notify the secretary of the place in which tests of producer's dairy products are conducted. Such tests shall be performed only

by licensed technicians. Approved dairy laboratories located outside Vermont are exempt from this inspection.

(b) The secretary shall at least annually inspect ~~approved~~ all in-state dairy laboratories and those out-of-state dairy laboratories not approved by the National Conference on Interstate Milk Shipments and if qualified, they shall be ~~so certified~~ approved by the secretary.

* * *

(d) In case the producer's milk is transported from the farm to a milk plant in another state, the ~~purchaser shall keep the samples and test them at some approved place within the state of Vermont, or if the purchaser elects and agrees to pay the additional cost of supervision by the secretary or his agent, he may test the samples in another state in the plant where the milk is first received from the farm. All testing shall be done by persons holding a testing license issued by the secretary. The secretary may enter the premises of a milk handler and take possession of any or all samples including those from milk producers' deliveries and test them~~ samples shall be tested in an approved dairy laboratory.

§ 2744. ENFORCEMENT

* * *

(d) Right of entry. The secretary or his or her agent may for the purpose of inspection enter at all reasonable times the premises, except the residence, of all milk handlers and producers and examine all pertinent records and personnel and may use reasonable means of determining the sanitary condition of the entire milk producing and handling process. Refusal to permit inspection shall be grounds for revoking a license or ability to ship milk pursuant to chapter 25 of Title 3.

§ 2744a. DRUGS

(a) No producer shall sell or offer for sale milk which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

~~(b)~~(1) In the event that milk from a dairy farm contains a drug, no more milk produced by that producer shall be received by any milk dealer~~,~~ or handler~~, for a period of up to two days~~ until a sample of at least one complete milking has been collected and found negative. In the event of a second violation within a 12-month period, no more milk produced by that producer shall be received by any milk dealer~~,~~ or handler~~,~~ for a period of up to ~~four~~ two days and until a sample of at least one complete milking has been collected and found negative. In the event of a third violation within a 12-month period, the secretary shall, at a minimum, take the same action as required for a second

violation and may prohibit the producer from selling milk in this state. No handler~~,~~ or dealer~~,~~ shall accept milk from a producer whose ability to sell milk is suspended or terminated.

~~(c)~~(2) In lieu of suspending a producer's ability to sell milk, the secretary may issue an administrative penalty. The amount of the penalty shall not exceed the value of the milk which could have been prohibited from sale. A producer who fails to pay an administrative penalty, after opportunity for hearing, shall have his, or her, ability to sell milk suspended until the penalty is paid. In lieu of suspending a producer's ability to sell milk, the secretary may accept the assessment by the milk dealer or handler, against the producer, of damages beyond the milk dealer's, or handler's control which occurred as a result of purchasing the contaminated milk, as an equivalent penalty.

(3) Notwithstanding the provisions of subsection (c) of this section, the secretary may at any time issue an emergency order prohibiting a producer from selling and a handler from accepting any milk until the milk tests negative for drugs.

(b)(1) No producer shall sell livestock for slaughter which contains any drug or drugs in excess of tolerances established by the United States Food and Drug Administration in the Code of Federal Regulations.

(2) In the event that livestock intended for slaughter is found to contain a drug or drugs in excess of levels established by the United States Food and Drug Administration in the Code of Federal Regulations at the time of sale, the secretary may assess an administrative penalty not to exceed $1,000.00 for each violation.

~~(d)~~(c) Before issuing an order or administrative penalty under this section, the secretary shall provide the producer and the handler~~,~~ or dealer~~,~~ an opportunity for hearing. ~~Notwithstanding this requirement, the secretary may at any time issue an emergency order prohibiting a producer from selling, and a handler from accepting, any milk until the milk tests negative for drugs.~~

* * *

Sec. 2. REPEAL

6 V.S.A. § 2753 (segregation of products) is repealed.

Sec. 3. 6 V.S.A. chapter 152 is amended to read:

CHAPTER 152. SALE OF UNPASTEURIZED (RAW) MILK

§ 2775. LIMITED SALE OF UNPASTEURIZED (RAW) MILK PERMISSIBLE

~~The~~ Notwithstanding section 2701 of this title, the production and sale of unpasteurized milk to a consumer for ~~fluid~~ personal consumption is permitted

within the state of Vermont only when produced, marketed, and sold in conformance with this chapter.

§ 2776. DEFINITIONS

~~For the purposes of~~ In this chapter~~,~~:

(1) "Consumer" means a customer who purchases, barters for, or otherwise acquires unpasteurized milk from the farm or delivered from the farm.

(2) "Personal consumption" means the use by a consumer of unpasteurized milk for food or to create a food product made with or from unpasteurized milk which is intended to be ingested by the consumer, members of his or her household, or any nonpaying guests.

(3) "Unpasteurized milk" or "unpasteurized (raw) milk" means ~~unpasteurized milk sold for fluid consumption and does not include unpasteurized milk to be pasteurized or unpasteurized milk produced for use in manufacturing of milk products other than fluid~~ milk that is unprocessed.

(4) "Unprocessed" means milk that has not been modified from the natural state it was in as it left the animal, other than filtering, packaging, and cooling.

§ 2777. STANDARDS FOR THE SALE OF UNPASTEURIZED (RAW) MILK

(a) Unpasteurized milk ~~for fluid consumption~~ shall be sold directly from the producer to the ~~end user~~ consumer for personal consumption only and shall not be resold.

* * *

Sec. 4. 6 V.S.A. chapter 153 is amended to read:

CHAPTER 153. STANDARDS AND PURITY

§ 2801. ADULTERATION PROHIBITED

It is prohibited to sell, transfer, or offer for sale any adulterated dairy product ~~or adulterated imitation dairy product~~ which does not conform to Vermont statutes and regulations adopted thereunder. Nothing herein shall be construed to prohibit the salvage of milk solids for human consumption under regulations adopted by the secretary.

§ 2802. FOREIGN FATS PROHIBITED

A person, firm, or corporation, by himself or herself, his or her servant or agent, or as the servant or agent of another, shall not manufacture, sell, or exchange, or have in possession with intent to sell or exchange, any dairy

products or any of the fluid or solid derivatives of any of them to which has been added any fat or oil other than milk fat, except chocolate ice cream and chocolate milk which may contain the amount of fats other than milk fat normally contained in the chocolate or cocoa used in the manufacture of chocolate ice cream and chocolate milk. This section does not prohibit a fat substitute if it is approved for insertion into a dairy product by the U.S. Food and Drug Administration and is clearly identified in the list of ingredients on the label.

* * *

§ 2811. MARKING OF RETAIL PACKAGES

(a)(1) All retail packages of dairy products~~,~~ and fluid dairy products ~~and imitation dairy products~~ sold or offered for sale shall be plainly and conspicuously marked with:

~~(1)~~(A) The true name of the product as defined by statute or regulation.

~~(2)~~(B) The true name of all ingredients in descending order of importance if it is not a single defined product.

~~(3)~~(C) The name and address of the producer or handler.

~~(4)~~(D) The net weight or volume of package contents.

(2) The secretary may assign identifying numbers for milk plants ~~and imitation dairy products plants~~, which may appear on the package.

(b) The following situations are exempted from the operation of subsection (a) of this section:

(1) Milk sold by a producer to a handler.

(2) A producer who ~~does not deliver and who does not sell or offer for sale more than 25 quarts of milk to the public in any one day~~ sells unpasteurized (raw) milk pursuant to chapter 152 of this title.

* * *

Sec. 5. 6 V.S.A. chapter 155 is amended to read:

CHAPTER 155. FROZEN DESSERTS

* * *

§ 2856. EXEMPTIONS

A person who holds a valid milk handler's license shall be exempt from all licensing provisions of this chapter.

Sec. 6. 6 V.S.A. chapter 157 is amended to read:

CHAPTER 157. BONDS

§ 2881. CONDITIONS AND AMOUNT; FAILURE TO FILE

(a) Except as provided in section 2882 of this title, no handler shall purchase milk from a Vermont ~~producers~~ producer or milk ~~cooperatives~~ cooperative, either directly or through a marketing service owned by one or more cooperatives, and the secretary shall not issue a handler's license, unless the handler furnishes the secretary a good and sufficient surety bond, executed by a surety company duly authorized to transact business in this state in an amount equal to 50 percent for all species other than cattle, and 100 percent for cattle, of the maximum amount due all milk producers in the state who ~~sell~~ sold milk to the handler for a 41-day period during the previous 12 months. ~~He or she~~ The secretary may accept, in lieu of such bond, a guaranteed irrevocable letter of credit. The bonds shall be taken for the benefit of Vermont milk producers and milk cooperatives in this state. At any time in his or her discretion, the secretary may require such handlers to file detailed statements of the business transacted by them in this state, and at any time may require them to give such additional bonds as he or she deems necessary. If the handler refuses or neglects to file the detailed statements or to give bonds required by the secretary, the secretary may suspend the license of the handler until he or she complies with the secretary's orders. The secretary shall report to the attorney general the name of any handler doing business in this state without a license or after suspension of its license by the secretary and the attorney general shall forthwith bring injunction proceedings against the handler. Renewals of bonds specified in this section shall be furnished the secretary 60 days before the effective date of the bond. If the handler fails to file the bonds as required, the secretary shall forthwith publish the name of the handler in four newspapers of general circulation in the state for a period of three consecutive days and notify, by registered mail, producers supplying such handler.

(b) ~~[Deleted.]~~ A milk cooperative that sells milk from a Vermont producer either directly or through a marketing service owned by one or more cooperatives shall file a monthly detailed report that states where the milk from each bulk tank unit served is sold and shall specify the volume of milk that is sold by Vermont cooperative members and independent producers who market their milk through a milk cooperative either directly or through a marketing service owned by one or more cooperatives.

§ 2882. EXEMPTIONS FROM FILING BOND

* * *

(b) A handler who does not purchase milk from Vermont producers or milk cooperatives either directly or through a marketing service owned by one or more cooperatives shall not be required to furnish surety as provided under section 2881 of this title.

(c) A handler who pays ~~a milk cooperative~~ for milk in advance or at the time of delivery shall not be required to furnish surety as provided under section 2881 of this title. Every producer, or milk cooperative either directly or through a marketing service owned by the cooperatives, selling milk to handlers who pay for milk in advance or at the time of delivery shall, on ~~January 1 and~~ July 1 of each year, notify the secretary in writing of the identity of each handler and shall promptly notify the secretary, in writing, of any changes to the most recent notification.

(d) A handler who purchases fewer than 150,000 pounds of milk per month from a milk cooperative, either directly or through a marketing service owned by one or more cooperatives, shall not be required to furnish surety as provided under section 2881 of this title.

* * *

§ 2884. PROCEEDINGS FOR RECOVERY ON BOND

~~Upon breach of the condition of a bond or other security, upon application by the~~ When the condition of a bond or other security is breached, if a producer ~~of~~ or milk cooperative applies to a handler~~,~~ for payment of products furnished to that handler whose account ~~for products furnished such handler~~ remains unpaid as provided in section 2883 of this title, the secretary shall institute appropriate proceedings thereon in his name as trustee for the benefit of all the producers ~~of such~~ or milk cooperatives in this state supplying the handler ~~in this state~~ and to whom such handler may be indebted at the time the proceedings are instituted. The proceedings may be commenced in any county in this state where a producer of the handler resides.

Sec. 7. 6 V.S.A. chapter 163 is amended to read:

CHAPTER 163. VERMONT DAIRY PROMOTION COUNCIL; PRODUCER TAX

§ 2971. CREATION OF COUNCIL

* * *

(b) The milk cooperatives shall provide the secretary of agriculture, food and markets with two nominees for each entitlement of whom one shall be appointed by the secretary. The second nominee shall become an alternate to serve in the absence of the appointee. The secretary of agriculture, food and markets shall appoint three producer members to the council and one alternate to serve in the absence of any one of these three members to represent those

producers not members of a milk cooperative and those cooperatives not eligible under the terms of this section, and one distributor representative, after seeking the advice of producer associations, distributor associations and individual producers and distributors within the state. During the month of February, six members shall be appointed for a one-year term and the balance for a two-year term. Thereafter one-half of the members shall be appointed annually. The council shall serve at the discretion of the secretary. A milk producer who is serving on the Vermont dairy promotion council shall not be a member of the agency disbursing the funds. The appointive members shall each receive ~~$50.00~~ $75.00 per day for each day spent in actual attendance at meetings of the council, but not exceeding a total compensation of ~~$500.00~~ $750.00 per annum for each member, and they also shall receive their actual necessary expenses and mileage while attending to their duties. The secretary shall serve as chair of the council and administer and enforce the provisions of this act.

* * *

§ 2988. REFERENDUM

* * *

(f) All administration costs associated with the referendum vote shall be assessed against the ~~state dairy council~~ Vermont dairy promotion fund.

* * *

Sec. 8. 9 V.S.A. chapter 73 is amended to read:

CHAPTER 73. WEIGHTS AND MEASURES

* * *

§ 2692. BULK MILK TANKS

(a) When installing a farm bulk tank or reconstructing a floor area supporting a bulk tank, the tank shall not be placed in service and used as a commercial measuring device unless a foundation has been constructed with due consideration of frost penetration and of sufficient strength to support the completely liquid-laden tank without change of level, and a steel plate not less than six inches square and not less than one-quarter inch thick is placed under each leg and the steel plate and the tank legs are cemented to the floor. Bulk tanks shall be calibrated using accepted practices approved by the ~~weights and measures division~~ consumer protection section as soon as possible after the milk house and bulk tank installation has been approved by the dairy ~~division~~ section.

* * *

(c) If the secretary determines the bulk milk tank is not an accurate measure for milk~~,~~ (or because of continued movement of the tank caused by a poor foundation) ~~he~~, the secretary may condemn the tank and forbid its use as a measuring device. Any person who alters a bulk tank weight conversion chart, uses other than latest conversion chart issued, uses a condemned tank as a measure, uses a tank without the legs cemented to the floor or changes the level position of a bulk milk tank without immediately notifying the secretary of agriculture, food and markets shall be fined not more than ~~$200.00~~ $500.00 for each offense.

(d) The first handler receiving milk from a producer shall furnish competent personnel licensed by the consumer protection section to ~~assist in the calibration of~~ calibrate the producer's bulk milk tank. The word "handler" as used in this subsection shall mean a person, firm, unincorporated association, or corporation engaged in the business of buying, selling, assembling, packaging, or processing milk or other dairy products, for sale within or ~~without~~ outside the state of Vermont. ~~The handler shall pay $75.00 if the capacity of the tank being calibrated is 0-500 gallons, and another $25.00 for each additional 500 gallons capacity or part thereof.~~

* * *

Sec. 9. AGENCY OF AGRICULTURE, FOOD AND MARKETS EDUCATIONAL MATERIALS REGARDING THE REGULATION OF COMPOSTING ON FARMS

(a) The agency of agriculture, food and markets and the agency of natural resources, after consultation with the regional planning commissions and the compost association of Vermont, shall develop educational materials regarding the regulatory requirements for the operation of a compost facility on a farm. The educational materials shall include a summary of the state regulations for the operation of a compost facility, including the accepted composting practices, the solid waste management rules, and state land use planning under 10 V.S.A. chapter 151.

(b) The agency of agriculture, food and markets and the agency of natural resources shall post the educational materials required by this section on each agency's website and shall conduct outreach activities to inform farmers of the materials produced under this section.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

ORDERED TO LIE

S. 38.

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

PENDING ACTION: Third Reading

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)

David Mears of Montpelier – Commissioner of the Department of Environmental Conservation – By Sen. Brock for the Committee on Natural Resources and Energy. (3/23/11)

Michael Snyder of Stowe – Commissioner of the Department of Forests, Parks and Recreation – By Sen. MacDonald for the Committee on Natural Resources and Energy. (3/23/11)

Annie Noonan of Montpelier – Commissioner of the Department of Labor – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/28/11)

Patrick Berry of Middlebury – Commissioner of the Department of Fish and Wildlife – By Sen. McCormack for the Committee on Natural Resources and Energy. (3/28/11)

Kathryn T. Boardman of Shelburne of Shelburne – Director of the Vermont Municipal Bond Bank – By Sen. Ashe for the Committee on Finance. (3/29/11)

David R. Coates of Colchester – Director of the Vermont Municipal Bond Bank – By Sen. Fox for the Committee on Finance. (3/29/11)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (3/29/11)

Timothy B. Tomasi of Montpelier – Superior Court Judge – By Sen. Snelling for the Committee on Judiciary. (5/3/11)

Robert P. Gerety, Jr. of White River Junction – Superior Court Judge – By Sen. Nitka for the Committee on Judiciary. (5/3/11)