Senate Calendar

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SENATE CONVENES AT: 2:00 P.M.

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H. 54.

An act relating to Public Records Act exemptions.

Reported favorably by Senator White for the Committee on Government Operations.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of April 23, 2013, page 801.)

H. 403.

An act relating to community supports for persons with serious functional impairments.

Reported favorably by Senator Fox for the Committee on Health and Welfare.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of April 24, 2013, page 853.)

Reported favorably by Senator Fox for the Committee on Appropriations.

(Committee vote: 6-0-1)

H. 512.

An act relating to approval of amendments to the charter of the City of Barre.

Reported favorably by Senator Pollina for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments.)

H. 517.

An act relating to approval of the adoption and the codification of the charter of the Town of St. Albans.

Reported favorably by Senator McAllister for the Committee on Government Operations.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of April 23, 2013, page 812.)

Favorable with Proposal of Amendment

H. 200.

An act relating to civil penalties for possession of marijuana.

Reported favorably with recommendation of proposal of amendment by Senator Benning 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:

* * * Criminal Penalties and Civil Penalties for Marijuana Possession * * *

Sec. 1. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) ~~A~~ No person shall knowingly and unlawfully ~~possessing~~ possess more than one ounce of marijuana or more than five grams of hashish or cultivate marijuana. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than $500.00, or both.

(B) A person convicted of a second or subsequent offense ~~under this subdivision~~ of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating marijuana shall be imprisoned not more than two years or fined not more than $2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be

imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

(2) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ two ounces or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than three plants of marijuana shall be imprisoned not more than three years or fined not more than $10,000.00, or both.

(3) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ one pound or more ~~containing any~~ of marijuana or knowingly and unlawfully cultivating more than 10 plants of marijuana shall be imprisoned not more than five years or fined not more than $100,000.00, or both.

(4) A person knowingly and unlawfully possessing ~~marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of~~ 10 pounds or more of marijuana or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than $500,000.00, or both.

(5) Prior to accepting a plea of guilty or a plea of nolo contendere from a defendant charged with a violation of this subsection, the court shall address the defendant personally in open court, informing the defendant and determining that the defendant understands that admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to the charge may have collateral consequences such as loss of education financial aid, suspension or revocation of professional licenses, and restricted access to public benefits such as housing. If the court fails to provide the defendant with notice of collateral consequences in accordance with this subdivision and the defendant later at any time shows that the plea and conviction may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

* * *

(d) Only the portion of a marijuana-infused product that is attributable to marijuana shall count toward the possession limits of this section. The weight of marijuana that is attributable to marijuana-infused products shall be determined according to methods set forth in rule by the Department of Public Safety in accordance with chapter 86 of this title (therapeutic use of cannabis).

Sec. 2. 18 V.S.A. § 4230a–d are added to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON OVER 21 YEARS OF AGE; CIVIL VIOLATION

(a) A person 21 years of age or older who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

(1) Not more than $200.00 for a first offense.

(2) Not more than $300.00 for a second offense.

(3) Not more than $500.00 for a third or subsequent offense.

(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under state law.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind.

(c)(1) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.

(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).

(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.

(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's

expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.

(e)(1) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a motor vehicle operator's license, an identification card, a passport, or another suitable form of identification.

(2) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(3) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

(f) Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be retained by the State for the funding of law enforcement officers on the Drug Task Force, except for a $12.50 administrative charge for each violation which shall be retained by the State. The remaining 50 percent shall be paid to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a) Offense. Except as otherwise provided in section 4230c of this title, a person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of $300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and

(2) a civil penalty of not more than $600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section with a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the Diversion Program has imposed, the Diversion Program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau

under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required Program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

§ 4230c. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; THIRD OR SUBSEQUENT OFFENSE; CRIME

No person shall knowingly and unlawfully possess marijuana. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a crime if the person has been adjudicated at least twice previously in violation of section 4230b of this title and shall be imprisoned not more than 30 days or fined not more than $600.00, or both.

§ 4230d. MARIJUANA POSSESSION BY A PERSON UNDER 16 YEARS OF AGE; DELINQUENCY

No person shall knowingly and unlawfully possess marijuana. A person under the age of 16 years who knowingly and unlawfully possesses one ounce

or less of marijuana or five grams or less of hashish commits a delinquent act and shall be subject to 33 V.S.A. chapter 52. The person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice.

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

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

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

* * *

(24) Violations of 18 V.S.A. §§ 4230a and 4230b, relating to possession of marijuana.

* * *

Sec. 5. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

(d) A person who violates subsection (a) of this section shall be ~~fined~~ assessed a civil penalty of not more than $500.00. A person who violates subsection (b) of this section shall be ~~fined~~ assessed a civil penalty of not more than $25.00. A person ~~convicted and fined~~ adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to ~~prosecution~~ a civil violation for the same actions under subsection (b) of this section.

Sec. 6. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL ~~OR MARIJUANA~~

(a) A person shall not consume alcoholic beverages ~~or marijuana~~ while operating a motor vehicle on a public highway. As used in this section,

"alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

* * *

* * * Enhanced Penalties for Tax Offenses Based on Income Derived from Illegal Activity * * *

Sec. 7. 32 V.S.A. § 3202 is amended to read:

§ 3202. INTEREST AND PENALTIES

(a) Failure to pay; interest. When a taxpayer fails to pay a tax liability imposed by this title (except the motor vehicle purchase and use tax) on the date prescribed therefor, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a sum of interest computed at the rate per annum established by the ~~commissioner~~ Commissioner pursuant to section 3108 of this title on the unpaid amount of that tax liability for the period from the prescribed date to the date of full payment of the liability.

(b) Penalties.

(1) Failure to file. When a taxpayer fails to file a tax return required by this title (other than a return required by subchapter 5 of chapter 151 of this title for estimation of nonwithheld income tax), on the date prescribed therefor or the date as extended pursuant to section 5868 of this title, unless the taxpayer affirmatively shows that such failure is due to reasonable cause and not due to willful neglect, then in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a penalty which shall be equal to five percent of the outstanding tax liability for each month, or portion thereof, that the tax return is not filed; provided, however, that in no event shall the amount of any penalty imposed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment. If the return is not filed within 60 days after the date prescribed therefor, there shall be assessed a minimum penalty of $50.00 regardless of whether there is a tax liability.

(2) Failure to pay estimated tax. When a taxpayer fails to make payments as required by subchapter 5 of chapter 151 of this title (estimations of nonwithheld income tax), the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to one percent of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(3) Failure to pay. When a taxpayer fails to pay a tax liability imposed by this title (other than a return required by subchapter 5 of chapter 151 of this title for estimation of nonwithheld income tax)~~,~~ on the date prescribed therefor, then in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to for income tax under subchapters 2 and 3 of chapter 151 of this title, one percent, and for all other taxes five percent, of the outstanding tax liability for each month, or portion thereof, that the tax liability is not paid in full; provided, however, that in no event shall the amount of any penalty assessed under this subdivision exceed 25 percent of the tax liability unpaid on the prescribed date of payment.

(4) Negligent failure to pay. When a taxpayer fails to pay a tax liability imposed by this title and the failure is due to negligence or constitutes a substantial understatement of tax, in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay a penalty which shall be equal to 25 percent of that portion of the underpayment. For purposes of this subdivision, "negligence" means any failure to make a reasonable attempt to comply with the provisions of the tax code and "substantial understatement" means an understatement of 20 percent or more of the tax.

(5) Fraudulent failure to pay. When a taxpayer fraudulently or with willful intent to defeat or evade a tax liability imposed by this title, either fails to pay a tax liability on the date prescribed therefor or requests and receives a refund of a tax liability, in addition to any interest payable pursuant to subsection (a) of this section, the ~~commissioner~~ Commissioner may assess and the taxpayer shall then pay~~,~~ a penalty equal to the amount of the tax liability unpaid on the prescribed date of payment or received as a refund subsequent to that date.

(6) Violation based on income from illegal activity. The penalties provided in subdivisions (1)–(5) of this subsection shall be doubled if the violation is based on income derived from illegal activity. The penalty provided in this subdivision (6) shall be in addition to any other civil or criminal penalties provided by law.

(7) A failure to pay shall not be subject to more than one of the penalties set forth in subdivisions (3), (4)~~,~~ and (5) of this subsection.

Sec. 8. 32 V.S.A. § 5894 is amended to read:

§ 5894. LIABILITY FOR FAILURE OR DELINQUENCY

(a) Failure to supply information. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership~~,~~ who,

with intent to evade any requirement of this chapter or any lawful requirement of the ~~commissioner~~ Commissioner hereunder, fails to supply any information required by or under this chapter shall be fined not more than $1,000.00 or be imprisoned not more than one year, or both.

(b) Failure to file. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership who knowingly fails to file a tax return when due shall be imprisoned not more than one year or fined not more than $1,000.00, or both.

(c) Failure to pay. An individual, fiduciary, or officer or employee of any corporation or partner or employee of any partnership, who with intent to evade a tax liability fails to pay a tax when due shall, if the amount of tax evaded is $500.00 or less in a single calendar year, be imprisoned not more than one year or fined not more than $1,000.00, or both.

(d) Failure to file or failure to pay; in excess of $500.00. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability fails to file a tax return when required to do so or fails to pay a tax when due shall, if the amount of tax evaded is in excess of $500.00 in a single calendar year, be imprisoned not more than three years or fined not more than $10,000.00, or both.

(e) False or fraudulent return. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership who knowingly makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall be imprisoned not more than one year or fined not more than $1,000.00, or both. An individual, fiduciary, or officer or employee of a corporation or partner or employee of a partnership, who with intent to evade a tax liability makes, signs, verifies or files with the ~~commissioner~~ Commissioner a false or fraudulent tax return shall, if the amount of tax evaded is more than $500.00, be imprisoned not more than three years or fined not more than $10,000.00, or both.

(f) An individual, fiduciary, officer, or employee of any corporation or a partner or employee of any partnership who violates subsections (a)–(e) of this section based on income derived from illegal activity shall be imprisoned not more than three years or fined not more than $10,000.00, or both. The penalty provided in this subsection shall be in addition to any other civil or criminal penalties provided by law.

* * * Expungement of a Misdemeanor Possession of Marijuana Criminal Record * * *

Sec. 9. 13 V.S.A. § 7601(3) is amended to read:

(3) "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. "Predicate offense" shall not include misdemeanor possession of marijuana.

* * * Alcoholic Beverage Offenses by a Person Under 21 Years of Age * * *

Sec. 10. 7 V.S.A. § 656 and 657 are amended to read:

§ 656. ~~MINORS~~ PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE, PROCURING, POSSESSING, OR CONSUMING ~~LIQUORS~~ ALCOHOLIC BEVERAGES; FIRST OR SECOND OFFENSE; CIVIL VIOLATION

(a)(1) Prohibited conduct. A ~~minor 16~~ person under 21 years of age ~~or older~~ shall not:

~~(1)~~(A) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons;

~~(2)~~(B) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or

~~(3)~~(C) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors~~,~~ or in a jurisdiction where the indicators of consumption are observed.

(2) Offense. Except as otherwise provided in section 657 of this title, a person under 21 years of age who knowingly and unlawfully violates subdivision (1) of this subsection commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(A) a civil penalty of $300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a first offense; and

(B) a civil penalty of not more than $600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 180 days, for a second offense.

~~(b)(1) A law enforcement officer shall issue a notice of violation, in a form approved by the court administrator, to a person who violates this section if the person has not previously been adjudicated in violation of this section or convicted of violating section 657 of this title. The notice of violation shall require the person to provide his or her name and address, and shall explain procedure under this section, including that:~~

~~(A) the person must contact the diversion board in the county where the offense occurred within 15 days;~~

~~(B) failure to contact the diversion board within 15 days will result in the case being referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a penalty of $300.00 and a 90 day suspension of the person's operator's license, and may face substantially increased insurance rates;~~

~~(C) no money should be submitted to pay any penalty until after adjudication; and~~

~~(D) the person shall notify the diversion board if the person's address changes.~~

~~(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.~~

~~(3) Within 15 days after receiving a notice of violation issued under subdivision (1) of this subsection, the person shall contact the diversion board in the county where the offense occurred and register for the teen alcohol safety program. If the person fails to do so, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.~~

~~(c) A person who violates this section commits a civil violation and shall be subject to a civil penalty of $300.00, and the person's operator's license and privilege to operate a motor vehicle shall be suspended for a period of 90 days.~~

~~The state may obtain a violation under this section or a conviction under section 657 of this title, but not both.~~

~~(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.~~

~~(e) Upon adjudicating a person in violation of this section, the judicial bureau shall notify the commissioner of motor vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the department for motor vehicle driving records. The identities of persons in the registry shall only be revealed to a law enforcement officer determining whether the person has previously violated this section.~~

~~(f)(1) Upon receipt from a law enforcement officer of a summons and complaint completed under subdivision (b)(2) of this section, the diversion board shall send the person a notice to report to the diversion board. The notice to report shall provide that:~~

~~(A) The person is required to complete all conditions related to the offense imposed by the diversion board, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.~~

~~(B) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, the case will be referred to the judicial bureau, where the person, if found liable for the violation, shall be assessed a penalty of $300.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.~~

~~(C) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense imposed by the diversion board, no penalty shall be imposed and the person's operator's license will not be suspended.~~

~~(2)(A) Upon being contacted by a person who has been issued a notice of violation under subdivision (b)(1) of this section, the diversion board shall register the person in the teen alcohol safety program. Pursuant to the teen alcohol safety program, the diversion board shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense, and in every case shall include a condition requiring satisfactory completion of substance abuse screening and, if deemed appropriate following~~

~~the screening, substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state certified or state licensed substance abuse counselor or substance abuse treatment provider to provide the services.~~

~~(B) Substance abuse screening required under this subsection shall be completed within 60 days after the diversion board receives a summons and complaint completed under subdivision (b)(2) of this section. The person shall complete all conditions at his or her own expense.~~

~~(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense which the diversion board has imposed, the diversion board shall:~~

~~(A) void the summons and complaint with no penalty due; and~~

~~(B) send copies of the voided summons and complaint to the judicial bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the judicial bureau under this subdivision, the diversion board shall redact all language containing the person's name, address, social security number or any other information which identifies the person.~~

~~(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, or if the person fails to pay the diversion board any required program fees, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.~~

~~(5) A person aggrieved by a decision of the diversion board or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.~~

~~(g) The state's attorney may dismiss without prejudice a violation brought under this section.~~

(b) Issuance of Notice of Violation. A law enforcement officer shall issue a person under 21 years of age who violates this section a notice of violation, in a form approved by the Court Administrator. The notice of violation shall require the person to provide his or her name and address and shall explain procedures under this section, including that:

(1) the person shall contact the Diversion Program in the county where the offense occurred within 15 days;

(2) failure to contact the Diversion Program within 15 days will result in the case being referred to the Judicial Bureau, where the person, if found liable for the violation, will be subject to a civil penalty and a suspension of the person's operator's license and may face substantially increased insurance rates;

(3) no money should be submitted to pay any penalty until after adjudication; and

(4) the person shall notify the Diversion Program if the person's address changes.

(c) Summons and Complaint. When a person is issued a notice of violation under this section, the law enforcement officer shall complete a summons and complaint for the offense and send it to the Diversion Program in the county where the offense occurred. The summons and complaint shall not be filed with the Judicial Bureau at that time.

(d) Registration in Youth Substance Abuse Safety Program. Within 15 days after receiving a notice of violation, the person shall contact the Diversion Program in the county where the offense occurred and register for the Youth Substance Abuse Safety Program. If the person fails to do so, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29. The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(e) Notice to Report to Diversion. Upon receipt from a law enforcement officer of a summons and complaint completed under this section, the Diversion Program shall send the person a notice to report to the Diversion Program. The notice to report shall provide that:

(1) The person is required to complete all conditions related to the offense imposed by the Diversion Program, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(2) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program, the case will be referred to the Judicial Bureau, where the person, if found liable for the violation, shall be assessed a civil penalty, the

person's driver's license will be suspended, and the person's automobile insurance rates may increase substantially.

(3) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense imposed by the Diversion Program, no penalty shall be imposed and the person's operator's license shall not be suspended.

(f)(1) Diversion Program Requirements. Upon being contacted by a person who has been issued a notice of violation, the Diversion Program shall register the person in the Youth Substance Abuse Safety Program. Pursuant to the Youth Substance Abuse Safety Program, the Diversion Program shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense and in every case shall include a condition requiring satisfactory completion of substance abuse screening using an evidence-based tool and, if deemed appropriate following the screening, substance abuse assessment and substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(2) Substance abuse screening required under this subsection shall be completed within 60 days after the Diversion Program receives a summons and complaint. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other condition related to the offense which the diversion program has imposed, the diversion program shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the Judicial Bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the Judicial Bureau under this subdivision, the Diversion Program shall redact all language containing the person's name, address, Social Security number, and any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other condition related to the offense imposed by the Diversion Program or if the person fails to pay the Diversion Program any required program fees, the Diversion Program shall file the summons and complaint with the Judicial Bureau for adjudication under 4 V.S.A. chapter 29.

The Diversion Program shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the Diversion Program or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) Failure to Pay Penalty. If a person fails to pay a penalty imposed under this section by the time ordered, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(h) Record of Adjudications. Upon adjudicating a person in violation of this section, the Judicial Bureau shall notify the Commissioner of Motor Vehicles, who shall maintain a record of all such adjudications which shall be separate from the registry maintained by the Department for motor vehicle driving records. The identity of a person in the registry shall be revealed only to a law enforcement officer determining whether the person has previously violated this section.

§ 657. ~~MINORS~~ PERSON UNDER 21 YEARS OF AGE MISREPRESENTING AGE,~~OR~~ PROCURING ~~OR,~~ POSSESSING ~~LIQUORS ALCOHOL AND DRIVING EDUCATION;~~, OR CONSUMING ALCOHOLIC BEVERAGES; THIRD OR SUBSEQUENT OFFENSE; CRIME

~~(a) A minor shall not:~~

~~(1) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons; or~~

~~(2) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or~~

~~(3) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors, or in a jurisdiction where the indicators of consumption are observed.~~

~~(b) A law enforcement officer shall issue a citation for a violation of this section if a person has been previously adjudicated in violation of this section or section 656 of this title.~~

~~(c) After the issuing officer issues a summons and complaint to the judicial bureau for a first offense pursuant to section 656 of this title, the state's attorney may withdraw the complaint filed with the judicial bureau and file an information charging a violation of this section in the criminal division of the superior court. The state may obtain a conviction under either this section or section 656 of this title, but not both.~~

~~(d) A person who violates this section:~~

~~(1) shall be fined not more than $600.00 or imprisoned not more than 30 days, or both; and~~

~~(2) if the person has previously been convicted of violating this section or adjudicated in violation of section 656 of this title, the person's operating license, nonresident operating privilege or the privilege of an unlicensed person to operate a motor vehicle shall be suspended for 120 days.~~

~~(e) The state's attorney shall require as a condition of diversion that:~~

~~(1) a person who is charged with a violation of this section who holds a license to operate a motor vehicle, and who has previously been convicted of violating this section or adjudicated in violation of section 656 of this title, relinquish the license for a period of 60 days; and~~

~~(2) attend an alcohol and driving program at the person's own expense.~~

~~(f) A person who is convicted of violating this section who holds a license to operate a motor vehicle shall, as a condition of probation, be required to complete an alcohol and driving program at the person's own expense.~~

~~(g) The alcohol and driving program shall be administered by the office of alcohol and drug abuse programs and shall take into consideration the needs of minors.~~

~~(h) The state's attorney may dismiss without prejudice an action brought under this section, and may file a civil violation in the judicial bureau.~~ A person under 21 years of age who engages in conduct in violation of subdivision 656(a)(1) of this title commits a crime if the person has been adjudicated at least twice previously in violation of subdivision 656(a)(1) of this title and shall be imprisoned not more than 30 days or fined not more than $600.00, or both.

Sec. 11. 7 V.S.A. § 657a is added to read:

§ 657a. PERSON UNDER 16 YEARS OF AGE MISREPRESENTING AGE OR PROCURING OR POSSESSING ALCOHOLIC BEVERAGES; DELINQUENCY

A person under 16 years of age who engages in conduct in violation of subdivision 656(a)(1) of this title commits a delinquent act and shall be subject to 33 V.S.A. chapter 52. The person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice.

* * * Task Force * * *

Sec. 12. TASK FORCE

(a) Creation of task force. There is created a Task Force for the purpose of developing recommendations to the General Assembly to address drugged driving in Vermont and to address appropriate penalties for possession of alcohol and possession of an ounce or less of marijuana by a person under 21 years of age as provided in this act.

(b) Membership. The Task Force shall be composed of four members as follows:

(1) the Commissioner of Public Safety or designee;

(2) the Commissioner of Health or designee;

(3) the Executive Director of State's Attorneys and Sheriffs or designee;

(4) the Defender General or designee;

(5) the Commissioner of Motor Vehicles or designee;

(6) the Court Diversion Director or designee; and

(7) a student assistance professional appointed by the Governor.

(c) Report. On or before November 1, 2013, the Task Force shall report to the House and Senate Committees on Judiciary its findings and any recommendations for legislative action.

* * * Application and Effective Dates * * *

Sec. 13. APPLICATION

(a) Secs. 1–4, 10, and 11 shall apply prospectively to conduct that occurs on or after July 1, 2013. A person who is cited or arrested for possession of

one ounce or less of marijuana or five grams or less of hashish or for an underage alcohol offense under 7 V.S.A. § 656 or 657 prior to July 1, 2013 shall be subject to the penalties provided by law at the time the conduct occurred.

(b) An offense in which the prohibited conduct occurred prior to July 1, 2013 shall not be deemed a prior offense for the purpose of determining increased penalties for second and subsequent offenses as provided in this act.

Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 12 and 13 of this act shall take effect on passage.

(b) Sec. 6 of this act shall take effect on July 1, 2014.

(c) The remaining sections of this act shall take effect on July 1, 2013.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for April 12, 2013, pages 743 and 746 and April 16, 2013, page 762.)

Reported favorably by Senator Sears for the Committee on Appropriations.

(Committee vote: 6-1-0)

H. 299.

An act relating to enhancing consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations.

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 as follows:

First: In Sec. 4, in 9 V.S.A. § 4402(1), by striking out subdivision (B) in its entirety and inserting in lieu thereof a new subdivision (B) to read as follows:

(B) "Solicitation" does not include an offer to renew an existing agreement for the purchase of goods or services, provided that the offer specifies the date on which the existing agreement expires.

Second: By striking out Secs. 6–10 in their entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

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

An act relating to amending consumer protection provisions for propane refunds, unsolicited demands for payment, and failure to comply with civil investigations.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2013, page 388.)

PROPOSAL OF AMENDMENT TO H. 299 TO BE OFFERED BY SENATOR MULLIN

Senator Mullin moves that the Senate propose to the House to amend the bill by inserting a new Sec. 6 to read as follows:

Sec. 6. 9 V.S.A. chapter 120 is added to read:

CHAPTER 120. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

§ 4195. LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE

(a) The General Assembly finds that:

(1) Vermont is striving to build an entrepreneurial and knowledge based economy. Attracting and nurturing small and medium sized internet technology ("IT") and other knowledge based companies is an important part of this effort and will be beneficial to Vermont's future.

(2) Patents are essential to encouraging innovation, especially in the IT and knowledge based fields. The protections afforded by the federal patent system create an incentive to invest in research and innovation, which spurs economic growth. Patent holders have every right to enforce their patents when they are infringed, and patent enforcement litigation is necessary to protect intellectual property.

(3) The General Assembly does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. The General Assembly also recognizes that Vermont is preempted from passing any law that conflicts with federal patent law.

(4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost hundreds of thousands of dollars or more, can be a significant burden on small and medium sized companies. Vermont wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.

(5) In order for Vermont companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving such information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on Vermont companies.

(6) Abusive patent litigation, and especially the assertion of bad faith infringement claims, can harm Vermont companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee, even if the claim is meritless. This is especially so for small and medium sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.

(7) Not only do bad faith patent infringement claims impose a significant burden on individual Vermont businesses, they also undermine Vermont's efforts to attract and nurture small and medium sized IT and other knowledge based companies. Funds used to avoid the threat of bad faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming Vermont's economy.

(b) Through this narrowly focused act, the General Assembly seeks to facilitate the efficient and prompt resolution of patent infringement claims, protect Vermont businesses from abusive and bad faith assertions of patent infringement, and build Vermont's economy, while at the same time respecting federal law and being careful to not interfere with legitimate patent enforcement actions.

§ 4196. DEFINITIONS

In this chapter:

(1) "Demand letter" means a letter, e-mail, or other communication asserting or claiming that the target has engaged in patent infringement.

(2) "Target" means a Vermont person:

(A) who has received a demand letter or against whom an assertion or allegation of patent infringement has been made;

(B) who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(C) whose customers have received a demand letter asserting that the person's product, service, or technology has infringed a patent.

§ 4197. BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

(a) A person shall not make a bad faith assertion of patent infringement.

(b) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(1) The demand letter does not contain the following information:

(A) the patent number;

(B) the name and address of the patent owner or owners and assignee or assignees, if any; and

(C) factual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent.

(2) Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

(3) The demand letter lacks the information described in subdivision (1) of this subsection, the target requests the information, and the person fails to provide the information within a reasonable period of time.

(4) The demand letter demands payment of a license fee or response within an unreasonably short period of time.

(5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and:

(A) those threats or lawsuits lacked the information described in subdivision (1) of this subsection; or

(B) the person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(c) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in subdivision (b)(1) of this section.

(2) Where the demand letter lacks the information described in subdivision (b)(1) of this section and the target requests the information, the person provides the information within a reasonable period of time.

(3) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy.

(4) The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(B) an institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

§ 4198. BOND

Upon motion by a target and a finding by the court that a target has established a reasonable likelihood that a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under § 4199(b) of this chapter, conditioned upon payment of any amounts finally determined to be due to the target. A hearing shall be held if either party so requests. A bond ordered pursuant to this section shall not exceed $250,000.00. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

§ 4199. ENFORCEMENT; REMEDIES; DAMAGES

(a) The Attorney General shall have the same authority under this chapter to make rules, conduct civil investigations, bring civil actions, and enter into assurances of discontinuance as provided under chapter 63 of this title. In an action brought by the Attorney General under this chapter the court may award or impose any relief available under chapter 63 of this title.

(b) A target of conduct involving assertions of patent infringement, or a person aggrieved by a violation of this chapter or by a violation of rules adopted under this chapter, may bring an action in superior court. A court

may award the following remedies to a plaintiff who prevails in an action brought pursuant to this subsection:

(1) equitable relief;

(2) damages;

(3) costs and fees, including reasonable attorney's fees; and

(4) exemplary damages in an amount equal to $50,000.00 or three times the total of damages, costs, and fees, whichever is greater.

(c) This chapter shall not be construed to limit rights and remedies available to the State of Vermont or to any person under any other law and shall not alter or restrict the Attorney General's authority under chapter 63 of this title with regard to conduct involving assertions of patent infringement.

And by renumbering the remaining section to be numerically correct.

H. 395.

An act relating to the establishment of the Vermont Clean Energy Loan Fund.

Reported favorably by Senator Collins for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

(No House amendments.)

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

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

First: In Sec. 1, in 10 V.S.A. § 280dd(c)(1), by striking "traditional"

Second: In Sec. 6, in 10 V.S.A. § 213(b), in the first sentence, after the phrase "each of whom shall serve as" by striking "a voting" and inserting in lieu thereof an

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

The Committee recommends that the Senate propose to the House to amend the bill by inserting a new section to be numbered Sec. 8a to read as follows:

Sec. 8a. VERMONT STATE TREASURER; CREDIT FACILITY FOR RESIDENTIAL ENERGY EFFICIENCY LOANS

(a) Notwithstanding any other provision of law to the contrary, the Vermont State Treasurer, working in collaboration with the Vermont Housing Finance Agency, the entities appointed to deliver energy efficiency under 30 V.S.A. § 209(d)(2), NeighborWorks of Western Vermont, and other appropriate parties, shall have the authority to establish a credit facility of up to $6,500,000.00, on terms acceptable to the Treasurer.

(b) The credit facility described in subsection (a) of this section shall be used for the purpose of financing energy efficiency improvements throughout Vermont for dwellings the owners of which demonstrate that they are credit-worthy and have a need for access to financing to make energy efficiency improvements in their dwellings. For the purpose of this section, "dwelling" means a residential structure that contains one or more housing units or that part of a structure that contains one or more residential housing units.

(c) The Treasurer shall take all reasonable steps to minimize the administrative costs of the financing programs supported by the facility described in subsection (a) of this section. On or before December 15, 2013, the Treasurer shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committees on Economic Development, Housing and General Affairs and on Finance detailing the steps taken to implement this subsection.

Reported favorably with recommendation of proposal of amendment by Senator Westman for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Committee on Natural Resources and Energy and Finance.

(Committee vote: 7-0-0)

PROPOSAL OF AMENDMENT TO H. 395 TO BE OFFERED BY SENATORS LYONS AND ASHE

Senators Lyons and Ashe move to amend the proposal of amendment of the Committee on Finance as follows:

First: In Sec. 1, in 10 V.S.A. § 280dd, by adding subsection (d) as follows:

(d) For all sustainable energy loans, the Authority shall maintain records on the projected reductions in greenhouse gas emissions and, for energy efficiency loans, the projected energy savings from the financed improvements and shall provide data on the projected greenhouse gas emissions reductions and projected energy savings to the Department of Public Service, the Public Service Board, and the Agency of Natural Resources on request. The methods used for calculating and reporting this data that shall be the same methods used in programs delivered under 30 V.S.A. § 209(d) and (e). The data provided shall be used for the purpose of tracking progress toward the greenhouse gas reduction goals of section 578 of this title and the building efficiency goals of section 581 of this title.

Second: In Sec. 8a, by adding subsection (d) as follows:

(d) Entities providing financing supported by the credit facility described in subsection (a) of this section shall:

(1) With respect to each dwelling that seeks financing supported by the facility:

(A) evaluate energy efficiency improvements on a whole-building basis and provide the list of potential improvements resulting from this evaluation to the owner; and

(B) provide information to the owner on other incentives or financial support available for the improvements; and

(2) With respect to each dwelling that receives financing supported by the facility, maintain records on the projected energy savings and projected reductions in greenhouse gas emissions from the financed energy efficiency improvements and provide data on the number of dwellings served, projected energy saved, and projected greenhouse gas emission reductions to the Department of Public Service, the Public Service Board, and the Agency of Natural Resources on request. The methods used for calculating and reporting this data that shall be the same methods used in programs delivered under 30 V.S.A. § 209(d) and (e). The data provided shall be used for the purpose of tracking progress toward the greenhouse gas reduction goals of 10 V.S.A. § 578 and the building efficiency goals of 10 V.S.A. § 581.

Third: After Sec. 8a, by adding Sec. 8b as follows:

Sec. 8b. VERMONT CLEAN ENERGY JOBS INITIATIVE

The following shall be known collectively as the Vermont Clean Energy Jobs Initiative: the Vermont Sustainable Energy Loan Fund in Sec. 1 of this act; the Energy Efficiency Loan Guarantee Program under Sec. 2 of this act; the residential energy efficiency loans under Sec. 8a of this act; property-assessed clean energy districts under 24 V.S.A. chapter 87, subchapter 2; the delivery of energy efficiency services by entities appointed under 30 V.S.A. § 209(d)(2); the Clean Energy Development Fund under 30 V.S.A. § 8015; and the Home Weatherization Assistance Program under 33 V.S.A. chapter 25.

H. 405.

An act relating to manure management and anaerobic digesters.

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

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 1, 30 V.S.A. § 248, in subdivision (q)(1), by striking out the last sentence and inserting in lieu thereof the following:

The certificate shall not be required for the methane digester, the digester influents and non-gas effluents, the buildings and equipment used to handle such influents and non-gas effluents, or the on-farm use of heat and exhaust produced by the generation of electricity, and these components shall not be subject to jurisdiction under this section.

(Committee vote: 6-0-1)

(For House amendments, see House Journal for March 20, 2013, page 426.)

House Proposal of Amendment

S. 31.

An act relating to prohibiting a court from consideration of interests in revocable trusts or wills when making a property settlement in a divorce proceeding.

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. 15 V.S.A. § 751 is amended to read:

§ 751. PROPERTY SETTLEMENT

(a) Upon motion of either party to a proceeding under this chapter, the court shall settle the rights of the parties to their property, by including in its

judgment provisions which equitably divide and assign the property. All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court. Title to the property, whether in the names of the husband, the wife, both parties, or a nominee, shall be immaterial, except where equitable distribution can be made without disturbing separate property.

(b) In making a property settlement the court may consider all relevant factors, including ~~but not limited to~~:

(1) the length of the civil marriage;

(2) the age and health of the parties;

(3) the occupation, source, and amount of income of each of the parties;

(4) vocational skills and employability;

(5) the contribution by one spouse to the education, training, or increased earning power of the other;

(6) the value of all property interests, liabilities, and needs of each party;

(7) whether the property settlement is in lieu of or in addition to maintenance;

(8) the opportunity of each for future acquisition of capital assets and income~~;~~. For purposes of this subdivision:

(A) The court may consider the parties' lifestyle and decisions made during the marriage and any other competent evidence as related to their expectations of gifts or an inheritance. The court shall not speculate as to the value of an inheritance or make a finding as to its value unless there is competent evidence of such value.

(B) A party's interest in an inheritance that has not yet vested and is capable of modification or divestment shall not be included in the marital estate.

(C) The court shall honor the provisions of any spendthrift clause as it applies to a party's interest in an irrevocable trust or inheritance.

(D) A party's interest in a trust with a valid spendthrift provision shall not be included in the marital estate.

(E) Notwithstanding any other provision of this subdivision (8), a person who is not a party to the divorce shall not be subject to any subpoena to provide documentation or to give testimony about:

(i) his or her assets, income, or net worth, unless it relates to a party's interest in an instrument that is vested and not capable of modification or divestment; or

(ii) his or her revocable estate planning instruments, including interests that pass at death by operation of law or by contract, unless a party's interest in an instrument is vested and not capable of modification or divestment.

(E) This subdivision (8) shall not be construed to limit the testimony given by the parties themselves or what can be obtained through discovery of the parties;

(9) the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;

(10) the party through whom the property was acquired;

(11) the contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as a homemaker; and

(12) the respective merits of the parties.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to consideration of interests in revocable estate planning instruments when making a property settlement in a divorce proceeding"

PROPOSAL OF AMENDMENT TO HOUSE PROPOSAL OF AMENDMENT TO S. 31 TO BE OFFERED BY SENATOR SEARS

Senator Sears, on behalf of the Committee on Judiciary, moves that the Senate concur in the House proposal of amendment with a proposal of amendment as follows:

In Sec. 1, in 15 V.S.A. § 751, subdivision (b)(8), by striking out subparagraph (C) in its entirety and by relettering the remaining subdivisions to be alphabetically correct.

House Proposal of Amendment

S. 59.

An act relating to independent direct support providers.

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. 21 V.S.A. chapter 20 is added to read:

CHAPTER 20. INDEPENDENT DIRECT SUPPORT PROVIDERS

§ 1631. DEFINITIONS

As used in this chapter:

(1) "Board" means the State Labor Relations Board established by 3 V.S.A. § 921.

(2) "Collective bargaining" or "bargaining collectively" means the process by which the State and the exclusive representative of the independent direct support providers negotiate mandatory subjects of bargaining identified in subsection 1634(b) of this chapter, or any other mutually agreed subjects of bargaining not in conflict with state or federal law, with the intent to arrive at an agreement which, when reached, shall be legally binding on all parties.

(3) "Collective bargaining service fee" means a fee deducted by the State from the compensation of an independent direct support provider who is not a member of the exclusive representative of independent direct support providers, which is paid to the exclusive representative. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the exclusive representative, and shall be deducted in the same manner as dues are deducted from the compensation of members of the exclusive representative, and shall be used to defray the costs incurred by the labor organization in fulfilling its duty to represent independent direct support providers in their relations with the State.

(4) "Exclusive representative" means the labor organization that has been certified under this chapter and has the right to represent independent direct support providers for the purpose of collective bargaining.

(5) "Grievance" means the exclusive representative's formal written complaint regarding the improper application of one or more terms of the collective bargaining agreement, the failure to abide by any agreement reached, or the discriminatory application of a rule or regulation, which has not been resolved to a satisfactory result through informal discussion with the State.

(6) "Independent direct support provider" means any individual who provides home- and community based services to a service recipient and is employed by the service recipient, shared living provider, or surrogate.

(7) "Labor organization" means an organization of any kind in which independent direct support providers participate and which exists, in whole or in part, for the purpose of representing independent direct support providers.

(8) "Service recipient" means a person who receives home- and community-based services under the Choices for Care Medicaid waiver, the Attendant Services Program (ASP), the Children's Personal Care Service Program, the Developmental Disabilities Services Program, or any successor program or similar program subsequently established.

(9) "Shared living provider" means a person who operates under a contract with an authorized agency and provides individualized home support for one or two people who live in his or her home. An authorized agency includes a designated agency for developmental services.

(10) "Surrogate" means a service recipient's authorized family member, legal guardian, or a person identified in a written agreement as having responsibility for the care of a service recipient.

§ 1632. RIGHTS OF INDEPENDENT DIRECT SUPPORT PROVIDERS

Independent direct support providers shall have the right to:

(1) organize, form, join, or assist a labor organization for the purposes of collective bargaining without interference, restraint, or coercion;

(2) bargain collectively through their chosen representatives;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining or other mutual aid or protection;

(4) pursue grievances through the exclusive representative as provided in this chapter; and

(5) refrain from any or all such activities, subject to the requirements of subdivision 1634(b)(3) of this chapter.

§ 1633. RIGHTS OF THE STATE

Subject to the rights guaranteed by this chapter and subject to all other applicable laws, rules, and regulations, nothing in this chapter shall be construed to interfere with the right of the State to:

(1) carry out the statutory mandate and goals of the Agency of Human Services and to utilize personnel, methods, and means in the most appropriate manner possible;

(2) with the approval of the Governor, take whatever action may be necessary to carry out the mission of the Agency of Human Services in an emergency situation;

(3) comply with federal and state laws and regulations;

(4) enforce regulations and regulatory processes;

(5) develop regulations and regulatory processes that do not impair existing contracts, subject to the duty to bargain over mandatory subjects of bargaining and to the rulemaking authority of the General Assembly and the Human Services Board; and

(6) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the federal government or any political subdivision or agency of the State in making an application for any grant.

§ 1634. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING; SCOPE OF BARGAINING

(a) Independent direct support providers, through their exclusive representative, shall have the right to bargain collectively with the State, through the Governor's designee, under this chapter.

(b) Mandatory subjects of bargaining under this section shall be limited to:

(1) compensation rates, workforce benefits, and payment methods and procedures, except that independent direct support providers shall not be eligible to participate in the State's retirement system or the Vermont state employee health plan solely by virtue of bargaining under this chapter;

(2) professional development and training, except that the issue of whether the State may choose directly to create and administer a professional development or training program shall be a permissive subject of bargaining;

(3) the collection and disbursement of dues or fees to the exclusive representative, provided that a collective bargaining service fee may not be required of nonmembers unless the exclusive representative has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses; and

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow, subject to prompt review and determination by the board to resolve any objection over the amount of the collective bargaining fee, as provided for in subsection (d) of this section.

(4) procedures for resolving grievances against the State, provided that the final step of any negotiated grievance procedure, if required, shall be a hearing and final determination by the board in accordance with board rules and regulations; and

(5) access to job referral opportunities within covered programs, except that the issue of whether the State may choose directly to create and administer a referral registry shall be a permissive subject of bargaining.

(c) For the purpose of this chapter, the obligation to bargain collectively is the performance of the mutual obligation of the State and the exclusive representative of the independent direct support providers to meet at reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal, or to make a concession shall not constitute, or be evidence of direct or indirect, a breach of this obligation. Nothing in this chapter shall be construed to require either party during collective bargaining to accede to any proposal or proposals of the other party.

(d) Any dispute raised by a nonmember concerning the amount of a collective bargaining service fee, as provided for under subdivision (b)(3) of this section, may be grieved to the State Labor Relations Board which shall review and determine such matter promptly, in accordance with the Board's rules.

§ 1635. ELECTION; BARGAINING UNIT

(a) Petitions and elections shall be conducted pursuant to the procedures provided in 3 V.S.A. §§ 941 and 942, except that only one bargaining unit shall exist for independent direct support providers, and the exclusive representative shall be the exclusive representative for the purpose of grievances.

(b) A representation election for independent direct support providers conducted by the Board shall be by mail ballot.

(c) The bargaining unit for purposes of collective bargaining pursuant to this chapter shall be one statewide unit of independent direct support providers. Eligible independent direct support providers shall have the right to participate in a representation election but shall not have the right to vote on or otherwise determine the collective bargaining unit. Eligible independent direct support providers shall all be independent direct support providers who have been paid for providing home- and community-based services within the previous 180 days.

(d) At least quarterly the State shall compile and maintain a list of names and addresses of all independent direct support providers who have been paid for providing home- and community-based services to service recipients within the previous 180 days. The list shall not include the names of any recipient, or indicate that an independent direct support provider is a relative of a recipient

or has the same address as a recipient. The State shall, upon request, provide within seven days the most recent list of independent direct support providers in its possession to any organization which has as one of its primary purposes the collective bargaining representation of independent direct support providers in their relations with state or other public entities. This obligation shall include providing the most recent list, upon request, to any labor organization certified as the exclusive representative under this chapter.

§ 1636. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If, after a reasonable period of negotiation, the representative of the collective bargaining unit and the State reach an impasse, the Board, upon petition of either party, may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the Board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement. A mediator shall be of high standing and not actively connected with labor or management.

(b) If, after a reasonable period of time, no fewer than 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the Board that the impasse continues.

(c) The Board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the Board shall appoint a neutral third party to act as a fact finder pursuant to rules adopted by the Board. A member of the Board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section, unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the Board. Upon request of either party or of the fact finder, the Board may issue subpoenas of persons and documents for the hearings and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from endeavoring to mediate the dispute at any time prior to issuing recommendations.

(f) The fact finder shall consider the following factors in making a recommendation:

(1) the needs and welfare of consumers, including their interest in greater access to quality services;

(2) the nature and needs of the personal care assistance program;

(3) the interest and welfare of independent direct support providers;

(4) the history of negotiation between the parties, including those leading to the proceedings;

(5) changes in the cost of living; and

(6) generally accepted labor-management relations practices in Vermont.

(g) Upon completion of the hearings provided in subsection (d) of this section, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be divided equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the Board for approval. The Board shall provide a copy of approved fact-finding costs to each party with its order apportioning half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the Board of fact-finding and the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 20 days after transmittal of findings and recommendations, each party shall submit to the Board its last best offer on all disputed issues as a single package. Each party's last best offer shall be certified to the Board by the fact finder. The board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine its cost. The Board shall not issue an order under this subsection that: (1) is in conflict with any statute; (2) is in conflict with any rule unless the rule relates to a mandatory subject of bargaining; or (3) determines an issue that is not a mandatory subject of bargaining. The Board shall determine the cost of the agreement selected and recommend to the General Assembly its choice with a request for appropriation. If the General Assembly appropriates sufficient funds, the agreement shall become effective and legally binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective and binding at the beginning of the next fiscal

year. No portion of any agreement shall become effective separately without the mutual consent of the parties.

§ 1637. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and the independent direct support providers and their representatives shall make every reasonable effort to make and maintain agreements concerning matters allowed under this chapter and to settle all disputes, whether arising out of the application of those agreements or disputes concerning the agreements. All disputes shall, upon request of either party, be considered within 15 days of the request or at such times as may be mutually agreed to and if possible settled with all expedition in conference between representatives designated and authorized to confer by the State or the independent direct support providers. This obligation does not compel either party to make any agreements or concessions.

(b) It shall be an unfair labor practice for the State to:

(1) Interfere with, restrain, or coerce independent direct support providers in the exercise of their rights under this chapter or by any law, rule, or regulation.

(2) Dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) Discriminate in regard to referral practices or eligibility for work opportunities within covered programs for an independent direct support provider, or to encourage or discourage membership in any labor organization.

(4) Take negative action against an independent direct support provider because the provider has taken actions demonstrating his or her support for a labor organization, including signing a petition, grievance, or affidavit or giving testimony under this chapter.

(5) Refuse to bargain collectively in good faith with the exclusive representative.

(6) Discriminate against an independent direct support provider based on race, color, creed, religion, age, gender, sexual orientation, gender identity, or national origin, or because the provider is a qualified individual with a disability.

(c) It shall be an unfair labor practice for a labor organization to:

(1) Restrain or coerce independent direct support providers in the exercise of the rights guaranteed them by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership, provided such rules are not discriminatory.

(2) Refuse to bargain collectively in good faith with the State.

(3) Cause, or attempt to cause, the State to discriminate against an independent direct support provider in violation of subsection (b) of this section.

(4) Threaten to or cause a provider to strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

(d) An independent direct support provider shall not strike or curtail his or her services in recognition of a picket line of any employee or labor organization.

§ 1638. PREVENTION OF UNFAIR PRACTICES

(a) The Board may prevent the State or a labor organization from engaging in any unfair labor practice listed in section 1637 of this title. Whenever a charge is made that the State or a labor organization has engaged in or is engaging in any unfair labor practice, the Board may issue and cause to be served upon that party a complaint stating the charges in that respect and containing a notice of hearing before the Board at a place and time therein fixed at least seven days after the complaint is served. The Board may amend the complaint at any time before it issues an order based thereon. No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the party against whom such charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the U.S. Armed Forces, in which event the six-month period shall be computed from the day of his or her discharge.

(b) The party complained of shall have the right to file an answer to the original or amended complaint and appear in person or otherwise and present evidence in connection therewith at the time and place fixed in the complaint. In the discretion of the Board, any other person may be permitted to intervene and present evidence in the matter. Any proceeding under this section shall, so far as practicable, be conducted in accordance with rules of evidence used in the courts. The Board shall provide for the making of a transcript of the testimony presented at the hearing.

(c) The Board shall have power to administer oaths and take testimony under oath relative to the matter of inquiry. At any hearing ordered by the Board, the Board shall have the power to subpoena witnesses and to demand the production of books, papers, records, and documents for its examination. Officers who serve subpoenas issued by the Board and witnesses attending hearings conducted by the Board shall receive fees and compensation at the

same rates as officers and witnesses in causes before a Criminal Division of the Superior Court, to be paid on vouchers of the Board.

(d) If upon the preponderance of the evidence, the Board finds that any party named in the complaint has engaged in or is engaging in any such unfair labor practice, it shall state its finding of fact in writing and shall issue and cause to be served on that party an order requiring him or her to cease and desist from the unfair labor practice, and to take such affirmative action as will carry out the policies of this chapter. If upon the preponderance of the evidence, the Board does not find that the party named in the complaint has engaged in or is engaging in any unfair labor practice, it shall state its findings of fact in writing and dismiss the complaint.

(e) In determining whether a complaint shall issue alleging a violation of subdivision 1637(1) or (2) of this title, and in deciding those cases, the same regulations and rules of decision shall apply irrespective of whether or not a labor organization affected is affiliated with a labor organization national or international in scope.

§ 1639. NEGOTIATED AGREEMENT; FUNDING

(a) If the State and the exclusive representative reach an agreement, the Governor shall request from the General Assembly an appropriation sufficient to fund the agreement in the next operating budget. If the General Assembly appropriates sufficient funds, the negotiated agreement shall become effective and binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly and shall become effective and legally binding in the next fiscal year.

(b) Collective bargaining agreements shall be for a maximum term of two years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall be filed with the Board. Upon the filing of such consent, an agreement may be supplemented, cancelled, or renegotiated.

(c) The agreement shall terminate at the expiration of its specified term. Negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time within one year next preceding the expiration date upon the request of either party and may be commenced at any time previous thereto with the consent of both parties.

(d) In the event the State of Vermont and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified

by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract which, as amended, shall remain in effect until a new contract is finalized and funded by the General Assembly.

(e) The Board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party. In the event a complaint is made by either party to an agreement, the Board shall proceed in the manner prescribed in section 1638 of this title relating to the prevention of unfair labor practices.

§ 1640. RIGHTS UNALTERED

(a) A collective bargaining agreement shall not infringe upon any rights of service recipients or their surrogates to hire, direct, supervise, or discontinue the employment of any particular independent direct support provider.

(b) Nothing in this section shall alter the rights and obligations of private sector employers and employees under the National Labor Relations Act, 29 U.S.C. § 151 et seq.

(c) Independent direct support providers shall not be considered state employees for purposes other than collective bargaining, including for purposes of joint or vicarious liability in tort or the limitation on liability in subsection (e) of this section. Independent direct support providers shall not be eligible for participation in the State Employee Retirement System or health care plan solely by virtue of bargaining under this chapter. Nothing in this chapter shall require the State to alter its current practice with respect to independent direct support providers of making payments regarding Social Security and Medicare taxes, federal or state unemployment contributions, or workers' compensation insurance.

(d) Nothing in this chapter shall infringe upon the right of the Judiciary and the General Assembly to make programmatic modifications to the delivery of state services through subsidy or other programs.

(e) The State and its employees shall not be vicariously liable for any act or omission by an independent direct support provider or any claim arising out of the employment relationship between a service recipient and an independent direct service provider, nor shall the State be liable as a joint employer.

§ 1641. RULES AND REGULATIONS

The Board shall make and may amend and rescind and adopt such rules and regulations consistent with this chapter as may be necessary to carry out the provisions of this chapter.

§ 1642. APPEAL

(a) Any person aggrieved by an order or decision of the Board issued under the authority of this chapter may appeal on questions of law to the Supreme Court.

(b) An order of the Board shall not automatically be stayed pending appeal. A stay must first be requested from the Board. The Board may stay the order or any part of it. If the Board denies a stay, then a stay may be requested from the Supreme Court. The Supreme Court or a single justice may stay the order or any part of it and may order additional interim relief.

§ 1643. ENFORCEMENT

(a) Orders of the Board issued under this chapter may be enforced by any party or by the Board by filing a petition with the Civil Division of the Superior Court of Washington County or in the Civil Division of the Superior Court in the county in which the action before the Board originated. The petition shall be served on the adverse party as provided for service of process under the Vermont Rules of Civil Procedure. If, after hearing, the court determines that the Board had jurisdiction over the matter and that a timely appeal was not filed or that an appeal was timely filed and a stay of the Board order or any part of it was not granted or that a Board order was affirmed on appeal in pertinent part by the Supreme Court, the court shall incorporate the order of the Board as a judgment of the court. There is no appeal from that judgment except that a judgment reversing a Board decision on jurisdiction may be appealed to the Supreme Court.

(b) Upon filing of a petition by a party or the Board, the court may grant such temporary relief, including a restraining order, as it deems proper pending formal hearing.

(c) Orders and decisions of the Board shall apply only to the particular case under appeal, but any number of appeals presenting similar issues may be consolidated for hearing with the consent of the Board. The Board shall not modify, add to, or detract from a collective bargaining agreement by any order or decision.

§ 1644. ANTITRUST EXEMPTION

The activities of independent direct support providers and their exclusive representative that are necessary for the exercise of their rights under this chapter shall be afforded state action immunity under applicable federal and state antitrust laws. The State intends that the "state action" exemption to federal antitrust laws be available only to the State, to independent direct support providers, and to their exclusive representative in connection with

these necessary activities. Exempt activities shall be actively supervised by the State.

Sec. 2. SELF-DETERMINATION ALLIANCE

(a) There is established a Self-Determination Alliance to advise the State on issues related to stabilizing the independent direct provider workforce and improving the quality of services provided to people with disabilities and elders who manage their services. The alliance shall consist of:

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee;

(2) The Commissioner of Health or designee;

(3) Two service recipients who manage their services under Developmental Disabilities Services, two service recipients who manage their services under Choices for Care Medicaid Waiver, and two recipients who manage their services under Attendant Services Program (ASP), and one service recipient who manages his or her services under the Traumatic Brain Injury Program.

(4) One family member of a service recipient under Children's Personal Care Program and one family member of a service recipient under Developmental Disabilities Services.

(b) All initial appointments to the Alliance shall be made on or before August 1, 2013. The chair shall convene the first meeting on or before September 1, 2013. The chair shall be appointed by the Governor from among its members. Members shall serve coterminously and at the pleasure of their appointing authority. A majority of members of the Self-Determination Alliance shall constitute a quorum for the transaction of any business. The Alliance shall be within the Agency of Human Services for administrative purposes only.

(c) The Self-Determination Alliance shall advise the State regarding issues relating to attracting and retaining a high-quality independent direct support provider workforce to be available to all service recipients, including making recommendations to improve the quality, stability, and availability of the independent direct support provider workforce.

(d) The Secretary of Human Services shall review the recommendations of the Self-Determination Alliance within 30 days of submission, and shall include the recommendations with his or her input to the Governor's collective bargaining designee.

Sec. 3. SUNSET

Sec. 2 of this act shall be repealed on June 30, 2018. Prior to this date, the members of the Self-Determination Alliance shall review the purpose and membership of the Alliance and report its recommendations on the future role of the Alliance to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment

S. 77.

An act relating to patient choice and control at end of life.

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. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A TERMINAL CONDITION

§ 5281. DEFINITIONS

As used in this chapter:

(1) "Capable" means that in the opinion of a court or in the opinion of the patient's prescribing physician, consulting physician, psychiatrist, psychologist, or clinical social worker, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(2) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's illness and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(3) "Dispense" means to prepare and deliver pursuant to a lawful order of a physician a prescription drug in a suitable container appropriately labeled for subsequent use by a patient entitled to receive the prescription drug. The term shall not include the actual administration of a prescription drug to the patient.

(4) "Evaluation" means a consultation between a psychiatrist, psychologist, or clinical social worker licensed in Vermont and a patient for the purpose of confirming that the patient:

(A) is capable; and

(B) does not have impaired judgment.

(5) "Good faith" means objective good faith.

(6) "Health care facility" shall have the same meaning as in section 9432 of this title.

(7) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(8) "Hospice care" means a program of care and support provided by a Medicare-certified hospice provider to help an individual with a terminal condition to live comfortably by providing palliative care, including effective pain and symptom management. Hospice care may include services provided by an interdisciplinary team that are intended to address the physical, emotional, psychosocial, and spiritual needs of the individual and his or her family.

(9) "Impaired judgment" means that a person does not sufficiently appreciate the relevant facts necessary to make an informed decision.

(10) "Informed decision" means a decision by a patient to request and obtain a prescription for medication to be self-administered to hasten his or her death based on the patient's understanding and appreciation of the relevant facts that was made after the patient was fully informed by the prescribing physician of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life, and that the patient may live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) if the patient is not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed.

(11) "Palliative care" shall have the same meaning as in section 2 of this title.

(12) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(13) "Physician" means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

(14) "Prescribing physician" means the physician whom the patient has designated to have responsibility for the care of the patient pursuant to this chapter and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(15)(A) "Qualified patient" means a patient who:

(i) is capable;

(ii) is physically able to self-administer medication;

(iii) has executed an advance directive in accordance with chapter 231 of this title;

(iv) is enrolled in hospice care or has been informed of all feasible end-of-life services pursuant to subdivision 5283(3)(D) of this title; and

(v) has satisfied the requirements of this chapter in order to obtain a prescription for medication to hasten his or her death.

(B) An individual shall not qualify under the provisions of this chapter solely because of age or disability.

(16) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

(1) A patient who is capable, who has been determined by the prescribing physician and consulting physician to be suffering from a terminal condition, and who has voluntarily expressed a wish to hasten the dying process may request medication to be self-administered for the purpose of hastening his or her death in accordance with this chapter.

(2) A patient shall have made an oral request and a written request and shall have reaffirmed the oral request to his or her prescribing physician not less than 15 days after the initial oral request. At the time the patient makes the second oral request, the prescribing physician shall offer the patient an opportunity to rescind the request.

(b) Oral requests for medication by the patient under this chapter shall be made in the physical presence of the prescribing physician.

(c) A written request for medication shall be signed and dated by the patient and witnessed by at least two persons, at least 18 years of age, who, in the presence of the patient, sign and affirm that the patient appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed. Neither witness shall be any of the following persons:

(1) the patient's prescribing physician, consulting physician, or any person who has conducted an evaluation of the patient pursuant to section 5285 of this title;

(2) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(3) a person who at the time the request is signed knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(4) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(d) A person who knowingly fails to comply with the requirements in subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

(e) The written request shall be completed only after the patient has been examined by a consulting physician as required under section 5284 of this title.

(f)(1) Under no circumstances shall a guardian or conservator be permitted to act on behalf of a ward for purposes of this chapter.

(2) Under no circumstances shall an agent under an advance directive be permitted to act on behalf of a principal for purposes of this chapter.

§ 5283. PRESCRIBING PHYSICIAN; DUTIES

The prescribing physician shall perform all the following:

(1) determine whether a patient:

(A) is suffering a terminal condition, based on the prescribing physician's physical examination of the patient and review of the patient's relevant medical records;

(B) is capable;

(C) has executed an advance directive in accordance with chapter 231 of this title;

(D) is enrolled in hospice care;

(E) is making an informed decision; and

(F) has made a voluntary request for medication to hasten his or her death;

(2) require proof of Vermont residency, which may be shown by:

(A) a Vermont driver's license or photo identification card;

(B) proof of Vermont voter's registration; or

(C) a Vermont resident personal income tax return for the most recent tax year;

(3) inform the patient in person, both verbally and in writing, of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life, and that the patient may live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) if the patient is not enrolled in hospice care, all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed;

(4) refer the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient is capable and is acting voluntarily;

(5) verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter;

(6) with the patient's consent, consult with the patient's primary care physician, if the patient has one;

(7) recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship;

(8) counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant to this chapter and the importance of not taking the medication in a public place;

(9)(A) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner; and

(B) offer the patient an opportunity to rescind after the patient's second oral request;

(10) verify, immediately prior to writing the prescription for medication under this chapter, that the patient is making an informed decision;

(11) fulfill the medical record documentation requirements of section 5290 of this title;

(12) ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death; and

(13)(A) dispense medication directly, including ancillary medication intended to facilitate the desired effect while minimizing the patient's discomfort, provided the prescribing physician is licensed to dispense medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contact a pharmacist and inform the pharmacist of the prescription; and

(ii) deliver the written prescription personally or by mail or facsimile to the pharmacist, who will dispense the medication to the patient, the prescribing physician, or an expressly identified agent of the patient.

§ 5284. MEDICAL CONSULTATION REQUIRED

Before a patient is qualified in accordance with this chapter, a consulting physician shall physically examine the patient, review the patient's relevant medical records, and confirm in writing the prescribing physician's diagnosis that the patient is suffering from a terminal condition and verify that the patient

is capable, is acting voluntarily, and has made an informed decision. The consulting physician shall either verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter.

§ 5285. REFERRAL FOR EVALUATION

If, in the opinion of the prescribing physician or the consulting physician, a patient may have impaired judgment, either physician shall refer the patient for an evaluation. A medication to end the patient's life shall not be prescribed until the person conducting the evaluation determines that the patient is capable and does not have impaired judgment.

§ 5286. INFORMED DECISION

A person shall not receive a prescription for medication to hasten his or her death unless the patient has made an informed decision. Immediately prior to writing a prescription for medication in accordance with this chapter, the prescribing physician shall verify that the patient is making an informed decision.

§ 5287. RECOMMENDED NOTIFICATION

The prescribing physician shall recommend that the patient notify the patient's next of kin or someone with whom the patient has a significant relationship of the patient's request for medication in accordance with this chapter. A patient who declines or is unable to notify the next of kin or the person with whom the patient has a significant relationship shall not be refused medication in accordance with this chapter.

§ 5288. RIGHT TO RESCIND

A patient may rescind the request for medication in accordance with this chapter at any time and in any manner regardless of the patient's mental state. A prescription for medication under this chapter shall not be written without the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5289. WAITING PERIOD

The prescribing physician shall write a prescription no less than 48 hours after the last to occur of the following events:

(1) the patient's written request for medication to hasten his or her death;

(2) the patient's second oral request; or

(3) the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5290. MEDICAL RECORD DOCUMENTATION

The following shall be documented and filed in the patient's medical record:

(1) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;

(2) all written requests by a patient for medication to hasten his or her death;

(3) the prescribing physician's diagnosis, prognosis, and basis for the determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician's diagnosis, prognosis, and verification, pursuant to section 5284 of this title, that the patient is capable, is acting voluntarily, and has made an informed decision;

(5) a copy of the patient's advance directive;

(6) the prescribing physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten his or her death or that the prescribing physician informed the patient of all feasible end-of-life services;

(7) the prescribing physician's and consulting physician's verifications that the patient either does not have impaired judgment or that the prescribing or consulting physician, or both, referred the patient for an evaluation pursuant to section 5285 of this title and the person conducting the evaluation has determined that the patient does not have impaired judgment;

(8) a report of the outcome and determinations made during any evaluation which the patient may have received;

(9) the date, time, and wording of the prescribing physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request; and

(10) a note by the prescribing physician indicating that all requirements under this chapter have been satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

§ 5291. REPORTING REQUIREMENT

(a) The Department of Health shall require:

(1) that any physician who writes a prescription pursuant to this chapter promptly file a report with the Department covering all the prerequisites for writing a prescription under this chapter; and

(2) physicians to report on an annual basis the number of written requests for medication received pursuant to this chapter, regardless of whether a prescription was actually written in each instance.

(b) The Department shall review annually the medical records of qualified patients who hastened their deaths in accordance with this chapter during the previous year.

(c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to facilitate the collection of information regarding compliance with this chapter and to enable the Department to report information as required by subsection (d) of this section. Individually identifiable health information collected under this chapter, as well as reports filed pursuant to subdivision (a)(1) of this section, are confidential and are exempt from public inspection and copying under the Public Records Act.

(d) The Department shall generate, and make available to the public to the extent that doing so would not reasonably be expected to violate the privacy of any person, an annual statistical report of information collected under subsections (a) and (b) of this section, including:

(1) demographic information regarding qualified patients who hastened their deaths in accordance with this chapter, including the underlying illness and the type of health insurance or other health coverage, if any;

(2) any reasons given by qualified patients for their use of medication to hasten their deaths in accordance with this chapter;

(3) information regarding physicians prescribing medication in accordance with this chapter, including physicians' compliance with the requirements of this chapter;

(4) the number of qualified patients who did not take the medication prescribed pursuant to this chapter and died of other causes; and

(5) the number of instances in which medication was taken by a qualified patient to hasten death but failed to have the intended effect.

§ 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

(1) The Department initially shall adopt rules under this section as emergency rules pursuant to 3 V.S.A. § 844. The General Assembly

determines that adoption of emergency rules pursuant to this subdivision is necessary to address an imminent peril to public health and safety.

(2) Contemporaneously with the initial adoption of emergency rules under subdivision (1) of this section, the Department shall propose permanent rules under this section for adoption pursuant to 3 V.S.A. §§ 836–843. The Department subsequently may revise these rules in accordance with the Vermont Administrative Procedure Act.

§ 5293. PROHIBITIONS; INSURANCE POLICIES

(a) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

(b) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

§ 5294. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter.

(b) A person shall not be subject to civil or criminal liability or professional disciplinary action solely for being present when a qualified patient takes prescribed medication to hasten his or her death in accordance with this chapter.

(c) A health care facility or health care provider shall not subject a physician, nurse, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(d) The provision by a prescribing physician of medication in good faith reliance on the provisions of this chapter shall not constitute patient neglect for any purpose of law.

(e) A request by a patient for medication under this chapter shall not provide the sole basis for the appointment of a guardian or conservator.

(f)(1) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(2) If a health care provider is unable or unwilling to carry out a patient's request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient's relevant medical records to the new health care provider.

(3) A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

(g) This section shall not be construed to limit civil or criminal liability for gross negligence, recklessness, or intentional misconduct.

§ 5295. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a prescribing physician from writing a prescription for medication under this chapter for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the prescribing physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5294(c) of this title, any health care provider who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5296. LIABILITIES AND PENALTIES

(a) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

(b) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter shall be construed to limit criminal prosecution under any other provision of law.

(c) A health care provider is subject to review and disciplinary action by the appropriate licensing entity for failing to act in accordance with this chapter, provided such failure is not in good faith.

§ 5297. FORM OF THE WRITTEN REQUEST

A written request for medication as authorized by this chapter shall be substantially in the following form:

REQUEST FOR MEDICATION TO HASTEN MY DEATH

I, _____, am an adult of sound mind.

I am suffering from _____, which my prescribing physician has determined is a terminal disease and which has been confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, and the expected result. I have completed an advance directive. I have been informed of all feasible end-of-life services or am enrolled in hospice care.

I request that my prescribing physician prescribe medication that will hasten my death.

INITIAL ONE:

_____ I have informed my family or others with whom I have a significant relationship of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family or others with whom I have a significant relationship of my decision.

_____ I have no family or others with whom I have a significant relationship to inform of my decision.

I understand that I have the right to change my mind at any time.

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed:_____Dated:_____

AFFIRMATION OF WITNESSES

We affirm that, to the best of our knowledge and belief:

(1) the person signing this request:

(A) is personally known to us or has provided proof of identity;

(B) signed this request in our presence;

(C) appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed; and

(2) that neither of us:

(A) is under 18 years of age;

(B) is a relative (by blood, civil marriage, civil union, or adoption) of the person signing this request;

(C) is the patient's prescribing physician, consulting physician, or a person who has conducted an evaluation of the patient pursuant to 18 V.S.A. § 5285;

(D) is entitled to any portion of the person's assets or estate upon death; or

(E) owns, operates, or is employed at a health care facility where the person is a patient or resident.

Witness 1/Date_____

Witness 2/Date_____

NOTE: A knowingly false affirmation by a witness may result in criminal penalties.

§ 5298. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law. This section shall not be construed to conflict with section 1553 of the Patient Protection and Affordable Health Care Act, Pub.L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub.L. No. 111-152.

§ 5299. NO EFFECT ON PALLIATIVE SEDATION

This chapter shall not limit or otherwise affect the provision, administration, or receipt of palliative sedation consistent with accepted medical standards.

Sec. 2. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5282(c) shall be imprisoned for not more than 10 years or fined not more than $2,000.00, or both.

Sec. 3. EFFECTIVE DATES

This act shall take effect on September 1, 2013, except that 18 V.S.A. § 5292 (rules for safe disposal of unused medications) in Sec. 1 of this act shall take effect on passage. The Department of Health shall ensure that emergency rules adopted under Sec. 1 of this act, 18 V.S.A. § 5292, are in effect on or before September 1, 2013.

PROPOSAL OF AMENDMENT TO HOUSE PROPOSAL OF AMENDMENT TO S. 77 TO BE OFFERED BY SENATOR HARTWELL

Senator Hartwell moves that the Senate concur in the House Proposal of amendment with a proposal of amendment as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. PATIENT CHOICE AT END OF LIFE

§ 5281. DEFINITIONS

(a) As used in this chapter:

(1) "Bona fide physician –patient relationship" means a treating or consulting relationship in the course of which a physician has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.

(2) "Capable" means that a patient has the ability to make and communicate health care decisions to a physician, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(3) "Health care facility" shall have the same meaning as in section 9432 of this title.

(4) "Health care provider" means a person, partnership, corporation, facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(5) "Impaired judgment" means that a person does not sufficiently understand or appreciate the relevant facts necessary to make an informed decision.

(6) "Palliative care" shall have the same definition as in section 2 of this title.

(7) "Physician" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33.

(8) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. RIGHT TO INFORMATION

A patient's right under 12 V.S.A. § 1909(d) to receive answers to any specific question about the foreseeable risks and benefits of medication without the physician withholding any requested information exists regardless of the purpose of the inquiry. A physician who engages in discussions with a patient related to such risks and benefits in the circumstances described in this chapter shall not be construed to be assisting in or contributing to a patient's independent decision to self-administer a lethal dose of medication, and such discussions shall not be used to establish civil or criminal liability or professional disciplinary action.

§ 5283. PROTECTION OF PATIENT CHOICE AT END OF LIFE

(a) A physician with a bona fide physician–patient relationship with a patient with a terminal condition who is, within reasonable medical judgment, within the final three months of life shall not be considered to have engaged in unprofessional conduct under 26 V.S.A. § 1354 if:

(1) the physician determines that the patient is capable and does not have impaired judgment;

(2) the physician informs the patient of all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(3) the physician prescribes a dose of medication that may be lethal to the patient;

(4) the physician advises the patient of all foreseeable risks related to the prescription; and

(5) the patient makes an independent decision to self-administer a lethal dose of the medication.

(b) A patient who self-administers a lethal dose of medication prescribed for that patient pursuant to this chapter shall not be considered to be a person exposed to grave physical harm under 12 V.S.A. § 519, and no person shall be subject to civil or criminal liability solely for being present when a patient self-administers a lethal dose of medication prescribed pursuant to this chapter or for not acting to prevent the patient from self-administering a lethal dose of medication prescribed pursuant to this chapter.

§ 5284. LIMITATIONS ON ACTIONS

(a) A physician shall be immune from any civil or criminal liability or professional disciplinary action for actions performed in good faith compliance with the provisions of this chapter.

(b) A physician, nurse, pharmacist, or other person shall not be under any duty, by law or contract, to participate in the provision of a lethal dose of medication to a patient in accordance with this chapter.

(c) A health care facility or health care provider shall not subject a physician, nurse, pharmacist, or other person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

§ 5285. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a physician from writing a prescription for medication under this chapter for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5284(c) of this title, any physician who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5286. NO DENIAL OF BENEFITS UNDER LIFE INSURANCE POLICY

A person and his or her beneficiaries shall not be denied benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for actions taken in accordance with this chapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on September 1, 2013.

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

An act relating to protection of patient choice at end of life.

House Proposal of Amendment

S. 88.

An act relating to telemedicine services delivered outside a health care facility.

The House proposes to the Senate to amend the bill in Sec. 1, in the second sentence, after "service delivery,", by inserting the words "the possibility of

equipping home health agency nurses with the tools needed to provide telemedicine services during home health visits,"

House Proposal of Amendment

S. 150.

An act relating to miscellaneous amendments to laws related to motor vehicles.

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

* * * Definitions * * *

Sec. 1. 23 V.S.A. § 4(11) is amended to read:

(11) "Enforcement officers" shall include:

(A) the following persons certified pursuant to 20 V.S.A. § 2358: sheriffs, deputy sheriffs, constables whose authority has not been limited under 24 V.S.A. § 1936a, police officers, state's attorneys, capitol police officers, motor vehicle inspectors, state game wardens, and state police~~, and~~;

(B) for enforcement of offenses relating to parking of motor vehicles, meter checkers~~,~~ and other duly authorized employees of a municipality employed to assist in the enforcement of parking regulations~~. "Enforcement officers" shall also include~~;

(C) for enforcement of nonmoving traffic violations enumerated in subdivisions 2302(a)(1), (2), (3), and (4) of this title, duly authorized employees of the ~~department of motor vehicles for the purpose of issuing~~ Department of Motor Vehicles. Such employees may issue complaints ~~related to their administrative duties, pursuant to 4 V.S.A. § 1105,~~ in accordance with 4 V.S.A. § 1105.

Sec. 2. 23 V.S.A. § 4(11) is amended to read:

(11) "Enforcement officers" shall include:

(A) the following persons certified pursuant to 20 V.S.A. § 2358: sheriffs, deputy sheriffs, constables whose authority has not been limited under 24 V.S.A. § 1936a, police officers, state's attorneys, capitol police officers, motor vehicle inspectors, liquor investigators, state game wardens, and state police~~, and~~;

(B) for enforcement of offenses relating to parking of motor vehicles, meter checkers~~,~~ and other duly authorized employees of a municipality employed to assist in the enforcement of parking regulations~~. "Enforcement officers" shall also include~~;

(C) for enforcement of nonmoving traffic violations enumerated in subdivisions 2302(a)(1), (2), (3), and (4) of this title, duly authorized employees of the ~~department of motor vehicles for the purpose of issuing~~ Department of Motor Vehicles. Such employees may issue complaints ~~related to their administrative duties, pursuant to 4 V.S.A. § 1105,~~ in accordance with 4 V.S.A. § 1105.

Sec. 3. 23 V.S.A. § 4(42) is amended to read:

(42) "Transporter" shall mean a person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer, and includes persons regularly engaged in the business of towing trailer coaches, owned by them or temporarily in their custody, on their own wheels over public highways, persons towing office trailers owned by them or temporarily in their custody, on their own wheels over public highways, persons regularly engaged and properly licensed for the short-term rental of "storage trailers" owned by them and who move these storage trailers on their own wheels over public highways, and persons regularly engaged in the business of moving modular homes over public highways and shall also include dealers and automobile repair shop owners when engaged in the transportation of motor vehicles to and from their place of business for repair purposes. "Transporter" shall also include ~~other persons, firms or corporations~~ the following, provided that the transportation and delivery of motor vehicles is a common and usual incident to ~~the repossession of motor vehicles in connection with~~ their business: persons towing overwidth trailers owned by them in connection with their business; persons whose business is the repossession of motor vehicles; and persons whose business involves moving vehicles from the place of business of a registered dealer to another registered dealer, leased vehicles to the lessor at the expiration of the lease, or vehicles purchased at the place of auction of an auction dealer to the purchaser. ~~For purposes of~~ As used in this subdivision, "short-term rental" shall mean a period of less than one year. Additionally, as used in this subdivision, "repossession" shall include the transport of a repossessed vehicle to a location specified by the lienholder or owner at whose direction the vehicle was repossessed. Before a person may become licensed as a transporter, he or she shall present proof of compliance with section 800 of this title. He or she shall also either own or lease a permanent place of business located in this ~~state~~ State where business shall be conducted during regularly established business hours and the required records stored and maintained.

* * * Placards for Persons with Disabilities * * *

Sec. 4. 23 V.S.A. § 304a(c) is amended to read:

(c) Vehicles with special registration plates or removable windshield placards from any state ~~or which have a handicapped parking card issued by the commissioner of motor vehicles~~ may use the special parking spaces when:

(1) the ~~card or~~ placard is displayed ~~in the lower right side of the windshield or~~:

(A) by hanging it from the front windshield rearview mirror in such a manner that it may be viewed from the front and rear of the vehicle; or

(B) if the vehicle has no rearview mirror, on the dashboard;

(2) the plate is mounted as provided in section 511 of this title; or

(3) the plate is mounted or the placard displayed as provided by the law of the ~~state~~ jurisdiction where the vehicle is registered.

* * * Temporary Registrations * * *

Sec. 5. 23 V.S.A. § 305(d) is amended to read:

(d) When a registration for a motor vehicle, snowmobile, motorboat, or all-terrain vehicle is processed electronically, a receipt shall be available for printing. The receipt shall serve as a temporary registration. To be valid, the temporary registration shall be in the possession of the operator at all times, and it shall expire ten days after the date of the transaction.

* * * Registration Fees, Taxes on Trailers * * *

Sec. 6. 23 V.S.A. § 371(a) is amended to read:

§ 371. TRAILER AND SEMI-TRAILER

(a)(1) The one-year and two-year fees for registration of a trailer or semi-trailer, except a contractor's trailer or farm trailer, shall be as follows:

(A) $25.00 and $48.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of ~~less than~~ 1,500 pounds or less;

(B) $49.00 and $96.00, respectively, when such trailer or semi-trailer has a gross weight of trailer and load of more than 1,500 pounds ~~or more,~~ and is drawn by a vehicle of the pleasure car type;

(C) $49.00 and $96.00, respectively, when such trailer or semi-trailer is drawn by a motor truck or tractor, when such trailer or semi-trailer has a gross weight of more than 1,500 pounds ~~or more,~~ but ~~not in excess of~~ less than 3,000 pounds;

(D) $49.00 and $96.00, respectively, when such trailer or semi-trailer is used in combination with a truck-tractor or motor truck registered at the fee provided for combined vehicles under section 367 of this title. Excepting for the fees, the provisions of this subdivision shall not apply to trailer coaches as defined in section 4 of this title nor to modular homes being transported by trailer or semi-trailer.

(2) The one-year and two-year fees for registration of a contractor's trailer shall be $145.00 and $290.00, respectively.

* * * Biennial Motorboat Registration * * *

Sec. 7. 23 V.S.A. § 3305 is amended to read:

§ 3305. FEES

(a) A person shall not operate a motorboat on the public waters of this state unless the motorboat is registered in accordance with this chapter.

(b) Annually or biennially, the owner of each motorboat required to be registered by this state shall file an application for a number with the ~~commissioner of motor vehicles~~ Commissioner of Motor Vehicles on forms approved by him or her. The application shall be signed by the owner of the motorboat and shall be accompanied by ~~a~~ an annual fee of $22.00 and a surcharge of $5.00, or a biennial fee of $39.00 and a surcharge of $10.00, for a motorboat in class A; by ~~a~~ an annual fee of $33.00 and a surcharge of $10.00, or a biennial fee of $61.00 and a surcharge of $20.00, for a motorboat in class 1; by ~~a~~ an annual fee of $60.00 and a surcharge of $10.00, or a biennial fee of $115.00 and a surcharge of $20.00, for a motorboat in class 2; by ~~a~~ an annual fee of $126.00 and a surcharge of $10.00, or a biennial fee of $247.00 and a surcharge of $20.00, for a motorboat in class 3. Upon receipt of the application in approved form, the ~~commissioner~~ Commissioner shall enter the application upon the records of the ~~department of motor vehicles~~ Department of Motor Vehicles and issue to the applicant a registration certificate stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules of the ~~commissioner~~ Commissioner in order that it may be clearly visible. The registration shall be void one year from the first day of the month following the month of issue in the case of annual registrations, or void two years from the first day of the month following the month of issue in the case of biennial registrations. A vessel of less than 10 horsepower used as a tender to a registered vessel shall be deemed registered, at no additional cost, and shall have painted or attached to both sides of the bow, the same registration number as the registered vessel with the number "1" after the number. The number

shall be maintained in legible condition. The registration certificate shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever the motorboat is in operation. A duplicate registration may be obtained upon payment of a fee of $2.00 to the ~~commissioner~~ Commissioner. Notwithstanding section 3319 of this chapter, $5.00 of each registration fee shall be allocated to the ~~transportation fund~~ Transportation Fund. The remainder of the fee shall be allocated in accordance with section 3319 of this title.

* * *

(d)(1) Registration of a motorboat ends when the owner transfers title to another. The former owner shall immediately return directly to the ~~commissioner~~ Commissioner the registration certificate previously assigned to the transferred motorboat with the date of sale and the name and residence of the new owner endorsed on the back of the certificate.

(2) When a person transfers the ownership of a registered motorboat to another, files a new application and pays a fee of $5.00, he or she may have registered in his or her name another motorboat of the same class for the remainder of the registration ~~year~~ period without payment of any additional registration fee. However, if the fee for the registration of the motorboat sought to be registered is greater than the registration fee for the transferred motorboat, the applicant shall pay the difference between the fee first paid and the fee for the class motorboat sought to be registered.

* * *

(f) Every registration certificate awarded under this subchapter shall continue in effect ~~for one year from the first day of the month of issue~~ as prescribed in subsection (b) of this section unless sooner ended under this chapter. The registration certificate may be renewed by the owner in the same manner provided for in securing the initial certificate.

* * *

* * * Off-Site Display of Vehicles by Dealers * * *

Sec. 8. 23 V.S.A. § 451(b) is amended to read:

(b) With the prior approval of the ~~commissioner~~ Commissioner, a Vermont dealer may display vehicles on a temporary basis, but in no instance for more than ~~10~~ 14 days, at fairs, shows, exhibitions, and other off-site locations within the manufacturer's stated area of responsibility in the franchise agreement. No sales may be transacted at these ~~off-site~~ off-site locations. A dealer desiring to display vehicles temporarily at an off-site location shall notify the ~~commissioner~~ Commissioner in a manner prescribed by the ~~commissioner~~

Commissioner no less than two days prior to the first day for which approval is requested.

* * * Penalties for Unauthorized Operation by Junior Operators and Learner's Permit Holders * * *

Sec. 9. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the ~~commissioner~~ Commissioner and showing compliance with the motor vehicle laws of this and other states. The ~~commissioner~~ Commissioner may recall any permit or license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the ~~commissioner~~ Commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The ~~commissioner~~ Commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment, 90 days when a total of six points has been accumulated, or 90 days when an operator is adjudicated of a violation of ~~section 678~~ subsection 614(c) or 615(a) of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the ~~commissioner~~ Commissioner, when the person has passed a reexamination approved by the ~~commissioner~~ Commissioner.

(b) When a license or permit is recalled under the provisions of this section, the person whose license or permit is so recalled shall have the same right of hearing before the ~~commissioner~~ Commissioner as is provided in subsection 671(a) of this title.

(c) Except for a recall based solely upon the provisions of subsection (d) of this section, any recall of a license or permit may extend past the operator's 18th birthday. While the recall is still in effect, that operator shall be ineligible for any operator's license.

(d) The ~~commissioner~~ Commissioner shall recall a learner's permit or junior operator's license upon written request of the individual's custodial parent or guardian.

(e) Any recall period under this section shall run concurrently with any suspension period imposed under chapter 13 of this title.

Sec. 10. 23 V.S.A. § 614 is amended to read:

§ 614. RIGHTS UNDER LICENSE

(a) An operator's license shall entitle the holder to operate a registered motor vehicle with the consent of the owner whether employed to do so or not.

(b) A junior operator's license shall entitle the holder to operate a registered motor vehicle~~,~~ with the consent of the owner, but shall not entitle him or her to operate a motor vehicle in the course of his or her employment or for direct or indirect compensation for one year following issuance of the license, except that the holder may operate a farm tractor with or without compensation upon a public highway in going to and from different parts of a farm of the tractor's owner or to go to any repair shop for repair purposes. A junior operator's license shall not entitle the holder to carry passengers for hire.

(c) During the first three months of operation, the holder of a junior operator's license is restricted to driving alone or with a licensed parent or guardian, licensed or certified driver education instructor, or licensed person at least 25 years of age. During the following three months, a junior operator may additionally transport family members. No person operating with a junior operator's license shall transport more passengers than there are safety belts unless he or she is operating a vehicle that has not been manufactured with a federally approved safety belt system. A person convicted of operating a motor vehicle in violation of this subsection shall be subject to a penalty of not more than $50.00, and his or her license shall be recalled for a period of 90 days. The provisions of this subsection may be enforced only if a law enforcement officer has detained the operator for a suspected violation of another traffic offense.

~~(b) This section shall not prohibit a holder of a junior operator's license from operating a farm tractor with or without compensation upon a public highway in going to and from different parts of a farm of the owner of such tractor and for repair purposes to any repair shop.~~

Sec. 11. 23 V.S.A. § 615 is amended to read:

§ 615. UNLICENSED OPERATORS

(a)(1) An unlicensed person 15 years of age or older~~,~~ may operate a motor vehicle~~,~~ if he or she ~~has in possession,~~ possesses a valid learner's permit issued

to him or her by the ~~commissioner~~ Commissioner and if ~~their~~ his or her licensed parent or guardian, licensed or certified driver education instructor, or a licensed person at least 25 years of age rides beside him or her. Nothing in this section shall be construed to permit a person against whom a revocation or suspension of license is in force, or a person less than 15 years of age, or a person who has been refused a license by the ~~commissioner,~~ Commissioner to operate a motor vehicle.

(2) A licensed person who does not possess a valid motorcycle endorsement may operate a motorcycle, with no passengers, only during daylight hours and then only if he or she has upon his or her person a valid motorcycle learner's permit issued to him or her by the ~~commissioner~~ Commissioner.

(b) ~~The commissioner in his or her discretion, may recall a learner's permit in the same circumstances as he or she may recall a provisional license~~ A person convicted of operating a motor vehicle in violation of this section shall be subject to a penalty of not more than $50.00, and his or her learner's permit shall be recalled for a period of 90 days. No person may be issued traffic complaints alleging a violation of this section and a violation of section 676 of this title from the same incident. The provisions of this section may be enforced only if a law enforcement officer has detained the operator for a suspected violation of another traffic offense.

Sec. 12. REPEAL

23 V.S.A. § 678 (penalties for unauthorized operation) is repealed.

* * * Nondriver Identification Cards * * *

Sec. 13. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the ~~commissioner~~ Commissioner and be issued an identification card which is attested by the ~~commissioner~~ Commissioner as to true name, correct age, residential address unless the listing of another address is requested by the applicant or is otherwise authorized by law, and any other identifying data as the ~~commissioner~~ 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~~ Commissioner may require. New and renewal application forms shall include a space for the applicant to request that a "veteran" designation be placed on his or her identification card. If a

veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides a Department of Defense Form 214 or other proof of veteran status specified by the Commissioner, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the identification card shall include the term "veteran" on its face. The ~~commissioner~~ Commissioner shall require payment of a fee of $20.00 at the time application for an identification card is made.

* * *

(i) ~~An identification card issued under this subsection to an individual under the age of 30 shall include a magnetic strip that includes only the name, date of birth, height, and weight of the individual identified on the card.~~ Each identification card issued to an initial or renewal applicant shall include a bar code encoded with minimum data elements as prescribed in 6 C.F.R. § 37.19.

* * *

* * * License Certificates * * *

Sec. 14. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

(a)(1) The ~~commissioner~~ Commissioner or his or her authorized agent may license operators and junior operators when an application, on a form prescribed by the ~~commissioner~~ Commissioner, signed and sworn to by the applicant for the license, is filed with him or her, accompanied by the required license fee and any valid license from another state or Canadian jurisdiction is surrendered.

(2) The ~~commissioner~~ Commissioner may, however, in his or her discretion, refuse to issue a license to any person whenever he or she is satisfied from information given him or her by credible persons, and upon investigation, that the person is mentally or physically unfit, or because of his or her habits, or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. A person refused a license, under the provisions of this subsection or section 605 of this title, shall be entitled to hearing as provided in sections 105-107 of this title.

(3) Any new or renewal application form shall include a space for the applicant to request that a "veteran" designation be placed on his or her license certificate. An applicant who requests the designation shall provide a Department of Defense Form 214, or other proof of veteran status specified by the Commissioner.

* * *

Sec. 15. 23 V.S.A. § 610 is amended to read:

§ 610. LICENSE CERTIFICATES

(a) The ~~commissioner~~ Commissioner shall assign a distinguishing number to each licensee and shall furnish the licensee with a license certificate~~,~~ ~~showing~~ that shows the number~~,~~ and the licensee's full name, date of birth, and residential address unless the listing of another address is requested by the applicant or is otherwise authorized by law. The certificate also shall include a brief physical description~~, and mailing address~~ and a space for the signature of the licensee. The license shall be void until signed by the licensee. If a veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides proof of veteran status as specified in subdivision 603(a)(3) of this title, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the license certificate shall include the term "veteran" on its face.

* * *

(c) Each license certificate issued to a first-time applicant and each subsequent renewal by that person shall be issued with the photograph or imaged likeness of the licensee included on the certificate. The ~~commissioner~~ Commissioner shall determine the locations where photographic licenses may be issued. ~~A photographic motor vehicle operator's license issued under this subsection to an individual under the age of 30 shall include a magnetic strip that includes only the name, date of birth, height, and weight of the licensee.~~ A person issued a license under this subsection that contains an imaged likeness may renew his or her license by mail. Except that a renewal by a licensee required to have a photograph or imaged likeness under this subsection must be made in person so that an updated imaged likeness of the person is obtained no less often than once every eight years.

(d) Each license certificate issued to an initial or renewal applicant shall include a bar code with minimum data elements as prescribed in 6 C.F.R. § 37.19.

Sec. 16. 23 V.S.A. § 7 is amended to read:

§ 7. ENHANCED DRIVER LICENSE; MAINTENANCE OF DATABASE INFORMATION; FEE

(a) The face of an enhanced license shall contain the individual's name, date of birth, gender, a unique identification number, full facial photograph or imaged likeness, address, signature, issuance and expiration dates, ~~and~~ citizenship, and, if applicable, a veteran designation. The back of the enhanced license shall have a machine-readable zone. A Gen 2 vicinity Radio Frequency

Identification chip shall be embedded in the enhanced license in compliance with the security standards of the U.S. Department of Homeland Security. Any additional personal identity information not currently required by the Department of Homeland Security shall need the approval of either the ~~general assembly~~ General Assembly or the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules prior to the implementation of the requirements.

(b) In addition to any other requirement of law or rule, before an enhanced license may be issued to a person, the person shall present for inspection and copying satisfactory documentary evidence to determine identity and United States citizenship. An application shall be accompanied by: a photo identity document, documentation showing the person's date and place of birth, proof of the person's Social Security number, and documentation showing the person's principal residence address. New and renewal application forms shall include a space for the applicant to request that a "veteran" designation be placed on the enhanced license. If a veteran, as defined in 38 U.S.C. § 101(2), requests a veteran designation and provides a Department of Defense Form 214 or other proof of veteran status specified by the Commissioner, and the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions, the identification card shall include the term "veteran" on its face. To be issued, an enhanced license must meet the same requirements as those for the issuance of a United States passport. Before an application may be processed, the documents and information shall be verified as determined by the ~~commissioner~~ Commissioner. Any additional personal identity information not currently required by the U.S. Department of Homeland Security shall need the approval of either the ~~general assembly~~ General Assembly or the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules prior to the implementation of the requirements.

(c) No person shall compile or maintain a database of electronically readable information derived from an operator's license, junior operator's license, enhanced license, learner permit, or nondriver identification card. This prohibition shall not apply to a person who accesses, uses, compiles, or maintains a database of the information for law enforcement or governmental purposes or for the prevention of fraud or abuse or other criminal conduct.

* * *

* * * Driver Training Instructors * * *

Sec. 17. 23 V.S.A. § 705 is amended to read:

§ 705. QUALIFICATIONS FOR INSTRUCTOR'S LICENSE

In order to qualify for an instructor's license, each applicant shall:

(1) not have been convicted of:

(A) a felony nor incarcerated for a felony within the 10 years prior to the date of application; ~~or~~

(B) a violation of section 1201 of this title~~,~~ or a ~~conviction~~ like offense in another jurisdiction reported to the ~~commissioner~~ Commissioner pursuant to subdivision 3905(a)(2) of this title within the three years prior to the date of application; ~~or~~

(C) a subsequent ~~conviction for an~~ violation of an offense listed in subdivision 2502(a)(5) of this title or of section 674 of this title; or

(D) a sex offense that requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3;

* * *

* * * Operating on Closed Highways * * *

Sec. 18. 23 V.S.A. § 1112 is amended to read:

§ 1112. CLOSED HIGHWAYS

(a) Except by the written permit of the authority responsible for the closing, ~~no~~ a person shall not drive any vehicle over any highway across which there is a barrier or a sign indicating that the highway is closed to public travel.

(b) An authority responsible for closing a highway to public travel may erect a sign, which shall be visible to highway users and proximate to the barrier or sign indicating that the highway is closed to public travel, indicating that violators are subject to penalties and civil damages.

(c) A municipal, county, or state entity that deploys police, fire, ambulance, rescue, or other emergency services in order to aid a stranded operator of a vehicle, or to move a disabled vehicle, operated on a closed highway in violation of this section, may recover from the operator in a civil action the cost of providing the services, if at the time of the violation a sign satisfying the requirements of subsection (b) of this section was installed.

* * * DUI Suspensions; Credit * * *

Sec. 19. 23 V.S.A. § 1205(p) is amended to read:

(p) Suspensions to run concurrently. Suspensions imposed under this section or any comparable statute of any other jurisdiction and sections 1206, 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~~ 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.~~

Sec. 20. 23 V.S.A. § 1216(i) is amended to read:

(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~~ 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.~~

* * * Sirens and Lights on Exhibition Vehicles * * *

Sec. 21. 23 V.S.A. § 1252 is amended to read:

§ 1252. ~~USES OF~~ ISSUANCE OF PERMITS FOR SIRENS OR COLORED LAMPS OR BOTH; USE OF AMBER LAMPS

(a) When satisfied as to the condition and use of the vehicle, the ~~commissioner~~ Commissioner shall issue and may revoke, for cause, permits for sirens or colored signal lamps in the following manner:

(1) Sirens or blue or blue and white signal lamps, or a combination of these, may be authorized for all law enforcement vehicles~~,~~ owned or leased by a law enforcement agency ~~or~~, a certified law enforcement officer ~~and if~~, or the Vermont Criminal Justice Training Council. If the applicant is a constable, the application shall be accompanied by a certification by the town clerk that the applicant is the duly elected or appointed constable and attesting that the town has not voted to limit the constable's authority to engage in enforcement activities under 24 V.S.A. § 1936a.

(2) Sirens and red or red and white signal lamps may be authorized for all ambulances, fire apparatus, vehicles used solely in rescue operations, or vehicles owned or leased by, or provided to, volunteer ~~firemen~~ firefighters and voluntary rescue squad members, including a vehicle owned by a volunteer's employer when the volunteer has the written authorization of the employer to use the vehicle for emergency fire or rescue activities ~~and motor vehicles used solely in rescue operations~~.

(3) No vehicle may be authorized a permit for more than one of the combinations described in subdivisions (1) and (2) of this subsection.

(4) ~~Notwithstanding subdivisions (1) and (2) of this subsection, no~~ No motor vehicle, other than one owned by the applicant, shall be issued a permit until ~~such time as~~ the ~~commissioner can adequately record~~ Commissioner has recorded the information regarding both the owner of the vehicle and the applicant for the permit.

(5) Upon application to the ~~commissioner~~ Commissioner, the ~~commissioner~~ Commissioner may issue a single permit for all the vehicles owned or leased by the applicant.

(6) Sirens and red or red and white signal lamps, or sirens and blue or blue and white signal lamps, may be authorized for restored emergency or enforcement vehicles used for exhibition purposes. Sirens and lamps authorized under this subdivision may only be activated during an exhibition, such as a car show or parade.

* * *

* * * Motor Vehicle Arbitration Board; Administrative Support * * *

Sec. 22. 9 V.S.A. § 4174 is amended to read:

§ 4174. VERMONT MOTOR VEHICLE ARBITRATION BOARD

(a) There is created a Vermont ~~motor vehicle arbitration board~~ Motor Vehicle Arbitration Board consisting of five members and three alternate members to be appointed by the ~~governor~~ Governor for terms of three years. Board members may be appointed for two additional three-year terms. One member of the ~~board~~ Board and one alternate shall be new car dealers in Vermont, one member and one alternate shall be persons active as automobile technicians, and three members and one alternate shall be persons having no direct involvement in the design, manufacture, distribution, sales, or service of motor vehicles or their parts. Board members shall be compensated in accordance with the provisions of 32 V.S.A. § 1010. ~~The board shall be attached to the department of motor vehicles and shall receive administrative~~

~~services from the department of motor vehicles~~ Administrative support for the Board shall be provided as determined by the Secretary of Transportation.

* * *

* * * Traffic Violations; Judicial Bureau * * *

Sec. 23. 4 V.S.A. § 1105 is amended to read:

§ 1105. ANSWER TO COMPLAINT; DEFAULT

(a) A violation shall be charged upon a summons and complaint form approved and distributed by the ~~court administrator~~ Court Administrator. The complaint shall be signed by the issuing officer or by the state's attorney. The original shall be filed with the ~~judicial bureau,~~ Judicial Bureau; a copy shall be retained by the issuing officer or state's attorney and two copies shall be given to the defendant. The Judicial Bureau may, consistent with rules adopted by the Supreme Court pursuant to 12 V.S.A. § 1, accept electronic signatures on any document, including the signatures of issuing officers, state's attorneys, and notaries public. The complaint shall include a statement of rights, instructions, notice that a defendant may admit, not contest, or deny a violation, notice of the fee for failure to answer within 20 days, and other notices as the ~~court administrator~~ Court Administrator deems appropriate. The ~~court administrator~~ Court Administrator, in consultation with appropriate law enforcement agencies, may approve a single form for charging all violations, or may approve two or more forms as necessary to administer the operations of the ~~judicial bureau~~ Judicial Bureau.

* * *

(f) If a person fails to appear or answer a complaint the ~~bureau~~ Bureau shall enter a default judgment against the person. However, no default judgment shall be entered until the filing of a declaration by the issuing officer or state's attorney, under penalty of perjury, setting forth facts showing that the defendant is not a person in military service as defined at 50 App. U.S.C. § 511 (Servicemembers Civil Relief Act definitions), except upon order of the hearing officer in accordance with the Servicemembers Civil Relief Act, 50 App. U.S.C. Titles I–II. The ~~bureau~~ Bureau shall mail a notice to the person that a default judgment has been entered. A default judgment may be set aside by the hearing officer for good cause shown.

* * *

* * * Texting While Driving; Penalties * * *

Sec. 24. 23 V.S.A. § 1099 is amended to read:

§ 1099. TEXTING PROHIBITED

* * *

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of not less than $100.00 and not more than $200.00 upon adjudication of a first violation, and of not less than $250.00 and not more than $500.00 upon adjudication of a second or subsequent violation within any two-year period.

* * * Portable Electronic Devices in Work Zones * * *

Sec. 25. 23 V.S.A. § 4(5) is amended to read:

(5) "Construction area" ~~shall mean and include all of that portion~~ or "work zone" or "work site" means an area of a highway ~~while under~~ undergoing construction, maintenance, or utility work activities by order or with the permission of the ~~state~~ State or a municipality ~~thereof,~~ that is designated by and located within properly posted warning ~~signs maintained at each end thereof showing such area to have been designated as a "Construction Area"~~ devices.

Sec. 26. 23 V.S.A. § 1095b is added to read:

§ 1095b. HANDHELD USE OF PORTABLE ELECTRONIC DEVICE IN WORK ZONE PROHIBITED

(a) Definition. As used in this section, "hands-free use" means the use of a portable electronic device without use of either hand and outside the immediate proximity of the user's ear, by employing an internal feature of, or an attachment to, the device.

(b) Use of handheld portable electronic device in work zone prohibited. A person shall not use a portable electronic device while operating a moving motor vehicle within a highway work zone. The prohibition of this subsection shall not apply unless the work zone is properly designated with warning devices in accordance with subdivision 4(5) of this title, and shall not apply:

(1) to hands-free use; or

(2) when use of a portable electronic device is necessary to communicate with law enforcement or emergency service personnel under emergency circumstances.

(c) Penalty. A person who violates this section commits a traffic violation and shall be subject to a penalty of not less than $100.00 and not more than

$200.00 upon adjudication of a first violation, and of not less than $250.00 and not more than $500.00 upon adjudication of a second or subsequent violation within any two-year period.

* * * Assessment of Points * * *

Sec. 27. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)(i)	§ 1095.	~~Operating with television set installed~~ Entertainment picture visible to operator;
(ii)	§ 1095b.	Use of portable electronic device in work zone—first offense;
(MM)	~~§ 1099. Texting prohibited—first offense;~~ [Deleted.]	

* * *

(4) Five points assessed for:

* * *

(C)	§ 1099.	Texting prohibited~~—second and subsequent offenses~~;
(D)	~~Deleted~~	
	§ 1095b.	Use of portable electronic device in work zone—second and subsequent offenses;

* * *

* * * Prohibited Idling of Motor Vehicles * * *

Sec. 28. 23 V.S.A. § 1110 is added to subchapter 11 of chapter 13 to read:

§ 1110. PROHIBITED IDLING OF MOTOR VEHICLES

(a)(1) General prohibition. A person shall not cause or permit operation of the primary propulsion engine of a motor vehicle for more than five minutes in any 60-minute period, while the vehicle is stationary.

(2) Exceptions. The five-minute limitation of subdivision (1) of this subsection shall not apply when:

(A) a military vehicle; an ambulance; a police, fire, or rescue vehicle; or another vehicle used in a public safety or emergency capacity idles as necessary for the conduct of official operations;

(B) an armored vehicle idles while a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

(C) a motor vehicle idles because of highway traffic conditions, at the direction of an official traffic control device or signal, or at the direction of a law enforcement official;

(D) the health or safety of a vehicle occupant requires idling, or when a passenger bus idles as necessary to maintain passenger comfort while nondriver passengers are on board;

(E) idling is necessary to operate safety equipment such as windshield defrosters, and operation of the equipment is needed to address specific safety concerns;

(F) idling of the primary propulsion engine is needed to power work-related mechanical, hydraulic, or electrical operations other than propulsion, such as mixing or processing cargo or straight truck refrigeration, and the motor vehicle is idled to power such work-related operations;

(G) a motor vehicle of a model year prior to 2018 with an occupied sleeper berth compartment is idled for purposes of air-conditioning or heating during a rest or sleep period;

(H) a motor vehicle idles as necessary for maintenance, service, repair, or diagnostic purposes or as part of a state or federal inspection; or

(I) a school bus idles on school grounds in compliance with rules adopted pursuant to the provisions of subsection 1282(f) of this title.

(b) Operation of an auxiliary power unit, generator set, or other mobile idle reduction technology is an alternative to operating the primary propulsion engine of a motor vehicle and is not subject to the prohibition of subdivision (a)(1) of this section.

(c) In addition to the exemptions set forth in subdivision (a)(2) of this section, the Commissioner of Motor Vehicles, in consultation with the Secretary of Natural Resources, may adopt rules governing times or circumstances when operation of the primary propulsion engine of a stationary motor vehicle is reasonably required.

(d) A person adjudicated of violating subdivision (a)(1) of this section shall be:

(1) assessed a penalty of not more than $10.00, which penalty shall be exempt from surcharges under 13 V.S.A. § 7282(a), for a first violation;

(2) assessed a penalty of not more than $50.00 for a second violation; and

(3) assessed a penalty of not more than $100.00 for a third or subsequent violation.

Sec. 29. 16 V.S.A. § 1045 is amended to read:

§ 1045. DRIVER TRAINING COURSE

* * *

(d) All driver education courses shall include instruction on the adverse environmental, health, economic, and other effects of unnecessary idling of motor vehicles and on the law governing prohibited idling of motor vehicles.

* * * Veteran Indicator on Commercial Driver Licenses * * *

Sec. 30. 23 V.S.A. § 4110(a)(5) is amended to read:

(5) The person's signature, as well as a space for the applicant to request that a "veteran" designation be placed on a commercial driver license. An applicant who requests a veteran designation shall provide a Department of Defense Form 214, or other proof of veteran status specified by the Commissioner.

Sec. 31. 23 V.S.A. § 4111 is amended to read:

§ 4111. COMMERCIAL DRIVER LICENSE

(a) Contents of license. A commercial driver's license shall be marked "commercial driver license" or "CDL," and shall be, to the maximum extent practicable, tamper proof, and shall include~~, but not be limited to~~ the following information:

* * *

(12) A veteran designation if a veteran, as defined in 38 U.S.C. § 101(2), requests the designation and provides proof of veteran status as specified in subdivision 4110(a)(5) of this title, and if the Office of Veterans Affairs confirms his or her status as an honorably discharged veteran or a veteran discharged under honorable conditions.

* * *

* * * Effective Dates and Sunsets * * *

Sec. 32. EFFECTIVE DATES AND SUNSETS

(a) This section and Sec. 22 of this act (administrative support for the Motor Vehicle Arbitration Board) shall take effect on passage.

(b)(1) Sec. 1 of this act shall take effect on July 1, 2013, if the deletion of "liquor investigators" from the definition of "enforcement officers" provided for in 2011 Acts and Resolves No. 17, Sec. 4 takes effect on or before July 1, 2013.

(2) Sec. 2 of this act shall take effect on July 1, 2013, if the deletion of "liquor investigators" from the definition of "enforcement officers" provided for in 2011 Acts and Resolves No. 17, Sec. 4 does not take effect on or before July 1, 2013.

(c) Secs. 25, 26, and 28, and in Sec. 27, § 2502(a)(1)(LL) and (a)(4)(D) of this act shall take effect on January 1, 2014.

(d) All other sections of this act shall take effect on July 1, 2013.

House Proposal of Amendment to Senate Proposal of Amendment

H. 95.

An act relating to unclaimed life insurance benefits

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: By striking out Sec. 2 (group life policyholder information) in its entirety and by inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. EFFECTIVE DATE; APPLICATION

This act shall take effect on July 1, 2013 and, notwithstanding 1 V.S.A. § 214(b), shall apply to all life insurance policies, annuity contracts, and retained asset accounts in force on or after the effective date.

Second: By striking out Sec. 3 in its entirety

House Proposal of Amendment to Senate Proposal of Amendment

H. 533

An act relating to capital construction and state bonding

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 1, Legislative Intent, in subsection (a), by striking out "$90,148,531.00" and inserting in lieu thereof $90,373,066.00

Second: In Sec. 2, State Buildings, in subsection (b), by striking out subdivision (5) and inserting in lieu thereof:

(5) Statewide, BGS engineering and architectural project costs:

$2,982,132.00

Third: In Sec. 2, State Buildings, in subsection (c), by striking out subdivisions (4) and (5) and inserting in lieu thereof:

(4) Statewide, major maintenance: $8,334,994.00

(5) Statewide, BGS engineering and architectural project costs:

$2,982,132.00

Fourth: In Sec. 2, in subsection (d), by inserting after the last sentence:

It is also the intent of the General Assembly that the Commissioner of Buildings and General Services may use up to $360,000.00 of the funds appropriated in subdivisions (b)(5) and (c)(5) of this section for the purpose of funding four limited service positions in the Department of Buildings and General Services created for engineering-related work pursuant to the 2013 Acts and Resolves No. [ ], Sec. E.100(b)(1) (FY 2014 Appropriations Act).

Fifth: In Sec. 2, in subsection (e), by striking out "$52,281,597.00", "$45,966,661.00", and "$98,248,258.00" and inserting in lieu thereof $52,461,132.00, $45,742,126.00, and $98,203,258.00

Sixth: By striking out Sec. 4, Human Services, in its entirety and inserting in lieu thereof:

Sec. 4. HUMAN SERVICES

(a) The following sums are appropriated in FY 2014 to the Department of Buildings and General Services for the Agency of Human Services for the projects described in this subsection:

(1) Health laboratory, continuation of design, permitting, bidding, and construction phases for co-location of Department of Health laboratory with the UVM Colchester research facility: $5,000,000.00

(2) Corrections, security upgrades: $100,000.00

(3) Corrections, facilities conditions analysis: $100,000.00

(b) The following sums are appropriated in FY 2015 to the Department of Buildings and General Services for the Agency of Human Services for the projects described in this subsection:

(1) Health laboratory, continuation of design, permitting, bidding, and

construction phases for co-location of the Department of Health laboratory with the UVM Colchester research facility: $6,000,000.00

(2) Corrections, security upgrades: $100,000.00

(c) It is the intent of the General Assembly that the funds appropriated in subdivision (b)(1) of this section are committed funds not subject to budget adjustment.

(d) On or before January 15, 2014, the Department of Corrections and the Department of Buildings and General Services shall report to the General Assembly on capital needs at state correctional facilities. The report shall evaluate five-year capital needs and shall include:

(1) a facilities conditions analysis;

(2) an assessment of space and capacity at Vermont state correctional facilities required for programming use; and

(3) proposed unit configurations for the housing of aging and other special needs populations.

(e) The Commissioner of Buildings and General Services shall use the funds appropriated to the Department of Buildings and General Services for the Agency of Human Services in subdivision (a)(3) of this section for the purpose described in subdivision (d)(1) of this section.

Appropriation – FY 2014	$5,200,000.00
Appropriation – FY 2015	$6,100,000.00
Total Appropriation – Section 4	$11,300,000.00

Seventh: In Sec. 6, Commerce and Community Development, by striking out subsection (c) in its entirety and inserting in lieu thereof:

(c) The following sum is appropriated in FY 2014 to the Department of Buildings and General Services for the Battle of Cedar Creek and Winchester Memorials, relocation and placement of roadside marker: $25,000.00

Eighth: In Sec. 6, in subsection (e), by striking out "$495,000.00" and "$745,000.00" and inserting in lieu thereof $440,000.00 and $690,000.00, respectively

Ninth: In Sec. 8, Education, in subsection (b), by striking out the second sentence and inserting in lieu thereof:

It is the intent of the General Assembly that the funds appropriated in this subsection are committed funds not subject to budget adjustment.

Tenth: In Sec. 11, Natural Resources, in subsection (a), by striking out subdivision (4)(B) and inserting in lieu thereof:

(B) Fish and Wildlife Enforcement Division, for equipment: $75,950.00

Eleventh: In Sec. 18a, Enhanced 911 Program, by striking out the section in its entirety and inserting in lieu thereof:

Sec. 18a. ENHANCED 911 PROGRAM

(a) The sum of $10,000.00 is appropriated in FY 2014 to the Enhanced 911 Board for one-time fees and equipment associated with the planning and implementation of the Enhanced 911 program in schools pursuant to 30 V.S.A. § 7057.

(b) The sum of $10,000.00 is appropriated in FY 2015 for the project described in subsection (a) of this section.

(c) It is the intent of the General Assembly that the appropriations to the Enhanced 911 Board for the Enhanced 911 program in subsections (a) and (b) of this section are one-time appropriations. Any future appropriations shall be funded through the Universal Service Fund established pursuant to 30 V.S.A. chapter 88.

Total Appropriation – Section 18a $20,000.00

Twelfth: In Sec. 24, Newport Waterfront, by striking out the section in its entirety and inserting in lieu thereof:

Sec. 24. 2009 Acts and Resolves No. 43, Sec. 25(a) is amended to read:

(a) Notwithstanding 29 V.S.A. § 166(b), the ~~commissioner of buildings and general services~~ Commissioner of Buildings and General Services is authorized to ~~negotiate the sale of~~ sell, lease, gift, or otherwise convey all or a portion of the ~~state's~~ State's property that adjoins the Hebard ~~state office building~~ State Office Building in Newport City for the purposes of transferring ownership and operation of the bike path, walking path, and boardwalk. ~~Upon approval of the chairs and vice chairs of the senate committee on institutions and the house committee on corrections and institutions, the commissioner may sell the property for the negotiated price. The commissioner shall strive to sell the property at fair market value. However, due to the unique nature of the transaction, the commissioner may use the following factors to justify selling the property at less than fair market value:~~

~~(1) Ongoing maintenance and operation costs associated with the property.~~

~~(2) Risk potential to the state.~~

~~(3) The local economic situation.~~

The Commissioner is further authorized to accept federal or state grants for improvements, maintenance, and operating costs associated with this property.

Thirteenth: In Sec. 25, Battle of Cedar Creek and Winchester Memorials, by inserting the word "capital" before each instance of the word "expenses", either lower or upper cased, and the words "of the Memorial" after the word "transportation"

Fourteenth: In Sec. 28, Windsor County Courthouse, by striking out "$40,000.00" and inserting in lieu thereof $45,000.00

Fifteenth: By adding a Sec. 29a, after Sec. 29, to read as follows:

Sec. 29a. 29 V.S.A. § 821(a) is amended to read:

(a) State buildings.

(1) "Asa Bloomer State Office Building" shall be the name of the building now known as the "Hulett" office building in the city of Rutland.

* * *

(9) "Vermont Psychiatric Care Hospital" shall be the name of the state hospital in Berlin.

(10) "Vermont State Health Laboratory" shall be the name of the state health laboratory in Colchester.

Sixteenth: In Sec. 30, Regional Economic Development Grant Program, by designating the existing language as (a) and by replacing the word "consider" with the word "evaluate" and by inserting a subsection (b) to read as follows:

(b) On or before September 15, 2013, the Commissioner of Buildings and General Services shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs with the results of the evaluation described in subsection (a) of this section.

Seventeenth: In Sec. 43, Additional Funding for Capital Projects, by inserting in subdivision (d)(1) "A total of" before "$200,000.00", by adding "for the Agency of Natural Resources" after "funds", and by adding subsections (e) and (f) to read as follows:

(e) On or before January 15, 2014, the Secretary of Natural Resources shall report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions on the amount of unexpended funds reallocated

pursuant to subsection (c) of this section and a description of the projects that received the funds.

(f) It is the intent of the General Assembly to evaluate in FY 2014 whether to grant the Agency of Natural Resources additional authority to reallocate unexpended funds.

Eighteenth: In Sec. 47, Enhanced 911 Program; Implementation in School Districts, by striking out the second sentence and inserting in lieu thereof:

The Board is authorized to use funds appropriated in Sec. 18a of this act for one-time fees and equipment associated with planning and implementing compliance with this program.

House Proposal of Amendment

J.R.S. 14.

Joint resolution supporting the Agency of Agriculture, Food and Markets' proposal to adopt an administrative rule to implement international maple grading standards in Vermont.

The House proposes to the Senate to amend the bill as follows:

First: By striking the final *Whereas* clause and inserting in lieu thereof the following:

Whereas, the 1,000-member Vermont Maple Sugar Makers' Association, the Maple Industry Committee of the Vermont Maple Sugar Makers' Association, the Franklin County Sugar Makers' Association, the Vermont Agriculture and Forest Products Development Board, and the Vermont Farm Bureau are each supportive of the Agency's adoption of the international maple grading standard, *now therefore be it*

Second*:* By striking the second ***Resolved*** clause and inserting in lieu thereof the following:

Resolved: That the Secretary of State be directed to send a copy of this resolution to Chuck Ross, Secretary of Agriculture, Food and Markets, to the Vermont Maple Sugar Makers' Association, to the Maple Industry Committee of the Vermont Maple Sugar Makers' Association, to the Franklin County Maple Sugar Makers' Association, to the Vermont Agricultural and Forest Products Development Board, and to the Vermont Farm Bureau.

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 240.

An act relating to Executive Branch fees.

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

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

First: In Sec. 26, 7 V.S.A. § 231, in subsection (a) subdivision (5), by striking out the following "$130.00" and inserting in lieu thereof the following: $140.00

Second: By striking out Secs. 27 and 28 in their entirety.

Third: By striking out Sec. 30 in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. 7 V.S.A. § 1002 is amended to read:

§ 1002. LICENSE REQUIRED; APPLICATION; FEE; ISSUANCE

* * *

(d) A person applying simultaneously for a tobacco license and a liquor license shall apply to the legislative body of the municipality and shall pay to the ~~department~~ Department only the fee required to obtain the liquor license. A person applying ~~only~~ for a tobacco license shall submit a fee of ~~$10.00~~ $100.00 to the legislative body of the municipality for each tobacco license or renewal. The municipal clerk shall forward the application to the ~~department~~ Department, and the ~~department~~ Department shall issue the tobacco license. ~~The municipal clerk shall retain $5.00 of this fee, and the remainder shall be deposited in the treasury of the municipality~~ The tobacco license fee shall be forwarded to the Commissioner for deposit in the Liquor Control Enterprise Fund.

* * *

Fourth: By adding internal captions and new Secs. 35, 36, 37, 38, and 39 to read as follows:

* * * State Police Dispatch Fees * * *

Sec. 35. UNIFORM DISPATCH FEES

The Commissioner of Public Safety shall adopt rules establishing uniform statewide fees for dispatch services provided by or under the direction of the Department of Public Safety. In setting the fees, the Commissioner shall consult with sheriffs and other entities that provide dispatch services.

* * * Break-Open Tickets * * *

Sec. 36. REPEAL

32 V.S.A. chapter 239 (game of chance) is repealed.

Sec. 37. 7 V.S.A. chapter 26 is added to read:

CHAPTER 26. BREAK-OPEN TICKETS

§ 901. DEFINITIONS

As used in this chapter:

(1) "Break-open ticket" means a lottery using a card or ticket of the so-called pickle card, jar ticket, or break-open variety commonly bearing the name "Lucky 7," "Nevada Club," "Victory Bar," "Texas Poker," "Triple Bingo," or any other name.

(2) "Commissioner" means the Commissioner of Liquor Control.

(3) "Distributor" means a person who purchases break-open tickets from a manufacturer and sells or distributes break-open tickets at wholesale in Vermont. "Distributor" shall include any officer, employee, or agent of a corporation or dissolved corporation who has a duty to act for the corporation in complying with the requirements of this chapter. "Distributor" shall not include a person who distributes only jar tickets which are used only for merchandise prizes.

(4) "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or otherwise prepares a break-open ticket for sale to a distributor.

(5) "Nonprofit organization" means a nonprofit corporation which is qualified for tax exempt status under the provisions of 26 U.S.C. § 501(c) and which has engaged, in good faith, in charitable, religious, educational, or civic activities in this State on a regular basis during the preceding year. "Nonprofit organization" also includes churches, schools, fire departments, municipalities, fraternal organizations, and organizations that operate agricultural fairs or field days and which have engaged, in good faith, in charitable, religious,

educational, or civic activities in this State on a regular basis during the preceding year.

(6) "Seller" means a nonprofit organization that sells break-open tickets at retail.

(7) "Seller's agent" means the owner of a premises where alcohol is served who has entered into a written agreement with a nonprofit organization to sell tickets at retail on behalf of the nonprofit organization.

§ 902. LICENSE REQUIRED

(a) Any manufacturer, distributor, seller, or seller's agent shall be licensed by the Commissioner.

(b) Upon application and payment of the fee, the Commissioner may issue the following licenses to qualified applicants:

(1) Manufacturer annual license	$7,500.00
(2) Distributor annual license	$7,500.00
(3) Seller's annual license	$ 50.00
(4) Seller's agent annual license	$ 50.00

(c) A license shall not be granted to an individual who has been convicted of a felony within five years of the license application nor to an entity in which any partner, officer, or director has been convicted of a felony within five years of the application.

(d) Licenses issued under this section may be renewed annually from the date of issue or last renewal, upon reapplication and payment of the licensing fee.

(e) A seller or a seller's agent must display his or her license in a conspicuous public place or in an area near where the break-open tickets are sold.

(f) All fees collected pursuant to this section shall be deposited into the Liquor Control Fund.

§ 903. DISTRIBUTION

(a) Only a licensed seller or licensed seller's agent may sell tickets at retail. A seller or seller's agent shall buy tickets for resale only from a licensed distributor. A distributor shall buy tickets only from a licensed manufacturer, and shall only sell tickets to a licensed seller or seller's agent.

(b) A distributor shall not distribute a box of break-open tickets unless the box bears indicia as required by the Commissioner. A distributor shall not

distribute a box of break-open tickets in this State with a prize payout of less than 60 percent. A person shall not distribute or sell a break-open ticket at retail unless the ticket bears a unique serial number.

(c) When making a sale of break-open tickets, a distributor shall require a seller or seller's agent to present evidence of a valid license under this chapter.

(d) A seller may sell break-open tickets on the premises of a club as defined in subdivision 2(7) of this title. All proceeds from the sale of break-open tickets shall be used by the seller exclusively for charitable, religious, educational, and civic undertakings, with only the following costs deducted from the proceeds:

(1) the actual cost of the break-open tickets;

(2) the prizes awarded;

(3) reasonable legal fees necessary to organize the nonprofit organization and to assure compliance with all legal requirements; and

(4) reasonable accounting fees necessary to account for the proceeds from the sale of break-open tickets by the seller.

(e) Notwithstanding 13 V.S.A. § 2143, a seller's agent may sell break-open tickets at premises licensed to sell alcoholic beverages if the seller's agent meets the requirements of section 904 of this title. All proceeds from the sale of break-open tickets by a seller's agent shall be remitted to the seller, except for:

(1) the actual cost of the break-open tickets;

(2) the prizes awarded; and

(3) any taxes due on the sale of break-open tickets under 32 V.S.A. chapter 245.

§ 904. REQUIREMENTS FOR A SELLER'S AGENT

(a) In order to sell break-open tickets, a seller's agent shall enter into a written agreement with the seller. The written agreement shall include the terms required by the Commissioner but at a minimum shall be filed with the Commissioner and include the names of individuals representing the seller and the seller's agent, contact information for those individuals, and the responsibility and duties of each party. The seller's agent shall file a copy of the written agreement with the Commissioner.

(b) The seller's agent must remit to the seller at least quarterly the proceeds owed to the seller under the written agreement, along with a copy of the report due under section 905 of this title.

§ 905. RECORDS; REPORT

(a) Each distributor, manufacturer, seller, and seller's agent licensed under this chapter shall maintain records and books relating to the distribution and sale of break-open tickets and to any other expenditure required by the Commissioner. A licensee shall make its records and books available to the Commissioner for auditing.

(b) Each licensed distributor shall file with the Commissioner on the same schedule as the distributor files sales tax returns the following information for the preceding reporting period:

(1) the names of organizations to which break-open tickets were sold;

(2) the number of break-open tickets sold to each organization; and

(3) the ticket denomination and serial numbers of tickets sold.

(c) Each licensed manufacturer shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain the following information for the reporting period:

(1) the names of distributors to which deals of break-open ticket were sold;

(2) the number of deals of break-open tickets sold to each distributor; and

(3) the ticket denomination and serial numbers for each deal.

(d) Each licensed seller that sells tickets shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain any information required by the Commissioner, but shall include:

(1) the number of boxes purchased and the actual cost of the break-open tickets;

(2) the prizes awarded;

(3) any reasonable legal fees necessary to organize the nonprofit organization and to assure compliance with all legal requirements;

(4) any reasonable accounting fees necessary to account for the proceeds from the sale of break-open tickets by the seller; and

(5) the amount of proceeds dedicated to the charitable purpose of the organization.

(e) Each licensed seller's agent that sells tickets shall file with the Commissioner quarterly reports on or before April 25, July 25, October 25, and January 25 for the quarter ending prior to the month in which the report is due. The reports shall contain any information required by the Commissioner, but shall include:

(1) the number of boxes purchased, the number of tickets in each box, and the retail sale value of the tickets;

(2) the actual cost of the break-open tickets;

(3) the prizes awarded;

(4) the amount of funds remitted to the seller; and

(5) evidence of taxes paid under 32 V.S.A. chapter 245 on the boxes purchased by the seller's agent.

(f) Records and reports filed under this section shall be subject to the provisions of 32 V.S.A. § 3102, except as necessary for the administration of this chapter.

(g) The Commissioner of Liquor Control shall provide the records and reports filed under this section to the Attorney General and Commissioner of Taxes upon request.

§ 906. RULES

The Department of Liquor Control shall regulate the sale of break-open tickets in this State. The Commissioner may adopt regulations for the licensure and reporting requirements under this chapter to establish indicia for boxes of break-open tickets and to establish reasonable reporting and accounting requirements on manufacturers, distributors, sellers, and seller's agents of break-open tickets to ensure the requirements of this chapter are met.

§ 907. ENFORCEMENT

(a) Any person who intentionally violates section 903 of this title shall be fined not more than $500.00 for each violation.

(b) Any person who intentionally violates section 902, 904, or 905 of this title shall be fined not more than $10,000.00 for the first offense and fined not more than $20,000.00 or imprisoned not more than one year, or both, for each subsequent offense.

(c) In addition to the criminal penalties provided under subsections (a) and (b) of this section, any person who violates a provision of this chapter shall be subject to one or both of the following penalties:

(1) revocation or suspension by the Commissioner of a license granted pursuant to this chapter; or

(2) confiscation of break-open tickets or confiscation of the revenues derived from the sale of those tickets, or both.

§ 908. APPEALS

Any licensee aggrieved by an action taken under this chapter and any person aggrieved by the Commissioner's refusal to issue or renew a license under this chapter may appeal in writing within 30 days of the Commissioner's decision to the Liquor Control Board for review of such action. The Board shall thereafter grant a hearing subject to the provisions of 3 V.S.A. chapter 25 upon the matter and notify the aggrieved person in writing of its determination. The Board's determination may be appealed within 30 days to the Vermont Supreme Court. Appeal pursuant to this section shall be the exclusive remedy for contesting the Commissioner's action under this chapter.

* * * Groundwater extraction * * *

Sec. 38. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

* * *

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the ~~agency of natural resources~~ Agency of Natural Resources.

* * *

(7) For public water supply ~~and~~, bottled water permits, and bulk water permits ~~and approvals~~ issued under 10 V.S.A. chapter 56 and ~~interim~~ groundwater withdrawal permits ~~and approvals~~ issued under 10 V.S.A. chapter 48:

(A) For public water supply construction permit applications: $375.00 per application plus $0.0055 per gallon of design capacity. Amendments $150.00 per application.

(B) For water treatment plant applications, except those applications submitted by a municipality as defined in 1 V.S.A. § 126 or a consolidated water district established under 24 V.S.A. § 3342: $0.003 per gallon of design capacity. Amendments $150.00 per application.

(C) For source permit applications:

(i) Community water systems: $945.00 per source.

(ii) Transient noncommunity:	$385.00 per source.
(iii) Nontransient, noncommunity:	$770.00 per source.
(iv) Amendments.	$150.00 per application.

(D) For public water supplies ~~and~~, bottled water facilities, and bulk water facilities, annually:

(i) Transient noncommunity:	$50.00
(ii) Nontransient, noncommunity:	$0.0355 per 1,000 gallons of water produced annually or $70.00, whichever is greater.
(iii) Community:	$0.0439 per 1,000 gallons of water produced annually.
(iv) Bottled water:	$1,390.00 per permitted facility.

(E) Amendment to bottled water facility permit, $150.00 per application.

(F) For facilities permitted to withdraw groundwater pursuant to 10 V.S.A. § 1418: $2,300.00 annually per facility.

(G) For facilities that bottle water or sell water in bulk, except for municipalities as defined in 1 V.S.A. § 126 or a consolidated water district established under 24 V.S.A. § 3342: $0.05 per gallon produced annually per permitted facility

~~(G)~~(H) In calculating flow-based fees under this subsection, the ~~secretary~~ Secretary will use metered production flows where available. When metered production flows are not available, the ~~secretary~~ Secretary shall estimate flows based on the standard design flows for new construction.

~~(H)~~(I) The ~~secretary~~ Secretary shall bill public water supplies and bottled water companies for the required fee. Annual fees may be divided into semiannual or quarterly billings.

* * *

Sec. 39. 10 V.S.A. § 1675 is amended to read:

§ 1675. PERMITS; CONDITIONS; DURATION; SUSPENSION OF REVOCATION

* * *

(h) A public water system permitted after the effective date of this act that bottles drinking water for public distribution and sale, including systems that sell water to a different state system that bottles the water, shall obtain from the ~~secretary~~ Secretary a source water permit under subsection 1672(g) of this title upon renewal of its operating permit under this section and every 10 years thereafter.

* * *

And by renumbering the remaining sections to be numerically correct.

(No House Amendments)

H. 295.

An act relating to technical tax changes.

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

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

First: By striking out Sec. 12 in its entirety and inserting in lieu thereof:

Sec. 12. [Deleted.]

Second: In Sec. 13, 32 V.S.A. § 5811(18)(A)(i), in subdivision (III), by inserting the word federal before the words "net operating loss";

Third: By adding a Sec. 13a to read to as follows:

Sec. 13a. 32 V.S.A. § 5811(21)(B) is amended to read:

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations;

(ii) with respect to adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code reduced by the total amount of any qualified dividend income: either the first $5,000.00 of such adjusted net capital gain income; or 40 percent of adjusted net capital gain income from the sale of assets held by the taxpayer for more than three years, except not adjusted net capital gain income from:

* * *

Fourth: In Sec. 31, in subsection (b), after the following: "Commissioner may reasonably require for the proper administration of this chapter." by inserting the following: The return shall include notice that the property may be subject to regulations governing potable water supplies and wastewater systems under 10 V.S.A. chapter 64 and to building, zoning, and subdivision regulations; and that the parties have an obligation under law to investigate and disclose his or her knowledge regarding flood regulation, if any, affecting the property.

Fifth: By inserting a Sec. 34a to read: [adds intent language, extends cloud moratorium to July 1, 2016, requires regulations with specific standards by January 1, 2016.]

Sec. 34a. 2012 Acts and Resolves No. 143, Sec. 52 is amended to read:

Sec. 52. TEMPORARY MORATORIUM ON ENFORCEMENT OF SALES TAX ON PREWRITTEN SOFTWARE ACCESSED REMOTELY

(a) The General Assembly finds that "cloud-based services" is the general term given to a variety of services that are accessed via the Internet or a proprietary network. Cloud-based services allow users to store data, access software, and access services and platforms from almost any device that can access the cloud via a broadband connection. The use of cloud services has greatly increased over the past decade. As a result, states have taken a wide range of positions regarding the way to characterize cloud-based services for the purpose of applying the sales and use tax. It is in this context that the General Assembly adopts this section.

(b) Notwithstanding the imposition of sales and use tax on prewritten computer software by 32 V.S.A. chapter 233, the ~~department of taxes~~ Department of Taxes shall not assess tax on charges for remotely accessed software made after December 31, 2006 and before July 1, ~~2013~~ 2016, and taxes paid on such charges shall be refunded upon request if within the statute of limitations and documented to the satisfaction of the ~~commissioner~~ Commissioner. "Charges for remotely accessed software" means charges for the right to access and use prewritten software run on underlying infrastructure that is not managed or controlled by the consumer or a related company. Enforcement of the sales and use tax imposed on the purchase of specified digital products pursuant to 32 V.S.A. § 9771(8) is not affected by this section.

(c) Beginning on July 1, 2013, the moratorium in subsection (b) of this section shall not apply to charges by a vendor for the right to access and use prewritten software if any vendor offers for sale, in a storage medium or by an

electronic download to the user's computer or server, either directly or through wholesale or retail channels that same computer software or comparable computer software that performs the same functions. The software shall be considered the same or comparable if the seller provides the customer with the use of software that functions with little or no personal intervention by the seller or seller's employees other than "help desk" assistance for customers having difficulty using the software.

(d) By January 1, 2016, the Department of Taxes shall promulgate regulations specifying how the sales and use tax will be applied to remotely accessed software. The regulations shall conform to the following general standards:

(1) The sale of computer hardware, computer equipment, and prewritten software shall be taxed, regardless of the method of delivery. The term "sale" shall include electronic delivery or load and leave, licenses or leases, transfer of rights to use software installed on a remote server, upgrades, and license upgrades.

(2) The lease of computer hardware on the premise of another shall be taxed if the lessor operates, directs, or controls the hardware.

(3) Charges for the installation of hardware shall not be taxed.

(4) If computer hardware cannot be purchased without mandatory services, such as training, maintenance, or testing, charges for these services shall be considered taxable. If, on the other hand, the services are optional, the charges shall not be taxed.

(5) The sale of the right to reproduce a program shall generally be considered taxable.

(6) The sale of custom software shall not be taxed, regardless of the method of delivery.

(7) If a sale involves both prewritten and custom software or if it involves the customization of prewritten software, the sale shall be taxable unless the price of both the prewritten component and the custom component are stated separately, in which case only the prewritten software component shall be taxed.

(8) The furnishing of reports of standard information to more than two customers shall generally be considered taxable.

(9) The provision of data processing services and access to database services shall generally be considered nontaxable.

(10) The regulations drafted by the Department of Taxes under this subsection shall conform with current Vermont law and maintain Vermont's compliance with the Streamlined Sales and Use Tax Agreement.

Sixth: By inserting Secs. 35 and 36 to read as follows:

Sec. 35. 8 V.S.A. § 15(c) is amended to read:

(c) The ~~commissioner~~ Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the ~~commissioner~~ Commissioner deems necessary to permit the ~~department~~ Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the ~~commissioner~~ Commissioner under this title, Title 9, or 18 V.S.A. chapter 221 ~~of Title 18. The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18~~.

Sec. 36. 32 V.S.A. § 3113(b) is amended to read:

(b) No agency of the ~~state~~ State shall grant, issue, or renew any license or other authority to conduct a trade or business (including a license to practice a profession) to, or enter into, extend, or renew any contract for the provision of goods, services, or real estate space with~~,~~ any person unless such person shall first sign a written declaration under the pains and penalties of perjury~~,~~ that the person is in good standing with respect to or in full compliance with a plan to pay~~,~~ any and all taxes due as of the date such declaration is made, except that the Commissioner may waive this requirement as the Commissioner deems appropriate to facilitate the Department of Financial Regulation's participation in any national licensing or registration systems for persons required to be licensed or registered by the Commissioner of Financial Regulation under Title 8, Title 9, or 18 V.S.A. chapter 221.

Seventh: By inserting Secs. 37–43 to read: [Health care claims tax]

* * * Health Insurance Claims Tax * * *

Sec. 37. 32 V.S.A. chapter 243 is added to read:

CHAPTER 243. HEALTH CARE CLAIMS TAX

§ 10401. DEFINITIONS

As used in this section:

(1) "Health insurance" means any group or individual health care benefit policy, contract, or other health benefit plan offered, issued, renewed,

or administered by any health insurer, including any health care benefit plan offered, issued, renewed, or administered by any health insurance company, any nonprofit hospital and medical service corporation, any dental service corporation, or any managed care organization as defined in 18 V.S.A. § 9402. The term includes comprehensive major medical policies, contracts, or plans and Medicare supplemental policies, contracts, or plans, but does not include Medicaid or any other state health care assistance program in which claims are financed in whole or in part through a federal program unless authorized by federal law and approved by the General Assembly. The term does not include policies issued for specified disease, accident, injury, hospital indemnity, long-term care, disability income, or other limited benefit health insurance policies, except that any policy providing coverage for dental services shall be included.

(2) "Health insurer" means any person who offers, issues, renews, or administers a health insurance policy, contract, or other health benefit plan in this State and includes third party administrators or pharmacy benefit managers who provide administrative services only for a health benefit plan offering coverage in this State. The term does not include a third party administrator or pharmacy benefit manager to the extent that a health insurer has paid the fee which would otherwise be imposed in connection with health care claims administered by the third party administrator or pharmacy benefit manager.

§ 10402. HEALTH CARE CLAIMS TAX

(a) There is imposed on every health insurer an annual tax in an amount equal to 0.999 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid to the Commissioner of Taxes in one installment due by January 1.

(b) Revenues paid and collected under this chapter shall be deposited as follows:

(1) 0.199 of one percent of all health insurance claims into the Health IT-Fund established in section 10301 of this title; and

(2) 0.8 of one percent of all health insurance claims into the State Health Care Resources Fund established in 33 V.S.A. § 1901d.

(c) The annual cost to obtain Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES) data, pursuant to 18 V.S.A. § 9410, for use by the Department of Taxes shall be paid from the Vermont Health IT-Fund and the State Health Care Resources Fund in the same proportion as revenues are deposited into those Funds.

(d) It is the intent of the General Assembly that all health insurers shall contribute equitably through the tax imposed in subsection (a) of this section. In the event that the tax is found not to be enforceable as applied to third party administrators or other entities, the tax owed by all other health insurers shall remain at the existing level and the General Assembly shall consider alternative funding mechanisms that would be enforceable as to all health insurers.

§ 10403. ADMINISTRATION OF TAX

(a) The Commissioner of Taxes shall administer and enforce this chapter and the tax. The Commissioner may adopt rules under 3 V.S.A. chapter 25 to carry out such administration and enforcement.

(b) All of the administrative provisions of chapter 151 of this title, including those relating to the collection and enforcement by the Commissioner of the withholding tax and the income tax, shall apply to the tax imposed by this chapter. In addition, the provisions of chapter 103 of this title, including those relating to the imposition of interest and penalty for failure to pay the tax as provided in section 10402 of this title, shall apply to the tax imposed by this chapter.

§ 10404. DETERMINATION OF DEFICIENCY, REFUND, PENALTY, OR INTEREST

(a) Within 60 days after the mailing of a notice of deficiency, denial or reduction of a refund claim, or assessment of penalty or interest, a health insurer may petition the Commissioner in writing for a determination of that deficiency, refund, or assessment. The Commissioner shall thereafter grant a hearing upon the matter and notify the health insurer in writing of his or her determination concerning the deficiency, penalty, or interest. This is the exclusive remedy of a health insurer with respect to these matters.

(b) Any hearing granted by the Commissioner under this section shall be subject to and governed by 3 V.S.A. chapter 25.

(c) Any aggrieved health insurer may, within 30 days after a determination by the Commissioner concerning a notice of deficiency, an assessment of penalty or interest, or a claim to refund, appeal that determination to the Washington Superior Court or to the Superior Court for the county in which the health insurer has a place of business.

Sec. 38. 32 V.S.A. § 3102(e) is amended to read:

(e) The ~~commissioner~~ Commissioner may, in his or her discretion and subject to such conditions and requirements as he or she may provide,

including any confidentiality requirements of the Internal Revenue Service, disclose a return or return information:

* * *

(14) to the ~~office of the state treasurer~~ Office of the State Treasurer, only in the form of mailing labels, with only the last address known to the ~~department of taxes~~ Department of Taxes of any person identified to the ~~department~~ Department by the ~~treasurer~~ Treasurer by name and Social Security number, for the ~~treasurer's~~ Treasurer's use in notifying owners of unclaimed property; ~~and~~

(15) to the ~~department of liquor control~~ Department of Liquor Control, provided that the information is limited to information concerning the sales and use tax and meals and rooms tax filing history with respect to the most recent five years of a person seeking a liquor license or a renewal of a liquor license; and

(16) to the Commissioner of Financial Regulation and the Commissioner of Vermont Health Access, if such return or return information relates to obligations of health insurers under chapter 243 of this title.

Sec. 39. 32 V.S.A. § 10301 is amended to read:

§ 10301. HEALTH IT-FUND

* * *

(c) Into the fund shall be deposited:

(1) revenue from the ~~reinvestment fee~~ health care claims tax imposed on health insurers pursuant to ~~8 V.S.A. § 4089k~~ subdivision 10402(b)(1) of this title.

* * *

Sec. 40. 2008 Acts and Resolves No. 192, Sec. 9.001(g) is amended to read:

(g) Sec. 7.005 of this act shall sunset July 1, ~~2015~~ 2013.

Sec. 41. 32 V.S.A. § 10301 is amended to read:

§ 10301. HEALTH IT-FUND

* * *

(c) Into the fund shall be deposited:

(1) ~~revenue from the health care claims tax imposed on health insurers pursuant to subdivision 10402(b)(1) of this title.~~ [Deleted.]

* * *

Sec. 42. 32 V.S.A. § 10402 is amended to read:

§ 10402. HEALTH CARE CLAIMS TAX

(a) There is imposed on every health insurer an annual tax in an amount equal to ~~0.999~~ 0.8 of one percent of all health insurance claims paid by the health insurer for its Vermont members in the previous fiscal year ending June 30. The annual fee shall be paid to the Commissioner of Taxes in one installment due by January 1.

(b) Revenues paid and collected under this chapter shall be deposited ~~as follows:~~

~~(1) 0.199 of one percent of all health insurance claims into the Health IT Fund established in section 10301 of this title; and~~

~~(2) 0.8 of one percent of all health insurance claims~~ into the State Health Care Resources Fund established in 33 V.S.A. § 1901d.

* * *

Sec. 43. REPEAL

8 V.S.A. § 4089l (health care claims assessment) is repealed on July 1, 2013.

Eighth: By inserting a Sec. 44 and 45 to read as follows:

Sec. 44 23 V.S.A. § 3106(a)(2) is amended to read:

(2) For the purposes of subdivision (1)(B) of this subsection, the tax-adjusted retail price applicable for a quarter shall be the average of the ~~monthly~~ retail ~~prices~~ price for regular gasoline determined and published by the Department of Public Service for each of the three months of the preceding quarter~~. The tax-adjusted retail price applicable for a quarter shall be the retail price exclusive of all~~ after all federal and state taxes and assessments, and the petroleum distributor licensing fee established by 10 V.S.A. § 1942~~, at the rates~~ applicable in ~~the preceding quarter~~ each month has been subtracted from that month's retail price.

Sec 45. 2013 Acts and Resolves No. 12, Sec. 24 is amended to read:

Sec. 24. ~~MOTOR~~ FUEL ~~ASSESSMENTS~~ TAX ASSESSMENT: MAY 1, 2013–SEPTEMBER 30, 2013

Notwithstanding the provisions of 23 V.S.A. § ~~3106(a)(1)(B)~~ 3106(a)(1)(B)(ii) and 3106(a)(2), from May 1, 2013 through September 30, 2013, the ~~motor fuel transportation infrastructure assessment required under 23 V.S.A. § 3106(a)(1)(B)(i) shall be $0.0656 per gallon, and the~~ fuel tax assessment required under 23 V.S.A. § 3106(a)(1)(B)(ii) shall be $0.067 per gallon.

And by renumbering the remaining sections to be numerically correct

Ninth: In the renumbered Sec. 46 (effective dates), by adding a subsection (8) to read as follows:

(8) Secs. 37–40 (health claims tax) shall take effect July 1, 2013 and Secs. 41 and 42 (health claims sunset) shall take effect on July 1, 2017.

(Committee vote: 7-0-0)

(No House amendments)

H. 521.

An act relating to making miscellaneous amendments to education law.

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

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

First: By deleting Sec. 2 in its entirety

Second: After Sec. 7, by inserting three new sections to be Secs. 7a through 7c to read as follows:

Sec. 7a. 33 V.S.A. § 6911(a)(1) is amended to read:

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

Sec. 7b. 33 V.S.A. § 6911(c) is amended to read:

(c) The ~~commissioner~~ Commissioner or the ~~commissioner's~~ Commissioner's designee may disclose registry information only to:

* * *

(7) upon request or when relevant to other states' adult protective services offices; ~~and~~

(8) the ~~board of medical practice~~ Board of Medical Practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353; and

(9) the Secretary of Education or the Secretary's designee, for purposes related to the licensing of professional educators pursuant to 16 V.S.A. chapter 5, subchapter 4 and chapter 51.

Sec. 7c. 16 V.S.A. § 253 is amended to read:

§ 253. CONFIDENTIALITY OF RECORDS

(a) Criminal records and criminal record information received under this subchapter are designated confidential unless, under state or federal law or regulation, the record or information may be disclosed to specifically designated persons.

(b) The Secretary, a superintendent, or a headmaster may disclose criminal records and criminal record information received under this subchapter to a qualified entity upon request, provided that the qualified entity has signed a user agreement and received authorization from the subject of the record request. As used in this section, "qualified entity" means an individual, organization, or governmental body doing business in Vermont that has one or more individuals performing services for it within the State and that provides care or services to children, persons who are elders, or persons with disabilities as defined in 42 U.S.C. § 5119c.

Third: By deleting Sec. 11 in its entirety

Fourth: By striking out Secs. 16 through 18 in their entirety and inserting in lieu thereof three new sections to be Secs. 16 through 18 to read as follows:

* * * Creation of New Independent Schools * * *

Sec. 16. 16 V.S.A. § 821(e) is added to read:

(e) Notwithstanding the authority of a school district to cease operation of an elementary school and to begin paying tuition on behalf of its resident elementary students pursuant to subdivision (a)(1) or subsection (d) of this section, a school district shall not cease operation of an elementary school with the intention, for the purpose, or with the result of having the school building or buildings reopen as an independent school serving essentially the same population of students.

Sec. 17. 16 V.S.A. § 822(d) is added to read:

(d) Notwithstanding the authority of a school district to cease operation of a secondary school and to begin paying tuition on behalf of its resident secondary students pursuant to subdivision (a)(1) of this section, a school district shall not cease operation of a secondary school with the intention, for the purpose, or with the result of having the school building or buildings reopen as an independent school serving essentially the same population of students.

Sec. 18. 16 V.S.A. § 166(b)(8) is added to read:

(8) Notwithstanding any other provision of law, approval under this subsection of a new or existing independent school that proposes to operate in a building in which a school district operated a school is subject to either subsection 821(e) or 822(d) of this title, as appropriate for the grades operated.

Fifth: By striking out Sec. 20 and inserting in lieu thereof 14 new sections to be Secs. 20 through 33 and related reader assistance headings to read as follows:

* * * Transportation Grants * * *

Sec. 20. 16 V.S.A. § 4016(c) is amended to read:

(c) ~~A district may apply and the commissioner may pay for extraordinary transportation expenditures incurred due to geographic or other conditions such as the need to transport students out of the school district to attend another school because the district does not maintain a public school. The state board of education shall define extraordinary transportation expenditures by rule. The total amount of base year extraordinary transportation grant expenditures shall be $250,000.00 for fiscal year 1997, increased each year thereafter by the annual price index for state and local government purchases of goods and services. Extraordinary transportation expenditures shall not be paid out of the funds appropriated under subsection (b) of this section for other transportation expenditures. Grants paid under this section shall be paid from the education fund and shall be added to adjusted education payment receipts paid under section 4011 of this title.~~ [Repealed.]

* * * Compact for Military Children * * *

Sec. 21. 16 V.S.A. § 806m.E is amended to read:

E. The Interstate Commission may not assess, levy, or collect from Vermont in its annual assessment more than ~~$100~~ $2,000.00 per year. Other funding sources may be accepted and used to offset expenses related to the ~~state's~~ State's participation in the compact.

Sec. 22. AGENCY OF EDUCATION BUDGET

There shall be no separate or additional General Fund appropriation to the Agency of Education in fiscal year 2014 for purposes of funding the increased assessment to be paid pursuant to Sec. 21 of this act.

* * * Adult Basic Education * * *

Sec. 23. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD; GENERAL POWERS AND DUTIES

The ~~state board~~ State Board shall evaluate education policy proposals, including timely evaluation of policies presented by the ~~governor~~ Governor and ~~secretary~~ Secretary; engage local school board members and the broader education community; and establish and advance education policy for the ~~state~~ State of Vermont. In addition to other specified duties, the ~~board~~ Board shall:

* * *

(13) ~~Constitute~~ Be the ~~state board~~ State Board for the program of adult education and literacy and perform all the duties and powers prescribed by law pertaining to adult education and literacy and to act as the state approval agency for educational institutions conducting programs of adult education and literacy.

* * *

* * * Special Education Employees; Transition to Employment by Supervisory Unions * * *

Sec. 24. 2010 Acts and Resolves No. 153, Sec. 18, as amended by 2011 Acts and Resolves No. 58, Sec. 18, is further amended to read:

Sec. 18. TRANSITION

(a) Each supervisory union shall provide for any transition of employment of special education and transportation ~~staff~~ employees by member districts to employment by the supervisory union, pursuant to Sec. 9 of this act, 16 V.S.A. § 261a(a)(6), and (8)(E) by:

(1) providing that the supervisory union assumes all obligations of each existing collective bargaining agreement in effect between the member districts and their special education employees and their transportation employees until the agreement's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing, in the absence of an existing recognized representative of its employees, for the immediate and voluntary recognition by the supervisory union of the recognized representatives of the employees of the member

districts as the recognized representatives of the employees of the supervisory union;

(3) ensuring that an employee of a member district who is not a probationary employee shall not be considered a probationary employee upon transition to the supervisory union; and

(4) ~~containing an agreement~~ negotiating a collective bargaining agreement, addressing special education employees, with the recognized representatives of the employees of the member districts ~~that is effective on the day the supervisory union assumes obligations of existing agreements regarding how the supervisory union, prior to reaching its first collective bargaining agreement with its special education employees and with its transportation employees, will address issues of seniority, reduction in force, layoff, and recall~~ , which, for the purposes of this section, shall be: the exclusive representative of special education teachers; the exclusive representative of the special education administrators; and the exclusive bargaining agent for special education paraeducators if the supervisory union has elected to employ special education paraeducators pursuant to subdivision (b)(3) of this section. The supervisory union shall become the employer of these employees on the date specified in the ratified agreement.

(b) For purposes of this section and Sec. 9 of this act, "special education employee" shall include a special education teacher, a special education administrator, and a special education paraeducator, which means a teacher, administrator, or paraeducator whose job assignment consists of providing special education services directly related to students' individualized education programs or to the administration of those services. Provided, however, that "special education employee" shall include a "special education paraeducator" only if the supervisory union board elects to employ some or all special education paraeducators because it determines that doing so will lead to more effective and efficient delivery of special education services to students. If the supervisory union board does not elect to employ all special education paraeducators, it must use objective, nondiscriminatory criteria and identify specific duties to be performed when determining which categories of special education paraeducators to employ.

(c) Education-related parties to negotiations under either Title 16 or 21 shall incorporate in their current or next negotiations matters addressing the terms and conditions of special education employees.

(d) If a supervisory union has not entered into a collective bargaining agreement with the representative of its prospective special education employees by August 15, 2015, it shall provide the Secretary of Education

with a report identifying the reasons for not meeting the deadline and an estimated date by which it expects to ratify the agreement.

Sec. 25. 16 V.S.A. § 1981(8) is amended to read:

(8) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union and by the supervisory union board to engage in professional negotiations with a teachers' or administrators' organization.

Sec. 26. 21 V.S.A. § 1722(18) is amended to read:

(18) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union and by the supervisory union board to engage in collective bargaining with their school employees' negotiations council.

Sec. 27. EXCESS SPENDING; TRANSITION

For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12) in fiscal years 2014 through 2017, "education spending" shall not include the portion of a district's proposed budget that is directly attributable to assessments from the supervisory union for special education services that exceeds the portion of the district's proposed budget in the year prior to transition for special education services provided by the district.

Sec. 28. APPLICABILITY

Only school districts and supervisory unions that have not completed the transition of special education employees to employment by the supervisory union or have not negotiated transition provisions into current master agreements as of the effective dates of Secs. 24 through 27 of this act are subject to the employment transition provisions of those sections.

Sec. 29. REPORT

On or before January 1, 2017, the Secretary of Education shall report to the House and Senate Committees on Education regarding the decisions of supervisory unions to exercise or not to exercise the flexibility regarding employment of special education paraeducators provided in Sec. 24 of this act and may propose amendments to Sec. 24 or to related statutes as he or she deems appropriate.

* * * Early Education; Labor Relations * * *

Sec. 30. FINDINGS

The General Assembly finds:

(1) The early education a child receives before school age, particularly before the age of three, has a profound effect on a child's development during this critical stage of life. Investments in the consistency and quality of early education lay a vital foundation for the future cognitive, social, and academic success of Vermont children.

(2) Early education providers should have the opportunity to work collectively with the State to enhance professional development and educational opportunities for early educators, to increase child care subsidy funding to enable more children to receive critical early education opportunities, and to ensure the continual improvement of early education in Vermont.

Sec. 31. 33 V.S.A. chapter 36 is added to read:

CHAPTER 36. EARLY CARE AND EDUCATION PROVIDERS LABOR RELATIONS ACT

§ 3601. PURPOSE

(a) The General Assembly recognizes the right of all early care and education providers to bargain collectively with the State over matters within the State's control and identified as subjects of bargaining pursuant to subsection 3603(b) of this chapter.

(b) The General Assembly intends to create an opportunity for early care and education providers to choose to form a union and bargain with the State over matters within the State's control and identified as subjects of bargaining pursuant to subsection 3603(b) of this chapter.

(c) Specific terms and conditions of employment at individual child care centers, which are the subject of traditional collective bargaining between employers and employees, are outside the limited scope of this act.

(d) The matters subject to this chapter are those within the control of the State of Vermont and relevant to all early care and education providers.

(e) Early care and education providers do not forfeit their rights under the National Labor Relations Act, 29 U.S.C. § 151, et seq., or the Vermont State Labor Relations Act, 21 V.S.A. § 1501, et seq., by becoming members of an organization that represents them in their dealings with the State. The terms and conditions of employment with individual early care and education providers, which are the subjects of traditional collective bargaining between

employers and employees and which are governed by federal law, fall outside the limited scope of bargaining defined in this chapter.

§ 3602. DEFINITIONS

As used in this chapter:

(1) "Board" means the State Labor Relations Board established under 3 V.S.A. § 921.

(2) "Early care and education provider" means a licensed child care home provider, a registered child care home provider, or a legally exempt child care home provider who provides child care services as defined in subdivision 3511(3) of this title.

(3) "Subsidy payment" means any payment made by the State to assist families in paying for child care services through the State's child care financial assistance program.

(4) "Collective bargaining" or "bargaining collectively" means the process by which the State and the exclusive representative of early care and education providers negotiate terms or conditions related to the subjects of collective bargaining identified in subsection 3603(b) of this title which when reached and funded shall be legally binding.

(5) "Exclusive representative" means the labor organization that has been elected or recognized and certified by the Board under this chapter and consequently has the exclusive right under section 3608 of this title to represent early care and education providers for the purpose of collective bargaining and the enforcement of any contract provisions.

(6) "Grievance" means the exclusive representative's formal written complaint regarding an improper application of one or more terms of the collective bargaining agreement.

§ 3603. ESTABLISHMENT OF COLLECTIVE BARGAINING

(a) Early care and education providers, through their exclusive representative, shall have the right to bargain collectively with the State through the Governor's designee.

(b) Mandatory subjects of bargaining are limited to child care subsidy reimbursement rates and payment procedures, professional development, the collection of dues or agency fees and disbursement to the exclusive representative, and procedures for resolving grievances. The parties may also negotiate on any mutually agreed matters that are not in conflict with state or federal law.

(c) The State, acting through the Governor's designee, shall meet with the exclusive representative for the purpose of entering into a written agreement.

(d) Early care and education providers shall be considered employees and the State shall be considered the employer solely for the purpose of collective bargaining under this chapter. Early care and education providers shall not be considered state employees other than for purposes of collective bargaining, including for purposes of vicarious liability in tort, and for purposes of unemployment compensation or workers' compensation. Early care and education providers shall not be eligible for participation in the state employees' retirement system or the health insurance plans available to executive branch employees solely by virtue of bargaining under this chapter.

(e) Agency fees may be collected only from early care and education providers who receive subsidy payments from the State.

§ 3604. RIGHTS OF EARLY CARE AND EDUCATION PROVIDERS

Early care and education providers shall have the right to:

(1) organize, form, join, or assist any union or labor organization for the purpose of collective bargaining without any interference, restraint, or coercion;

(2) bargain collectively through a representative of their own choice;

(3) engage in concerted activities for the purpose of supporting or engaging in collective bargaining;

(4) pursue grievances through the exclusive representative as negotiated pursuant to this chapter; and

(5) refrain from any or all such activities.

§ 3605. RIGHTS OF THE STATE

Nothing in this chapter shall be construed to interfere with right of the State to:

(1) take necessary actions to carry out the mission of the Agency of Human Services;

(2) comply with federal and state laws and regulations regarding child care and child care subsidies;

(3) enforce child care regulations and regulatory processes including regulations regarding the qualifications of early care and education providers and the prevention of abuse in connection with the provisions of child care services;

(4) develop child care regulations and regulatory processes subject to the rulemaking authority of the General Assembly and the Human Services Board;

(5) establish and administer quality standards under the Step Ahead Recognition system;

(6) solicit and accept for use any grant of money, services, or property from the federal government, the State, or any political subdivision or agency of the State, including federal matching funds, and to cooperate with the federal government or any political subdivision or agency of the State in making an application for any grant; and

(7) refuse to take any action that would diminish the quantity or quality of child care provided under existing law.

§ 3606. UNIT

(a) The bargaining unit shall be composed of licensed home child care providers, registered home child care providers, and legally exempt child care providers as defined in this chapter.

(b) Early care and education providers may select an exclusive representative for the purpose of collective bargaining by using the procedures in sections 3607 and 3608 of this title.

(c) The exclusive representative of the early care and education providers is required to represent all of the providers in the unit without regard to membership in the union.

§ 3607. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS; HEARINGS; DETERMINATIONS

(a) A petition may be filed with the Board in accordance with regulations prescribed by the Board:

(1) By an early care and education provider or group of providers or any individual or labor organization acting on the providers' behalf:

(A) alleging that not less than 30 percent of the providers in the petitioned bargaining unit wish to be represented for collective bargaining and that the State declines to recognize their representative as the representative defined in this chapter; or

(B) asserting that the labor organization that has been certified as the bargaining representative no longer represents a majority of early care and education providers.

(2) By the State alleging that one or more individuals or labor organizations has presented a claim to be recognized as the exclusive representative defined in this chapter.

(b) The Board shall investigate the petition and, if it has reasonable cause to believe that a question concerning representation exists, shall conduct a hearing. The hearing shall be held before the Board, a member of the Board, or its agents appointed for that purpose upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the Board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties, in writing, the results thereof.

(c) In determining whether or not a question of representation exists, the Board shall apply the same regulations and rules of decision regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with regulations and rules of the Board.

(e) For the purposes of this chapter, the State may voluntarily recognize the exclusive representative of a unit of early care and education providers if the labor organization demonstrates that it has the support of a majority of the providers in the unit it seeks to represent and no other employee organization seeks to represent the providers.

§ 3608. ELECTION; RUNOFF ELECTIONS

(a) If a question of representation exists, the Board shall conduct a secret ballot election to determine the exclusive representative of the unit of early care and education providers. The original ballot shall be prepared to permit a vote against representation by anyone named on the ballot. The labor organization receiving a majority of votes cast shall be certified by the Board as the exclusive representative of the unit of early care and education providers. In any election in which there are three or more choices, including the choice of "no union," and none of the choices on the ballot receives a majority, a runoff election shall be conducted by the Board. The ballot shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election shall not be directed if in the preceding 12 months a valid election has been held.

§ 3609. POWERS OF REPRESENTATIVES

The exclusive representative shall be the exclusive representative of all the early care and education providers in the unit for the purposes of collective bargaining and the resolution of grievances.

§ 3610. NEGOTIATED AGREEMENT; FUNDING

If the State and the exclusive representative reach an agreement, the Governor shall request from the General Assembly an appropriation sufficient to fund the agreement in the next operating budget. If the General Assembly appropriates sufficient funds, the negotiated agreement shall become effective and binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly and shall become effective and legally binding in the next fiscal year.

§ 3611. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If after a reasonable period of negotiation, the exclusive representative and the State reach an impasse, the Board upon petition of either party may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the Board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement. A mediator shall be of high standing and not affiliated with either labor or management.

(b) If after a minimum of 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the Board that the impasse continues.

(c) Upon the request of either party, the Board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the Board shall appoint a fact finder who shall be a person of high standing and shall not be affiliated with either labor or management. A member of the Board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the Board. Upon request of either party or of the fact finder, the Board may issue subpoenas of persons and documents for the hearings and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from mediating the dispute at any time prior to issuing recommendations.

(f) In making a recommendation, the fact finder shall consider whether the proposal increases the amount and quality of care provided to children and families in a manner that is more affordable for Vermont families and citizens and whether the subsidies provided are consistent with federal guidance.

(g) Upon completion of the hearings, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be paid equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the Board for approval. The Board shall provide a copy of approved fact-finding costs to each party with its order apportioning half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the Board of the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 15 days after transmittal of findings and recommendations, each party shall submit to the Board its last best offer on all disputed issues as a single package. Each party's last best offer shall be filed with the Board under seal and shall be unsealed and placed in the public record only when both parties' last best offers are filed with the Board. The Board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the Board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine that selection's cost. The Board shall not issue an order under this subsection that is in conflict with any law or rule or that relates to an issue that is not a mandatory subject of collective bargaining. The Board shall determine the cost of the agreement selected and recommend to the General Assembly its choice with a request for appropriation. If the General Assembly appropriates sufficient funds, the agreement shall become effective and legally binding at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated

changes shall become effective and binding at the beginning of the next fiscal year.

§ 3612. GENERAL DUTIES AND PROHIBITED CONDUCT

(a) The State and all early care and education providers and their representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under this chapter and to settle all disputes, whether arising out of the application of those agreements or growing out of any disputes concerning those agreements. However, this obligation does not compel either party to agree to a proposal or make a concession.

(b) It shall be an unfair labor practice for the State to:

(1) interfere with, restrain, or coerce early care and education providers in the exercise of their rights under this chapter or by any other law, rule, or regulation;

(2) discriminate against an early care and education provider because of the provider's affiliation with a labor organization or because a provider has filed charges or complaints or has given testimony under this chapter;

(3) take negative action against an early care and education provider because the provider has taken actions such as signing a petition, grievance, or affidavit that demonstrates the provider's support for a labor organization;

(4) refuse to bargain collectively in good faith with the exclusive representative;

(5) discriminate against an early care and education provider based on race, color, religion, ancestry, age, sex, sexual orientation, gender identity, national origin, place of birth, marital status, or against a qualified disabled individual; or

(6) request or require an early care and education provider to have an HIV-related blood test or discriminate against a provider on the basis of HIV status of the provider.

(c) It shall be an unfair labor practice for the exclusive representative to:

(1) restrain or coerce early care and education providers in the exercise of the rights guaranteed to them under this chapter or by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership provided such rules are not discriminatory;

(2) cause or attempt to cause the State to discriminate against an early care and education provider or to discriminate against a provider;

(3) refuse to bargain collectively in good faith with the State; or

(4) threaten to or cause a provider to strike or curtail the provider's services in recognition of a picket line of any employee or labor organization.

(d) Early care and education providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization.

(e) Complaints related to this section shall be made and resolved in accordance with procedures set forth in 3 V.S.A. § 965.

§ 3613. ANTITRUST EXEMPTION

The activities of early care and education providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded state action immunity under applicable federal and state antitrust laws. The State intends that the "state action" exemption to federal antitrust laws be available only to the State, to early care and education providers, and to their exclusive representative in connection with these necessary activities. Exempt activities shall be actively supervised by the State.

§ 3614. RIGHTS UNALTERED

(a) This chapter does not alter or infringe upon the rights of:

(1) a parent or legal guardian to select and discontinue child care services of any early care and education provider;

(2) an early care and education provider to choose, direct, and terminate the services of any employee that provides care in that home; or

(3) the Judiciary and General Assembly to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility for families, legal guardians, and providers participating in child care subsidy programs, and to the nature of services provided.

(b) Nothing in this chapter shall affect the rights and obligations of private sector employers and employees under the National Labor Relations Act, 29 U.S.C. § 151, et seq., or the Vermont State Labor Relations Act, 21 V.S.A. § 1501, et seq. The terms and conditions of employment at individual centers, which are the subjects of traditional collective bargaining between employers and their employees and which are governed by federal laws, fall outside the limited scope of bargaining defined in this chapter.

Sec. 32. NEGOTIATIONS; EARLY CARE AND EDUCATION PROVIDERS

The State's costs of negotiating an agreement pursuant to 33 V.S.A. chapter 36 shall be borne by the State out of existing appropriations made to it by the General Assembly.

* * * Effective Dates * * *

Sec. 33. EFFECTIVE DATES

(a) Sec. 20 of this act (extraordinary transportation aid) shall take effect on July 1, 2014 and shall apply to grants that would have been made in fiscal year 2015 and after.

(b) This section and all other sections of this act shall take effect on passage; provided, however, that Sec. 14 of this act (salary) shall apply retroactively beginning on January 2, 2013.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for April 11, 2013, page 723.)

Reported favorably with recommendation of proposal of amendment by Senator Starr for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Education with the following amendments thereto:

First: By striking out the *fourth* proposal of amendment in its entirety

Second: In the *fifth* proposal of amendment, by striking out Sec. 20 (transportation grants) and its related reader assistance heading in their entirety

Third: In the *fifth* proposal of amendment, in Sec. 31, in 33 V.S.A. § 3602, by striking out subdivision (3) in its entirety and by renumbering the remaining subdivisions to be numerically correct

Fourth: In the *fifth* proposal of amendment, in Sec. 31, 33 V.S.A. § 3603, in subsection (b), by striking out the first sentence and inserting in lieu thereof a new first sentence to read as follows: Mandatory subjects of bargaining are limited to child care reimbursement rates and payment methods, professional development, the collection of dues or agency fees and disbursement to the exclusive representative, and procedures for resolving grievances.

Fifth: In the *fifth* proposal of amendment, in Sec. 31, 33 V.S.A. § 3603, in subsection (e), by striking out the words "subsidy payments" and inserting in lieu thereof the word reimbursement

Sixth: In the *fifth* proposal of amendment, in Sec. 31, 33 V.S.A. § 3605, in subdivision (4), by striking out the words "and the Human Services Board"

(Committee vote: 6-1-0)

House Proposal of Amendment

S. 85

An act relating to workers' compensation for firefighters and rescue or ambulance workers.

The House proposes to the Senate to amend the bill as follows:

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

Sec. 2. EDUCATION AND TRAINING

The Department of Health shall provide annual education and training to emergency medical personnel licensed under 18 V.S.A. chapter 17 and the Vermont Fire Academy shall provide annual education and training to firefighters on the requirements of the Occupational Safety and Health Administration standards 1910.134 (respiratory protection) and 1910.1030 (bloodborne pathogens).

ORDERED TO LIE

S. 55.

An act relating to increasing efficiency in state government finance and lending operations.

PENDING ACTION: Second reading of the bill.

S. 165.

An act relating to collective bargaining for deputy state's attorneys.

PENDING ACTION: Third reading of the bill.

H. 522.

An act relating to strengthening Vermont's response to opioid addiction and methamphetamine abuse.

PENDING ACTION: Third reading of the bill.