

# Journal of the Senate

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WEDNESDAY, MARCH 16, 2016

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Bills Referred

House bills of the following titles were severally read the first time and referred:

### H. 857.

An act relating to timber harvesting.

To the Committee on Natural Resources & Energy.

### H. 858.

An act relating to miscellaneous criminal procedure amendments.

To the Committee on Judiciary.

## Bill Amended; Bill Passed

### S. 225.

Senate bill entitled:

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

Was taken up.

Thereupon, pending third reading of the bill, Senator Degree, Flory, Kitchel, Mazza, and Westman moved to amend the bill by striking out Sec. 7 and the reader assistance thereto in their entirety and inserting in lieu thereof the following:

Sec. 7. [Deleted.]

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Rodgers moved to amend the bill by adding a new section to be Sec. 26 and a reader assistance thereto to read:

\* \* \* ATV Operation on State Highways; Pilot Program; Orleans County \* \* \*

Sec. 26. ATV OPERATION ON STATE HIGHWAYS; PILOT PROGRAM; ORLEANS COUNTY

(a) A pilot program is established to authorize the operation of all-terrain vehicles (ATVs) on State highways in Orleans County in accordance with this section. The pilot program shall start on July 1, 2016, and end on July 1, 2020.

(b) Notwithstanding 23 V.S.A. § 3506(b), during the term of the pilot program, a person may operate an ATV along a State highway, other than I-91, for a distance of one mile or less, if the State highway:

(1) connects properties open to ATV travel, including a town highway that has been opened to ATV travel. The operator may access properties adjacent to the connecting State highway that offer food, fuel, lodging, or repair services; or

(2) provides access to the closest food, fuel, lodging, or repair services that are available from property open to ATV travel.

(c) A person shall not operate an ATV along a State highway under the pilot program unless the person:

(1) wears protective headgear of a type approved by the Commissioner of Motor Vehicles;

(2) maintains financial responsibility at the levels specified at 23 V.S.A. § 800;

(3) complies with the signaling requirements of 23 V.S.A. §§ 1064 and 1065; and

(4) complies with all motor vehicle laws applicable when an ATV is operated on a public highway as specified at 23 V.S.A. § 3501(5).

(d) A person who violates subsection (c) of this section shall be subject to the penalty prescribed in 23 V.S.A. § 3507.

(e) The Commissioner of Public Safety, after consulting with the Vermont ATV Sportsman's Association and municipalities in Orleans County, shall submit an interim written report to the House and Senate Committees on Transportation on or before January 15, 2018, and a follow-up written report on or before January 15, 2021, evaluating the pilot program.

And by renumbering the remaining section to be numerically correct.

Which was disagreed to.

Thereupon, the bill was read the third time and passed.

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**Consideration Resumed; Bill Amended; Bill Passed****S. 183.**

Consideration was resumed on Senate bill entitled:

An act relating to permanency for children in the child welfare system.

Thereupon, the pending question, Shall the bill be amended as moved by Senator Sirotkin?, was decided in the affirmative.

Thereupon, the bill was read the third time and passed.

**Bill Amended; Bill Passed****S. 75.**

Senate bill entitled:

An act relating to food and lodging establishments.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sirotkin moved to amend the bill by in Sec. 1, 18 V.S.A. § 4301(a)(9) by inserting after the first sentence: “Lodging establishment” shall not include lodging establishments renting three or fewer units to the public.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Nitka, Collamore, and Starr moved to amend the bill in Sec. 1, 18 V.S.A. § 4301(a)(7), by inserting after the second sentence: A food manufacturing establishment shall not include a place where only maple syrup or maple products, as defined in 6 V.S.A. § 481, are prepared for human consumption.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Bill Amended; Bill Passed****S. 196.**

Senate bill entitled:

An act relating to the Agency of Human Services’ contracts with providers.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the bill by in Sec. 1, in subsection (a), in the first sentence, by inserting after the word “State”, the following: or employed by a person contracting with the State

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Joint Resolution Adopted on the Part of the Senate**

**J.R.S. 45.**

Joint Senate resolution of the following title was read the third time and adopted on the part of the Senate:

Joint resolution relating to the transfer of two State-owned parcels of land to the Town of Duxbury.

**Bill Amended; Third Reading Ordered**

**S. 91.**

Senator Ashe, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to qualifications of judicial officers and judicial selection and retention.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 601 is amended to read:

**§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION**

(a) A Judicial Nominating Board is created for the nomination of Supreme Court Justices, Superior judges, magistrates, the Chair ~~of the Public Service Board~~, and members of the Public Service Board.

(b) The Board shall consist of 11 members who shall be selected as follows:

(1) The Governor shall appoint two members who are not attorneys at law.

(2) The Senate shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(3) The House shall elect three of its members, not all of whom shall be members of the same party, and only one of whom may be an attorney at law.

(4) Attorneys at law admitted to practice before the Supreme Court of Vermont, and residing in the State, shall elect three of their number as members of the Board. The Supreme Court shall regulate the manner of their nomination and election.

(5) The members of the Board appointed by the Governor shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the Board elected by the House and Senate shall serve for terms of two years and may serve for no more than three consecutive terms. The members of the Board elected by the attorneys at law shall serve for terms of two years and may serve for no more than three consecutive terms. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.

(6) The members shall elect their own chair who will serve for a term of two years.

(c) Legislative members of the Board shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406. Members of the Board who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses in the same manner as board members are compensated under 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the legislative appropriation.

(d) The Judicial Nominating Board ~~shall~~ may adopt rules under 3 V.S.A. chapter 25 which shall establish criteria and standards for the nomination of candidates for Justices of the Supreme Court, Superior judges, magistrates, and the Chair of the ~~Public Service Board~~, and members of the Public Service Board based on the attributes identified in subsection 602(f) of this title. ~~The criteria and standards shall include such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness, and public service.~~ The application form shall not be included in the rules and may be developed and periodically revised at the discretion of the Board.

(e) A quorum of the Board shall consist of eight members.

(f) The Board is authorized to use the staff and services of appropriate State agencies and departments as necessary to conduct investigations of applicants. The Office of Legislative Council shall assist the Board for the purpose of rulemaking.

(g) Except as provided in subsection (h) of this section, proceedings of the Board, including the names of candidates considered by the Board and information about any candidate submitted by the Court Administrator or by any other source shall be confidential.

(h) The following shall be public:

(1) operating procedures of the Board;

(2) standard application forms and any other forms used by the Board, provided they do not contain personal information about a candidate or confidential proceedings;

(3) all proceedings of the Board prior to the Board's receipt of the first candidate's completed application; and

(4) at the time the Board sends the names of the candidates to the Governor, the total number of applicants for the vacancy and the total number of candidates sent to the Governor.

Sec. 2. 4 V.S.A. § 602 is amended to read:

§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR OF THE PUBLIC SERVICE BOARD

(a)(1) Prior to ~~submission of~~ submitting to the Governor the names of qualified candidates for justices Justices of the ~~supreme court~~ Supreme Court, ~~superior~~ Superior Court judges, magistrates, ~~the chair of the public service board, and members of the public service board to the governor~~ and the Chair of the Public Service Board, the ~~board~~ Judicial Nominating Board shall submit to the ~~court administrator of the supreme court~~ Court Administrator a list of all candidates, and ~~the administrator~~ he or she shall disclose to the ~~board~~ Board information solely about professional disciplinary action taken or pending concerning any candidate.

(2) From the list of candidates ~~presented~~, the ~~judicial nominating board~~ Judicial Nominating Board shall select by majority vote, provided that a quorum is present, ~~qualified~~ well-qualified candidates for the position to be filled.

(b) Whenever a vacancy occurs in the office of a ~~supreme court justice or~~ Supreme Court Justice, a ~~superior judge~~ Superior Court judge, magistrate, or Chair of the Public Service Board, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the ~~judicial nominating board~~ Board shall submit to the ~~governor~~ Governor the names of as many persons as it deems ~~qualified~~ well qualified to be appointed to the office. ~~There shall be included in the qualifications for appointment that the person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding appointment, and with respect to a candidate for superior judge particular consideration shall be given to the nature and extent of the candidate's trial practice.~~

(c) All proceedings of the board, including the names of candidates considered by the board and information about any candidate submitted by the court administrator or by any other source, shall be confidential.

(1) A candidate for judge or Justice shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for a minimum of ten years, with at least five years immediately preceding his or her application to the Board.

(2) A candidate for magistrate shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.

(3) A candidate for Chair of the Public Service Board shall not be required to be an attorney; however if the candidate is admitted to practice law in Vermont, the Judicial Nominating Board shall submit the candidate's name to the Court Administrator, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning the candidate. If a candidate is not admitted to practice law in Vermont, but practices a profession requiring licensure, certification, or other professional regulation by the State, the Judicial Nominating Board shall submit the candidate's name to the State professional regulatory entity and that entity shall disclose to the Board any professional disciplinary action taken or pending concerning the candidate.

(d) A candidate shall possess the following attributes:

(1) Integrity. A candidate shall possess a record and reputation for excellent character and integrity.

(2) Legal knowledge and ability. A candidate shall possess a high degree of knowledge of established legal principles and procedures and have demonstrated a high degree of ability to interpret and apply the law to specific factual situations.

(3) Judicial temperament. A candidate shall possess an appropriate judicial temperament.

(4) Impartiality. A candidate shall exhibit an ability to make judicial determinations in a manner free of bias.

(5) Communication capability. A candidate shall possess demonstrated oral and written capacities, with reasonable accommodations, required by the position.

(6) Financial integrity. A candidate shall possess demonstrated financial probity.

(7) Work ethic. A candidate shall demonstrate diligence.

(8) Administrative capabilities. A candidate shall demonstrate management and organizational skills or experience required by the position.

(9) Courtroom experience. For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall have experience in environmental and zoning law.

(10) Other. A candidate shall possess other attributes the Board deems relevant as identified through its rules.

Sec. 3. 4 V.S.A. § 602a is added to read:

§ 602a. DUTIES; PUBLIC SERVICE BOARD MEMBERS

(a) In accordance with 30 V.S.A. § 3, whenever a vacancy occurs for a member position on the Public Service Board, the Governor shall submit at least five names of potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board shall submit to the Governor the names of candidates it deems well qualified. The Judicial Nominating Board shall submit to the Governor a summary of the qualifications and experience of each candidate whose name is submitted to the Governor, together with any further information relevant to the matter. Vacancies for the position of Chair of the Public Service Board shall follow the procedure set forth in section 602 of this title.

(b) A candidate for the position of member of the Public Service Board shall not be required to be an attorney; however, if the candidate is admitted to practice law in Vermont, the Judicial Nominating Board shall submit the candidate's name to the Court Administrator, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning the candidate. If a candidate is not admitted to practice law in Vermont, but practices a profession requiring licensure, certification, or other professional regulation by the State, the Judicial Nominating Board shall submit the candidate's name to the State professional regulatory entity and that entity shall disclose to the Board any professional disciplinary action taken or pending concerning the candidate.

(c) A candidate shall possess the attributes provided in subsection 602(d) of this title.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: "An act relating to procedures of the Judicial Nominating Board and qualifications of candidates for the positions of Justice, judge, magistrate, and Chair and member of the Public Service Board"



And that when so amended the bill ought to pass.

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

Thereupon, pending the question, Shall the bill be read the third time?, Senator Ashe moved to amend the bill as follows:

First: In Sec. 1, 4 V.S.A. § 601, in subsection (d), by striking out the following: “602(f)” and by inserting in lieu thereof the following: 602(d)

Second: In Sec. 1, 4 V.S.A. § 601, in subsection (g), by inserting a comma between the word “source” and the word “shall”

Which was agreed to.

Thereupon, third reading of the bill was ordered.

### **Bills Amended; Third Readings Ordered**

#### **S. 132.**

Senator Ayer, for the Committee on Health & Welfare, to which was referred Senate bill entitled:

An act relating to the prohibition of conversion therapy on minors.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Findings \* \* \*

#### Sec. 1. FINDINGS

In recognition that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, illness, deficiency, or shortcoming, the General Assembly finds:

(1) Vermont has a compelling interest in protecting the physical and psychological well-being of children, including lesbian, gay, bisexual, and transgender youth, and in protecting its children against exposure to serious harms.

(2) A 2015 report published by the U.S. Substance Abuse and Mental Health Service’s Administration states “conversion therapy...is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations...[m]ost importantly, it may put young people at risk of serious harm.”

(3) The American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the National Association of School Psychologists,

and the National Association of Social Workers, together representing more than 477,000 health and mental health professionals, have all taken the position that homosexuality is not a mental disorder and thus there is no need for a “cure.”

\* \* \* Conversion Therapy \* \* \*

Sec. 2. 18 V.S.A. chapter 196 is added to read:

#### CHAPTER 196. CONVERSION THERAPY

##### § 8351. DEFINITIONS

As used in this chapter:

(1) “Conversion therapy” means any practice by a mental health care provider that seeks to change an individual’s sexual orientation, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex. “Conversion therapy” does not include psychotherapies that:

(A) provide support to an individual undergoing gender transition; and

(B) provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices and that do not seek to change an individual’s sexual orientation or gender identity.

(2) “Mental health care provider” means a person licensed to practice medicine pursuant to 26 V.S.A. chapter 23, 33, or 81 who specializes in the practice of psychiatry; a psychologist, a psychologist-doctorate, or a psychologist-master as defined in 26 V.S.A. § 3001; a clinical social worker as defined in 26 V.S.A. § 3201; a clinical mental health counselor as defined in 26 V.S.A. § 3261; a licensed marriage and family therapist as defined in 26 V.S.A. § 4031; a psychoanalyst as defined in 26 V.S.A. § 4051; any other allied mental health professional; or a student, intern, or trainee of any such profession.

##### § 8352. TREATMENT OF MINORS

A mental health care provider shall not use conversion therapy with a client younger than 18 years of age.

##### § 8353. UNPROFESSIONAL CONDUCT

Any conversion therapy used on a client younger than 18 years of age by a mental health care provider shall constitute unprofessional conduct as provided in the relevant provisions of Title 26 and shall subject the mental health care

provider to discipline pursuant to the applicable provisions of that title and of 3 V.S.A. chapter 5.

\* \* \* Physicians \* \* \*

Sec. 3. 26 V.S.A. § 1354(a) is amended to read:

(a) The ~~board~~ Board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the ~~state~~ State, constitutes unprofessional conduct:

\* \* \*

(39) use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of chapter 31 of this title; or

(40) use of conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Osteopathy \* \* \*

Sec. 4. 26 V.S.A. § 1842(b) is amended to read:

(b) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a-:

\* \* \*

(13) Use of conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Psychologists \* \* \*

Sec. 5. 26 V.S.A. § 3016 is amended to read:

§ 3016. UNPROFESSIONAL CONDUCT

Unprofessional conduct means the conduct listed in this section and in 3 V.S.A. § 129a:

\* \* \*

(11) Use of conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Clinical Social Workers \* \* \*

Sec. 6. 26 V.S.A. § 3210(a) is amended to read:

(a) The following conduct and the conduct set forth in 3 V.S.A. § 129a by a licensed social worker constitutes unprofessional conduct. When that conduct is by an applicant or a person who later becomes an applicant, it may constitute grounds for denial of a license:

\* \* \*

(12) failing to clarify the clinical social worker's role with the parties involved and to take appropriate action to minimize any conflicts of interest, when the clinical social worker anticipates a conflict of interest among the individuals receiving services or anticipates having to perform in conflicting roles such as testifying in a child custody dispute or divorce proceedings involving clients; or

(13) using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

Sec. 7. 26 V.S.A. § 3210(a) is amended to read:

(a) The following conduct and the conduct set forth in 3 V.S.A. § 129a by a person licensed under this chapter constitutes unprofessional conduct. When that conduct is by an applicant or a person who later becomes an applicant, it may constitute grounds for denial or discipline of a license:

\* \* \*

(12) failing to clarify the licensee's role with the parties involved and to take appropriate action to minimize any conflicts of interest, when the clinical social worker anticipates a conflict of interest among the individuals receiving services or anticipates having to perform in conflicting roles such as testifying in a child custody dispute or divorce proceedings involving clients; or

(13) using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Clinical Mental Health Counselors \* \* \*

Sec. 8. 26 V.S.A. § 3271(a) is amended to read:

(a) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a-:

\* \* \*

(7) independently practicing outside or beyond a clinical mental health counselor's area of training, experience or competence without appropriate supervision; or

(8) using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

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\* \* \* Marriage and Family Therapists \* \* \*

Sec. 9. 26 V.S.A. § 4042(a) is amended to read:

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a:

\* \* \*

(7) Using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Psychoanalysts \* \* \*

Sec. 10. 26 V.S.A. § 4062(a) is amended to read:

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a:

\* \* \*

(7) Using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Naturopathic Physicians \* \* \*

Sec. 11. 26 V.S.A. § 4132(a) is amended to read:

(a) The following conduct and conduct set forth in 3 V.S.A. § 129a by a person licensed under this chapter or an applicant for licensure constitutes unprofessional conduct:

\* \* \*

(11) Using conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

\* \* \* Effective Dates \* \* \*

Sec. 12. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except Sec. 7 shall take effect on July 1, 2017.

And that when so amended the bill ought to pass.

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

**S. 174.**

Senator Ashe, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to a model State policy for use of body cameras by law enforcement officers.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LAW ENFORCEMENT ADVISORY BOARD; MODEL STATE POLICY; BODY CAMERAS

(a)(1) On or before December 15, 2016, the Law Enforcement Advisory Board shall establish and report to the Senate and House Committees on Judiciary and on Government Operations a statewide policy for the use of body cameras by Vermont law enforcement officers.

(2) The report required by this subsection shall include a section addressing:

(A) any costs associated with establishing the statewide policy, including strategies for minimizing the costs of obtaining cameras and storing data; and

(B) potential grants available to alleviate the costs of establishing the statewide policy.

(b) The model policy required by this section shall include provisions regarding:

(1) when a law enforcement officer should wear a body camera;

(2) under what circumstances a law enforcement officer wearing a body camera should turn the camera on and off, and a requirement that the officer provide the reasons for doing so each time the camera is turned on and off;

(3) when a video recording made by a law enforcement officer's body camera should be exempt from disclosure under the Public Records Act as determined by 1 V.S.A. chapter 5, subchapter 3; and

(4) treatment of situations when a law enforcement officer's body camera malfunctions or is unavailable.

(c)(1) Except as provided in subdivision (2) of this subsection, on or before July 1, 2017, every State, local, county, and municipal law enforcement agency and every constable who is not employed by a law enforcement agency shall adopt a policy for the use of body cameras by law enforcement officers that at a minimum meets the requirements of the policy established by the Law Enforcement Advisory Board pursuant to subsection (a) of this section. If a law enforcement agency or officer that is required to adopt a policy pursuant to this subsection fails to do so on or before July 1, 2017, that agency or officer shall be deemed to have adopted, and shall follow and enforce, the model

policy established by the Law Enforcement Advisory Board pursuant to subsection (a) of this section.

(2) A law enforcement agency or constable that does not use body cameras shall not be required to adopt a model policy under subdivision (1) of this subsection.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

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

**S. 176.**

Senator Sirotkin, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to an income tax credit for home modifications required by a disability or physical hardship.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2907 is amended to read:

§ 2907. ACCESSIBILITY STANDARDS; RESIDENTIAL CONSTRUCTION

(a) ~~For the purposes of~~ As used in this chapter, “residential construction” means new construction of one family or multifamily dwellings. “Residential construction” shall not include a single family dwelling built by the owner for the personal occupancy of the owner and the owner’s family, or the assembly or placement of residential construction that is prefabricated or manufactured out of state.

(b) Any residential construction shall be built to comply with all the following standards:

(1) At least one first floor exterior door that is at least 36 inches wide.

(2) First floor interior doors between rooms that are at least 34 inches wide or open doorways that are at least 32 inches wide with thresholds that are level, ramped, or beveled.

(3) Interior hallways that are level and at least 36 inches wide.

(4) Environmental and utility controls and outlets that are located at heights that are in compliance with standards adopted by the Vermont ~~access board~~ Access Board.

(5) Bathroom walls that are reinforced to permit attachment of grab bars.

(c) A violation of this section shall neither affect marketability nor create a defect in title of the residential construction.

(d) Prior to the sale of residential construction, a seller shall provide written disclosure to a prospective buyer detailing whether the residential construction is in compliance with the standards described in subsection (b) of this section. Disclosure shall be made on a form and in a manner prescribed by the Access Board.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

An act relating to disclosure of compliance with accessibility standards in the sale of residential construction.

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

## S. 215.

Senator Mullin, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the regulation of vision insurance plans.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4088j is amended to read:

§ 4088j. CHOICE OF PROVIDERS FOR VISION CARE AND MEDICAL EYE CARE SERVICES

\* \* \*

(e)(1) An agreement between a health insurer or an entity that writes vision insurance and an optometrist or ophthalmologist for the provision of vision services to plan members or subscribers in connection with coverage under a stand-alone vision care plan or other health insurance plan shall not require that an optometrist or ophthalmologist provide services or materials at a fee



limited or set by the plan or insurer unless the services or materials are reimbursed as covered services under the contract.

(2) An optometrist or ophthalmologist shall not charge more for services and materials that are noncovered services under a vision care plan than his or her usual and customary rate for those services and materials.

(3) Reimbursement paid by a vision care plan for covered services and materials shall be reasonable and shall not provide nominal reimbursement in order to claim that services and materials are covered services.

(4) A vision care plan shall not limit an optometrist's or ophthalmologist's choice of or relationship with optical laboratories or sources and suppliers of services or materials if the source, supplier, or laboratory selected by the optometrist or ophthalmologist offers the services or materials at a lower cost to the consumer than the source, supplier, or laboratory selected by the vision care plan.

(f) The Department of Financial Regulation shall enforce the provisions of this section.

(g) As used in this section:

(1) "Covered services" means services and materials for which reimbursement from a vision care plan or other health insurance plan is provided by a member's or subscriber's plan contract, or for which a reimbursement would be available but for application of the deductible, co-payment, or coinsurance requirements under the member's or subscriber's health insurance plan.

(2) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer or a subcontractor of a health insurer, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term includes vision care plans but does not include policies or plans providing coverage for a specified disease or other limited benefit coverage.

\* \* \*

(7) "Vision care plan" means an integrated or stand-alone plan, policy, or contract providing vision benefits to enrollees with respect to covered services or covered materials, or both.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

And that when so amended the bill ought to pass.

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

### S. 216.

Senator Sirotkin, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to prescription drug formularies.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. PRESCRIPTION DRUG FORMULARIES; RULEMAKING

On or before January 1, 2017, the Commissioner of Financial Regulation shall adopt rules pursuant to 3 V.S.A. chapter 25 to require all health insurers that offer health benefit plans to Vermont residents through the Vermont Health Benefit Exchange to provide information to enrollees, potential enrollees, and health care providers about the plans' prescription drug formularies. The rules shall ensure that the formulary is posted online in a standard format established by the Department of Financial Regulation; that the formulary is updated frequently and is searchable by enrollees, potential enrollees, and health care providers; and that it includes information about the prescription drugs covered, applicable cost-sharing amounts, drug tiers, prior authorization, step therapy, and utilization management requirements.

Sec. 2. 33 V.S.A. § 2011 is added to read:

#### § 2011. 340B DRUG PRICING; REIMBURSEMENT FORMULA

The Department of Vermont Health Access shall use the same dispensing fee in its reimbursement formula for 340B prescription drugs as the Department uses to pay for non-340B prescription drugs under the Medicaid program.

Sec. 3. 340B REIMBURSEMENT; REPORT

The Department of Vermont Health Access shall determine the formula used by other states' Medicaid programs to reimburse covered entities that use 340B pricing for dispensing prescription drugs to Medicaid beneficiaries. On or before January 15, 2017, the Department shall report to the House Committees on Health Care and the Senate Committees on Health and Welfare and on Finance regarding its findings, its recommendations for modifications to Vermont's 340B reimbursement formula, if any, and the financial implications of implementing any recommended modification.

Sec. 4. 18 V.S.A. § 4631a(b) is amended to read:

(b)(1) It is unlawful for any manufacturer of a prescribed product or any wholesale distributor of medical devices, or any agent thereof, to offer or give any gift to a health care provider or to a member of the Green Mountain Care Board established in chapter 220 of this title.

(2) The prohibition set forth in subdivision (1) of this subsection shall not apply to any of the following:

\* \* \*

(K) The provision of coffee ~~or other~~, snacks, or other refreshments ~~at a booth~~ at a conference or seminar.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

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

### **Bill Ordered to Lie**

#### **S. 220.**

Senator Pollina, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the public financing of campaigns.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2981 is amended to read:

§ 2981. DEFINITIONS

As used in this subchapter:

\* \* \*

(4) "Vermont campaign finance qualification period" means one of the period beginning February 15 of each even numbered year and ending on the date on which primary petitions must be filed under section 2356 of this title following periods within which a candidate who intends to seek Vermont campaign finance grants shall be required to obtain qualifying contributions, as chosen by the candidate:

(A) The period beginning October 1 of the odd-numbered year and ending on January 15 of the even-numbered year.

(B) The period beginning November 1 of the odd-numbered year and ending on February 15 of the even-numbered year.

(C) The period beginning December 1 of the odd-numbered year and ending on March 15 of the even-numbered year.

(D) The period beginning January 1 of the even-numbered year and ending on April 15 of the even-numbered year.

(E) The period beginning February 1 of the even-numbered year and ending on May 15 of the even-numbered year.

Sec. 2. 17 V.S.A. § 2982 is amended to read:

§ 2982. FILING OF VERMONT CAMPAIGN FINANCE DECLARATION AND AFFIDAVIT

(a) A candidate for the office of Governor or Lieutenant Governor who intends to seek Vermont campaign finance grants from the Secretary of State Services Fund shall file:

(1) a declaration of his or her chosen Vermont campaign finance qualification period on or before the date on which that chosen period begins; and

(2) a Vermont campaign finance affidavit on or before the date on or before which primary petitions must be filed, whether the candidate seeks to enter a party primary or is an independent candidate which his or her chosen Vermont campaign finance qualification period ends.

(b) The Secretary of State shall prepare a the Vermont campaign finance declaration and affidavit form forms described in this section, informational materials on procedures and financial requirements, and notification of the penalties for violation of this subchapter.

(c)(1) The Vermont campaign finance affidavit shall set forth the conditions of receiving grants under this subchapter and provide space for the candidate to agree that he or she will abide by such conditions and all expenditure and contribution limitations, reporting requirements, and other provisions of this chapter.

\* \* \*

(3) The affidavit shall also contain a list of all the candidate's qualifying contributions together with the name and town of residence of the contributor and the date each contribution was made.

\* \* \*

Sec. 3. 17 V.S.A. § 2983 is amended to read:

§ 2983. VERMONT CAMPAIGN FINANCE GRANTS; CONDITIONS

(a) A person shall not be eligible for Vermont campaign finance grants if:

(1) prior to February 15 of the general election year during any two-year general election cycle his or her chosen Vermont campaign finance qualification period, he or she becomes a candidate by announcing that he or she seeks an elected position as Governor or Lieutenant Governor or by accepting contributions totaling \$2,000.00 or more or by making expenditures totaling \$2,000.00 or more; or

(2) except for the contributions permitted under subdivision (1) of this subsection, prior to accepting any Vermont campaign finance grant, he or she solicits or accepts any contributions, other than qualifying contributions.

(b) A candidate who accepts Vermont campaign finance grants shall:

(1)(A) ~~not~~ Not solicit, accept, or expend any contributions except qualifying contributions, Vermont campaign finance grants, and contributions authorized under section 2985 of this chapter, which contributions may be solicited, accepted, or expended only in accordance with the provisions of this subchapter;

(B) For the purposes of this subdivision (1), notwithstanding the provisions of subdivision 2944(c)(1) of this chapter, an expenditure described in that subdivision that is made by a political party that is associated with the candidate shall not be presumed to be a related expenditure made on behalf of the candidate.

(2) ~~deposit~~ Deposit all qualifying contributions, Vermont campaign finance grants, and any contributions accepted in accordance with the provisions of section 2985 of this chapter in a federally insured noninterest-bearing checking account; and

(3) ~~not~~ Not later than 40 days after the general election, deposit in the Secretary of State Services Fund, after all permissible expenditures have been paid, the balance of any amounts remaining in the account established under subdivision (2) of this subsection.

Sec. 4. 17 V.S.A. § 2984 is amended to read:

§ 2984. QUALIFYING CONTRIBUTIONS

(a) In order to qualify for Vermont campaign finance grants, a candidate for the office of Governor or Lieutenant Governor shall obtain during ~~the~~ his or her chosen Vermont campaign finance qualification period the following amount and number of qualifying contributions for the office being sought:

(1) for Governor, a total amount of no less than \$35,000.00 collected from no fewer than 1,500 qualified individual contributors making a contribution of no more than \$50.00 each; or

(2) for Lieutenant Governor, a total amount of no less than \$17,500.00 collected from no fewer than 750 qualified individual contributors making a contribution of no more than \$50.00 each.

\* \* \*

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on January 1, 2017.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senator Kitchel moved that the bill be ordered to lie.

Which was agreed to.

#### **Senator Campbell Assumes the Chair**

#### **Bill Amended; Third Reading Ordered**

#### **S. 224.**

Senator Cummings, for the Committee on Economic Development, Housing & General Affairs, to which was referred Senate bill entitled:

An act relating to warranty obligations of equipment dealers and suppliers.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. FINDINGS AND INTENT

##### (a) The General Assembly finds:

(1) Vermont has long relied on economic activity relating to working farms and forestland in the State. These working lands, and the people who work the land, are part of the State's cultural and ecological heritage, and Vermont has made major policy and budget commitments in recent years in support of working lands enterprises. Farm and forest enterprises need a robust system of infrastructure to support their economic and ecological activities, and that infrastructure requires a strong economic base consisting of dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm and forest working land infrastructure are in the best interest of the State.

(2) Snowmobiles and all-terrain vehicles have a significant economic impact in the State, including the distribution and sale of these vehicles, use by

residents, ski areas, and emergency responders, as well as tourists that come to enjoy riding snowmobiles and all-terrain vehicles in Vermont. It is in the best interest of the State to ensure that Vermont consumers who want to purchase snowmobiles and all-terrain vehicles have access to a competitive marketplace and a strong network of dealers, suppliers, and repair facilities in the State.

(3) The distribution and sale of equipment, snowmobiles, and all-terrain vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare, and in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate equipment, snowmobile, and all-terrain vehicle suppliers and their representatives, and to regulate dealer agreements issued by suppliers who are doing business in this State, in order to protect and preserve the investments and properties of the citizens of this State.

(4) There continues to exist an inequality of bargaining power between equipment, snowmobile, and all-terrain vehicle suppliers and the independent dealer network. This inequality of bargaining power enables equipment, snowmobile, and all-terrain vehicle suppliers to compel dealers to execute dealer agreements, related contracts, and addenda that contain terms and conditions that would not routinely be agreed to by the equipment, snowmobile, and all-terrain vehicle dealer if this inequality did not exist. It therefore is in the public interest to enact legislation to prevent unfair or arbitrary treatment of equipment, snowmobile, and all-terrain vehicle dealers by equipment, snowmobile, and all-terrain vehicle suppliers. It is also in the public interest that Vermont consumers, municipalities, businesses, and others that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont have access to a robust independent dealer network to obtain competitive prices when purchasing these items and to obtain warranty, recall, or other repair work.

(b) It is the intent of the General Assembly that this act be liberally construed in order to achieve its purposes.

Sec. 2. 9 V.S.A. chapter 107 is amended to read:

CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

§ 4071. DEFINITIONS

As used in this chapter:

(1) “Current net price” means the price listed in the supplier’s price list or ~~catalog~~ catalogue in effect at the time the dealer agreement is terminated, less any applicable discounts allowed.

(2)(A) “Dealer” means a person, corporation, or partnership primarily engaged in the business of retail sales of farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, yard and garden equipment, attachments, accessories, and repair parts inventory. Provided however, “dealer” shall

(B) “Dealer” does not include a “single line dealer,” a person primarily engaged in the retail sale and service of industrial, forestry, and construction equipment. “Single line dealer” means a person, partnership or corporation who:

(A)(i) has purchased 75 percent or more of the dealer’s total new product his or her new inventory from a single supplier; and

(B)(ii) has a total annual average sales volume for the previous three years in excess of \$15 \$100 million for the entire territory for which the dealer is responsible.

(3) “Dealer agreement” means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor supplier by which the supplier gives the dealer is granted the right to sell or distribute goods or services or to use a trade name, trademark, service mark, logotype, or advertising or other commercial symbol.

(4) “Inventory” means farm, utility, forestry, or industrial equipment, implements, machinery, yard and garden equipment, attachments, or repair parts. These terms do not include heavy construction equipment.

(A) “Inventory” means:

(i) farm, utility, forestry, yard and garden, or industrial:

(I) tractors;

(II) equipment;

(III) implements;

(IV) machinery;

(V) attachments;

(VI) accessories; and

(VII) repair parts;

(ii) snowmobiles, as defined in 23 V.S.A. § 3201(5); and

(iii) all-terrain vehicles, as defined in 23 V.S.A. § 3801(1).

(B) “Inventory” does not include heavy construction equipment.



(5) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location. In the event of termination of a dealer agreement by the supplier, "net cost" shall include the reasonable cost of assembly or disassembly performed by a dealer.

(6) "Supplier" means a wholesaler, manufacturer, or distributor of inventory as defined in this chapter who enters into a dealer agreement with a dealer.

(7) "Termination" of a dealer agreement means the cancellation, nonrenewal, or noncontinuance of the agreement.

#### § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

~~(a) Notwithstanding any agreement to the contrary, prior to the termination of a dealer agreement, a supplier shall notify the dealer of the termination not less than 120 days prior to the effective date of the termination. No supplier may terminate, cancel, or fail to renew a dealership agreement without cause. "Cause" means failure by an equipment dealer to comply with the requirements imposed upon the equipment dealer by the dealer agreement, provided the requirements are not substantially different from those requirements imposed upon other similarly situated equipment dealers in this State.~~

~~(b) The supplier may immediately terminate the agreement at any time upon the occurrence of any of the following events which in addition to the above definition of cause, are also cause for termination, cancellation, or failure to renew a dealership agreement:~~

~~(1) the filing of a petition for bankruptcy or for receivership either by or against the dealer;~~

~~(2) the making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;~~

~~(3) any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;~~

~~(4) the commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;~~

~~(5) a change or additions in location of the dealer's place of business as provided in the agreement without the prior written approval of the supplier; or~~

~~(6) withdrawal of an individual proprietor, partner, major shareholder, the involuntary termination of the manager of the dealership, or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier.~~

~~(c) Unless there is an agreement to the contrary, a dealer who intends to terminate a dealer agreement with a supplier shall notify the supplier of that intent not less than 120 days prior to the effective date of termination.~~

~~(d) Notification required by this section shall be in writing and shall be made by certified mail or by personal delivery and shall contain:~~

- ~~(1) a statement of intention to terminate the dealer agreement;~~
- ~~(2) a statement of the reasons for the termination; and~~
- ~~(3) the date on which the termination shall be effective.~~

#### TERMINATION OF DEALER AGREEMENT

##### (a) Requirements for notice.

(1) A person shall provide a notice required in this section by certified mail or by personal delivery.

##### (2) A notice shall be in writing and shall include:

- (A) a statement of intent to terminate the dealer agreement;
- (B) a statement of the reasons for the termination, including specific reference to one or more requirements of the dealer agreement that serve as the basis for termination, if applicable; and
- (C) the effective date of termination.

##### (b) Termination by a supplier for cause.

(1) In this subsection, "cause" means the failure of a dealer to meet one or more requirements of a dealer agreement, provided that the requirement is reasonable, justifiable, and substantially the same as requirements imposed on similarly situated dealers in this State.

(2) A supplier shall not terminate a dealer agreement except for cause.

(3) To terminate a dealer agreement for cause, a supplier shall deliver a notice of termination to the dealer at least 120 days before the effective date of termination.

(4) A dealer has 60 days from the date it receives a notice of termination to meet the requirements of the dealer agreement specified in the notice.

(5) If a dealer meets the requirements of the dealer agreement specified in the notice within the 60-day period, the dealer agreement does not terminate pursuant to the notice of termination.

(c) Termination by a supplier for failure to meet reasonable marketing or market penetration requirements.

(1) Notwithstanding subsection (b) of this section, a supplier shall not terminate a dealer agreement for failure to meet reasonable marketing or market penetration requirements except as provided in this subsection.

(2) A supplier shall deliver an initial notice of termination to the dealer at least 18 months before the effective date of termination.

(3) After providing an initial notice, the supplier shall work with the dealer in good faith to meet the reasonable marketing or market penetration requirements specified in the notice, including reasonable efforts to provide the dealer with adequate inventory and competitive marketing programs.

(4) If the dealer fails to meet reasonable marketing or market penetration requirements specified in the notice by the end of the 18-month period, the supplier may terminate the dealer agreement by providing a final notice of termination.

(5) A dealer has 90 days from the date it receives a final notice of termination to meet the reasonable marketing or market penetration requirements specified in the notice.

(6) If a dealer meets the reasonable marketing or market penetration requirements specified in the notice within the 90-day period, the dealer agreement does not terminate pursuant to the final notice of termination.

(d) Termination by a supplier upon a specified event. A supplier may terminate a dealer agreement if one of the following events occurs:

(1) A person files a petition for bankruptcy or for receivership on behalf of or against the dealer.

(2) The dealer makes an intentional and material misrepresentation regarding his or her financial status.

(3) The dealer defaults on a chattel mortgage or other security agreement between the dealer and the supplier.

(4) A person commences the voluntary or involuntary dissolution or liquidation of a dealer organized as a business entity.

(5) Without the prior written consent of the supplier:

(A) The dealer changes the business location specified in the dealer agreement or adds an additional dealership of the supplier's same brand.

(B) An individual proprietor, partner, or major shareholder withdraws from, or substantially reduces his or her interest in, the dealer.

(C) The dealer terminates a manager of the dealer.

(e) Termination by a dealer. Unless a provision of a dealer agreement provides otherwise, a dealer may terminate the dealer agreement by providing a notice of termination to the supplier at least 120 days before the effective date of termination.

\* \* \*

#### § 4074. REPURCHASE TERMS

(a)(1) Within 90 days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to section 4073 of this title may examine any books or records of the dealer to verify the eligibility of any item for repurchase.

(2) Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer the following items that the dealer previously purchased from the supplier, or other qualified vendor approved by the supplier, that are in the possession of the dealer on the date of termination of the dealer agreement;

~~(A) all inventory previously purchased from the supplier in possession of the dealer on the date of termination of the dealer agreement; and~~

~~(B) required signage, special tools, books, manuals, supplies, data processing equipment, and software previously purchased from the supplier or other qualified vendor approved by the supplier in the possession of the dealer on the date of termination of the dealer agreement.~~

(b) The supplier shall pay the dealer:

(1) 100 percent of the net cost of all new and undamaged and complete ~~farm and utility tractors, utility equipment, forestry equipment, industrial equipment, farm implements, farm machinery, yard and garden equipment, attachments, and accessories~~ inventory, other than repair parts, purchased from the supplier within the 30-month period preceding the date of termination, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location.

(2) 90 percent of the current net prices of all new and undamaged repair parts.

(3) 85 percent of the current net prices of all new and undamaged superseded repair parts.

(4) 85 percent of the latest available published net price of all new and undamaged noncurrent repair parts.

(5) Either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the dealer to

purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment and software required and approved by the supplier to communicate with the supplier.

(6) ~~Repurchase at~~ 75 percent of the net cost of specialized repair tools, signage, books and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination. Specialized repair tools must be unique to the supplier's product line, must be no more than 10 years old, and must be complete and in usable condition.

(7) ~~Repurchase at average~~ Average as-is value shown in current industry guides; for dealer-owned rental fleet financed by the supplier or its finance subsidiary, provided the equipment was purchased from the supplier within 30 months of the date of termination.

(c) The party that initiates the termination of the dealer agreement shall pay the cost of the return, handling, packing, and loading of the inventory. If the termination is initiated by the supplier, the supplier shall reimburse the dealer five percent of the net parts return credited to the dealer as compensation for picking, handling, packing, and shipping the parts returned to the supplier.

(d) Payment to the dealer required under this section shall be made by the supplier not later than 45 days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of daily interest at the current New York prime rate plus three percent of any outstanding balance over the required 45 days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer as a setoff against any amount owed by the dealer to the supplier.

\* \* \*

#### § 4077a. ~~PROHIBITED ACTS~~

~~No supplier shall:~~

~~(1) coerce any dealer to accept delivery of any equipment, parts, or accessories therefor, which such dealer has not voluntarily ordered, except that a supplier may require a dealer to accept delivery of equipment, parts or accessories that are necessary to maintain equipment generally sold in the dealer's area of responsibility, and a supplier may require a dealer to accept delivery of safety related equipment, parts, or accessories pertinent to equipment generally sold in the dealer's area of responsibility;~~

~~(2) condition the sale of any equipment on a requirement that the dealer also purchase any other goods or services, but nothing contained in this chapter shall prevent the supplier from requiring the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any equipment used in the trade area;~~

~~(3) — coerce any dealer into a refusal to purchase the equipment manufactured by another supplier; or~~

~~(4) — discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers, but nothing contained in this chapter shall prevent differentials which make only due allowance for a difference in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such equipment is sold or delivered by the supplier.~~

### PROHIBITED ACTS

(a) A supplier shall not coerce or attempt to coerce a dealer to accept delivery of inventory that the dealer has not voluntarily ordered, except inventory that is:

(1) necessary to maintain inventory generally sold in the dealer's area of responsibility; or

(2) safety-related and pertinent to inventory generally sold in the dealer's area of responsibility.

(b) A supplier shall not condition the sale of inventory on a requirement that the dealer also purchase any other goods or services, provided that a supplier may require a dealer to purchase parts reasonably necessary to maintain inventory used in the dealer's area of responsibility.

(c)(1) A supplier shall not prevent, coerce, or attempt to coerce a dealer from investing in, or entering into an agreement for the sale of, a competing product line or make of inventory.

(2) A supplier shall not require, coerce, or attempt to coerce a dealer to provide a separate facility or personnel for a competing product line or make of inventory.

(3) Subdivisions (1)–(2) of this subsection do not apply unless a dealer:

(A) maintains a reasonable line of credit for each product line or make of inventory;

(B) maintains the principal management of the dealer; and

(C) remains in substantial compliance with the supplier's reasonable facility requirements, which shall not include a requirement to provide a separate facility or personnel for a competing product line or make of inventory.

(d) A supplier shall not discriminate in the prices it charges for inventory of like grade and quality it sells to similarly situated dealers, provided that a supplier may use differentials that allow for a difference in the cost of

manufacture, sale, or delivery resulting from the differing methods or quantities in which the supplier sells or delivers the inventory.

(e) A supplier shall not change the area of responsibility specified in a dealer agreement without good cause, which for purposes of this subsection includes changes in the dealer's vehicle or warranty registration pattern, demographics, and geographic barriers.

§ 4078. WARRANTY OBLIGATIONS

(a) A supplier shall:

(1) specify in writing a dealer's reasonable obligation to perform warranty service on the supplier's inventory;

(2) provide the dealer a schedule of reasonable compensation for warranty service, including amounts for diagnostic work, parts, labor, and the time allowance for the performance of warranty service; and

(3) compensate the dealer pursuant to the schedule of compensation for the warranty service the supplier requires it to perform.

(b) Time allowances for the diagnosis and performance of warranty service shall be reasonable and adequate for the service to be performed by a dealer that is equipped to complete the requirements of the warranty service.

(c) The hourly rate paid to a dealer shall not be less than the rate the dealer charges to customers for nonwarranty service.

(d) A supplier shall compensate a dealer for parts used to fulfill warranty and recall obligations of warranty service at a rate not less than the price the dealer actually paid the supplier for the parts plus 20 percent.

(e)(1) Whenever a supplier and a dealer enter into an agreement providing consumer warranties, the supplier shall pay any warranty claim made for warranty parts and service within 30 days after its receipt and approval.

(2) The supplier shall approve or disapprove a warranty claim within 30 days after its receipt.

(3) If a claim is not specifically disapproved in writing within 30 days after its receipt, it shall be deemed to be approved and payment shall be made by the supplier within 30 days after its receipt.

(f) A supplier violates this section if it:

(1) fails to perform its warranty obligations;

(2) fails to include in written notices of factory recalls to machinery owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or

(3) fails to compensate a dealer for repairs required by a recall.

(g) A supplier shall not:

(1) impose an unreasonable requirement in the process a dealer must follow to file a warranty claim; or

(2) impose a surcharge or fee, or otherwise increase the prices or charges to a dealer, in order to recover the additional costs the supplier incurs from complying with the provisions of this section.

#### § 4079. REMEDIES

(a) A person damaged as a result of a violation of this chapter may bring an action against the violator in a Vermont court of competent jurisdiction for damages, together with the actual costs of the action, including reasonable attorney's fees, injunctive relief against unlawful termination, ~~cancellation, nonrenewal,~~ or substantial change of competitive circumstances, and such other relief as the Court deems appropriate.

(b) A provision in a dealer agreement that purports to deny access to the procedures, forums, or remedies provided by the laws of this State is void and unenforceable.

~~(c) Nothing contained in this chapter may prohibit~~ Notwithstanding subsection (b) of this section, a dealer agreement may include a provision for binding arbitration of disputes ~~in an agreement.~~ Any arbitration shall be consistent with the provisions of this chapter and 12 V.S.A. chapter 192, and the place of any arbitration shall be in the county in which the dealer's principal place of business is maintained in this State.

\* \* \*

#### Sec. 3. APPLICABILITY TO EXISTING DEALER AGREEMENTS

Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of this act shall apply on July 1, 2017.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

#### **Adjournment**

On motion of Senator Baruth, the Senate adjourned until ten o'clock and twenty-five minutes in the morning.