

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 224 entitled “An act relating to warranty obligations of
4 equipment dealers and suppliers” respectfully reports that it has considered the
5 same and recommends that the House propose to the Senate that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. FINDINGS AND INTENT

9 (a) The General Assembly finds:

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

19 (2) Snowmobiles and all-terrain vehicles have a significant economic
20 impact in the State, including the distribution and sale of these vehicles, use by
21 residents, ski areas, and emergency responders, as well as tourists that come to

1 enjoy riding snowmobiles and all-terrain vehicles in Vermont. It is in the best
2 interest of the State to ensure that Vermont consumers who want to purchase
3 snowmobiles and all-terrain vehicles have access to a competitive marketplace
4 and a strong network of dealers, suppliers, and repair facilities in the State.

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

13 (4) There continues to exist ~~an inequality of a disparity in~~ bargaining
14 power between equipment, snowmobile, and all-terrain vehicle suppliers and
15 the independent dealer network. This ~~inequality of disparity in~~ bargaining
16 power enables equipment, snowmobile, and all-terrain vehicle suppliers to
17 compel dealers to execute dealer agreements, related contracts, and addenda
18 that contain terms and conditions that would not routinely be agreed to by the
19 equipment, snowmobile, and all-terrain vehicle dealer if this ~~inequality~~
20 ~~disparity~~ did not exist. It therefore is in the public interest to enact legislation
21 to prevent unfair or arbitrary treatment of equipment, snowmobile, and all-

1 terrain vehicle dealers by equipment, snowmobile, and all-terrain vehicle
2 suppliers. It is also in the public interest that Vermont consumers,
3 municipalities, businesses, and others that purchase equipment, snowmobiles,
4 and all-terrain vehicles in Vermont have access to a robust independent dealer
5 network to obtain competitive prices when purchasing these items and to
6 obtain warranty, recall, or other repair work.

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

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

10 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

11 § 4071. DEFINITIONS

12 As used in this chapter:

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

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

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

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

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

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

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

18 (A) “Inventory” means:

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

20 (I) tractors;

21 (II) equipment;

1 (III) implements;

2 (IV) machinery;

3 (V) attachments;

4 (VI) accessories; and

5 (VII) repair parts;

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

7 snowmobile implements, attachments, garments, accessories and repair parts;

8 and

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

10 all-terrain vehicle implements, attachments, garments, accessories and repair

11 parts.

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

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

18 (6) “Supplier” means a wholesaler, manufacturer, or distributor of
19 inventory ~~as defined in this chapter~~ who enters into a dealer agreement with a
20 dealer.

1 (7) “Termination” of a dealer agreement means the cancellation,
2 nonrenewal, or noncontinuance of the agreement.

3 (8) “Coerce” means the failure to act in a fair and equitable manner in
4 performing or complying with a provision of a dealer agreement; provided,
5 however, that recommendation, persuasion, urging, or argument shall not be
6 synonymous with coerce or lack of good faith.

7 (9) “Good faith” means honesty in fact and the observance of reasonable
8 commercial standards of fair dealing, as interpreted under 9A V.S.A. § 1-
9 201(B)(20).

10 § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

11 ~~(a) Notwithstanding any agreement to the contrary, prior to the termination~~
12 ~~of a dealer agreement, a supplier shall notify the dealer of the termination not~~
13 ~~less than 120 days prior to the effective date of the termination. No supplier~~
14 ~~may terminate, cancel, or fail to renew a dealership agreement without cause.~~

15 ~~“Cause” means failure by an equipment dealer to comply with the~~
16 ~~requirements imposed upon the equipment dealer by the dealer agreement,~~
17 ~~provided the requirements are not substantially different from those~~
18 ~~requirements imposed upon other similarly situated equipment dealers in this~~
19 ~~State.~~

20 ~~(b) The supplier may immediately terminate the agreement at any time~~
21 ~~upon the occurrence of any of the following events which in addition to the~~

1 ~~above definition of cause, are also cause for termination, cancellation, or~~
2 ~~failure to renew a dealership agreement:~~

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

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

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

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

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

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

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

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

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

4 TERMINATION OF DEALER AGREEMENT

5 (a) Requirements for notice.

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

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

9 (A) a statement of intent to terminate the dealer agreement;

10 (B) a statement of the reasons for the termination, including specific
11 reference to one or more requirements of the dealer agreement that serve as the
12 basis for termination, if applicable; and

13 (C) the effective date of termination.

14 (b) Termination by a supplier for cause.

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

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

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

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

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

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

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

14 (2) A supplier shall deliver an initial notice of termination to the dealer
15 at least 24 months before the effective date of termination.

16 (3) After providing an initial notice, the supplier shall work with the
17 dealer in good faith to meet the reasonable marketing or market penetration
18 requirements specified in the notice, including reasonable efforts to provide the
19 dealer with adequate inventory and marketing programs that are substantially
20 the same as those provided to dealers in this State, or region, whichever is
21 more appropriate under the circumstances.

1 (4) If the dealer fails to meet reasonable marketing or market penetration
2 requirements specified in the notice by the end of the 24-month period, the
3 supplier may terminate the dealer agreement by providing a final notice of
4 termination not less than 90 days prior to the effective date of the termination.

5 (5) If a dealer meets the reasonable marketing or market penetration
6 requirements within the 24-month period, the dealer agreement shall not
7 terminate.

8 (d) Termination by a supplier upon a specified event. **Notwithstanding**
9 **subsection (b) of this section,** a supplier may immediately terminate a dealer
10 agreement if one of the following events occurs:

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

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

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

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

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

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

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

3 (6) The dealer fails to operate in the normal course of business for eight
4 consecutive business days, unless the failure to operate is caused by an
5 emergency or other circumstances beyond the dealer's control.

6 (7) The dealer abandons the business.

7 (8) The dealer pleads guilty to or is convicted of a felony that is
8 substantially related to the qualifications, function, or duties of the dealer.

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

13 * * *

14 § 4074. REPURCHASE TERMS

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

19 (2) Except as otherwise provided in this chapter, the supplier shall
20 repurchase from the dealer the following items that the dealer previously
21 purchased from the supplier, or other qualified vendor approved by the

1 supplier, that are in the possession of the dealer on the date of termination of
2 the dealer agreement;

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

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

9 (b) The supplier shall pay the dealer:

10 (1) 100 percent of the net cost of all new, unsold, and undamaged, and
11 complete farm and utility tractors, utility equipment, forestry equipment,
12 industrial equipment, farm implements, farm machinery, yard and garden
13 equipment, attachments, and accessories inventory, other than repair parts,
14 purchased from the supplier within the 30-month period preceding the date of
15 termination, less a reasonable allowance for deterioration attributable to
16 ~~weather conditions~~ weather exposure at the dealer's location.

17 (2) ~~100~~ 90 percent of the current net prices of all new and undamaged
18 repair parts.

19 (3) ~~95~~ 85 percent of the current net prices of all new and undamaged
20 superseded repair parts.

1 (4) ~~95~~ 85 percent of the latest available published net price of all new
2 and undamaged noncurrent repair parts.

3 (5) Either the fair market value, or **the supplier shall** assume the lease
4 responsibilities of, any specific data processing hardware that the supplier
5 required the dealer to purchase to satisfy the reasonable requirements of the
6 dealer agreement, including computer systems equipment and software
7 required and approved by the supplier to communicate with the supplier.

8 (6) ~~Repurchase at~~ 75 percent of the net cost of specialized repair tools,
9 signage, books, and **[any other?]** supplies previously purchased, pursuant to
10 requirements of the supplier and held by the dealer on the date of termination.
11 ~~Specialized repair tools must be unique to the supplier's product line and must~~
12 ~~be complete and in usable condition.~~

13 (7) ~~Repurchase at average~~ Average as-is value shown in current industry
14 guides; for dealer-owned rental fleet financed by the supplier or its finance
15 subsidiary, provided the equipment was purchased from the supplier within
16 30 months of the date of termination.

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

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

8 § 4075. EXCEPTIONS TO REPURCHASE REQUIREMENT

9 The provisions of this chapter shall not require the a supplier to repurchase
10 from a dealer of:

11 (1) a repair part with a limited storage life or otherwise subject to
12 physical or structural deterioration, including gaskets or batteries;

13 (2) a single repair part normally priced and sold in a set of two or more
14 items;

15 (3) a repair part that, because of its condition, cannot be marketed as a
16 new part without repackaging or reconditioning by the supplier or
17 manufacturer;

18 (4) any inventory that the dealer elects to retain;

19 (5) any inventory ordered by the dealer after receipt of notice of
20 termination of the dealer agreement by either the dealer or supplier; ~~or~~

1 (6) any inventory that was acquired by the dealer from a source other
2 than the supplier unless the source was approved by the supplier;

3 (7) a specialized repair tool that is not unique to the supplier's product
4 line, over 10 years old, incomplete, or in unusable condition;

5 (8) a part identified by the supplier as non-returnable at the time of the
6 dealer's order; or

7 (9) [books or any other?] supplies that are not unique to the supplier's
8 product line, over three years old, incomplete, or in unusable condition.

9 * * *

10 § 4077a. ~~PROHIBITED ACTS~~

11 ~~No supplier shall:~~

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

19 ~~(2) condition the sale of any equipment on a requirement that the dealer~~
20 ~~also purchase any other goods or services, but nothing contained in this chapter~~
21 ~~shall prevent the supplier from requiring the dealer to purchase all parts~~

1 ~~reasonably necessary to maintain the quality of operation in the field of any~~
2 ~~equipment used in the trade area;~~

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

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

11 PROHIBITED ACTS

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

15 (1) necessary to maintain inventory in a quantity, and of the model
16 range, generally sold in the dealer's geographic area of responsibility; or

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

19 (b) A supplier shall not condition the sale of inventory on a requirement
20 that the dealer also purchase any other goods or services, provided that a

1 supplier may require a dealer to purchase parts reasonably necessary to
2 maintain inventory used in the dealer's geographic area of responsibility.

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

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

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

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

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

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

17 (d) A supplier shall not discriminate in the prices it charges for inventory of
18 like grade and quality it sells to similarly situated dealers, provided that a
19 supplier may use differentials that allow for a difference in the cost of
20 manufacture, sale, or delivery resulting from the differing methods or
21 quantities in which the supplier sells or delivers the inventory.

1 (e) A supplier shall not change the geographic area of responsibility
2 specified in a dealer agreement without good cause, which for purposes of this
3 subsection includes the dealer’s market penetration within the assigned
4 geographic area of responsibility and changes in the inventory warranty
5 registration pattern in the area surrounding the dealer’s geographic area of
6 responsibility.

7 § 4078. WARRANTY OBLIGATIONS

8 (a) A supplier shall:

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

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

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

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

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

1 (d)(1) A supplier shall compensate a dealer for parts used to fulfill warranty
2 and recall obligations of warranty service at a rate not less than the price the
3 dealer actually paid the supplier for the parts plus 20 percent, plus freight and
4 handling if charged by the supplier.

5 (2) The wholesale price on which a dealer's markup reimbursement is
6 based for any parts used in a recall or campaign shall not be less than the
7 highest wholesale price listed in the supplier's wholesale price catalogue
8 within six months prior to the start of the recall or campaign.

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

12 (2) The supplier shall approve or disapprove a warranty claim within
13 30 days after its receipt.

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

17 (f) A supplier violates this section if it:

18 (1) fails to perform its warranty obligations;

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

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

2 (g) A supplier shall not:

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

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

8 § 4079. REMEDIES

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

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

18 (c) ~~Nothing contained in this chapter may prohibit~~ Notwithstanding
19 subsection (b) of this section, a dealer agreement may include a provision for
20 binding arbitration of disputes in an agreement. Any arbitration shall be
21 consistent with the provisions of this chapter and 12 V.S.A. chapter 192, and

1 the place of any arbitration shall be in the county in which the dealer's
2 principal place of business is maintained in this State.

3 * * *

4 Sec. 3. APPLICABILITY TO EXISTING DEALER AGREEMENTS

5 Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in
6 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of
7 this act shall apply on July 1, 2017.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2016.

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17 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE