

1 Report of Committee of Conference

2 H.84

3 TO THE SENATE AND HOUSE OF REPRESENTATIVES:

4 The Committee of Conference, to which were referred the disagreeing votes
5 of the two Houses upon Senate Bill, entitled:

6 84. An act relating to internet dating services.

7 Respectfully reports that it has met and considered the same and
8 recommends that the bill be amended by striking out all after the enacting
9 clause and inserting in lieu thereof:

10 * * * Consumer Litigation Funding * * *

11 Sec. A.1. 8 V.S.A. chapter 74 is added to read:

12 CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

13 * * *

14 § 2260. ANNUAL REPORTS

15 (a) Annually, on or before April 1, each company registered under this
16 chapter shall file a report with the Commissioner under oath and in the form
17 and manner prescribed by the Commissioner. The report shall include any
18 information the Commissioner requires concerning the company's business
19 and operations during the preceding calendar year within Vermont and, in
20 addition, shall include:

21 (1) the number of contracts entered into;

1 (2) the dollar value of funded amounts to consumers;

2 (3) the dollar value of charges under each contract, itemized and
3 including the annual rate of return;

4 (4) the dollar amount and number of litigation funding transactions in
5 which the realization to the company was as contracted; and

6 (5) the dollar amount and number of litigation funding transactions in
7 which the realization to the company was less than contracted.

8 (b) To assist the general public with more fully understanding the nature of
9 consumer litigation funding in Vermont, the Commissioner shall summarize
10 and analyze relevant data submitted under this section and publish the
11 summary and analysis on a web page maintained by the Department of
12 Financial Regulation, as well as on a web page maintained by the Office of the
13 Attorney General.

14 (c) Annually, beginning on or before October 1, 2017, the Commissioner
15 and Attorney General shall report jointly to the General Assembly on the status
16 of consumer litigation funding in Vermont and make any recommendations
17 they deem necessary to improve the regulatory framework of consumer
18 litigation funding, including a recommendation on whether Vermont should
19 limit charges imposed under a consumer litigation funding contract and, if so, a
20 specific recommendation on what that limit should be.

1 Sec. A.2. CONSUMER LITIGATION FUNDING; INITIAL REPORT

2 (a) In addition to the reporting requirements in 8 V.S.A. § 2260, on or
3 before January 10, 2017 each company registered under this chapter shall file a
4 report with the Commissioner under oath and in the form and manner
5 prescribed by the Commissioner. The report shall include any information the
6 Commissioner requires concerning the company's business and operations
7 during the preceding calendar year within Vermont and, in addition, shall
8 include:

9 (1) the number of contracts entered into;

10 (2) the dollar value of funded amounts to consumers;

11 (3) the dollar value of charges under each contract, itemized and
12 including the annual rate of return;

13 (4) the dollar amount and number of litigation funding transactions in
14 which the realization to the company was as contracted; and

15 (5) the dollar amount and number of litigation funding transactions in
16 which the realization to the company was less than contracted.

17 (b) To assist the general public with more fully understanding the nature of
18 consumer litigation funding in Vermont, the Commissioner shall summarize
19 and analyze relevant data submitted under this section and publish the
20 summary and analysis on a web page maintained by the Department of

1 Financial Regulation, as well as on a web page maintained by the Office of the
2 Attorney General.

3 (c) In addition to the reporting requirements in 8 V.S.A. § 2260, on or
4 before January 31, 2017, the Commissioner and Attorney General shall report
5 jointly to the General Assembly on the status of consumer litigation funding in
6 Vermont and make any recommendations they deem necessary to improve the
7 regulatory framework of consumer litigation funding, including a
8 recommendation on whether Vermont should limit charges imposed under a
9 consumer litigation funding contract and, if so, a specific recommendation on
10 what that limit should be.

11 * * * Structured Settlement Agreements * * *

12 Sec. B.1.

13 * * * Business Registration; Enforcement * * *

14 Sec. C.1–C.14

15 * * * Anti-Trust Penalties * * *

16 Sec. D.1.

17 * * * Discount Membership Programs * * *

18 Secs. E.1–E.2

19 * * * Nonresidential Improvement Fraud * * *

20 Sec. F.1. 13 V.S.A. § 2029 is amended to read:

21 § 2029. HOME IMPROVEMENT FRAUD

1 (a) As used in this section, “home improvement” includes the fixing,
2 replacing, remodeling, removing, renovation, alteration, conversion,
3 improvement, demolition, or rehabilitation of or addition to any building or
4 land, or any portion thereof, which is used or designed to be used as a
5 residence or dwelling unit. Home improvement shall include the construction,
6 replacement, installation, paving, or improvement of driveways, roofs, and
7 sidewalks, and the limbing, pruning, and removal of trees or shrubbery and
8 other improvements to structures or upon land that is adjacent to a dwelling
9 house.

10 (b)(1) A person commits the offense of home improvement fraud when he
11 or she enters into a contract or agreement, written or oral, for \$500.00 or more,
12 with an owner for home improvement, or into several contracts or agreements
13 for \$2,500.00 or more in the aggregate, with more than one owner for home
14 improvement, and he or she knowingly:

15 (A) fails to perform the contract or agreement, in whole or in
16 part; and

17 (B) when the owner requests performance or a refund of payment
18 made, the person fails to either:

19 (i) refund the payment; or

20 (ii) make and comply with a definite plan for completion of the
21 work that is agreed to by the owner;

1 (2) misrepresents a material fact relating to the terms of the contract or
2 agreement or to the condition of any portion of the property involved;

3 (3) uses or employs any unfair or deceptive act or practice in order to
4 induce, encourage, or solicit such person to enter into any contract or
5 agreement or to modify the terms of the original contract or agreement; or

6 (4) when there is a declared state of emergency, charges for goods or
7 services related to the emergency a price that exceeds two times the average
8 price for the goods or services and the increase is not attributable to the
9 additional costs incurred in connection with providing those goods or services.

10 (c) Whenever a person is convicted of home improvement fraud or of
11 fraudulent acts related to home improvement:

12 (1) the person shall notify the Office of Attorney General;

13 (2) the court shall notify the Office of the Attorney General; and

14 (3) the Office of Attorney General shall place the person's name on the
15 Home Improvement and Nonresidential Improvement Fraud Registry.

16 (d)(1) A person who violates subsection (b) of this section shall be
17 imprisoned not more than two years or fined not more than \$1,000.00, or both,
18 if the loss to a single consumer is less than \$1,000.00.

19 (2) A person who is convicted of a second or subsequent violation of
20 subdivision (1) of this subsection shall be imprisoned not more than three years
21 or fined not more than \$5,000.00, or both.

1 (3) A person who violates subsection (b) of this section shall be
2 imprisoned not more than three years or fined not more than \$5,000.00, or
3 both, if:

4 (A) the loss to a single consumer is \$1,000.00 or more; or

5 (B) the loss to more than one consumer is \$2,500.00 or more in the
6 aggregate.

7 (4) A person who is convicted of a second or subsequent violation of
8 subdivision (3) of this subsection shall be imprisoned not more than five years
9 or fined not more than \$10,000.00, or both.

10 (5) A person who violates subsection (c) or (e) of this section shall be
11 imprisoned for not more than two years or fined not more than \$1,000.00,
12 or both.

13 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
14 this section, subdivision of 2029a(d)(2), (3), or (4) of this title, or convicted of
15 fraudulent acts related to home improvement, may engage in home
16 improvement activities for compensation only if:

17 (1) the work is for a company or individual engaged in home
18 improvement activities or nonresidential improvement activities, and the
19 person first notifies the company or individual of the conviction and notifies
20 the Office of Attorney General of the person's current address and telephone
21 number; the name, address, and telephone number of the company or

1 individual for whom the person is going to work; and the date on which the
2 person will start working for the company or individual; or

3 (2) the person notifies the Office of Attorney General of the intent to
4 engage in home improvement activities or nonresidential improvement
5 activities, and that the person has filed a surety bond or an irrevocable letter of
6 credit with the Office in an amount of not less than \$50,000.00, and pays on a
7 regular basis all fees associated with maintaining such bond or letter of credit.

8 (f) The Office of Attorney General shall release the letter of credit at such
9 time when:

10 (1) any claims against the person relating to home improvement fraud or
11 nonresidential improvement fraud have been paid;

12 (2) there are no pending actions or claims against the person for home
13 improvement fraud or nonresidential improvement fraud; and

14 (3) the person has not been engaged in home improvement activities or
15 nonresidential improvement activities for at least six years and has signed an
16 affidavit so attesting.

17 (g) [Reserved.]

18 (h) [Repealed.]

19 **Sec. F.2. 13 V.S.A. § 2029a is added to read:**

20 § 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

1 (a) As used in this section, “nonresidential improvement” includes the
2 fixing, replacing, remodeling, removing, renovation, alteration, conversion,
3 improvement, demolition, or rehabilitation of or addition to any building or
4 land, or any portion thereof, that is used or designed to be used as a business,
5 office, or by the State, a county, or a municipality. Nonresidential
6 improvement shall include the construction, replacement, installation, paving,
7 or improvement of driveways, parking lots, signs, roofs, and sidewalks, and the
8 limbing, pruning, and removal of trees or shrubbery and other improvements to
9 structures or upon land that is adjacent to a business, office, or State, county, or
10 municipal building.

11 (b)(1) A person commits the offense of nonresidential improvement fraud
12 when he or she enters into a contract or agreement, written or oral, for
13 \$1,000.00 or more, with an owner for nonresidential improvement, or into
14 several contracts or agreements for \$5,000.00 or more in the aggregate, with
15 more than one owner for nonresidential improvement, and he or she
16 knowingly:

17 (A) fails to perform the contract or agreement, in whole or in
18 part; and

19 (B) when the owner requests performance or a refund of payment
20 made, the person fails to either:

21 (i) refund the payment; or

1 (ii) make and comply with a definite plan for completion of the
2 work that is agreed to by the owner;

3 (2) misrepresents a material fact relating to the terms of the contract or
4 agreement or to the condition of any portion of the property involved;

5 (3) uses or employs any unfair or deceptive act or practice in order to
6 induce, encourage, or solicit such person to enter into any contract or
7 agreement or to modify the terms of the original contract or agreement; or

8 (4) when there is a declared state of emergency, charges for goods or
9 services related to the emergency a price that exceeds two times the average
10 price for the goods or services and the increase is not attributable to the
11 additional costs incurred in connection with providing those goods or services.

12 (c) Whenever a person is convicted of nonresidential improvement fraud:

13 (1) the person shall notify the Office of Attorney General;

14 (2) the court shall notify the Office of the Attorney General; and

15 (3) the Office of Attorney General shall place the person's name on the

16 Home Improvement and Nonresidential Improvement Fraud Registry.

17 (d)(1) A person who violates subsection (b) of this section shall be
18 imprisoned not more than two years or fined not more than \$1,000.00, or both,
19 if the loss to a single consumer is less than \$1,000.00.

1 (2) A person who is convicted of a second or subsequent violation of
2 subdivision (1) of this subsection shall be imprisoned not more than three years
3 or fined not more than \$5,000.00, or both.

4 (3) A person who violates subsection (b) of this section shall be
5 imprisoned not more than three years or fined not more than \$5,000.00, or
6 both, if:

7 (A) the loss to a single consumer is \$1,000.00 or more; or

8 (B) the loss to more than one consumer is \$2,500.00 or more in the
9 aggregate.

10 (4) A person who is convicted of a second or subsequent violation of
11 subdivision (3) of this subsection shall be imprisoned not more than five years
12 or fined not more than \$10,000.00, or both.

13 (5) A person who violates subsection (c) or (e) of this section shall be
14 imprisoned for not more than two years or fined not more than \$1,000.00,
15 or both.

16 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
17 this section, subdivision 2029(d)(2), (3), or (4) of this title, or convicted of
18 fraudulent acts related to nonresidential improvement, may engage in home
19 improvement activities or nonresidential improvement activities for
20 compensation only if:

1 (1) the work is for a company or individual engaged in home
2 improvement activities or nonresidential improvement activities, and the
3 person first notifies the company or individual of the conviction and notifies
4 the Office of Attorney General of the person’s current address and telephone
5 number; the name, address, and telephone number of the company or
6 individual for whom the person is going to work; and the date on which the
7 person will start working for the company or individual; or

8 (2) the person notifies the Office of Attorney General of the intent to
9 engage in home improvement activities or nonresidential improvement
10 activities, and that the person has filed a surety bond or an irrevocable letter of
11 credit with the Office in an amount of not less than \$50,000.00, and pays on a
12 regular basis all fees associated with maintaining such bond or letter of credit.

13 (f) The Office of Attorney General shall release the letter of credit at such
14 time when:

15 (1) any claims against the person relating to home improvement fraud or
16 nonresidential improvement fraud have been paid;

17 (2) there are no pending actions or claims against the person for home
18 improvement fraud or nonresidential improvement fraud; and

19 (3) the person has not been engaged in home improvement activities or
20 nonresidential improvement activities for at least six years and has signed an
21 affidavit so attesting.

1 * * * Financial Institutions; Licensed Lender;

2 Technical Corrections * * *

3 Secs. G.1–G.3

4 * * * Internet Dating Services * * *

5 Secs. H.1–H.2

6 * * * Fantasy Sports Contests * * *

7 Sec. I.1. ATTORNEY GENERAL; FANTASY SPORTS CONTESTS

8 The Vermont Attorney General shall exercise his or her enforcement

9 authority to the fullest extent possible to enforce the provisions of 13 V.S.A.

10 chapter 51 (gambling and lotteries) against any person who operates a fantasy

11 sports contest in this State.

12 * * * Equipment and Machinery Dealers * * *

13 Sec. J.1. FINDINGS AND INTENT

14 (a) The General Assembly finds:

15 (1) Vermont has long relied on economic activity relating to working

16 farms and forestland in the State. These working lands, and the people who

17 work the land, are part of the State’s cultural and ecological heritage, and

18 Vermont has made major policy and budget commitments in recent years in

19 support of working lands enterprises. Farm and forest enterprises need a

20 robust system of infrastructure to support their economic and ecological

21 activities, and that infrastructure requires a strong economic base consisting of

1 dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm
2 and forest working lands infrastructure are in the best interest of the State.

3 (2) Snowmobiles and all-terrain vehicles have a significant economic
4 impact in the State, including the distribution and sale of these vehicles, use by
5 residents, ski areas, and emergency responders, as well as tourists that come to
6 enjoy riding snowmobiles and all-terrain vehicles in Vermont. It is in the best
7 interest of the State to ensure that Vermont consumers who want to purchase
8 snowmobiles and all-terrain vehicles have access to a competitive marketplace
9 and a strong network of dealers, suppliers, and repair facilities in the State.

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

18 (4) There continues to exist an **inequality of a disparity in** bargaining
19 power between equipment, snowmobile, and all-terrain vehicle suppliers and
20 the independent dealer network. This **inequality of a disparity in** bargaining
21 power enables equipment, snowmobile, and all-terrain vehicle suppliers to

1 compel dealers to execute dealer agreements, related contracts, and addenda
2 that contain terms and conditions that would not routinely be agreed to by the
3 equipment, snowmobile, and all-terrain vehicle dealer if this **inequality**
4 **disparity** did not exist. It therefore is in the public interest to enact legislation
5 to prevent unfair or arbitrary treatment of equipment, snowmobile, and all-
6 terrain vehicle dealers by equipment, snowmobile, and all-terrain vehicle
7 suppliers. It is also in the public interest that Vermont consumers,
8 municipalities, businesses, and others that purchase equipment, snowmobiles,
9 and all-terrain vehicles in Vermont have access to a robust independent dealer
10 network to obtain competitive prices when purchasing these items and to
11 obtain warranty, recall, or other repair work.

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

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

15 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

16 § 4071. DEFINITIONS

17 As used in this chapter:

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

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

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

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

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

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

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

4 (A) “Inventory” means:

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

6 (I) tractors;

7 (II) equipment;

8 (III) implements;

9 (IV) machinery;

10 (V) attachments;

11 (VI) accessories; and

12 (VII) repair parts;

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

14 snowmobile implements, attachments, garments, accessories, and repair

15 parts; and

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

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

18 parts.

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

20 (5) “Net cost” means the price the dealer paid the supplier for the

21 inventory, less all applicable discounts allowed, plus the amount the dealer

1 paid for freight costs from the supplier’s location to the dealer’s location. In
2 the event of termination of a dealer agreement by the supplier, “net cost” shall
3 include the reasonable cost of assembly or disassembly performed by a dealer.

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

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

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

13 (9) “Good faith” means honesty in fact and the observance of reasonable
14 commercial standards of fair dealing, as interpreted under 9A V.S.A.
15 § 1-201(B)(20).

16 § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

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

21 “Cause” means failure by an equipment dealer to comply with the

1 ~~requirements imposed upon the equipment dealer by the dealer agreement,~~
2 ~~provided the requirements are not substantially different from those~~
3 ~~requirements imposed upon other similarly situated equipment dealers in this~~
4 ~~State.~~

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

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

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

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

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

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

19 ~~(6) withdrawal of an individual proprietor, partner, major shareholder,~~
20 ~~the involuntary termination of the manager of the dealership, or a substantial~~

1 ~~reduction in the interest of a partner or major shareholder without the prior~~
2 ~~written consent of the supplier.~~

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

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

8 ~~(1) a statement of intention to terminate the dealer agreement;~~

9 ~~(2) a statement of the reasons for the termination; and~~

10 ~~(3) the date on which the termination shall be effective.~~

11 TERMINATION OF DEALER AGREEMENT

12 (a) Requirements for notice.

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

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

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

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

20 (C) the effective date of termination.

1 (b) Termination by a supplier for cause.

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

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

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

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

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

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

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

20 (2) A supplier shall deliver an initial notice of termination to the dealer
21 at least ~~18~~ 24 months before the effective date of termination.

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

7 (4) If the dealer fails to meet reasonable marketing or market penetration
8 requirements specified in the notice by the end of the 18 24 -month period, the
9 supplier may terminate the dealer agreement by providing a final notice of
10 termination not less than 90 days prior to the effective date of the termination.

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

14 (6) If a dealer meets the reasonable marketing or market penetration
15 requirements within the 90-day 24-month period, the dealer agreement shall
16 not terminate does not terminate pursuant to the final notice of termination.

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

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

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

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

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

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

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

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

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

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

16 ~~(7) The dealer abandons the business.~~

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

19 (e) Termination by a dealer. Unless a provision of a dealer agreement
20 provides otherwise, a dealer may terminate the dealer agreement by providing

1 a notice of termination to the supplier at least 120 days before the effective
2 date of termination.

3 * * *

4 § 4074. REPURCHASE TERMS

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

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

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

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

20 (b) The supplier shall pay the dealer:

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

8 (2) **90 100** percent of the current net prices of all new and undamaged
9 repair parts.

10 (3) **85 95** percent of the current net prices of all new and undamaged
11 superseded repair parts.

12 (4) **85 95** percent of the latest available published net price of all new
13 and undamaged noncurrent repair parts.

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

19 (6) ~~Repurchase at~~ 75 percent of the net cost of specialized repair tools,
20 signage, books, and supplies previously purchased, pursuant to requirements of
21 the supplier and held by the dealer on the date of termination. ~~Specialized~~

1 ~~repair tools must be unique to the supplier's product line and must be complete~~
2 ~~and in usable condition.~~

3 (7) ~~Repurchase at average~~ Average as-is value shown in current industry
4 guides; for dealer-owned rental fleet financed by the supplier or its finance
5 subsidiary, provided the equipment was purchased from the supplier within
6 30 months of the date of termination.

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

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

19 § 4075. EXCEPTIONS TO REPURCHASE REQUIREMENT

20 The provisions of this chapter shall not require a supplier to repurchase
21 from a dealer:

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

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

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

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

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

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

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

15 (8) a part identified by the supplier as nonreturnable at the time of the
16 dealer's order; or

17 (9) supplies that are not unique to the supplier's product line, over three
18 years old, incomplete, or in unusable condition.

19 * * *

20 § 4077a. ~~PROHIBITED ACTS~~

21 ~~No supplier shall:~~

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

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

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

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

21 PROHIBITED ACTS

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

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

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

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

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

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

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

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

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

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

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

10 (e) A supplier shall not change the geographic area of responsibility
11 specified in a dealer agreement without good cause, which for purposes of this
12 subsection includes changes in the dealer’s vehicle or warranty registration
13 pattern, demographics, and geographic barriers the dealer’s market penetration
14 within the assigned geographic area of responsibility and changes in the
15 inventory warranty registration pattern in the area surrounding the dealer’s
16 geographic area of responsibility.

17 § 4078. WARRANTY OBLIGATIONS

18 (a) A supplier shall:

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

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

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

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

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

11 (d) A supplier shall compensate a dealer for parts used to fulfill warranty
12 and recall obligations at a rate not less than the price the dealer actually paid
13 the supplier for the parts plus 20 percent, plus freight and handling if charged
14 by the supplier.

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

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

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

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

6 (g) A supplier violates this section if it:

7 (1) fails to perform its warranty obligations;

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

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

12 (h) A supplier shall not:

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

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

18 § 4079. REMEDIES

19 (a) A person damaged as a result of a violation of this chapter may bring an
20 action against the violator in a Vermont court of competent jurisdiction for
21 damages, together with the actual costs of the action, including reasonable

1 attorney's fees, injunctive relief against unlawful termination, ~~cancellation,~~
2 ~~nonrenewal,~~ or substantial change of competitive circumstances, and such
3 other relief as the Court deems appropriate.

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

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

13 * * *

14 Sec. J.3. APPLICABILITY TO EXISTING DEALER AGREEMENTS

15 Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in
16 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of
17 this act shall apply on ~~July 1, 2017~~ July 1, 2016.

18 * * * Effective Dates * * *

19 Sec. K.1. EFFECTIVE DATES

1 (a) This section, Secs. G.1–G.3 (technical corrections), and Sec. I.1
2 (enforcement action against fantasy sports contest operators) take effect on
3 passage.

4 (b) The following sections take effect on July 1, 2016:

5 (1) Secs. A.1–A.2 (consumer litigation funding).

6 (2) Sec. B.1 (structured settlements agreements).

7 (3) Secs. C.1–C.12 (business registration; enforcement).

8 (4) Sec. D.1 (anti-trust penalties).

9 (5) Secs. E.1–E.2 (discount membership programs).

10 (6) Secs. F.1–F.2 (nonresidential improvement fraud).

11 (7) Sec. H.1 (findings and purpose; internet dating services).

12 (8) Secs. J.1–J.3 (equipment and machinery dealers).

13 (c) In Sec. H.2 (internet dating services):

14 (1) 9 V.S.A. §§ 2482a, 2482c, and 2482d shall take effect on passage.

15 (2) 9 V.S.A. § 2482b shall take effect on January 1, 2017.

16 and that after passage the title of the bill be amended to read: “An act relating
17 to consumer protection”

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2 COMMITTEE ON THE PART OF
3 THE SENATE

COMMITTEE ON THE PART OF
THE HOUSE

4

5 _____

6 SEN. MULLIN

REP. MARCOTTE

7

8 _____

9 SEN. BALINT

REP. DAKIN

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11 _____

12 SEN. BARUTH

REP. HEAD

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