

1 S.266

2 Introduced by Senator Westman

3 Referred to Committee on

4 Date:

5 Subject: Property; presuit mediation

6 Statement of purpose of bill as introduced: This bill proposes to establish a
7 presuit mediation process for disputes related to access to landlocked property.

8 An act relating to presuit mediation of disputes related to access to
9 landlocked property

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 12 V.S.A. chapter 215, subchapter 3 is added to read:

12 Subchapter 3. Mediation Prior To Filing a Complaint Related to Access to
13 Landlocked Property

14 § 7021. PRESUIT MEDIATION REQUEST; SERVICE; RESPONSE

15 (a) A potential plaintiff may serve upon each known potential defendant a
16 request to participate in presuit mediation prior to filing a civil action related to
17 access to landlocked property.

18 (b) Service of the request required in subsection (a) of this section shall be
19 in letter form and shall be served on all known potential defendants by certified

1 mail. The date of mailing such request shall toll all applicable statutes of
2 limitations.

3 (c) The request to participate in presuit mediation shall name all known
4 potential defendants and contain a brief statement of the facts that the potential
5 plaintiff believes are grounds for relief and may include other documents or
6 information supporting the potential plaintiff's claim.

7 (d) Within 60 days after service of the request to participate in presuit
8 mediation, each potential defendant shall accept or reject the potential
9 plaintiff's request for presuit mediation by mailing a certified letter to counsel
10 or, if the party is unrepresented, to the potential plaintiff. If a potential
11 defendant does not respond within 60 days after service, the request shall be
12 deemed rejected.

13 (e) Nothing in this subchapter precludes potential plaintiffs and defendants
14 from presuit negotiation or other presuit dispute resolution to settle potential
15 claims.

16 § 7022. PROCESS; TIME FRAMES

17 (a) The mediation shall take place within 60 days after the service of all
18 potential defendants' acceptance of the request to participate in presuit
19 mediation. The parties may agree to an extension of time. If in good faith the
20 mediation cannot be scheduled within the 60-day time period, the potential
21 plaintiff need not participate and may proceed to file suit.

1 (b) If presuit mediation is not agreed to by all potential defendants, the
2 mediator certifies that mediation is not appropriate, or mediation is
3 unsuccessful, the potential plaintiff may initiate a civil action as provided in
4 the Vermont Rules of Civil Procedure. The action shall be filed within the
5 later of the following periods:

6 (1) within 90 days after:

7 (A) the potential plaintiff's receipt of a potential defendant's letter
8 refusing mediation or the date on which a potential defendant is deemed to
9 have refused; or

10 (B) the potential plaintiff's receipt of the mediator's certification that
11 mediation was not appropriate or that the process was complete; or

12 (2) prior to expiration of the applicable statute of limitations.

13 (c) If presuit mediation is attempted unsuccessfully, the parties shall not be
14 required to participate in mandatory mediation under Rule 16.3 of the Vermont
15 Rules of Civil Procedure.

16 § 7023. CONFIDENTIALITY

17 All written and oral communications made in connection with or during the
18 mediation process set forth in this subchapter shall be confidential. The
19 mediation process shall be treated as a settlement negotiation under Rule 408
20 of the Vermont Rules of Evidence.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2018.