

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 533
3 entitled “An act relating to converting civil forfeiture of property in drug-
4 related prosecutions into a criminal process” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 4 V.S.A. § 32 is amended to read:

8 § 32. JURISDICTION; CRIMINAL DIVISION

9 (a) The Criminal Division shall have jurisdiction to try, render judgment,
10 and pass sentence in prosecutions for felonies ~~and~~, misdemeanors, and drug
11 forfeiture proceedings pursuant to 18 V.S.A. chapter 84, subchapter 2.

12 (b) The Criminal Division shall have jurisdiction to try and finally
13 determine prosecutions for violations of bylaws or ordinances of a village,
14 town, or city, except as otherwise provided.

15 (c) The Criminal Division shall have jurisdiction of the following civil
16 actions:

17 (1) appeals of final decisions of the Judicial Bureau;

18 (2) DUI license suspension hearings filed pursuant to 23 V.S.A.
19 chapter 24;

20 (3) extradition proceedings filed pursuant to 13 V.S.A. chapter 159;

1 ~~(4)~~ drug forfeiture proceedings under ~~18 V.S.A. chapter 84, subchapter~~
2 ~~2~~;

3 ~~(5)~~(4) fish and wildlife forfeiture proceedings under 10 V.S.A. chapter
4 109;

5 ~~(6)~~(5) liquor forfeiture proceedings under 7 V.S.A. chapter 19;

6 ~~(7)~~(6) hearings relating to refusal to provide a DNA sample pursuant to
7 20 V.S.A. § 1935;

8 ~~(8)~~(7) automobile forfeiture and immobilization proceedings under
9 23 V.S.A. chapters 9 and 13;

10 ~~(9)~~(8) sex offender proceedings pursuant to 13 V.S.A. §§ 5411(e)
11 and 5411d(f);

12 ~~(10)~~(9) restitution modification proceedings pursuant to 13 V.S.A.
13 § 7043(k);

14 ~~(11)~~(10) municipal parking violation proceedings pursuant to 24 V.S.A.
15 § 1974a(e), if the municipality has established an administrative procedure
16 enabling a person to contest the violation, and the person has exhausted the
17 administrative procedure;

18 ~~(12)~~(11) proceedings to enforce 9 V.S.A. chapter 74, relating to energy
19 efficiency standards for appliances and equipment;

20 ~~(13)~~(12) proceedings to enforce 30 V.S.A. § 53, relating to commercial
21 building energy standards.

1 for seizure of such property shall issue only upon a showing of probable cause
2 that the property is subject to forfeiture. Application ~~therefor~~ for a preliminary
3 order or process and issuance, execution, and return of the order or process
4 shall be subject to provisions of applicable law.

5 (b) Any property subject to forfeiture under this subchapter may be seized
6 upon process. Seizure without process may be made when:

7 (1) the seizure is incident to an arrest with probable cause or a search
8 under a valid search warrant;

9 (2) the property subject to seizure has been the subject of a prior
10 judgment in favor of the State in a forfeiture proceeding under this subchapter;

11 ~~or~~

12 (3) the seizure is incident to a valid warrantless search.

13 (c) The State may temporarily secure property pending a request of the
14 State ex parte for a preliminary order or process pursuant to this section.

15 ~~(d)~~ If property is seized without process under subdivision (b)(1) or (3)
16 of this section and the State intends to seek forfeiture under this subchapter, the
17 State shall forthwith petition the ~~court~~ Criminal Division for a preliminary
18 order or process under subsection (a) of this section.

19 ~~(d)~~(e) Notwithstanding subsection 4241(b) of this title, all regulated drugs
20 the possession of which is prohibited under this chapter are contraband and
21 shall be automatically forfeited to the State and destroyed.

1 § 4242a. PROMPT POSTSEIZURE PROCEEDINGS

2 (a) Following the seizure of property for which the State seeks forfeiture
3 pursuant to section 4241 of this title, a defendant or any owner, co-owner, or
4 regular user of the property has a right to a prompt postseizure hearing.

5 (b) A defendant, owner, co-owner, or regular user may petition the
6 Criminal Division having jurisdiction for a prompt postseizure hearing.

7 (c) The State shall notify any owner, co-owner, or regular user of the
8 property of which the State is aware, after a reasonable search of public
9 records, that property has been seized pursuant to this subchapter, and the
10 owner, co-owner, or regular user of the property may request a prompt
11 postseizure hearing.

12 (d) At the Criminal Division’s discretion, it may hold a prompt postseizure
13 hearing:

14 (1) as a separate hearing; or

15 (2) at the same time as a hearing pursuant to Rule 41(f) of the Vermont
16 Rules of Criminal Procedure, a probable cause determination, a post-
17 arraignment hearing, or other pretrial hearing.

18 (e) A party, by agreement of all parties or for good cause shown, may move
19 for an extension of the hearing date. Any motion may be supported by an
20 affidavit, sworn statement, or other submission.

1 (f) The Criminal Division shall order the return of the seized property if it
2 finds:

3 (1) the seizure was invalid;

4 (2) a criminal charge has not been filed and no extension of the filing
5 period established under this section is available;

6 (3) the property is not reasonably required to be held as evidence; or

7 (4) the final judgment will likely be in favor of the defendant or any
8 other person with an interest in the property.

9 (g) The provisions of this section do not apply to contraband.

10 § 4243. ~~JUDICIAL~~ CRIMINAL FORFEITURE PROCEDURE

11 (a) Conviction or agreement required. An asset is subject to forfeiture ~~by~~
12 ~~judicial determination~~ as a criminal sanction under section 4241 of this title
13 and 13 V.S.A. § 364 if:

14 (1) a person is convicted of the criminal offense related to the action for
15 forfeiture and the State establishes by clear and convincing evidence that the
16 property is an instrument of or represents the proceeds of the underlying
17 offense; or

18 (2) a person enters into ~~an~~ a plea agreement or other agreement with the
19 prosecutor, including an agreement under which he or she the person is not
20 charged with a criminal offense ~~related to the action for forfeiture~~ subjecting
21 the person to forfeiture under section 4241 of this title; or

1 (3) a person is granted immunity or a reduced punishment, with or
2 without the filing of a criminal charge, in exchange for testifying or assisting a
3 law enforcement investigation or prosecution.

4 (b) ~~Evidence. The State may introduce into evidence in the judicial~~
5 ~~forfeiture case the fact of a conviction in the Criminal Division~~ Discovery.
6 Discovery related to the criminal forfeiture proceeding is subject to the
7 Vermont Rules of Criminal Procedure.

8 (c) Burden of proof. The State bears the burden of proving by clear and
9 convincing evidence that the property is an instrument of or represents the
10 proceeds of the underlying offense.

11 (d) ~~Notice. Within 60 days from when the seizure occurs, the State shall~~
12 ~~notify any owners, possessors, and lienholders of the property of the action, if~~
13 ~~known or readily ascertainable. Upon motion by the State, a court may extend~~
14 ~~the time period for sending notice for a period not to exceed 90 days for good~~
15 ~~cause shown.~~ Notice of proposed forfeiture.

16 (1) The loss of property subject to forfeiture shall be considered as a
17 criminal sanction as part of and following the prosecution of the crime that
18 subjects the individual with an interest in the property to forfeiture of property
19 pursuant to section 4241 of this title. Upon the State's determination that it
20 will seek forfeiture, the State shall file a Notice of Proposed Forfeiture as shall
21 be a separate document not later than 30 days prior to trial or at the Criminal

1 Division’s discretion. The Notice of Proposed Forfeiture shall include the
2 following information:

3 (A) the facts upon which the forfeiture is requested, including a
4 description of the property subject to forfeiture and the type and quantity of
5 regulated drug involved;

6 (B) the time, date, and place of the seizure;

7 (C) the names of the apparent owner or owners, lienholders who have
8 properly recorded their interests, and any other person appearing to have an
9 interest, and, in the case of a conveyance, the name of the person holding title;
10 the registered owner; and the make, model, and year of the conveyance;

11 (D) the current location and custodian of the seized property; and

12 (E) warning that seized property may be forfeited as a sanction
13 related to the crime for which the individual was charged, as part of a
14 sentencing consideration, as part of a plea agreement, or through other means
15 for the court to oversee.

16 (2) The Notice of Potential Collateral Consequences of Conviction
17 required pursuant to 13 V.S.A. chapter 231 shall include notification of the
18 provisions of this subchapter.

19 (3) The State shall serve the Notice in accordance with the Vermont
20 Rules of Criminal Procedure. The State shall inform any owners, possessors,
21 and lienholders of the property of the action, if known or readily ascertainable.

1 In addition, the State shall cause the Notice to be published in a newspaper of
2 general circulation in the State, as ordered by the Criminal Division.

3 (4) The Notice shall not be read to the jury of the underlying
4 prosecution.

5 (5) The State may amend the Notice at any time before trial of the
6 underlying prosecution.

7 (6) The Criminal Division may grant an unlimited number of 30-day
8 extensions for the filing of the Notice if, for each extension, the court
9 determines that probable cause is shown and additional time is warranted.

10 (e) Return of property. If notice is not sent in accordance with subsection
11 (d) of this section, and no time extension is granted or the extension period has
12 expired, the law enforcement agency shall return the property to the person
13 from whom the property was seized. ~~An agency's return of property due to~~
14 ~~lack of proper notice does not restrict the agency's authority to commence a~~
15 ~~forfeiture proceeding at a later time.~~ Nothing in this subsection shall require
16 the agency to return contraband, evidence, or other property that the person
17 from whom the property was seized is not entitled to lawfully possess.

18 ~~(f) Filing of petition. The State shall file a petition for forfeiture of any~~
19 ~~property seized under section 4242 of this title promptly, but not more than~~
20 ~~14 days from the date the preliminary order or process is issued. The petition~~
21 ~~shall be filed in the Superior Court of the county in which the property is~~

1 ~~located or in any court with jurisdiction over a criminal proceeding related to~~
2 ~~the property.~~

3 ~~(g) Service of petition. A copy of the petition shall be served on all persons~~
4 ~~named in the petition as provided for in Rule 4 of the Vermont Rules of Civil~~
5 ~~Procedure. In addition, the State shall cause notice of the petition to be~~
6 ~~published in a newspaper of general circulation in the State, as ordered by the~~
7 ~~court. The petition shall state:~~

8 ~~(1) the facts upon which the forfeiture is requested, including a~~
9 ~~description of the property subject to forfeiture, and the type and quantity of~~
10 ~~regulated drug involved;~~

11 ~~(2) the names of the apparent owner or owners, lienholders who have~~
12 ~~properly recorded their interests, and any other person appearing to have an~~
13 ~~interest; and, in the case of a conveyance, the name of the person holding title,~~
14 ~~the registered owner, and the make, model, and year of the conveyance.~~

15 § 4244. FORFEITURE HEARING HEARINGS

16 ~~(a) Within 60 days following service of notice of seizure and forfeiture~~
17 ~~under section 4243 of this title, a claimant may file a demand for judicial~~
18 ~~determination of the forfeiture. The demand must be in the form of a civil~~
19 ~~complaint accompanied by a sworn affidavit setting forth the facts upon which~~
20 ~~the claimant intends to rely, including, if relevant, the noncriminal source of~~
21 ~~the asset or currency at issue. The demand must be filed with the court~~

1 ~~administrator in the county in which the seizure occurred.~~ Defendant's
2 forfeiture hearing. The Criminal Division shall consider the loss of property
3 subject to forfeiture as a criminal sanction as part of and following the
4 prosecution of the underlying crime. The Criminal Division has discretion to
5 schedule the criminal forfeiture hearing as soon as practicable after the
6 defendant's conviction of the offense subjecting the person to forfeiture under
7 section 4241 of this title, including concurrent with sentencing. The hearing
8 shall be conducted by the Criminal Division without a jury.

9 (b) ~~The court shall hold a hearing on the petition as soon as practicable~~
10 ~~after, and in any event no later than 90 days following, the conclusion of the~~
11 ~~criminal prosecution.~~ Exceptions to the conviction requirement. The Criminal
12 Division may waive the conviction requirements of section 4243 of this title
13 and subsection (a) of this section and grant title to the subject property to the
14 State if the State files a motion not fewer than 90 days after seizure and shows
15 by a preponderance of the evidence that, before conviction, the defendant:

16 (1) died;

17 (2) was deported by the U.S. government;

18 (3) abandoned the property; or

19 (4) fled the jurisdiction.

20 (c) ~~A lienholder who has received notice of a forfeiture proceeding may~~
21 ~~intervene as a party. If the court finds that the lienholder has a valid, good~~

1 ~~faith interest in the subject property which is not held through a straw~~
2 ~~purchase, trust, or otherwise for the actual benefit of another and that the~~
3 ~~lienholder did not at any time have knowledge or reason to believe that the~~
4 ~~property was being or would be used in violation of the law, the court upon~~
5 ~~forfeiture shall order compensation to the lienholder to the extent of the~~
6 ~~lienholder's interest.~~ Proportionality.

7 (1) The defendant, owner, co-owner, or other regular user of the
8 property may petition the Criminal Division to determine whether the
9 forfeiture is unconstitutionally excessive under the Constitutions of the State of
10 Vermont or the United States. At the Criminal Division's discretion, it may
11 hold a proportionality hearing:

12 (A) as a separate hearing; or

13 (B) at the same time as a hearing pursuant to Rule 41(f) of the
14 Vermont Rules of Criminal Procedure, a prompt postseizure proceeding
15 pursuant to section 4242a of this title or a forfeiture hearing pursuant to section
16 4244 of this title.

17 (2) The defendant has the burden of establishing that the forfeiture is
18 unconstitutionally excessive by a preponderance of the evidence at a hearing
19 conducted by the Criminal Division without a jury. In determining whether the
20 forfeiture is unconstitutionally excessive, the Criminal Division may consider
21 all relevant factors including:

1 (A) the seriousness of the underlying crime and its impact on the
2 community, including the duration of the activity, use of a firearm, and harm
3 caused by the defendant;

4 (B) the extent to which the defendant participated in the underlying
5 crime;

6 (C) the extent to which the subject property was used in committing
7 the crime;

8 (D) whether the underlying crime was completed or attempted;

9 (E) the hardship to the defendant if the forfeiture of a motor vehicle
10 would deprive the defendant of the defendant's livelihood; and

11 (F) if forfeiture of the subject property is an undue hardship to the
12 defendant's family.

13 (3) In determining the value of the instrumentality subject to forfeiture,
14 the Criminal Division may consider all relevant facts related to the fair market
15 value of the property, including any publications identified by the Attorney
16 General pursuant to subsection 4241(d) of this title.

17 (4) The Criminal Division shall not consider the value of the subject
18 property to the State in determining whether the forfeiture is unconstitutionally
19 excessive.

20 ~~(d) The court shall not order the forfeiture of property if an owner, co-~~
21 ~~owner, or person who regularly uses the property, other than the defendant,~~

1 ~~shows by a preponderance of the evidence that the owner, co-owner, or regular~~
2 ~~user did not consent to or have any express or implied knowledge that the~~
3 ~~property was being or was intended to be used in a manner that would subject~~
4 ~~the property to forfeiture, or that the owner, co-owner, or regular user had no~~
5 ~~reasonable opportunity or capacity to prevent the defendant from using the~~
6 ~~property.~~ Lienholder hearing. The Criminal Division shall not order the
7 forfeiture of property subject to a lienholder's interest without a hearing upon
8 petition by the lienholder, other than the defendant. A lienholder who has
9 received notice of a criminal forfeiture proceeding may petition the Criminal
10 Division at any time before it enters judgement in the prosecution of the
11 underlying offense or grants a motion pursuant to subsection (b) of this section.
12 The Criminal Division shall hear the petition within 30 days after its filing or
13 at the court's discretion. The hearing shall be conducted by the Criminal
14 Division without a jury and the hearing may be consolidated with any other
15 hearing before the trial in the underlying prosecution. If a lienholder shows by
16 clear and convincing evidence that the lienholder has a valid, good faith
17 interest in the subject property that is not held through a straw purchase, trust,
18 or otherwise for the actual benefit of another and that the lienholder did not at
19 any time have actual knowledge or reason to believe that the property was
20 being or would be used in violation of the law, the Criminal Division shall
21 order return of the property to the lienholder or compensation to the lienholder

1 to the extent of value of the lienholder's interest, whichever is of less cost or
2 expense to effectuate.

3 ~~(e) The proceeding shall be against the property and shall be deemed~~
4 ~~civil in nature. The State shall have the burden of proving all material facts by~~
5 ~~clear and convincing evidence. Innocent owner hearing. The Criminal~~
6 ~~Division shall not order the forfeiture of property of an owner, co-owner, or~~
7 ~~person who regularly uses the property, other than the defendant, without a~~
8 ~~hearing upon petition by the owner, co-owner, or person who regularly uses~~
9 ~~the property.~~

10 (1) An owner, co-owner, or person who regularly uses the property,
11 other than the defendant, may petition the Criminal Division at any time before
12 it enters judgement in the prosecution of the underlying offense or grants a
13 motion pursuant to subsection (b) of this section.

14 (2) The petition may be a simple written statement that sets forth:

15 (A) the right, title, or interest in the property of the owner, co-owner,
16 or person who regularly uses the property;

17 (B) the time and circumstances of the acquisition of the interest in the
18 property;

19 (C) additional relevant facts supporting the petition; and

20 (D) a request for the return of the property or other relief sought by
21 the owner, co-owner, or person who regularly uses the property.

1 (3) The Criminal Division shall hear the petition within 30 days after its
2 filing or at the court’s discretion. The hearing shall be conducted by the
3 Criminal Division without a jury and the hearing may be consolidated with any
4 other hearing before the trial in the underlying prosecution.

5 (4) The owner, co-owner, or person who regularly uses the property,
6 other than the defendant, has the burden to prove by clear and convincing
7 evidence the validity of ownership interest or regular use. If the owner, co-
8 owner, or person who regularly uses the property meets the burden, the State
9 has the burden to prove by clear and convincing evidence that the owner, co-
10 owner, or regular user did consent to or have actual knowledge that the
11 property was being or was intended to be used in a manner that would subject
12 the property to forfeiture. If the State fails to meet its burden, the Criminal
13 Division shall order return of the property. As used in this subsection and
14 subsection (d) of this section, “actual knowledge” means a direct and clear
15 awareness of information, a fact, or a condition.

16 (5) The Criminal Division may impose reasonable conditions, including
17 the use of photographic evidence, to protect access to property subject to this
18 section and its use in later proceedings.

19 ~~(f) The court shall make findings of fact and conclusions of law and shall~~
20 ~~issue a final order. If the petition is granted, the court shall order the property~~
21 ~~held for evidentiary purposes, delivered to the State Treasurer, or, in the case~~

1 ~~of regulated drugs or property which is harmful to the public, destroyed~~

2 Judgment. The Criminal Division shall enter judgment:

3 (1) dismissing the forfeiture proceeding and returning the subject
4 property to the rightful owner if the State fails to meet its burden in the
5 underlying criminal prosecution or the defendant’s forfeiture hearing pursuant
6 to subsection (a) of this section except, in the case of regulated drugs or
7 property that is harmful to the public, the subject property shall be destroyed;

8 (2) forfeiting the subject property if the State meets its burden in the
9 underlying criminal prosecution and the forfeiture proceedings pursuant to
10 subsection (a) of this section; or

11 (3) following a hearing or at court’s discretion pursuant to a stipulation
12 or plea agreement.

13 § 4244a. APPEAL

14 The defendant may appeal the Criminal Division’s decision regarding the
15 seizure of forfeiture of property following final judgment in the forfeiture
16 proceeding pursuant to the Vermont Rules of Criminal Procedure.

17 § 4245. REMISSION OR MITIGATION OF FORFEITURE TO THE
18 STATE’S ATTORNEY

19 (a) On petition filed within 90 days after completion of a forfeiture
20 proceeding, a court that issued a forfeiture order pursuant to section 4244 of
21 this title request by an owner, co-owner, or person who regularly uses the

1 property, other than by the defendant, made at any time before the Criminal
2 Division enters judgment in the prosecution of the underlying offense or grants
3 a motion pursuant to subsection (b) of section 4244 a State’s Attorney may
4 ~~order~~ exercise prosecutorial discretion and determine that the forfeiture be
5 remitted or mitigated. The ~~petition~~ request shall be sworn and shall include all
6 information necessary for its resolution or shall describe where such
7 information can be obtained. Upon receiving a ~~petition~~ request, the ~~court~~
8 State’s Attorney shall investigate and may conduct ~~a-an~~ hearing interview if in
9 ~~its~~ the State’s Attorney’s judgment it would be helpful to the resolution of the
10 ~~petition~~ request. The ~~court~~ State’s Attorney shall either approve or reject the
11 ~~petition~~ request within ~~90~~ 30 days.

12 (b) The ~~court~~ State’s Attorney may remit or mitigate a forfeiture pursuant
13 to this subchapter upon finding that relief should be granted to avoid extreme
14 hardship or upon finding that the ~~petitioner~~ requestor has a valid, good faith
15 interest in the property ~~which~~ that is not held through a straw purchase, trust,
16 or otherwise for the benefit of another ~~and that the petitioner did not at any~~
17 ~~time have knowledge or reason to believe that the property was being or would~~
18 ~~be used in violation of the law.~~

19 * * *

1 § 4247. DISPOSITION OF PROPERTY

2 (a) Whenever property is forfeited and delivered to the State Treasurer
3 under this subchapter, the State Treasurer shall, ~~not~~ not sooner than 90 days of
4 the date the property is delivered but not later than one year after the property
5 is delivered, sell the property at a public sale held under 27 V.S.A. chapter ~~13~~
6 18, subchapter 7.

7 (b) The proceeds from the sale of forfeited property, upon exhaustion of all
8 appeals or at the Criminal Division's discretion, shall be used first to pay
9 restitution to any victim of the underlying crime and then to reimburse the
10 Center for Crime Victim Services for any expenses incurred in securing
11 restitution for the victim, then to offset any costs of selling the property, and
12 then, after any liens on the property have been paid in full, applied to payment
13 of seizure, storage, and forfeiture expenses, including animal care expenses
14 related to the underlying violation. Remaining proceeds shall be distributed as
15 follows:

16 (1)(A) 45 55 percent shall be distributed among:

- 17 (i) the Office of the Attorney General;
- 18 (ii) the Department of State's Attorneys and Sheriffs; and
- 19 (iii) State and local law enforcement agencies.

20 (B) ~~The Governor's Criminal Justice and Substance Abuse Cabinet~~
21 State Treasurer is authorized to determine the allocations among the groups

1 listed in subdivision (A) of this subdivision (1), and may only reimburse the
2 prosecutor and law enforcement agencies for their proportionate participated
3 participation in the prosecution or enforcement effort resulting in the forfeiture
4 for expenses incurred, including controlled drug-buy money, investigation
5 costs, salaries, benefits, overtime, and any other actual expenses for involved
6 personnel. The proceeds shall be held by the Treasurer until the Cabinet
7 notifies the Treasurer of the allocation determinations, at which time the Upon
8 determination of the allocations, the Treasurer shall forward promptly
9 distribute the allocated amounts to the appropriate agency's operating funds.
10 Notwithstanding the provisions of this subsection, five percent of the proceeds
11 distributed pursuant to subdivision (A) of this subdivision (1) shall be directed
12 to the Evidence-Based Education and Advertising Fund established in 33
13 V.S.A. § 2004a.

14 (2) The remaining 55 45 percent shall be deposited in the General Fund.

15 * * *

16 § 4248a. LIMITATION ON FEDERAL ADOPTION

17 (a) A State or local law enforcement agency shall not transfer or offer for
18 adoption property seized from a defendant, owner, co-owner, or regular user of
19 the property pursuant to this subchapter to a federal agency for the purpose of
20 forfeiture under 18 U.S.C. chapter 46 or other federal law unless the seized
21 property includes U.S. currency exceeding \$25,000.00. This subsection only

1 applies to seizure by State or local law enforcement agencies pursuant to their
2 own authority under State law and without involvement of the U.S.
3 government. Nothing in this subsection shall be construed to limit State or
4 local agencies from participating in joint task forces with the U.S. government.

5 (b) State and local law enforcement agencies are prohibited from accepting
6 payment of any kind or distribution of forfeiture proceeds from the
7 U.S. government if the State or local law enforcement agency violates
8 subsection (a) of this section. Any payments or forfeiture proceeds that violate
9 subsection (a) of this section shall be directed to the State’s General Fund.

10 Sec. 3. EFFECTIVE DATE

11 This act shall take effect on July 1, 2022.

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19 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE