



TO: Marilyn Miller, Executive Director, Vermont Vehicle & Automotive Association

FROM: Clare Buckley, Partner, Leonine Public Affairs, LLP

RE: 2019 Legislative session - VADA Bills of Direct Interest

DATE: June 6, 2019

Note: This report supplements LPA's final 2019 legislative report dated May 30th, that contains a political overview and summarizes many of the key bills that passed in 2019. The purpose of this report is to provide more detail regarding the bills of direct interest to VADA members that passed both chambers in 2019 and are awaiting the Governor's signature as of this writing.

TRANSPORTATION COMMITTEE SHAKEUP

In terms of transportation policy, the House and Senate Transportation Committees saw significant changes in membership this year that resulted in more initiatives aimed at curbing transportation-related carbon emissions. In January, Speaker Mitzi Johnson appointed Rep. Curt McCormack, D-Burlington, as chair of the House Transportation Committee, replacing long-standing Chair Rep. Patrick Brennan, R-Colchester. Rep. Barbara Murphy, I-Fairfax, a moderate who has served on the committee over the past few years, was appointed Vice-Chair. Many State House observers didn't know what to expect as Rep. McCormack is proud he does not own a car and is a strong climate change advocate. In the end, Rep. McCormack got high marks for running a committee that was willing to listen to all sides.

The Senate Transportation Committee also saw significant change in membership with long standing Chair Sen. Dick Mazza, D-Grand Isle/Colchester, and member Sen. Jane Kitchel, being joined by new members Senate President Tim Ashe, D/P-Chittenden, as Vice-Chair, and freshman Senators Andrew Perchlik, D/P-Washington, and James McNeil, R-Rutland. Senator Ashe and Sen. Perchlik, who is the Director of the Clean Energy Development Fund within the Vermont Department of Public Service, brought a strong interest in electric vehicles and reducing carbon emissions to the committee. Chairman Mazza remains a strong friend to and supporter of VADA.



VADA achieved its top three priorities this year as described below:

- » Pass a bill to reverse a Department of Taxes decision to impose the sales tax on parts being incorporated into dealer-owned used vehicles being reconditioned for resale
- » Pass a bill to authorize dealers to have up to 30 days after the sale of a used vehicle where the title is being held by a lienholder to submit the paperwork to DMV under certain circumstances
- » Oppose S.135, a bill related to dealer financing, to ensure it did not pass this year

BILLS OF DIRECT INTEREST TO VADA

1. **BILLS THAT PASSED BOTH CHAMBERS AND ARE AWAITING THE GOVERNOR'S SIGNATURE**

SALES TAX ON AUTO PARTS INCORPORATED INTO DEALER-OWNED USED VEHICLES FOR RESALE (H.514)

[Click here for a link to H.514 as it passed the House and Senate](#)

VADA succeeded in persuading lawmakers to include Section 39 in H.514, a miscellaneous tax bill, which reverses the Vermont Department of Taxes decision to impose Vermont's six percent sales tax on parts incorporated into dealer-owned vehicles being reconditioned for resale effective July 1, 2019. Last year the tax department took the position that there is no exemption available for parts incorporated into reconditioned vehicles, despite dealers using resale certificates and thereby not paying the sales tax for years and the fact that the purchase and use tax is paid on the parts when the vehicle is sold. VADA representatives met with the Commissioner of Taxes and others in late 2018 to convince them to reverse their decision but the tax department held firm citing the lack of a statutory exemption. The tax commissioner offered to push his decision to impose the sales tax on auto parts off for a year to allow VADA to sue the department and get a court ruling. Realizing the significant expense of litigation and the risk of a court ruling against VADA, VADA pursued a legislative solution. Governor Scott supported Section 39 but did not include it in his proposed miscellaneous tax



bill. Instead, the tax commissioner offered it in testimony to the House Ways and Means Committee. VADA member Mitchell Jay also testified in favor of it and VADA lobbied all members privately to include it in the bill. While all committee members voted for it, special recognition goes to Rep. Sam Young, D-Glover, who championed VADA's cause in the House Ways and Means Committee. A VADA representative also testified in the Senate Finance Committee and lobbied Senators. Senate Finance Committee Chair Senator Ann Cummings, D-Washington, strongly supported VADA, which went a long way to get a unanimous vote in her committee.

It is important to note that the sales tax has been and will continue to be imposed on many items used in an automotive repair shop, such as tools and equipment and shop supplies. The tax department will likely be updating its [Vermont Sales and Use Tax Guide](#) for the Automotive Repairs Industry soon to reflect Section 39, which is effective July 1, 2019 (the same date that the tax department said it would begin taxing these parts). The language in H.514 that has passed the House and Senate (and we are awaiting the Governor's signature) is as follows:

Sec. 39. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

(12) Motor vehicle purchases and use taxed under chapter 219 of this title and the transactions exempted therefrom which are listed in section 8911 of this title. Provided, however, that notwithstanding subdivision 8911(5), construction, earthmoving, logging, and motorized equipment which that has not been registered as a motor vehicle is subject to tax under this chapter; and further provided that power take off and other auxiliary equipment on motor vehicles, whether attached prior to or subsequent to registration, is not exempt under this section. Motor vehicle parts purchased by a dealer registered under the provisions of 23 V.S.A. §§ 451-468 shall be exempt from the tax under this chapter when used to recondition a used motor vehicle owned by the dealer in its inventory for resale.



DMV MISCELLANEOUS BILL (S.149)

[Click Here for link to S.149 as it passed the House and Senate.](#)

S.149 contains various amendments to Department of Motor Vehicle laws, including the creation of a permit for anyone who plans to test automated vehicles in Vermont. At VADA's request, the bill includes Sections 19-22 that provide a motor vehicle dealer with up to 30 days after the sale of a used vehicle where the title is held by a lienholder to submit paperwork to DMV under certain circumstances. This is modeled on a New Hampshire law. Sections 19-22 are effective July 1, 2019. DMV will be issuing a new form for dealers to complete for used vehicle sales that meet all the requirements set forth in the statute. See full text of these sections below.

Sec. 19. 23 V.S.A. § 2015(b) is amended to read:

(b) If the application refers to a vehicle purchased from a dealer, it shall contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of his or her security agreement and be signed by the dealer as well as the owner, and the dealer shall promptly mail or deliver the application to the Commissioner unless title is in the possession of a lienholder at the time of sale, in which case the dealer shall have until 30 calendar days after the date the dealer acquired the vehicle to mail or deliver the application to the Commissioner. The dealer shall not be entitled to the extension if the lien on the vehicle was granted by the dealer to finance vehicle inventory acquisition.

Sec. 20. 23 V.S.A. § 2024 is amended to read:

§ 2024. RESALE BY DEALER

If a dealer buys a vehicle, and holds it for resale, and obtains the certificate of title from the owner or the lienholder ~~within 10 days after receiving the vehicle, then~~ the certificate need not be sent to the Commissioner. When the dealer transfers the vehicle to a person, other than by the creation of a security interest, he or she shall simultaneously execute the assignment and warranty of title by filling in the spaces on the certificate of title or as prescribed by the Commissioner or, if title is held by a finance source, execute a form prescribed by the Commissioner that provides proof of the transfer but does not release the lien. The certificate shall be mailed or delivered to the Commissioner with the transferee's application for a new certificate.



Sec. 21. 23 V.S.A. § 459 is amended to read:

§ 459. NOTICE, APPLICATION, AND FEES TO COMMISSIONER

(a) Upon issuing a number plate with temporary validation stickers, a temporary number plate, or a temporary decal to a purchaser, a dealer shall, ~~within~~ have 15 calendar days, or up to 30 calendar days as applicable pursuant to subsection 2015(b) of this title, to forward to the Commissioner the application and fee, deposited with him or her by the purchaser, together with notice of such issue and such other information as the Commissioner may require.

(b) If a number plate with temporary validation stickers, a temporary registration plate, or a temporary decal is not issued by a dealer in connection with the sale or exchange of a vehicle or motorboat, the dealer may accept from the purchaser a properly executed registration, tax, and title application, and the required fees for transmission to the Commissioner. The dealer shall, ~~within~~ have 15 calendar days, or up to 30 calendar days as applicable pursuant to subsection 2015(b) of this title, to forward to the Commissioner the application and fee together with such other information as the Commissioner may require.

Sec. 22. 23 V.S.A. § 2083 is amended to read:

§ 2083. OTHER OFFENSES

(a) A person who:

(2) knowingly fails to mail or deliver a certificate of title or application for a certificate of title to the Commissioner within ~~20~~ 30 days after the transfer or creation or satisfaction of a security interest shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(3) knowingly fails to deliver to his or her transferee a certificate of title within ~~20~~ 30 days after the transfer shall be subject to the penalties prescribed in subdivision (5) of this subsection;

(5) knowingly violates any provision of this chapter, except as provided in subdivision (6) of this subsection or section 2082 of this title, shall be fined not more than \$2,000.00, or imprisoned for not more than two years, or both; or



(b) Absent a showing of a knowing failure to deliver as provided in subdivision (a) (3) of this section, a person who fails to deliver to his or her transferee a certificate of title within ~~10~~ 30 days after the transfer commits a traffic violation and shall be assessed a civil penalty of not more than \$1,000.00.

UNCONSCIONABLE CONTRACTS (S.18)

[Click here for S.18 as passed by the House and Senate](#)

S.18, An act relating to consumer justice enforcement, addresses so-called “unconscionable” contract provisions and is largely a do-over of S.105 from the 2017-2018 biennium, which Governor Scott vetoed. The bill provides that certain types of contract provisions, if used in a non-negotiated contract between a business and an individual, are presumptively unconscionable. If there is a dispute between the parties that ends up in court and the business invokes one of the contract provisions (for instance, a waiver of one’s right to seek punitive damages), the court can determine that the provision is in fact unconscionable. The court can then also find that the business committed an unfair and deceptive trade practice in violation of the consumer protection statute and impose a \$1,000 penalty for each unconscionable contract provision, award the plaintiff attorney’s fees, and impose other remedies available under the consumer protection statute.

VADA reached out to the American Financial Services Association and an expert attorney who drafts motor vehicle retail installment sales contracts and lease contracts in all 50 states for assistance in analyzing the potential impact this bill could have on dealers. These experts informed VADA that a provision in the Senate-passed bill that deemed unconscionable “a waiver of the individual’s right to asset claims or seek remedies provided by State or federal statute” was broad and may implicate binding arbitration clauses common in many motor vehicle contracts. Moreover, dealer-assisted financing through a bank, credit union or sales finance company was not exempt under the Senate-passed bill but if a consumer obtained a motor vehicle sales contract or lease directly a bank, credit union or sales finance company, it would be exempt. VADA met with DFR Commissioner Mike Pieciak who agreed to support a provision that would exempt motor vehicle retail installment sales contracts because he regulated those under Title 9, Chapter 59. However, at



first, the DFR commissioner was neutral on exempting motor vehicle leases because he does not regulate leases. As a result, the House Judiciary Committee decided to exempt motor vehicle sales contracts but not to exempt motor vehicle leases. Commissioner Pieciak later decided he supported exempting leases but it was too late as the conference committee didn't have time to take testimony and the exemption was not in either bill.

In the end, at VADA's request, the provision exempting motor vehicle retail installment sales contracts regulated under Title 9, Chapter 59, was included in the bill. However, motor vehicle lease contracts and any other form contracts dealers use with consumers, including but not limited to GAP contracts, rust proofing, etc, are not exempt and will be subject to S.18.

The final version of S.18 states that "a waiver of the individual's right to a jury trial or to bring a class action" is presumed unconscionable. There is concern that this provision will deem binding arbitration provisions unconscionable, which are common in both motor vehicle sales contract and motor vehicle leases. It is possible that if this provision were interpreted to prohibit a binding arbitration provision in a contract that the Federal Arbitration Act would preempt this provision in Vermont law, but that is an open legal question.

S.18 has not yet been delivered to the Governor. It is an open question whether he will veto it like he did with S.105 from the 2017-2018 biennium. A key difference between S.105 and S.18 is that the latter exempts contracts related to participating in recreational activity, and thus is acceptable to the state's ski areas. Opposition to S.105 by the state's recreational industry was a key factor in the Governor's decision to veto it. If he signs S.18 into law or allows it to take effect without his signature it will take effect on October 1, 2020. **All Vermont motor vehicle leasing, rustproofing, GAP and other contracts that Vermont dealers use with consumers need to be reviewed if this bill becomes law.**



TRANSPORTATION BILL (H.529)

[Here is a link to the bill as it passed the House and Senate.](#)

The annual transportation bill or “T-bill” was approved without much controversy in 2019. The bill authorizes a FY2020 transportation program of nearly \$620 million. Some key provisions in the bill that affect dealers are:

- » Section 34 creates a \$2 million Vehicle Incentive and Emissions Repair Program that provides low income Vermonters with incentives to purchase more efficient vehicles and point-of-sale vouchers to repair certain vehicles that fail emissions testing. The Agency of Transportation is charged with administering these two new programs. Please see Section 34 by clicking on the link above.
- » Section 44 makes changes to the Automated Vehicle Inspection Program by exempting any vehicle more than 16 model years old from emissions or an on board diagnostic (OBD) systems inspection effective July 1, 2019. Section 45 authorizes the commissioner of DMV to update rules and to implement a “temporary work-around” to AVIP to achieve the OBD systems inspection exemption in such a short period of time.
- » Section 46 creates a “Vehicle Feebate and Vehicle Incentive Programs Funding Report” as follows:

The Agency of Transportation, in consultation with the Joint Fiscal Office, shall complete a study and submit a written report to the House and Senate Committees on Transportation on or before October 15, 2019 concerning whether Vermont should establish a time-of-acquisition vehicle feebate program to act as a self-funding incentive program. For purposes of this section, a “vehicle feebate” provides rebates to individuals who purchase or, if applicable, lease efficient vehicles that are funded by fees levied on individuals who purchase or, if applicable, lease inefficient vehicles. The report shall, at a minimum, consider whether vehicle feebates should be structured in steps—one or multiple—or as a continuum; whether there should be separate vehicle feebates for different classes of vehicles and, if so, whether there should be different pivot points for where a fee crosses over to a rebate; and if vehicle feebates should apply to both new and used vehicles and purchased and leased vehicles. The report shall also consider how a time-of- acquisition vehicle feebate program or other funding mechanism could function with the vehicle



incentive programs established in Sec. 34 of this act and the level of investment, incentives, feebates, and other monetary incentives and disincentives needed to reach the number of plug-in electric vehicles in Vermont's Comprehensive Energy Plan.

» Section 47 creates a "Weight-Based Annual Registration Report" as follows:

The Agency of Transportation, in consultation with the Joint Fiscal Office, shall complete a study and submit a written report to the House and Senate Committees on Transportation on or before December 15, 2019 concerning the feasibility of implementing an annual motor vehicle registration fee system that addresses road maintenance cost allocations for road traveling motor vehicles based on vehicle weight. Such a registration fee system could be in addition to or in lieu of existing motor vehicle registration fees. The study and report shall, at a minimum, identify, analyze, and make recommendations on: the current motor vehicle registration fee structure, any benefits to establishing a new system that better allocates costs based on vehicle weight; any anticipated implementation difficulties; ways to measure vehicle weight; what types of road traveling motor vehicles could and should be subject to such a registration fee; how to calculate registration fees to best account for weight- based wear on Vermont roads; and how other States have implemented weight- based registration fees.

II. BILLS OF DIRECT INTEREST TO VADA THAT DID NOT PASS IN 2019

Because 2019 was the first year of the legislative biennium bills that did not pass both chambers will carry over to the 2020 session. There are a number of bills of interest to VADA that were taken up in 2019 and did not pass, including H.201, related to towing and artisan's liens, and another proposal that would revamp the way that automotive repair technical education programs are operated.

The most significant bill to VADA that did not pass is **S.135, An Act Relating to Consumer Protection and Automobile Financing**. S.135 was introduced and referred to the Senate Economic Development, Housing and General Affairs Committee. [Click here for a link to S.135 as introduced](#). This bill imposes new obligations on dealers when financing a vehicle and significantly increases the penalties and fines for violating them as well as capping documentary fees at \$150 and capping dealer reserve at no more than two percent. Vermont Legal Aid



had this bill introduced and proceeded to spread unsubstantiated and in some instances false claims of dealer wrong doing around the State House and to the press. VADA representatives spent a significant amount of time meeting with lawmakers this year to educate them about the negative impact on consumers and dealers if this bill were to become law. VADA has asked Chair Senator Michael Sirotkin, D-Chittenden, to have a legal expert on all the state and federal laws and regulations related to dealer financing to testify before the committee on this bill. Paul Metrey, Vice President of Regulatory Affairs and Chief Regulatory Counsel, Financial Service, Privacy and Tax for the National Automobile Dealers Association has agreed to testify on the bill on VADA's behalf. Late in the session, the chair had VADA lobbyist Clare Buckley and Wendy Morgan of Vermont Legal Aid testify briefly on a scaled down but still significantly flawed version of the bill but the committee ran out of time to seriously consider moving it. Chair Sirotkin told VADA that he plans to take the bill up again in 2020.

Thank you for having Leonine Public Affairs serve as VADA's lobbyist in 2019.