

1 S.224

2 Introduced by Senator Rodgers

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; machinery dealerships; warranty obligations

6 Statement of purpose of bill as introduced: This bill proposes to clarify the
7 warranty obligations of manufacturers, suppliers, and dealers with respect to
8 equipment and machinery dealerships.

9 An act relating to warranty obligations of equipment dealers and suppliers

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

11 Sec. 1. FINDINGS

12 The General Assembly finds:

13 (1) Vermont has long relied on economic activity relating to working
14 farms and forestland in the State. These working lands, and the people who
15 work the land, are part of the State's cultural and ecological heritage, and
16 Vermont has made major policy and budget commitments in recent years in
17 support of working lands enterprises. Farm and forest enterprises need a
18 robust system of infrastructure to support their economic and ecological
19 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 land infrastructure are in the best interest of the State.

3 (2) The distribution and sale of equipment within this State vitally
4 affects the general economy of the State and the public interest and the public
5 welfare, and in order to promote the public interest and the public welfare, and
6 in the exercise of its police power, it is necessary to regulate equipment
7 suppliers and their representatives, and to regulate dealer agreements issued by
8 the aforementioned who are doing business in this State in order to prevent
9 frauds, impositions, and other abuses upon its citizens and to protect and
10 preserve the investments and properties of the citizens of this State.

11 (3) There continues to exist an inequality of bargaining power between
12 equipment suppliers and the independent dealer network. This inequality of
13 bargaining power enables equipment suppliers to compel dealers to execute
14 dealer agreements, related contracts, and addendums that contain terms and
15 conditions that would not routinely be agreed to by the equipment dealer if this
16 inequality did not exist. It therefore is in the public interest to enact legislation
17 to prevent unfair or arbitrary treatment of equipment dealers by equipment
18 manufacturers-suppliers. It is the General Assembly's intent to have this act
19 liberally construed in order to achieve its purpose.

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

21 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

1 Sec. 3. 9 V.S.A. § 4071 is amended to read:

2 § 4071. DEFINITIONS

3 As used in this chapter:

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

7 (2) “Dealer” means a person, ~~corporation, or partnership~~ primarily
8 engaged in the business of retail sales of farm and utility tractors, farm
9 implements, farm machinery, forestry equipment, industrial equipment, utility
10 equipment, yard and garden equipment, construction equipment, all-terrain
11 vehicles as defined in 23 V.S.A. § 3801(1), attachments, accessories, and or
12 repair parts. Provided, however, “dealer” shall not include a “single line
13 dealer” primarily engaged in the retail sale and service of industrial, forestry,
14 and construction equipment. “Single line dealer” means a person, ~~partnership~~
15 ~~or corporation~~ who:

16 (A) has purchased 75 percent or more of the dealer’s total new
17 product inventory from a single supplier; and

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

1 provided the requirements are economically viable and are not substantially
2 different from those requirements imposed upon other similarly situated
3 equipment dealers in this State. Failure to meet market share requirements
4 does not alone constitute cause for termination.

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; in subsection (a) of this section are also cause for
8 termination, cancellation, or 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 * * *

4 Sec. 5. 9 V.S.A. § 4074 is amended to read:

5 § 4074. REPURCHASE TERMS

6 (a) Within 90 days from receipt of the written request of the dealer, a
7 supplier under the duty to repurchase inventory pursuant to section 4073 of this
8 title may examine any books or records of the dealer to verify the eligibility of
9 any item for repurchase. Except as otherwise provided in this chapter, the
10 supplier shall repurchase from the dealer all inventory previously purchased
11 from the supplier in possession of the dealer on the date of termination of the
12 dealer agreement and required signage, special tools, books, manuals, supplies,
13 data processing equipment, and software previously purchased from the
14 supplier or other qualified vendor approved by the supplier in the possession of
15 the dealer on the date of termination of the dealer agreement.

16 (b) The supplier shall pay the dealer:

17 (1) ~~100~~ one hundred percent of the net cost of all new and undamaged
18 and complete farm and utility tractors, utility equipment, forestry equipment,
19 industrial equipment, farm implements, farm machinery, yard and garden
20 equipment, construction equipment, attachments, and accessories purchased
21 from the supplier within the 30-month period preceding the date of

1 termination, less a reasonable allowance for deterioration attributable to
2 weather conditions at the dealer's location.;

3 (2) ~~90~~ one hundred percent of the current net prices of all new and
4 undamaged repair parts.;

5 (3) ~~85~~ ninety-five percent of the current net prices of all new and
6 undamaged superseded repair parts.;

7 (4) ~~85~~ ninety-five percent of the latest available published net price of
8 all new and undamaged noncurrent repair parts.;

9 (5) ~~Either~~ either the fair market value, or assume the lease
10 responsibilities of any specific data processing hardware that the supplier
11 required the dealer to purchase to satisfy the reasonable requirements of the
12 dealer agreement, including computer systems equipment and software
13 required and approved by the supplier to communicate with the supplier.;

14 (6) ~~Repurchase at 75~~ seventy-five percent of the net cost of specialized
15 repair tools, signage, books and supplies previously purchased, pursuant to
16 requirements of the supplier and held by the dealer on the date of termination.
17 Specialized repair tools must be unique to the supplier's product line and must
18 be complete and in usable condition.;

19 (7) ~~Repurchase at~~ average as-is value shown in current industry guides,
20 dealer-owned rental fleet financed by the supplier or its finance subsidiary,

1 provided the equipment was purchased from the supplier within 30 months of
2 the date of termination.

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

8 (d) Payment to the dealer required under this section shall be made by the
9 supplier not later than 45 days after receipt of the inventory by the supplier.

10 A penalty shall be assessed in the amount of daily interest at the current New
11 York prime rate plus three percent of any outstanding balance over the
12 required 45 days. The supplier shall be entitled to apply any payment required
13 under this section to be made to the dealer as a setoff against any amount owed
14 by the dealer to the supplier.

15 Sec. 6. 9 V.S.A. § 4077a is amended to read:

16 § 4077a. PROHIBITED ACTS

17 No supplier shall:

18 (1) coerce, or attempt to coerce, any dealer to accept delivery of any
19 equipment, parts, or accessories therefor, which such dealer has not voluntarily
20 ordered, except that a supplier may require a dealer to accept delivery of
21 equipment, parts or accessories that are necessary to maintain equipment

1 generally sold in the dealer's area of responsibility, and a supplier may require
2 a dealer to accept delivery of safety-related equipment, parts, or accessories
3 pertinent to equipment generally sold in the dealer's area of responsibility;

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

9 ~~(3) coerce any dealer into a refusal to purchase the equipment~~
10 ~~manufactured by another supplier; or~~ prevent, coerce, or attempt to coerce a
11 dealer from having an investment in or hold a dealership contract for the sale
12 of competing product lines or makes of equipment or require the dealer to
13 provide separate facilities for competing product lines or makes of equipment;

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

20 (5) modify a dealer's assigned area of responsibility without the dealer's
21 written consent; or

1 (6) if the supplier reimbursed a dealer for equipment, repair parts, or
2 labor to avoid a violation of this section, recover the costs of the
3 reimbursement.

4 Sec. 7. 9 V.S.A. § 4078 is amended to read:

5 § 4078. WARRANTY OBLIGATIONS

6 (a) Each supplier shall specify in writing to each of its dealers in this State
7 the reasonable obligations of the dealer for warranty service on its products,
8 shall compensate the dealer for such service required of the dealer by the
9 supplier, and shall provide the dealer the schedule of compensation to be paid
10 the dealer for parts, work, and service in connection with them, and the time
11 allowance for the performance of the work and service. If the dealer does not
12 comply with excessive obligations placed upon the dealer by the supplier
13 pursuant to this section, the supplier is not relieved from compliance with the
14 requirements of this chapter.

15 (b) A schedule of compensation shall include reasonable compensation for
16 diagnostic work, as well as for repair service, parts, and labor. Time
17 allowances for the diagnosis and performance of warranty service shall be
18 reasonable and adequate for the work to be performed. The hourly rate paid to
19 a dealer shall not be less than the rate charged by the dealer to customers for
20 nonwarranty service and repairs. Each supplier shall compensate each of its
21 dealers for parts used to fulfill warranty and recall obligations of repair and

1 servicing at a rate not less than the rate charged by the dealer to its retail
2 customers for like parts for nonwarranty work.

3 (c) It is a violation of this section for any supplier to fail to perform any
4 warranty obligations or to fail to include in written notices of factory recalls to
5 machinery owners and dealers the expected date by which necessary parts and
6 equipment will be available to dealers for the correction of such defects, or to
7 fail to compensate any of its dealers in this State for repairs required by a
8 recall.

9 (d) Whenever a supplier and a dealer enter into an agreement providing
10 consumer warranties, the supplier shall pay any warranty claim made for
11 warranty parts and service within 30 days after its receipt and approval. The
12 supplier shall approve or disapprove a warranty claim within 30 days after its
13 receipt. If a claim is not specifically disapproved in writing within 30 days
14 after its receipt, it shall be deemed to be approved and payment shall be made
15 by the supplier within 30 days after its receipt.

16 Sec. 8. EFFECTIVE DATE

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