

LEGEND:

Per Request of Committee

Italicized language is common to both parties' proposals

AEM Proposal

NEDA Issue #1-Court Issues - Findings, Applicability, and Remedy

NEDA Issue #2-Competitive Product Lines

NEDA Issue #3-Termination of the Dealer Agreement for Market Share

NEDA Issue #4-Warranty

NEDA Issue #5-Attempt to Coerce

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing & General Affairs to
3 which was referred Senate Bill No. 224 entitled “An act relating to warranty
4 obligations of equipment dealers and suppliers” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking all
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds:

9 (1) Vermont has long relied on economic activity relating to working
10 farms and forestland in the State. These working lands, and the people who
11 work the land, are part of the State’s cultural and ecological heritage, and
12 Vermont has made major policy and budget commitments in recent years in
13 support of working lands enterprises. Farm and forest enterprises need a
14 robust system of infrastructure to support their economic and ecological
15 activities, and that infrastructure requires a strong economic base consisting of
16 dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm
17 and forest working land infrastructure are in the best interest of the State.

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

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

17 (3) There continues to exist an inequality of bargaining power between
18 equipment, snowmobile, and all-terrain vehicle suppliers and the independent

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1 dealer network. This inequality of bargaining power enables equipment,
2 snowmobile, and all-terrain vehicle suppliers to compel dealers to execute
3 dealer agreements, related contracts, and addendums that contain terms and
4 conditions that would not routinely be agreed to by the equipment,
5 snowmobile, and all-terrain vehicle dealer if this inequality did not exist. It
6 therefore is in the public interest to enact legislation to prevent unfair or
7 arbitrary treatment of equipment, snowmobile, and all-terrain vehicle dealers
8 by equipment, snowmobile, and all-terrain vehicle suppliers. It is also in the
9 public interest that Vermont consumers, municipalities, businesses, and others
10 that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont
11 have access to a robust independent dealer network to obtain competitive
12 prices when purchasing these items and to obtain warranty, recall, or other
13 repair work. *It is the General Assembly's intent to have this act liberally*
14 *construed in order to achieve its purpose. This act is intended to apply*
15 *prospectively to all dealer agreements executed after the effective date of the*
16 *act. [Open issue – prospective/retroactive application]*

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

18 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

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1 § 4070. APPLICABILITY

2 The provisions of this chapter shall apply to the conduct of all persons
3 affected by the presumptions of this chapter situated in this State. Any person
4 who engages directly or indirectly in purposeful contacts within this State in
5 connection with the offering or advertising for sale of, or has business dealings
6 with respect to, inventory within the State shall be subject to the provisions of
7 this chapter and the jurisdiction of the courts of this State. An amendment to
8 this chapter shall apply to existing dealer agreements and to all amendments,
9 renewals, or extensions of existing dealer agreements, and dealer agreements
10 entered into on or after the effective date of this act.

11 § 4071. DEFINITIONS

12 As used in this chapter:

13 (1) "Current net price" means the price listed in the supplier's price list
14 or ~~catalog~~ catalogue in effect at the time the dealer agreement is terminated,
15 less any applicable discounts allowed.

16 (2) "Dealer" means a person, ~~corporation, or partnership~~ primarily
17 engaged in the business of retail sales of ~~farm and utility tractors, farm~~
18 ~~implements, farm machinery, forestry equipment, industrial equipment, utility~~

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1 equipment, yard and garden equipment, attachments, accessories, and repair
2 parts inventory. Provided, however, “dealer” shall not include a “single line
3 dealer” primarily engaged in the retail sale and service of industrial, forestry,
4 and construction equipment. “Single line dealer” means a person, ~~partnership~~
5 ~~or corporation~~ who:

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

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

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

16 (4) “Inventory” means farm, utility, forestry, or industrial equipment,
17 implements, machinery, yard and garden equipment, snowmobiles as defined
18 in 23 V.S.A. § 3201(5), all-terrain vehicles as defined in 23 V.S.A. § 3801(1),

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1 attachments, accessories, or repair parts. These terms do not include heavy
2 construction equipment.

3 (5) "Net cost" means the price the dealer paid the supplier for the
4 inventory, less all applicable discounts allowed, plus the amount the dealer
5 paid for freight costs from the supplier's location to the dealer's location. In the
6 event of termination of a dealer agreement by the supplier, "net cost" shall
7 include the reasonable cost of assembly or disassembly performed by a dealer.

8 (6) "Supplier" means a wholesaler, manufacturer, or distributor of
9 inventory as defined in this chapter who enters into a dealer agreement with a
10 dealer.

11 (7) "Termination" of a dealer agreement means the cancellation,
12 nonrenewal or noncontinuance of the agreement.

13 § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

14 (a) Notwithstanding any agreement to the contrary, prior to the termination
15 of a dealer agreement, a supplier shall notify the dealer in writing of the
16 termination not less than 120 days prior to the effective date of the termination.

17 No supplier may terminate, cancel, or fail to renew a ~~dealership~~ dealer
18 agreement without cause. "Cause" means failure by ~~an equipment~~ a dealer to

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1 comply with the requirements imposed upon the ~~equipment~~ dealer by the
2 dealer agreement, provided the requirements are reasonable and justifiable in
3 light of current economic conditions and are not substantially different from
4 those requirements imposed upon other similarly situated ~~equipment~~ dealers in
5 this State. The notice of termination shall state all reasons constituting cause
6 for termination and shall state that the dealer has 60 days to cure any claimed
7 deficiency. If the deficiency is cured within 60 days, the notice of termination
8 shall be void.

9 (b) Notwithstanding subsection (a) of this section, before termination of the
10 dealer agreement because of the failure of a dealer to meet reasonable
11 marketing criteria or market penetration, the supplier shall provide written
12 notice of that intention at least two years in advance. After notice, the supplier
13 issuing the notice shall make good faith efforts to work with the dealer to gain
14 the desired market share including reasonably making available to the dealer
15 an adequate inventory and competitive marketing programs. The supplier, at
16 the end of the two-year notice period, may terminate the dealer agreement only
17 upon further written notice specifying the reasons the dealer failed to meet
18 reasonable criteria or market penetration. The written notice shall specify that

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1 termination is effective 90 days from the date of the notice. If the dealer cures
2 the claimed deficiency within the 90-day period, the dealer agreement shall not
3 be terminated.

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

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

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

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

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

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

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1 (6) withdrawal of an individual proprietor, partner, major shareholder,
2 the involuntary termination of the manager of the dealership, or a substantial
3 reduction in the interest of a partner or major shareholder without the prior
4 written consent of the supplier.

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

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

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

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

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

13 § 4073. SUPPLIER'S DUTY TO REPURCHASE INVENTORY

14 (a) Whenever a dealer enters into a dealer agreement under which the dealer
15 agrees to maintain an inventory, and the agreement is terminated by either
16 party as provided in this chapter, the supplier, upon written request of the
17 dealer filed within 30 days of the effective date of the termination, shall

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1 repurchase the dealer's inventory as provided in this chapter. There shall be no
2 requirement for the supplier to repurchase inventory pursuant to this section if:

3 (1) the dealer has made an intentional and material misrepresentation as
4 to the dealer's financial status;

5 (2) the dealer has defaulted under a chattel mortgage or other security
6 agreement between the dealer and supplier; or

7 (3) the dealer has filed a voluntary petition in bankruptcy.

8 (b) Whenever a dealer enters into a dealer agreement in which the dealer
9 agrees to maintain an inventory and the dealer or the majority stockholder of
10 the dealer, if the dealer is a corporation, dies or becomes incompetent, the
11 supplier shall, at the option of the heir, personal representative, or guardian of
12 the dealer or the person who succeeds to the stock of the majority stockholder,
13 repurchase the inventory as if the agreement had been terminated. The heir,
14 personal representative, guardian, or succeeding stockholder has 180 days from
15 the date of the death of the dealer or majority stockholder to exercise the
16 option under this chapter.

17 § 4074. REPURCHASE TERMS

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1 (a) Within 90 days from receipt of the written request of the dealer, a
2 supplier under the duty to repurchase inventory pursuant to section 4073 of this
3 title may examine any books or records of the dealer to verify the eligibility of
4 any item for repurchase. Except as otherwise provided in this chapter, the
5 supplier shall repurchase from the dealer all inventory previously purchased
6 from the supplier in possession of the dealer on the date of termination of the
7 dealer agreement and required signage, special tools, books, manuals, supplies,
8 data processing equipment, and software previously purchased from the
9 supplier ~~or other qualified vendor approved by the supplier in the possession of~~
10 ~~the dealer on the date of termination of the dealer agreement.~~ [Two open
11 questions: (1) does underlying law apply only to software purchased from
12 vendors?; (2) can software be repurchased?]

13 (b) The supplier shall pay the dealer:

14 (1) ~~100~~ One hundred percent of the net cost of all new and undamaged
15 and complete ~~farm and utility tractors, utility equipment, forestry equipment,~~
16 ~~industrial equipment, farm implements, farm machinery, yard and garden~~
17 ~~equipment, attachments, and accessories~~ inventory, other than repair parts,
18 purchased from the supplier within the 30-month period preceding the date of

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1 termination and not previously sold or put into regular use or service, less a
2 reasonable allowance for deterioration attributable to weather conditions and
3 wear and tear at the dealer's location.

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

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

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

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

15 (6) ~~Repurchase at 75~~ Seventy-five percent of the net cost of specialized
16 repair tools, signage, books and supplies previously purchased, pursuant to
17 requirements of the supplier and held by the dealer on the date of termination.

18 The repurchase amount for signage, books, and supplies is limited to those

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1 items purchased in the five years prior to the date of termination. Specialized
2 repair tools must be unique to the supplier's product line, ~~and must be~~
3 ~~complete, and in usable~~ working condition, and purchased by the dealer in the
4 ten years prior to the date of termination [open question: time-period].

5 (7) ~~Repurchase at average~~ Average as-is value shown in current industry
6 guides; for dealer-owned rental fleet financed by the supplier or its finance
7 subsidiary, provided the equipment was purchased from the supplier within
8 30 months of the date of termination.

9 (c) ~~The obligation to repurchase repair parts pursuant to subdivisions~~
10 ~~(b)(2)-(4) of this section does not apply to the following:~~

11 ~~(1) parts identified as non-returnable at the time the dealer purchased the~~
12 ~~parts;~~

13 ~~(2) parts purchased in a set of multiple parts and the set is not complete~~
14 ~~and in able to be resold;~~

15 ~~(3) parts that have a limited storage life or are otherwise subject to~~
16 ~~deterioration, including rubber items, gaskets, and batteries;~~

17 ~~(4) parts that are in broken or damaged packages; or~~

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1 ~~(5) parts that cannot be resold without new packaging or reconditioning~~
2 ~~due to their condition.~~ [moved to §4075; see below]

3 The party that initiates the termination of the dealer agreement shall pay the
4 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 § 4075. EXCEPTIONS TO REPURCHASE REQUIREMENT

16 The provisions of this chapter shall not require the repurchase from a dealer
17 of:

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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 and the set is not complete and is unable to be resold;

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) a repair part identified as non-returnable at the time the dealer
9 purchased the part;

10 (5) a repair part that is in damaged packaging;

11 (6) any inventory that the dealer elects to retain;

12 ~~(5)~~(7) any inventory ordered by the dealer after receipt of notice of
13 termination of the dealer agreement by either the dealer or supplier; or

14 ~~(6)~~(8) any inventory that was acquired by the dealer from a source other
15 than the supplier unless the source was approved by the supplier.

16 * * *

17 § 4077a. PROHIBITED ACTS

18 No supplier shall:

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

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

13 (3) ~~coerce any dealer into a refusal to purchase the equipment~~
14 ~~manufactured by another supplier; or~~ prevent, [or]coerce, or attempt to coerce
15 a dealer from having an investment in or hold a dealer agreement for the sale
16 of competing product lines or makes of inventory, or require the dealer to
17 provide separate facilities for competing product lines or makes of inventory;
18 [provided, however that this subdivision does not apply unless the dealer

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1 maintains a reasonable line of credit for each make or line of inventory, the
2 dealer remains in substantial compliance with any reasonable facilities
3 requirement of the supplier, and no change is made in the principal
4 management of the dealer; and further provided that for purposes of this
5 section, "reasonable facilities requirement" shall not include a requirement that
6 a dealer establish or maintain exclusive facilities, personnel, or display space];
7 [provided, however, that for major competing lines, a supplier does not violate
8 this subdivision by requiring separate financial statements upon one year's
9 notice to a dealer, or to require separate sales staff and facilities upon three
10 years' notice to a dealer.]

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

17 (5) change the relevant market area set forth in the dealer agreement
18 without good cause, which for purposes of this subdivision shall include

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1 changes in the dealer's vehicle or warranty registration pattern, demographics,
2 and geographic barriers; or

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

5 ~~[(6) recover its costs from dealers within this State, including an~~
6 ~~increase in the wholesale price of inventory or a surcharge imposed on a dealer~~
7 ~~solely intended to recover the cost of reimbursing a dealer for parts and labor~~
8 ~~pursuant §4078.]~~

9 § 4078. WARRANTY OBLIGATIONS

10 (a) Each supplier shall specify in writing to each of its dealers in this State
11 the reasonable obligations of the dealer for warranty service on its products,
12 shall compensate the dealer for the service required of the dealer by the
13 supplier, and shall provide the dealer the schedule of compensation to be paid
14 to the dealer for parts, labor, and service in connection with them, and the
15 time allowance for the performance of the labor and service. ~~If the dealer~~
16 ~~does not comply with excessive obligations placed upon the dealer by the~~
17 ~~supplier pursuant to this section, the supplier is not relieved from compliance~~
18 ~~with the requirements of this chapter.]~~—[The supplier shall not impose

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1 unreasonable requirements on the dealer concerning the process the dealer
2 must follow to file a warranty claim.]

3 (b) A schedule of compensation shall include reasonable compensation for
4 diagnostic work, as well as for repair service, parts, and labor. Time
5 allowances for the diagnosis and performance of warranty service shall be
6 reasonable and adequate for the work to be performed by a dealer that is
7 equipped to complete the requirements of the warranty service. The hourly
8 rate paid to a dealer shall not be less than the rate charged by the dealer to
9 customers for nonwarranty service and repairs. Each supplier shall
10 compensate each of its dealers for parts used to fulfill warranty and recall
11 obligations of repair and servicing [at a rate not less than the price the dealer
12 actually paid the supplier for the parts plus 20 percent] ~~at a rate not less than~~
13 the rate charged by the dealer to its retail customers for like parts for
14 nonwarranty work, current net price price plus 20%].

15 (c) It is a violation of this section for any supplier to fail to perform any
16 warranty obligations or to fail to include in written notices of factory recalls to
17 machinery owners and dealers the expected date by which necessary parts and
18 equipment will be available to dealers for the correction of such defects, or to

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1 *fail to compensate any of its dealers in this State for repairs required by a*
2 *recall.*

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

10 § 4079. REMEDIES

11 (a) A person damaged as a result of a violation of this chapter may bring an
12 action against the violator in a Vermont court of competent jurisdiction for
13 damages, together with the actual costs of the action, including reasonable
14 attorney's fees, injunctive relief against unlawful termination, cancellation,
15 nonrenewal, or substantial change of competitive circumstances, and such
16 other relief as the Court deems appropriate. A provision in a dealer agreement
17 that purports to deny access to the procedures, fora, or remedies provided by
18 the laws of this State is void and unenforceable.

