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H.328

Introduced by Representatives Yantachka of Charlotte, Smith of New Haven,  
Bancroft of Westford, Batchelor of Derby, Beck of  
St. Johnsbury, Beyor of Highgate, Christie of Hartford, Cole of  
Burlington, Conquest of Newbury, Dakin of Colchester,  
Devereux of Mount Holly, Emmons of Springfield, Graham of  
Williamstown, Higley of Lowell, Lawrence of Lyndon, Lewis  
of Berlin, Macaig of Williston, Martin of Wolcott, Russell of  
Rutland City, Shaw of Derby, Townsend of South Burlington,  
Troiano of Stannard, Viens of Newport City, Walz of  
Barre City, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Commerce and trade; machinery dealerships; warranty obligations

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

An act relating to warranty obligations of equipment dealers and suppliers

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

1       Sec. 1. FINDINGS

2           The General Assembly finds:

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

12           (2) The distribution and sale of equipment within this State vitally  
13           affects the general economy of the State and the public interest and the public  
14           welfare, and in order to promote the public interest and the public welfare, and  
15           in the exercise of its police power, it is necessary to regulate equipment  
16           suppliers and their representatives, and to regulate dealer agreements issued by  
17           the aforementioned who are doing business in this State in order to prevent  
18           frauds, impositions, and other abuses upon its citizens and to protect and  
19           preserve the investments and properties of the citizens of this State.

20           (3) There continues to exist an inequality of bargaining power between  
21           equipment suppliers and the independent dealer network. This inequality of

1 bargaining power enables equipment suppliers to compel dealers to execute  
2 dealer agreements, related contracts, and addendums that contain terms and  
3 conditions that would not routinely be agreed to by the equipment dealer if this  
4 inequality did not exist. It therefore is in the public interest to enact legislation  
5 to prevent unfair or arbitrary treatment of equipment dealers by equipment  
6 manufacturers-suppliers. It is the General Assembly's intent to have this act  
7 liberally construed in order to achieve its purpose.

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

9 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

10 \* \* \*

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

12 § 4071. DEFINITIONS

13 As used in this chapter:

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

17 (2) "Dealer" means a person, ~~corporation or partnership~~ primarily  
18 engaged in the business of retail sales of farm and utility tractors, farm  
19 implements, farm machinery, forestry equipment, industrial equipment, utility  
20 equipment, yard and garden equipment, construction equipment, attachments,  
21 accessories ~~and~~ or repair parts. Provided, however, "dealer" shall not include

1 a “single line dealer” primarily engaged in the retail sale and service of  
2 industrial, forestry, and construction equipment. “Single line dealer” means a  
3 person, ~~partnership or corporation~~ who:

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

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

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

14 (4) “Inventory” means farm, utility, forestry, or industrial equipment,  
15 implements, machinery, yard and garden equipment, construction equipment,  
16 attachments, or repair parts. ~~These terms do not include heavy construction~~  
17 equipment. The term repair parts includes bundled parts, which means several  
18 related parts, components, or accessories that the supplier requires the dealer to  
19 purchase in a single transaction.

20 \* \* \*

1 Sec. 4. 9 V.S.A. § 4072 is amended to read:

2 § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

3 (a) Notwithstanding any agreement to the contrary, prior to the termination  
4 of a dealer agreement, a supplier shall notify the dealer of the termination not  
5 less than 120 days prior to the effective date of the termination. No supplier  
6 may terminate, cancel, or fail to renew a dealership agreement without cause.  
7 “Cause” means failure by an equipment dealer to comply with ~~the~~ reasonable  
8 requirements imposed upon the equipment dealer by the dealer agreement,  
9 provided the requirements are economically viable and are not substantially  
10 different from those requirements imposed upon other similarly situated  
11 equipment dealers in this ~~state~~ State. Failure to meet market share  
12 requirements does not alone constitute cause for termination.

13 (b) The supplier may immediately terminate the agreement at any time  
14 upon the occurrence of any of the following events which in addition to the  
15 ~~above~~ definition of cause, in subsection (a) of this section are also cause for  
16 termination, cancellation, or failure to renew a dealership agreement:

17 (1) ~~The~~ the filing of a petition for bankruptcy or for receivership either  
18 by or against the dealer;

19 (2) ~~The~~ the making by the dealer of an intentional and material  
20 misrepresentation as to the dealer’s financial status;



1 supplies, data processing equipment, and software previously purchased from  
2 the supplier or other qualified vendor approved by the supplier in the  
3 possession of the dealer on the date of termination of the dealer agreement.

4 (b) The supplier shall pay the dealer:

5 (1) ~~100~~ One hundred percent of the net cost of all new and undamaged  
6 and complete farm and utility tractors, utility equipment, forestry equipment,  
7 industrial equipment, farm implements, farm machinery, yard and garden  
8 equipment, construction equipment, attachments, and accessories purchased  
9 from the supplier within the 30-month period preceding the date of  
10 termination, less a reasonable allowance for deterioration attributable to  
11 weather conditions at the dealer's location;

12 (2) ~~90~~ One hundred percent of the current net prices of all new and  
13 undamaged repair parts;

14 (3) ~~85~~ Ninety-five percent of the current net prices of all new and  
15 undamaged superseded repair parts;

16 (4) ~~85~~ Ninety-five percent of the latest available published net price of  
17 all new and undamaged noncurrent repair parts;

18 (5) ~~either~~ Either the fair market value, or assume the lease  
19 responsibilities of any specific data processing hardware that the supplier  
20 required the dealer to purchase to satisfy the reasonable requirements of the

1 dealer agreement, including computer systems equipment and software  
2 required and approved by the supplier to communicate with the supplier;

3 (6) ~~repurchase at 75~~ Seventy-five percent of the net cost of specialized  
4 repair tools, signage, books, and supplies previously purchased, pursuant to  
5 requirements of the supplier and held by the dealer on the date of termination.  
6 Specialized repair tools must be unique to the supplier's product line and must  
7 be complete and in usable condition; ~~and~~.

8 (7) ~~repurchase at average~~ Average as-is value shown in current industry  
9 guides, dealer-owned rental fleet financed by the supplier or its finance  
10 subsidiary, provided the equipment was purchased from the supplier within  
11 30 months of the date of termination.

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

17 (d) Payment to the dealer required under this section shall be made by the  
18 supplier not later than 45 days after receipt of the inventory by the supplier.  
19 A penalty shall be assessed in the amount of daily interest at the current New  
20 York prime rate plus three percent of any outstanding balance over the  
21 required 45 days. The supplier shall be entitled to apply any payment required



1 under this section to be made to the dealer as a setoff against any amount owed  
2 by the dealer to the supplier.

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

4 § 4077a. PROHIBITED ACTS

5 No supplier shall:

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

14 (2) ~~Condition~~ condition the sale of any equipment on a requirement that  
15 the dealer also purchase any other goods or services, but nothing contained in  
16 this chapter shall prevent the supplier from requiring the dealer to purchase all  
17 parts reasonably necessary to maintain the quality of operation in the field of  
18 any equipment used in the trade area;

19 (3) ~~Coerce any dealer into a refusal to purchase the equipment~~  
20 ~~manufactured by another supplier~~ prevent, coerce, or attempt to coerce a dealer  
21 from having an investment in or hold a dealership contract for the sale of

1 competing product lines or makes of equipment or require the dealer to provide  
2 separate facilities for competing product lines or makes of equipment;

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

9 (5) modify a dealer's assigned area of responsibility without the dealer's  
10 written consent.

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

12 § 4078. WARRANTY OBLIGATIONS

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

1       (b) A schedule of compensation shall include reasonable compensation for  
2       diagnostic work, as well as for repair service, parts, and labor. Time  
3       allowances for the diagnosis and performance of warranty service shall be  
4       reasonable and adequate for the work to be performed. The hourly rate paid to  
5       a dealer shall not be less than the rate charged by the dealer to customers for  
6       nonwarranty service and repairs. Each supplier shall compensate each of its  
7       dealers for parts used to fulfill warranty and recall obligations of repair and  
8       servicing at a rate not less than the rate charged by the dealer to its retail  
9       customers for like parts for nonwarranty work.

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

16       (d) Whenever a supplier and a dealer enter into an agreement providing  
17       consumer warranties, the supplier shall pay any warranty claim made for  
18       warranty parts and service within 30 days after its receipt and approval. The  
19       supplier shall approve or disapprove a warranty claim within 30 days after its  
20       receipt. If a claim is not specifically disapproved in writing within 30 days

1 after its receipt, it shall be deemed to be approved and payment shall be made  
2 by the supplier within 30 days after its receipt.

3 Sec. 8. EFFECTIVE DATE

4 This act shall take effect on July 1, 2015.