

Association of Equipment Manufacturers (AEM)
Proposed Amendments to S. 224, Equipment Dealers and Suppliers
House Commerce and Economic Development Committee
April 15, 2016

AEM Substantiation for Objection to Hostile Legislative Finding

Valid, enforceable and fair contracts are formed every day by parties that do not have equal bargaining power. The fact that parties may be in an unequal bargaining position is not enough alone to justify voiding a contract agreed to by the parties, or regulating its contents. If unequal bargaining power exists between an equipment supplier and its Vermont dealer, this does not justify the Legislature voiding, or rewriting, or micro-managing the agreed-to terms in existing or future dealer agreements. State courts have recognized that, even in the context of a business-to-business contract, practically every contract negotiation involves parties with some bargaining disparity. In *LaMoille Grain Company, Inc. v. St. Johnsbury and Lamoille County Railroad*, 135 Vt. 5, 9 (1976), the Vermont Supreme Court held:

“The fact that the parties may be in unequal bargaining positions is not enough alone to justify non-enforcement of a contract; practically every contract negotiation involves parties with some bargaining disparity. Title 9A, Vermont Statutes Annotated, § 2-302, comment 1, explains the principle of the unconscionability provision as being 'one of the prevention of oppression and unfair surprise . . . and not of disturbance of allocation of risks because of superior bargaining power.' (emphasis added).”

It simply is not accurate to characterize all equipment dealer agreements as being forced upon knowledgeable Vermont business enterprises through universal supplier oppression, or bad faith, or other animus. With this overly broad finding, the Vermont Legislature castigates *the entire equipment supplier industry*, without competent testimony or specific evidence.

Practically every contract negotiation involves parties with bargaining disparity. The resulting dealer agreements are reduced to writing, are reviewed by the parties and their legal advisors, and freely and voluntarily signed by each party. They are not coerced. They would not have been signed by a business enterprise if the terms were unfair or arbitrary. Nor should they be revised, retroactively, by this Legislature in an attempt to tip the scales in favor of one party, long after the ink has dried. “Leveling the playing field” for contracting parties is not a legitimate exercise of the state’s police power.

If a contract with a supplier is no longer in the dealer’s best interests, the dealer is free to end it at any time and move on to representing another supplier. This is the freedom to contract.