

Association of Equipment Manufacturers (AEM)
Proposed Amendments to S. 224, Equipment Dealers and Suppliers
House Commerce and Economic Development Committee
April 12, 2016

AEM respectfully submits the following proposed amendments to the S.224. The amendment language is bold-faced and italicized:

Section 1. FINDINGS and INTENT:

Delete the strike through.

Add the words bold-faced and italicized.

(a) (4) There continues to exist an inequality of bargaining power between equipment, snowmobile, and all terrain vehicle suppliers and the independent dealer network. This inequality of bargaining power enables equipment, snowmobile, and all terrain vehicle suppliers to compel dealers to execute dealer agreements, related contracts, and addenda that contain terms and conditions that would not routinely be agreed to by the equipment, snowmobile, and all terrain vehicle dealer if this inequality did not exist. It therefore is in the public interest to enact legislation to prevent unfair or arbitrary treatment of equipment, snowmobile, and all terrain vehicle dealers by equipment, snowmobile, and all terrain vehicle suppliers. It is also in the public interest ~~that~~ *of Vermont consumers, municipalities, businesses, and others that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont to have access to a robust independent dealer network to obtain competitive prices when purchasing these items and to obtain warranty, recall, or other repair work.*

CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

§ 4071. DEFINITIONS

Add the words bold-faced and italicized.

“Coerce” means the failure to act in a fair and equitable manner in performing or complying with any terms or provisions of a dealer agreement provided, however, that recommendation, persuasion, urging or argument shall not be synonymous with coerce or lack of good faith.

§ 4072. TERMINATION OF DEALER AGREEMENTS

Delete the strike through.

Add the words bold-faced and italicized.

(b) Termination by a supplier fo cause.

(1) In this subsection, “cause” means the failure of a dealer to meet one or more requirements of a dealer agreement, provided that the requirement is reasonable, ~~justifiable~~, and substantially the same as requirements imposed on similarly situated dealers in this State, *or region, in whichever is most applicable, at the time the dealer agreement was executed.*

(c) Termination by a supplier for failure to meet reasonable marketing or market penetration requirements.

(2) A supplier shall deliver an initial notice of termination to the dealer at least two years ~~18~~ **24** months before the effective date of termination.

(3) After providing an initial notice, the supplier shall work with the dealer in good faith to meet the reasonable marketing or market penetration requirements specified in the notice, including reasonable efforts to provide the dealer with ~~adequate~~ inventory and ~~competitive~~ marketing programs *substantially the same as those provided to similarly situated dealers in this State or region, whichever is most applicable.*

4) If the dealer fails to meet reasonable marketing or market penetration requirements specified in the notice by the end of the ~~18-month~~ 24-month period, the supplier may terminate the dealer agreement by providing a final notice of termination.

(5) ~~A dealer has 90 days from the date it receives a final notice of termination to meet the reasonable marketing or market penetration requirements specified in the notice.~~ Termination of the dealer agreement shall be effective upon the dealer's receipt of the final notice or any later date stated in the final notice.

(6) ~~If a dealer meets the reasonable marketing or market penetration requirements specified in the notice within the 90-day period, the dealer agreement does not terminate pursuant to the final notice of termination.~~

(d) Termination by a supplier upon a specified event. A supplier may *immediately* terminate a dealer agreement if one of the following events occurs *which in addition to the above definition of cause, are also cause for termination, cancellation, or failure to renew a dealership agreement:*

(1) A person files a petition for bankruptcy or for receivership on behalf of or against the dealer;

(2) The dealer makes an intentional and material misrepresentation regarding his or her financial status;

(3) The dealer defaults on a chattel mortgage or other security agreement between the dealer and the supplier;

(4) A person commences the voluntary or involuntary dissolution or liquidation of a dealer organized as a business entity;

(5) Without the prior written approval of the supplier;

(A) The dealer changes the business location specified in the dealer agreement or adds an additional dealership of the supplier's same brand.

(B) An individual proprietor, partner, or major shareholder withdraws from, or substantially reduces his or her interest in the dealer

~~*(C) The dealer terminates a manager of the dealer*~~

(7) The dealer has failed to operate in the normal course of business for eight (8) consecutive business days or has otherwise abandoned its business;

(8) The dealer has pleaded guilty to or has been convicted of a felony;

§ 4074. REPURCHASE TERMS

Delete the strike through.

Add the words bold-faced and italicized.

(b) The supplier shall pay the dealer:

(1) 100 one hundred percent of the net cost of all new, **unsold**, ~~and~~ undamaged and complete inventory, other than repair parts, purchased from the supplier within the 30-month period preceding the date of termination, less a reasonable allowance for deterioration attributable to ~~weather conditions~~ **weather exposure** at the dealer's location.

(6) Repurchase at 75 percent of the net cost of specialized repair tools, signage, books and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination. Specialized repair tools must be unique to the supplier's product line, must be no more than 10 years old, and must be complete and in usable condition. **Supplies must be unique to the supplier's product line, must be no more than 3 years old, and must be complete and in usable condition.**

(new paragraph – related to repair parts)

Repurchase of repair parts does not apply to the following:

(a) parts that were purchased in a set of multiple parts and the set is not complete and in resalable condition;

(b) parts that have a limited storage life or are otherwise subject to deterioration, including, but not limited to, rubber items, gaskets and batteries;

(c) parts that are in broken or damaged packages;

(d) parts that are not resalable without new packaging or reconditioning due to their condition;

(e) parts identified by the supplier as non-returnable at the time of the dealer's order;

§ 4077a PROHIBITED ACTS

Delete the strike through.

Add the words bold-faced and italicized.

(a) A supplier shall not coerce or attempt to coerce a dealer to accept delivery of inventory that the dealer has not voluntarily ordered, except nventory that is:

(1) necessary to maintain inventory *in a quantity, and of the model range,* generally sold in the dealer's area of responsibility; or

c)(1) A supplier shall not prevent, coerce, or attempt to coerce a dealer from investing in, or entering into an agreement for the sale of, a competing product line or make of inventory.

(2) A supplier shall not require, coerce, or attempt to coerce a dealer to provide a separate facility or personnel for a competing product line or make of inventory.

However, for major competing lines, it is not a violation of this section, with one (1) year notice, to require separate financial statements and, with three (3) years notice, require separate sales staff and facilities.

~~(3) Subdivisions (1) (2) of this subsection do not apply unless a dealer:~~
~~— (A) maintains a reasonable line of credit for each product line or make of inventory;~~
~~— (B) maintains the principal management of the dealer; and~~
~~— (C) remains in substantial compliance with the supplier's reasonable facility requirements, which shall not include a requirement to provide a separate facility or personnel for a competing product line or make of inventory.~~

(e) A supplier shall not change the area of responsibility specified in a dealer agreement without good ~~cause~~ *reason*, which for purposes of this subsection includes changes in the dealer's ~~vehicle or warranty registration pattern demographics, and geographic barriers,~~ *market penetration within the assigned area of responsibility and changes in the inventory warranty registration pattern surrounding the dealer's area of responsibility.*

§ 4078. WARRANTY OBLIGATIONS

Delete the strike through.

Add the words bold-faced and italicized.

(g) A supplier shall not:

(2) impose a surcharge or fee, ~~or otherwise increase the prices or charges to~~ *on a dealer*, in order to recover the additional costs the supplier incurs from complying with the provisions of this section.

Sec. 3. APPLICABILITY TO EXISTING DEALER AGREEMENTS

Delete the strike through.

Add the words bold-faced and italicized.

Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of this act shall apply on July 1, 2017, *except Section 4077a as amended, which shall only apply to a dealer agreement executed on or after July 1, 2017.*