

Association of Equipment Manufacturers (AEM)
Proposed Amendments to S. 224, Equipment Dealers and Suppliers
House Commerce and Economic Development Committee
April 18, 2016

One

§ 4072. TERMINATION OF DEALER AGREEMENTS

(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~~ **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.*

Two

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 **not less than 90 days prior to the effective date of the termination.**

Three

(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;

Four

(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.

(6) IF A DEALER, prior to the end of the 24 month notice of termination period, MEETS THE REASONABLE MARKETING OR MARKET PENETRATION REQUIREMENTS SPECIFIED IN THE NOTICE WITHIN THE 90-DAY PERIOD, THE DEALER AGREEMENT ~~DOES~~ SHALL NOT TERMINATE PURSUANT TO THE FINAL NOTICE OF TERMINATION.

FIVE

(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 that is substantially related to the qualifications, function or duties of the dealer.***

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Six

§ 4075. REPURCHASE TERMS

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

- (1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration, including gaskets or batteries;*
- (2) a single repair part normally priced and sold in a set of two or more items;*
- (3) a repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;*
- (4) any inventory that the dealer elects to retain;*
- (5) any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier; or*
- (6) any inventory that was acquired by the dealer from a source other than the supplier unless the source was approved by the supplier.*

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

Seven

§ 4077a PROHIBITED ACTS

(e) A supplier shall not change the area of responsibility specified in a dealer agreement without good CAUSE ~~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.*

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