



TESTIMONY IN OPPOSITION TO SB 224

March 31, 2016

Phillip Lighty
Senior Legislative Analyst
Specialty Vehicle Institute of America

The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers and distributors of all-terrain vehicles (ATVs) in the U.S.

SVIA is opposed to SB 224, which would regulate ATV dealer agreements under Vermont's "Machinery Dealerships" law. Passage of SB 224 would impose burdensome regulation on ATV manufacturers with the end result being an increase in the costs of doing business in Vermont and the consequent increase of the cost of ATVs to Vermont consumers. We urge you to amend the bill to not include ATVs in the definition of "inventory," thereby excluding ATV dealer agreements from the bill's requirements.

The legislature should not dictate contract terms in favor of either manufacturers or dealers. Further government intervention into dealer agreements creates an increasingly complicated and difficult business environment. Very few businesses in the free enterprise system enjoy the protections that would be provided by this legislation. Additional manufacturer requirements would further insulate dealers from the business risks common to other businesses, make them less responsive to consumers' needs and essentially require the manufacturer to become an insurance company for dealers who make decisions as independent businesses that may have nothing whatsoever to do with a particular manufacturer's brand.

This bill would incorporate ATV dealer agreements into the Machinery Dealerships law, which is designed for suppliers and dealers of various types of equipment, such as farm and industrial equipment. We do not believe that it is appropriate for ATV manufacturers and dealers to be regulated as equipment dealers and suppliers. Dealer agreement provisions should apply to powersports dealer agreements only if appropriate and constructive. New legislation specifically regulating the ATV industry, without any demonstrated need, is not merited.

The overriding difference between ATVs and the other types of equipment is the system through which they are sold. ATVs are not primarily sold at retail outlets that deal in the types of equipment included under this law. On average, ATVs are used 75% of the time for recreation and only 25% of the time for a combination of work or chores. ATVing is a family recreational activity, far more so than it is a utility application. As a result there is a divergence between the need for protection of dealers of ATVs and those of equipment. The dollar amount of commitment for ATV products is far less than the dollar commitment of the average equipment dealer. Thus the exposure to the dealer is inconsequential as compared to the farm equipment dealer, where one tractor can cost hundreds of thousands of dollars.

Following talks between bill proponents and opponents, as requested by Chairman Mullin of the Senate Economic Development, Housing and General Affairs Committee, the Northeastern Equipment Dealer's Association (NEDA) proposed an amendment package that, among other changes, amended the legislative finding section to specifically reference the ATV and snowmobile industries, including references to their economic impacts and how SB 224 will "ensure that Vermont consumers who want to purchase snowmobiles and all-terrain vehicles have access to a competitive marketplace and a strong network of dealers, suppliers and repair facilities in the State." The amendment package also adds ATV and snowmobile supplier references to the paragraph relating to "unequal bargaining power" which previously only referenced equipment suppliers. SVIA finds it problematic that legislative findings relative to ATVs (and snowmobiles) are included as amendments. Logic dictates that such findings would precede any actions to regulate an industry and would therefore be included in an introduced version of a bill. Likewise this action is troublesome as NEDA has moved the goal posts in response to our position to not include ATV dealer agreements in this bill which pertains to the equipment industry.

We also find hollow the suggestion that SB 224 will work to “ensure that Vermont consumers who want to purchase snowmobiles and all-terrain vehicles have access to a competitive marketplace.” Mandating business regulations doesn’t provide for any consumer assurance relative to a competitive marketplace and stating that such will do anything to improve competition runs counter to economic theory. The definition of a competitive market does not presuppose legislative action providing for regulations to ensure anything for consumers. Absence any market failure, there is no need for regulation at all, as such isn’t a suitable replacement for market competition. Franchise regulations are burdensome and do nothing to bolster competition or benefit consumers. In fact, such regulations accomplish the opposite.

A similar perspective was shared by several academics in the field of economics at a January 19, 2016 Federal Trade Commission (FTC) workshop that sought to “explore competition and related issues in the context of state regulation of motor vehicle distribution and how these regulations affect businesses and consumers.” As you know, the FTC is charged with a mission “to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.” Given the FTC’s concern with state franchise laws, it held this workshop and invited participants representing both franchisor and dealer interests as well as several respected academics from the field of economics.

The consensus was clear among all of the economics professors that state franchise regulation is detrimental, does not serve any consumer interest and represents special interest legislation serving only the dealers’ interests, likely at the expense of consumers. In the absence of any significant difference in the motor vehicle distribution market from other consumer markets, these professors all questioned what was the relevant market failure that is unique to the motor vehicle distribution market that necessitates regulation of any sort to correct. Not finding any, they concluded that state interference in these contracts was not deemed as a suitable replacement for market competition and that the market should be allowed to drive the contractual terms of franchise agreements. Most precisely, cited work by Professor Francine Lafontaine, University of Michigan, and a former Director for the Bureau of Economics at the FTC, concluded that the net economic effect of franchise laws was the extraction of rent from manufacturers that is in turn redistributed to dealers.

Many ATV manufacturers are on-highway motorcycle manufacturers as well. On-highway motorcycles fall under the umbrella of the motor vehicle franchise laws, and creating a different structure for ATVs will likely lead to conflicts between the two statutory frameworks.

Trying to comply with the myriad laws regulating business is burdensome enough already. Subjecting ATV suppliers/manufacturers and dealers to the Machinery Dealerships law would do little to enhance the business climate. Including ATVs in an inappropriate law will only serve to increase the cost of doing business and therefore increase the cost of ATVs to the consumer.

Thank you for your consideration of our comments on this very important issue.