

Northeast Equipment Dealers Association (NEDA)
Section-By-Section Summary of S.224,
An act relating to warranty obligations of equipment dealers and suppliers
With List of Some Other States with Similar Provisions
January 2016

The following is a summary of S.224, An act relating to warranty obligations of equipment dealers and suppliers, which proposes amendments to the Machinery Dealerships Act, 9 V.S.A. Chapter 107. **This summary lists some of the other states that have enacted into law similar but not identical provisions to the ones proposed in S.224. There are likely other states that have some of these provisions. These are the states we have identified to date.**

Sec. 1. Legislative findings

- Adds legislative findings to recognize that farms and forestry operations in Vermont need a robust infrastructure of dealers, manufacturers and repair facilities to support their economic activities. The findings also recognize the superior bargaining power of the equipment and ATV manufacturers and to make clear the purpose of the statute is to prevent unfair or arbitrary treatment of the independent dealer network by manufacturers. The findings state that the General Assembly intends that the statute be liberally construed to achieve its purpose.

Sec. 2. Amends Name of Chapter

- Changes the name of Chapter 107 in Title 9 Vermont Statutes Annotated from “Machinery Dealerships” to “Equipment and Machinery Dealerships”

Sec. 3. Amends 9 V.S.A. § 4071, Definitions

- Amends the definition of “dealer” to include construction equipment and all-terrain vehicles (ATVs) as defined in 23 V.S.A. § 3801(1). NEDA is proposing S.224 be amended to also cover snowmobiles.
Other States: 25 states use word “construction” equipment: California, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wyoming
Other States: Cover ATVs – Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Mississippi, Montana, New Hampshire, New York, Oklahoma, South Dakota, Wyoming
Other States: Cover Snowmobiles – Maine, Maryland, Massachusetts, Montana, New Hampshire, New York, South Dakota, Wyoming
- Amends the definition of “single line dealer” to mean a person engaged in the retail sale and service of industrial, forestry and construction equipment, who purchased 75 percent or more of its total new product inventory from a single supplier and has a total annual

average sales volume for the previous three years in excess of \$100 million (up from \$15 million in existing law) for the entire territory for which the dealer is responsible. Single line dealers are exempt from the definition of “dealer” and are not afforded the dealer protections under the Act.

Other States: Both Maine and New Hampshire laws were recently amended in a similar manor increasing the annual sales volume to \$100 Million. The current \$15 million limit could potentially exclude a number of Vermont Dealers.

- Amends the definition of “inventory” to include construction equipment and ATVs. (NEDA proposes to the committee to include snowmobiles too)
Other States: See Sec. 3 above for states that have laws that cover construction equipment, ATVs or snowmobiles.
- Adds that the term “repair parts” includes bundled parts, which means several related parts, components, or accessories that the supplier requires the dealer to purchase in a single transaction.
Other States: Similar language comes from draft legislation pending in Pennsylvania. This concept is included in other auto dealer laws that cover motor vehicle sales.

Sec 4. Amends 9 V.S.A. § 4072, Notice of Termination of Dealer Agreements

- Adds that any requirements that a manufacturer imposes upon an equipment dealer in a dealer agreement to terminate the agreement for cause must be “reasonable” and “economically viable”
Other States: The phrase “Essential and reasonable requirements” or “reasonable requirements” are used often including in Alabama, Arizona, California, Colorado, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska
- Adds a requirement that failure to meet market share requirements does not alone constitute cause for a manufacturer to terminate a dealer agreement
Other States: New Hampshire (there are likely others)
- Removes the ability of a manufacturer to immediately terminate a dealer agreement if the manager of the dealership is involuntarily terminated

Sec. 5. Amends 9 V.S.A. § 4074, Repurchase Terms

- Adds construction equipment (and NEDA amendment proposes to add ATVs and snowmobiles) to the existing obligations of the manufacturer to repurchase the dealer’s inventory in the event that the dealer agreement is being terminated by either party under Chapter 107
- Requires that the manufacturer pay the dealer 100 percent (rather than 90 percent) of the current net prices of all new and undamaged superseded repair parts when a dealer agreement is terminated

- Requires that the manufacturer pay the dealer 95 percent (rather than 85) percent of the latest available published net price of all new and undamaged noncurrent repair parts when a dealer agreement is terminated
Other States: Alabama, Florida, Georgia, Kansas, Minnesota, Nevada, Oregon, include provisions either 100 percent of net price for “current” or 95 percent for undamaged superseded/non-current parts. New Hampshire provides for 100% of new current parts. Many states, including NY, also require a manufacturer to provide a process/procedure for annual parts return based on qualifying criteria such as a percentage of annual sales volume or another criteria and exclude obsolete parts from repurchase upon termination. Identical means an interchangeable part previously package using/displaying an “old” identification number) repair part. Non-current means a part not found in the current “price book”.

Sec. 6. Amends 9 V.S.A. § 4077a, Prohibited Acts

- Adds that a manufacturer shall not *attempt* to coerce a dealer to accept delivery of any equipment, parts, or accessories, which the dealer did not voluntarily order (currently Vermont law is “coerce”)
- States that a manufacturer shall not prevent, coerce or attempt to coerce a dealer from investing in or holding a dealership contract for the sale of competing lines or makes of equipment or require the dealer to provide separate facilities for competing lines or makes of equipment.
Other States: The majority of states with a Fair dealer law (24 states of 45) include language addressing the sale of competitive lines by a dealer. Those states are: Alabama, Arkansas, California, Florida, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, Virginia, and Wyoming

Of the twenty four (24) state laws 12 (Arkansas, California, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, New York, North Carolina, Oklahoma, Vermont and Virginia) use language similar to “Coerce a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.” Four add “attempt to coerce” they are Maine, Arkansas, Missouri and North Dakota.

Eleven (11) states add additional language addressing manufacturer requirements for separate facilities of those seven (7) forbid a manufacturer from requiring separate facilities for competing lines (Maine, New Hampshire, Alabama, Florida, Wyoming, South Dakota and California). Four (4) include language specifically enabling a manufacture to require dealers carrying a competing line make certain accommodations such as separate facilities, staff, financials or a reasonable line of credit for each line-make (South Carolina, Oklahoma, Texas, New York, Wyoming).

- Prohibits a manufacturer from modifying a dealer’s assigned area of responsibility without the dealer’s written consent

Other States: The following thirty (30) states include language limiting a manufacturer's ability to change a dealer's competitive circumstances: New Hampshire, Montana, Oregon, Alabama, Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington, Wisconsin and Wyoming particularly if the change is due to a condition outside of the dealers control.

- In instances where a manufacturer reimbursed a dealer for equipment, repair parts or labor to avoid violating the prohibited acts section of the law, adds a requirement that the manufacturer cannot then recover its costs of that reimbursement from the dealer
Other States: Similar provision added to Maine dealer law in 2013 as a result of one manufacturer adding a surcharge to the cost of "selected" whole goods to off-set warranty expense. Provision is also included in the New Hampshire dealer law and is commonly found in existing Auto Dealer law.

Sec. 7. Amends 9 V.S.A. § 4078, Warranty Obligations

- Current law requires that if a dealer and a manufacturer enter into an agreement whereby the dealer will do warranty work for Vermont consumers, the manufacturer shall pay warranty claims within 30 days after receipt and approval. If a manufacturer does not disapprove a warranty claim in writing within 30 days of receipt it shall be deemed approved.
- Adds a requirement that the manufacturer shall: specify in writing to each of its dealers in Vermont the reasonable obligations of the dealer for performing warranty services on its products; compensate the dealer for warranty services; provide the dealer with a schedule of compensation to be paid to the dealer for parts, work (including diagnostic work) and service, as well as the time allowance for performing the work and service.
- Adds a requirement that each manufacturer must compensate dealers for parts used to fulfill warranty work and make repairs resulting from manufacturer recalls at a rate not less than the rate the dealer charges to its retail customers for like parts and nonwarranty work.
- Specifies that time allowances for diagnostic work and performance of warranty work shall be "reasonable and adequate." The hourly rate paid to a dealer shall not be less than the rate charged by the dealer to customers for nonwarranty service and repairs.

Other states: The vast majority of states require labor to be paid to the dealer for a reasonable and customary amount of time and in an amount equal to the dealer's posted rate (retail/customer). Roughly half of the State laws also detail Compensation for parts used (23 of 47), laws addressing compensation for parts most often state payment equal to dealer cost plus a percentage margin of 15-30%. A significant number of states include freight in calculation of dealer's net cost (part), and at least two states require compensation for parts to be equal to the dealer's retail price (Maine and New Hampshire).

- Requires manufactures to provide written notices of factory recalls to dealers and the expected date by which the necessary parts and equipment will be available to dealers for

the correction of defects and requires manufacturers to compensate dealers for repairs required by a recall.

Other states: Parts availability (particularly those related to recall or product improvement campaigns) has been an issue for all dealers regardless of market segment.

Sec. 8. Effective Date

- Sets a July 1, 2016 effective date for the Act.

Prepared by the Northeast Equipment Dealers Association, January 2016

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