

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing & General Affairs to
3 which was referred Senate Bill No. 224 entitled “An act relating to warranty
4 obligations of equipment dealers and suppliers” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking all
6 after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS AND INTENT

8 (a) The General Assembly finds:

9 (1) Vermont has long relied on economic activity relating to working
10 farms and forestland in the State. These working lands, and the people who
11 work the land, are part of the State’s cultural and ecological heritage, and
12 Vermont has made major policy and budget commitments in recent years in
13 support of working lands enterprises. Farm and forest enterprises need a
14 robust system of infrastructure to support their economic and ecological
15 activities, and that infrastructure requires a strong economic base consisting of
16 dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm
17 and forest working land infrastructure are in the best interest of the State.

18 (2) Snowmobiles and all-terrain vehicles have a significant economic
19 impact in the State, including the distribution and sale of these vehicles, use by
20 residents, ski areas, and emergency responders, as well as tourists that come to
21 enjoy riding snowmobiles and all-terrain vehicles in Vermont. It is in the best

1 interest of the State to ensure that Vermont consumers who want to purchase
2 snowmobiles and all-terrain vehicles have access to a competitive marketplace
3 and a strong network of dealers, suppliers, and repair facilities in the State.

4 (3) The distribution and sale of equipment, snowmobiles, and all-terrain
5 vehicles within this State vitally affects the general economy of the State and
6 the public interest and the public welfare, and in order to promote the public
7 interest and the public welfare, and in the exercise of its police power, it is
8 necessary to regulate equipment, snowmobile, and all-terrain vehicle suppliers
9 and their representatives, and to regulate dealer agreements issued by suppliers
10 who are doing business in this State in order to prevent frauds, impositions,
11 and other abuses upon its citizens and to protect and preserve the investments
12 and properties of the citizens of this State.

13 (4) There continues to exist an inequality of bargaining power between
14 equipment, snowmobile, and all-terrain vehicle suppliers and the independent
15 dealer network. This inequality of bargaining power enables equipment,
16 snowmobile, and all-terrain vehicle suppliers to compel dealers to execute
17 dealer agreements, related contracts, and addenda that contain terms and
18 conditions that would not routinely be agreed to by the equipment,
19 snowmobile, and all-terrain vehicle dealer if this inequality did not exist. It
20 therefore is in the public interest to enact legislation to prevent unfair or
21 arbitrary treatment of equipment, snowmobile, and all-terrain vehicle dealers

1 by equipment, snowmobile, and all-terrain vehicle suppliers. It is also in the
2 public interest that Vermont consumers, municipalities, businesses, and others
3 that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont
4 have access to a robust independent dealer network to obtain competitive
5 prices when purchasing these items and to obtain warranty, recall, or other
6 repair work.

7 (b) It is the intent of the General Assembly that this act be liberally
8 construed in order to achieve its purposes.

9 Sec. 2. 9 V.S.A. chapter 107 is amended to read:

10 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

11 § 4071. DEFINITIONS

12 As used in this chapter:

13 (1) “Current net price” means the price listed in the supplier’s price list
14 or ~~catalog~~ catalogue in effect at the time the dealer agreement is terminated,
15 less any applicable discounts allowed.

16 (2)(A) “Dealer” means a person, ~~corporation, or partnership~~ primarily
17 engaged in the business of retail sales of ~~farm and utility tractors, farm~~
18 ~~implements, farm machinery, forestry equipment, industrial equipment, utility~~
19 ~~equipment, yard and garden equipment, attachments, accessories, and repair~~
20 ~~parts~~ inventory. ~~Provided, however, “dealer” shall~~

1 (B) “Dealer” does not include a “single line dealer” primarily
2 ~~engaged in the retail sale and service of industrial, forestry, and construction~~
3 ~~equipment. “Single line dealer” means a person, partnership or corporation~~
4 who:

5 (A) has purchased 75 percent or more of ~~the dealer’s total new~~
6 ~~product~~ his or her new inventory from a single supplier; and

7 (B) has a total annual average sales volume for the previous three
8 years in excess of ~~\$15~~ \$100 million for the entire territory for which the dealer
9 is responsible.

10 (3) “Dealer agreement” means a written or oral ~~contract or~~ agreement
11 between a dealer and a ~~wholesaler, manufacturer, or distributor~~ supplier by
12 which the supplier gives the dealer ~~is granted~~ the right to sell or distribute
13 goods or services or to use a trade name, trademark, service mark, logotype, or
14 advertising or other commercial symbol.

15 ~~(4) “Inventory” means farm, utility, forestry, or industrial equipment,~~
16 ~~implements, machinery, yard and garden equipment, attachments, or repair~~
17 ~~parts. These terms do not include heavy construction equipment.~~

18 (4)(A) “Inventory” means:

19 (i) farm, utility, forestry, yard and garden, or industrial:

20 (I) tractors;

21 (II) equipment;

1 (III) implements;

2 (IV) machinery;

3 (V) attachments;

4 (VI) accessories; and

5 (VII) repair parts;

6 (ii) snowmobiles, as defined in 23 V.S.A. § 3201(5); and

7 (iii) all-terrain vehicles, as defined in 23 V.S.A. § 3801(1).

8 (B) "Inventory" does not include heavy construction equipment.

9 (5) "Net cost" means the price the dealer paid the supplier for the
10 inventory, less all applicable discounts allowed, plus the amount the dealer
11 paid for freight costs from the supplier's location to the dealer's location. In the
12 event of termination of a dealer agreement by the supplier, "net cost" shall
13 include the reasonable cost of assembly or disassembly performed by a dealer.

14 (6) "Supplier" means a wholesaler, manufacturer, or distributor of
15 inventory ~~as defined in this chapter~~ who enters into a dealer agreement with a
16 dealer.

17 (7) "Termination" of a dealer agreement means the cancellation,
18 nonrenewal, or noncontinuance of the agreement.

19 ~~§ 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS~~

20 ~~(a) Notwithstanding any agreement to the contrary, prior to the termination~~
21 ~~of a dealer agreement, a supplier shall notify the dealer of the termination not~~

1 ~~less than 120 days prior to the effective date of the termination. No supplier~~
2 ~~may terminate, cancel, or fail to renew a dealership agreement without cause.~~
3 ~~"Cause" means failure by an equipment dealer to comply with the requirements~~
4 ~~imposed upon the equipment dealer by the dealer agreement, provided the~~
5 ~~requirements are not substantially different from those requirements imposed~~
6 ~~upon other similarly situated equipment dealers in this State.~~

7 (b) ~~The supplier may immediately terminate the agreement at any time upon~~
8 ~~the occurrence of any of the following events which in addition to the above~~
9 ~~definition of cause, are also cause for termination, cancellation, or failure to~~
10 ~~renew a dealership agreement:~~

11 (1) ~~the filing of a petition for bankruptcy or for receivership either by or~~
12 ~~against the dealer;~~

13 (2) ~~the making by the dealer of an intentional and material~~
14 ~~misrepresentation as to the dealer's financial status;~~

15 (3) ~~any default by the dealer under a chattel mortgage or other security~~
16 ~~agreement between the dealer and the supplier;~~

17 (4) ~~the commencement of voluntary or involuntary dissolution or~~
18 ~~liquidation of the dealer if the dealer is a partnership or corporation;~~

19 (5) ~~a change or additions in location of the dealer's place of business as~~
20 ~~provided in the agreement without the prior written approval of the supplier; or~~

1 ~~(6) withdrawal of an individual proprietor, partner, major shareholder,~~
2 ~~the involuntary termination of the manager of the dealership, or a substantial~~
3 ~~reduction in the interest of a partner or major shareholder without the prior~~
4 ~~written consent of the supplier.~~

5 ~~(e) Unless there is an agreement to the contrary, a dealer who intends to~~
6 ~~terminate a dealer agreement with a supplier shall notify the supplier of that~~
7 ~~intent not less than 120 days prior to the effective date of termination.~~

8 ~~(d) Notification required by this section shall be in writing and shall be~~
9 ~~made by certified mail or by personal delivery and shall contain:~~

10 ~~(1) a statement of intention to terminate the dealer agreement;~~

11 ~~(2) a statement of the reasons for the termination; and~~

12 ~~(3) the date on which the termination shall be effective.~~

13 § 4072. TERMINATION OF DEALER AGREEMENT

14 (a) Requirements for notice.

15 (1) A person shall provide a notice required in this section by certified
16 mail or by personal delivery.

17 (2) A notice shall be in writing and shall include:

18 (A) a statement of intent to terminate the dealer agreement;

19 (B) a statement of the reasons for the termination, including specific
20 reference to one or more requirements of the dealer agreement that serve as the
21 basis for termination, if applicable; and

1 (C) the effective date of termination.

2 (b) Termination by a supplier for cause.

3 (1) In this subsection “cause” means the failure to meet one or more
4 requirements of a dealer agreement, provided that the requirement is
5 reasonable, justifiable, and substantially the same as requirements imposed on
6 similarly situated dealers in this State.

7 (2) A supplier may not terminate a dealer agreement except for cause.

8 (3) To terminate a dealer agreement for cause, a supplier shall deliver a
9 notice of termination to the dealer at least 120 dates before the effective date of
10 termination.

11 (4) A dealer has 60 days from the date it receives a notice of termination
12 to meet the requirements of the dealer agreement specified in the notice.

13 (5) If a dealer meets the requirements of the dealer agreement specified
14 in the notice within the 60-day period, the dealer agreement does not terminate
15 pursuant to the notice of termination.

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

18 (1) Notwithstanding subsection (a) of this section, a supplier may not
19 terminate a dealer agreement for failure to meet reasonable marketing or
20 market penetration requirements except as provided in this subsection.

1 (2) A supplier shall deliver an initial notice of termination to the dealer
2 at least two years before the effective date of termination.

3 (3) After providing an initial notice, the supplier shall work with the
4 dealer in good faith to meet the reasonable marketing or market penetration
5 requirements specified in the notice, including reasonable efforts to provide the
6 dealer with adequate inventory and competitive marketing programs.

7 (4) If the dealer fails to meet reasonable marketing or market penetration
8 requirements specified in the notice by the end of the two-year period, the
9 supplier may terminate the dealer agreement by providing a final notice of
10 termination.

11 (5) A dealer has 90 days from the date it receives a final notice of
12 termination to meet the reasonable marketing or market penetration
13 requirements specified in the notice.

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

17 (d) Termination by a supplier upon a specified event. A supplier may
18 terminate a dealer agreement if one of the following events occurs:

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

1 title may examine any books or records of the dealer to verify the eligibility of
2 any item for repurchase.

3 (2) Except as otherwise provided in this chapter, the supplier shall
4 repurchase from the dealer the following items that the dealer previously
5 purchased from the supplier, or other qualified vendor approved by the
6 supplier, that are in the possession of the dealer on the date of termination of
7 the dealer agreement;

8 (A) ~~all-inventory; previously purchased from the supplier in~~
9 ~~possession of the dealer on the date of termination of the dealer agreement and~~

10 (B) required signage, special tools, books, manuals, supplies, data
11 processing equipment, and software ~~previously purchased from the supplier or~~
12 ~~other qualified vendor approved by the supplier in the possession of the dealer~~
13 ~~on the date of termination of the dealer agreement.~~

14 (b) The supplier shall pay the dealer:

15 (1) 100 percent of the net cost of all new and undamaged and complete
16 ~~farm and utility tractors, utility equipment, forestry equipment, industrial~~
17 ~~equipment, farm implements, farm machinery, yard and garden equipment,~~
18 ~~attachments, and accessories~~ inventory, other than repair parts, purchased from
19 the supplier within the 30-month period preceding the date of termination, less
20 a reasonable allowance for deterioration attributable to weather conditions at
21 the dealer's location.

1 (2) 90 percent of the current net prices of all new and undamaged repair
2 parts.

3 (3) 85 percent of the current net prices of all new and undamaged
4 superseded repair parts.

5 (4) 85 percent of the latest available published net price of all new and
6 undamaged noncurrent repair parts.

7 (5) Either the fair market value, or assume the lease responsibilities of
8 any specific data processing hardware that the supplier required the dealer to
9 purchase to satisfy the reasonable requirements of the dealer agreement,
10 including computer systems equipment and software required and approved by
11 the supplier to communicate with the supplier.

12 (6) Repurchase at 75 percent of the net cost of specialized repair tools,
13 signage, books and supplies previously purchased, pursuant to requirements of
14 the supplier and held by the dealer on the date of termination. Specialized
15 repair tools must be unique to the supplier's product line and must be complete
16 and in usable condition.

17 (7) Repurchase at average as-is value shown in current industry guides,
18 dealer-owned rental fleet financed by the supplier or its finance subsidiary,
19 provided the equipment was purchased from the supplier within 30 months of
20 the date of termination.

1 (c) The party that initiates the termination of the dealer agreement shall pay
2 the cost of the return, handling, packing, and loading of the inventory. If the
3 termination is initiated by the supplier, the supplier shall reimburse the dealer
4 five percent of the net parts return credited to the dealer as compensation for
5 picking, handling, packing, and shipping the parts returned to the supplier.

6 (d) Payment to the dealer required under this section shall be made by the
7 supplier not later than 45 days after receipt of the inventory by the supplier. A
8 penalty shall be assessed in the amount of daily interest at the current New
9 York prime rate plus three percent of any outstanding balance over the
10 required 45 days. The supplier shall be entitled to apply any payment required
11 under this section to be made to the dealer as a setoff against any amount owed
12 by the dealer to the supplier.

13 * * *

14 ~~§ 4077A. PROHIBITED ACTS~~

15 ~~No supplier shall:~~

16 ~~(1) coerce any dealer to accept delivery of any equipment, parts, or~~
17 ~~accessories therefor, which such dealer has not voluntarily ordered, except that~~
18 ~~a supplier may require a dealer to accept delivery of equipment, parts or~~
19 ~~accessories that are necessary to maintain equipment generally sold in the~~
20 ~~dealer's area of responsibility, and a supplier may require a dealer to accept~~

1 ~~delivery of safety related equipment, parts, or accessories pertinent to~~
2 ~~equipment generally sold in the dealer's area of responsibility;~~

3 ~~(2) condition the sale of any equipment on a requirement that the dealer~~
4 ~~also purchase any other goods or services, but nothing contained in this chapter~~
5 ~~shall prevent the supplier from requiring the dealer to purchase all parts~~
6 ~~reasonably necessary to maintain the quality of operation in the field of any~~
7 ~~equipment used in the trade area;~~

8 ~~(3) coerce any dealer into a refusal to purchase the equipment~~
9 ~~manufactured by another supplier; or~~

10 ~~(4) discriminate in the prices charged for equipment of like grade and~~
11 ~~quality sold by the supplier to similarly situated dealers, but nothing contained~~
12 ~~in this chapter shall prevent differentials which make only due allowance for a~~
13 ~~difference in the cost of manufacture, sale, or delivery resulting from the~~
14 ~~differing methods or quantities in which such equipment is sold or delivered by~~
15 ~~the supplier.~~

16 § 4077A. PROHIBITED ACTS

17 (a) A supplier may not coerce or attempt to coerce a dealer to accept
18 delivery of inventory that dealer has not voluntarily ordered, except inventory
19 that is:

20 (1) necessary to maintain inventory generally sold in the dealer's
21 relevant market area; or

1 (2) safety-related and pertinent to inventory generally sold in the dealer's
2 relevant market area.

3 (b) A supplier may not condition the sale of inventory on a requirement
4 that the dealer also purchase any other goods or services, provided that a
5 supplier may require a dealer to purchase parts reasonably necessary to
6 maintain inventory used in dealer's relevant market area.

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

10 (2) A supplier may not require a dealer to provide a separate facility or
11 personnel for a competing product line or make of inventory.

12 (3) Subdivisions (1)–(2) of this subsection do not apply unless a dealer:

13 (A) maintains a reasonable line of credit for each product line or
14 make of inventory;

15 (B) maintains the principal management of the dealer; and

16 (C) remains in substantial compliance with the supplier's reasonable
17 facility requirements, which for purposes of this subsection does not include a
18 requirement to provide a separate facility or personnel for a competing product
19 line or make of inventory.

20 (d) A supplier may not discriminate in the prices it charges for inventory of
21 like grade and quality it sells to similarly situated dealers, provided that a

1 supplier may use differentials that allow for a difference in the cost of
2 manufacture, sale, or delivery resulting from the differing methods or
3 quantities in which the supplier sells or delivers the **inventory**.

4 (e) A supplier may not change the relevant market area specified in a dealer
5 agreement without good cause, which for purposes of this subsection includes
6 changes in the dealer’s vehicle or warranty registration pattern, demographics,
7 and geographic barriers.

8 § 4078. WARRANTY OBLIGATIONS

9 (a) A supplier shall:

10 (1) specify in writing a dealer’s obligation to perform warranty service
11 on the supplier’s inventory;

12 (2) provide a dealer a schedule of compensation for warranty service,
13 parts, and labor, including the time allowance for the performance of warranty
14 service and labor; and

15 (3) compensate a dealer pursuant to the schedule of compensation for
16 the warranty service the supplier requires it to perform.

17 [is there a difference between “service” “labor” and “repair?” – are these
18 discrete functions that merit discrete terminology, or are we using different
19 words to refer to the same activity? If discrete, are we using the proper term in
20 each instance? Should we be using all three in each instance? Should it
21 always be modified by “warranty”]

1 (b) A schedule of compensation shall include reasonable compensation for
2 diagnostic work, as well as for warranty service, parts, and labor.

3 (c) Time allowances for the diagnosis and performance of warranty service
4 shall be reasonable and adequate for the work to be performed by a dealer that
5 is equipped to complete the requirements of the warranty service. [does this
6 mean that the allowance must be set at a rate more or less pegged to the
7 average time it would take a dealer with all the right equipment to do the job?]

8 (d) The hourly rate paid to a dealer shall not be less than the rate the dealer
9 charges to customers for non-warranty service and repairs.

10 (e) A supplier shall compensate a dealer for parts used to fulfill warranty
11 and recall obligations of warranty service and repair at a rate not less than the
12 price the dealer actually paid the supplier for the parts plus 20 percent.

13 (f)(1) Whenever a supplier and a dealer enter into an agreement providing
14 consumer warranties, the supplier shall pay any warranty claim made for
15 warranty parts and service within 30 days after its receipt and approval.

16 (2) The supplier shall approve or disapprove a warranty claim within 30
17 days after its receipt.

18 (3) If a claim is not specifically disapproved in writing within 30 days
19 after its receipt, it shall be deemed to be approved and payment shall be made
20 by the supplier within 30 days after its receipt.

21 (g) A supplier violates this section if it:

- 1 (1) fails to perform its warranty obligations;
2 (2) fails to include in written notices of factory recalls to machinery
3 owners and dealers the expected date by which necessary parts and equipment
4 will be available to dealers for the correction of such defects; or
5 (3) fails to compensate a dealer for repairs required by a recall.

6 (h) A supplier may not:

- 7 (1) impose an unreasonable requirement in the process a dealer must
8 follow to file a warranty claim; or
9 (2) impose a surcharge or fee, or otherwise increase the prices or
10 charges to a dealer, in order to recover the additional costs the supplier incurs
11 from complying with the provisions of this section.

12

13 § 4079. REMEDIES

14 (a) A person damaged as a result of a violation of this chapter may bring an
15 action against the violator in a Vermont court of competent jurisdiction for
16 damages, together with the actual costs of the action, including reasonable
17 attorney's fees, injunctive relief against unlawful termination, ~~cancellation,~~
18 ~~nonrenewal,~~ or substantial change of competitive circumstances, and such
19 other relief as the Court deems appropriate.

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FOR THE COMMITTEE