

AEM Response to VT S 224 - February 23, 2016

AEM proposes the following as an amendment to S 224: **Strike everything after the enacting clause and insert a new Findings clause, and:**

- 1. a revised Repurchase Terms Section;**
- 2. a revised Warranty Section (very close to what NEDA has proposed and what AEM initially proposed) and**
- 3. a revised Competitive Lines Prohibited Acts section (based on New York law plus conforming dates).**

Over the last several weeks of AEM discussions regarding Vermont, AEM has developed and approved the following suggestions, while striking out other areas that we could not come close to obtaining consensus with NEDA.

The following AEM response specifically addresses the purpose of S. 224 (and other issues), namely, “to clarify the warranty obligations of manufacturers, suppliers, and dealers with respect to equipment and machinery dealerships.”

AEM Proposal (new Findings clause)

Findings: It is the General Assembly’s intent to have this act liberally construed in order to achieve its purpose. This act is intended to apply prospectively to all dealer agreements executed after the effective date of the act.

1. AEM Proposal

Amend § 4074, Repurchase Terms, in its entirety to read:

(a) Within 90 days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to section 4073 of this title may examine any books or records of the dealer to verify the eligibility of any item for repurchase. Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer all inventory previously purchased from the supplier in possession of the dealer on the date of termination of the dealer agreement and required signage, special tools, books, manuals, supplies, data processing equipment, and software previously purchased.

b) The supplier shall pay the dealer:

(1) one hundred percent of the net cost of all new and undamaged and complete farm and utility tractors, utility equipment, forestry equipment, industrial equipment, farm implements, farm machinery, yard and garden equipment, construction equipment, as defined in and accessories purchased from the supplier within the 30-month period preceding the date of termination, and not sold and/or previously put into regular use or service. A reasonable repurchase allowance will be made for deterioration attributable to weather conditions and wear and tear at the dealer’s location;

- (2) one hundred percent of the current net prices of all new and undamaged repair parts;
- (3) ninety-five percent of the current net prices of all new and undamaged superseded repair parts;
- (4) ninety-five percent of the latest available published net prices of all new and undamaged noncurrent repair parts;
- (5) Repurchase of repair parts does not apply to the following:
 - (a) parts that were identified as non-returnable at the time the dealer purchased the parts;
 - (b) parts that were purchased in a set of multiple parts and the set is not complete and in resalable condition;
 - (c) parts that have a limited storage life or are otherwise subject to deterioration, including, but not limited to, rubber items, gaskets and batteries;
 - (d) parts that are in broken or damaged packages;
 - (e) parts that are not resalable without new packaging or reconditioning due to their condition;
- (6) Either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the dealer to purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment and software required and approved by the supplier to communicate with the supplier.;
- (7) Repurchase at seventy-five 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. The repurchase amount for signage, books and supplies is limited to those item purchased in the five years prior the date of termination. Specialized repair tools must be unique to the diagnosis and repair of the supplier's product line. Specialized repair tools must be complete and in working condition and purchased by the dealer in the ten-year period prior to the date of termination.
- (8) Repurchase at average as-is value shown in current industry guides, dealer-owned rental fleet financed by the supplier or its finance subsidiary, provided the equipment was purchased from the supplier within 30 months of the date of termination.
 - (c) The party that initiates the termination of the dealer agreement shall pay the cost of the return, handling, packing, and loading of the inventory. If the termination is initiated by the supplier, the supplier shall reimburse the dealer 5 five percent of the net parts return credited to the dealer as compensation for picking, handling, packing, and shipping the parts returned to the supplier.
 - (d) Payment to the dealer required under this section shall be made by the supplier not later than 45 days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of daily interest at the current New York prime rate plus three percent of any outstanding balance over the required 45 days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer as a setoff against any amount owed by the dealer to the supplier.

2. AEM Proposal

Amend and restate § 4078, Warranty Obligations, in its entirety to read:

(a) Each supplier shall specify in writing to each of its dealers in this State the reasonable obligations of the dealer for warranty service on its products, shall compensate the dealer for such service required of the dealer by the supplier, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work, and service in connection with them, and the time allowance for the performance of the work and service. If the dealer does not comply with excessive obligations placed upon the dealer by the supplier pursuant to this section, the supplier is not relieved from compliance with the requirements of this chapter.

(b) A schedule of compensation shall include reasonable compensation for diagnostic work, as well as for repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty service shall be reasonable and adequate for the work to be performed by a dealer that is equipped to complete the requirements of the warranty service. 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. Each supplier shall compensate each of its dealers for parts used to fulfill warranty and recall obligations of repair and servicing at a rate not less than the rate charged by the dealer to its retail customers for like parts for nonwarranty work. current net price price plus 20%.

(c) It is a violation of this section for any supplier to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to machinery owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects, or to fail to compensate any of its dealers in this State for repairs required by a recall.

(d) Whenever a supplier and a dealer enter into an agreement providing consumer warranties, the supplier shall pay any warranty claim made for warranty parts and service within 30 days after its receipt and approval. The supplier shall approve or disapprove a warranty claim within 30 days after its receipt. If a claim is not specifically disapproved in writing within 30 days after its receipt, it shall be deemed to be approved and payment shall be made by the supplier within 30 days after its receipt.

3. AEM Proposal

Amend Section 4077a, Prohibited Acts, Subsection (3), Competitive Lines, to read:

No supplier shall....:

(3) prevent or coerce a dealer from having an investment in or hold a dealership contract for the sale of competing product lines or makes of equipment or require the dealer to provide separate facilities for competing product lines or makes of equipment; 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.