

The Honorable Kevin Mullin
Chairman
Vermont Senate Committee on Economic Development,
Housing and General Affairs

Dear Chairman Mullin:

On behalf of the Association of Equipment Manufacturers (AEM), I would like to provide additional comments on S. 224, an act relating to warranty obligations of equipment dealers and suppliers.

From large multinational to small short line manufacturers we have strong opposition to the proposed bill that will negatively affect their doing business in Vermont. As we have written and stated, the issues proposed are complex and due to the individual private contracts that currently exist between dealers and manufacturers, reaching consensus to respond is challenging.

Two areas we have complete consensus on in this proposed bill is the legislative “finding” that this legislative intrusion into the manufacturer-dealer relationship is needed to counter universal arbitrary and unfair treatment by our members. It is simply not true. The success of the manufacturer-dealer business relationship depends on shared goals and mutual responsibilities.

Secondly, rewriting existing dealership agreements by legislative action interferes with existing contracts and raises serious issues of unconstitutional impairment of those concerns. The bill must not apply to existing dealership agreements.

As I stated on Friday during my testimony before the Committee, this bill is titled and focused on warranty obligations and has ballooned into an unnecessary rewrite of a dealer contract.

Mr. Chairman, I committed to respond to you by February 24th. The AEM proposal – below and attached – would strike out everything after the enacting clause – keeping the balance of the statute unchanged -- and replace S. 224 with the revised findings section and the three major amended components: Repurchase Terms, Warranty Provisions and Competitive Lines. Below is our response and comments:

1. **Repurchase Terms:** As presented by the Northeast Equipment Dealers Association (NEDA) proposal in S 224 and in relation to Vermont’s current Code section, manufacturers would increase their repurchase terms as follows:
 - A total of 10% from 90% to 100% of the current net prices on all new and undamaged repair parts.
 - A total of 10% from 85% to 95% of the current net prices of all new and undamaged superseded repair parts.

- A total of 10% from 85% to 95% of the latest available published net prices of all new and undamaged noncurrent repair parts.
- All other major Repurchase Terms as identified in current Vermont Code would be kept in place.

AEM Corresponding Statement: This Repurchase Terms section is a major concession to NEDA in that this was originally proposed as a priority for the need for the legislation and the manufacturers have conceded to the increase in percentages for payments as requested by NEDA.

2. **Warranty Provisions:** In the current Vermont Code the only section regarding **Warranty Obligations** is as follows: “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.” This current section basically outlines the requirement to pay for warranty with appropriate timelines. The AEM proposal adds to the existing statute the following provisions that have been stated as of most importance to dealers:

- Manufacturers must provide in writing all of the obligations of the manufacturer and dealer with relationship to warranty service. A schedule of compensation shall include reasonable compensation for diagnostic testing, repair parts, service and labor. The manufacturer is required to provide Hourly Rates reimbursement as defined as “not less than the rate charged by the dealer to customers for non-warranty work”. For parts, the manufacturer is required to provide current net price plus 20%.
- Violations are outlined for manufacturers who do not perform any warranty obligations.
- The AEM proposal re-iterates the process to receive and approve warranty claims.

AEM Corresponding Statement: The Warranty Provisions have always been identified as the significant need and top priority for legislation brought forward by NEDA and in all legislative discussions. The AEM proposal specifically identifies the warranty provision process that is required of manufacturers and the various rates for reimbursement. These provisions are not found in the current Vermont Code. The AEM has conceded on all of the major Warranty provisions as identified by NEDA to include rates of re-imbursement for service, hourly rates and parts.

3. **33. Competitive Lines:** In the current Vermont Code, there is **not** currently a provision identified as a “Prohibited Act” that would not allow a manufacturer to require separate facilities, separate sales staff and separate financial records for a dealer to carry competitive

lines. There is no mention of competitive lines at all and what a manufacturer can and can't require a dealer to do (4077a(3) does state a supplier shall not coerce any dealers into a refusal to purchase the equipment manufactured by another supplier). Consequently a manufacturer can now under current Vermont law require separate facilities, separate sales staff and separate financial records for a dealer to carry competitive lines **immediately**. As identified by NEDA and in all legislative discussions, the competitive line issue has been identified as the second major area of priority. The AEM proposal would state that no supplier (manufacturer) shall 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. In brief the AEM proposal would allow a manufacturer to after a one year's notice, require a separate set of financial statements and after three years notice, separate sales staff and facilities for MAJOR competing lines. This is a very significant concession on manufacturers' part and appears to be a fair resolution to this contentious issue of allowing a major competitive line of equipment to be sold under another manufacturers' logo and in a facility that the manufacturer has spent time, money and marketing effort to drive customers to their dealer locations to purchase the equipment and services that the said manufacturer provides to the dealer.

AEM Corresponding Statement: In New York, where the NEDA is located, the New York State current law states that a manufacturer can require separate facilities, financial statements or sales staff for major competing lines provided that the dealer is given at least 36 months' notice of such requirements. The AEM proposal merely mirrors a fair competitive line provision in a neighboring state to Vermont and where NEDA is domiciled.

Thank you for your consideration.

Sincerely,

Nick Yaksich
Senior Vice President
Association of Equipment Manufacturers

Attachment