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S.224

Introduced by Senator Rodgers

Referred to Committee on Econ. Dev., Housing and General Affairs

Date: January 5, 2016

Subject: Commerce and trade; machinery dealerships; warranty obligations

Statement of purpose of bill as introduced: This bill proposes to clarify the warranty obligations of manufacturers, suppliers, and dealers with respect to equipment and machinery dealerships.

An act relating to warranty obligations of equipment dealers and suppliers

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. FINDINGS~~

~~The General Assembly finds:~~

~~(1) Vermont has long relied on economic activity relating to working farms and forestland in the State. These working lands, and the people who work the land, are part of the State's cultural and ecological heritage, and Vermont has made major policy and budget commitments in recent years in support of working lands enterprises. Farm and forest enterprises need a robust system of infrastructure to support their economic and ecological activities, and that infrastructure requires a strong economic base consisting of~~

1 ~~dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm~~  
2 and forest working land infrastructure are in the best interest of the State.

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

11 (3) There continues to exist an inequality of bargaining power between  
12 equipment suppliers and the independent dealer network. This inequality of  
13 bargaining power enables equipment suppliers to compel dealers to execute  
14 dealer agreements, related contracts, and addendums that contain terms and  
15 conditions that would not routinely be agreed to by the equipment dealer if this  
16 inequality did not exist. It therefore is in the public interest to enact legislation  
17 to prevent unfair or arbitrary treatment of equipment dealers by equipment  
18 manufacturers-suppliers. It is the General Assembly's intent to have this act  
19 liberally construed in order to achieve its purpose.

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

21 CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

1 ~~Sec. 3. 9 V.S.A. § 4071 is amended to read:~~

2 § 4071. DEFINITIONS

3 As used in this chapter:

4 (1) "Current net price" means the price listed in the supplier's price list  
5 or ~~catalog~~ catalogue in effect at the time the dealer agreement is terminated,  
6 less any applicable discounts allowed.

7 (2) "Dealer" means a person, ~~corporation, or partnership~~ primarily  
8 engaged in the business of retail sales of farm and utility tractors, farm  
9 implements, farm machinery, forestry equipment, industrial equipment, utility  
10 equipment, yard and garden equipment, construction equipment, all-terrain  
11 vehicles as defined in 23 V.S.A. § 3801(1), attachments, accessories, and or  
12 repair parts. Provided, however, "dealer" shall not include a "single line  
13 dealer" primarily engaged in the retail sale and service of industrial, forestry,  
14 and construction equipment. "Single line dealer" means a person, ~~partnership~~  
15 ~~or corporation~~ who:

16 (A) has purchased 75 percent or more of the dealer's total new  
17 product inventory from a single supplier; and

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

1 ~~(3) "Dealer agreement" means a written or oral contract or agreement~~  
2 between a dealer and a wholesaler, manufacturer, or distributor by which the  
3 dealer is granted the right to sell or distribute goods or services or to use a  
4 trade name, trademark, service mark, logotype, or advertising, or other  
5 commercial symbol.

6 (4) "Inventory" means farm, utility, forestry, or industrial equipment,  
7 implements, machinery, yard and garden equipment, construction equipment,  
8 all-terrain vehicles as defined in 23 V.S.A. § 3801(1), attachments, or repair  
9 parts. These terms do not include heavy construction equipment. The term  
10 repair parts includes bundled parts, which means several related parts,  
11 components, or accessories that the supplier requires the dealer to purchase in a  
12 single transaction.

13 \* \* \*

14 Sec. 4. 9 V.S.A. § 4072 is amended to read:

15 § 4072. NOTICE OF TERMINATION OF DEALER AGREEMENTS

16 (a) Notwithstanding any agreement to the contrary, prior to the termination  
17 of a dealer agreement, a supplier shall notify the dealer of the termination not  
18 less than 120 days prior to the effective date of the termination. No supplier  
19 may terminate, cancel, or fail to renew a dealership agreement without cause.  
20 "Cause" means failure by an equipment dealer to comply with ~~the~~ reasonable  
21 requirements imposed upon the equipment dealer by the dealer agreement,

1 ~~provided the requirements are economically viable and are not substantially~~  
2 different from those requirements imposed upon other similarly situated  
3 equipment dealers in this State. Failure to meet market share requirements  
4 does not alone constitute cause for termination.

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

9 (1) the filing of a petition for bankruptcy or for receivership either by or  
10 against the dealer;

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

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

15 (4) the commencement of voluntary or involuntary dissolution or  
16 liquidation of the dealer if the dealer is a partnership or corporation;

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

19 (6) withdrawal of an individual proprietor, partner, major shareholder,  
20 ~~the involuntary termination of the manager of the dealership,~~ or a substantial

1 ~~reduction in the interest of a partner or major shareholder without the prior~~

2 written consent of the supplier.

3 \* \* \*

4 Sec. 5. 9 V.S.A. § 4074 is amended to read:

5 § 4074. REPURCHASE TERMS

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

16 (b) The supplier shall pay the dealer:

17 (1) ~~100~~ one hundred percent of the net cost of all new and undamaged  
18 and complete farm and utility tractors, utility equipment, forestry equipment,  
19 industrial equipment, farm implements, farm machinery, yard and garden  
20 equipment, construction equipment, attachments, and accessories purchased  
21 from the supplier within the 30-month period preceding the date of

1 ~~termination, less a reasonable allowance for deterioration attributable to~~

2 weather conditions at the dealer's location.;

3 (2) ~~90~~ one hundred percent of the current net prices of all new and  
4 undamaged repair parts.;

5 (3) ~~85~~ ninety-five percent of the current net prices of all new and  
6 undamaged superseded repair parts.;

7 (4) ~~85~~ ninety-five percent of the latest available published net price of  
8 all new and undamaged noncurrent repair parts.;

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

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

19 (7) ~~Repurchase at~~ average as-is value shown in current industry guides,  
20 dealer-owned rental fleet financed by the supplier or its finance subsidiary,

1 ~~provided the equipment was purchased from the supplier within 30 months of~~  
2 the date of termination.

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

8 (d) Payment to the dealer required under this section shall be made by the  
9 supplier not later than 45 days after receipt of the inventory by the supplier.

10 A penalty shall be assessed in the amount of daily interest at the current New  
11 York prime rate plus three percent of any outstanding balance over the  
12 required 45 days. The supplier shall be entitled to apply any payment required  
13 under this section to be made to the dealer as a setoff against any amount owed  
14 by the dealer to the supplier.

15 Sec. 6. 9 V.S.A. § 4077a is amended to read:

16 § 4077a. PROHIBITED ACTS

17 No supplier shall:

18 (1) coerce, or attempt to coerce, any dealer to accept delivery of any  
19 equipment, parts, or accessories therefor, which such dealer has not voluntarily  
20 ordered, except that a supplier may require a dealer to accept delivery of  
21 equipment, parts or accessories that are necessary to maintain equipment



1 ~~generally sold in the dealer's area of responsibility, and a supplier may require~~

2 a dealer to accept delivery of safety-related equipment, parts, or accessories

3 pertinent to equipment generally sold in the dealer's area of responsibility;

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

9 ~~coerce any dealer into a refusal to purchase the equipment~~  
10 manufactured by another supplier; or prevent, coerce, or attempt to coerce a  
11 dealer from having an investment in or hold a dealership contract for the sale  
12 of competing product lines or makes of equipment or require the dealer to  
13 provide separate facilities for competing product lines or makes of equipment;

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

20 (5) modify a dealer's assigned area of responsibility without the dealer's  
21 written consent; or

1 ~~(6) if the supplier reimbursed a dealer for equipment, repair parts, or~~  
2 labor to avoid a violation of this section, recover the costs of the  
3 reimbursement.

4 Sec. 7. 9 V.S.A. § 4078 is amended to read:

5 § 4078. WARRANTY OBLIGATIONS

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

15 (b) A schedule of compensation shall include reasonable compensation for  
16 diagnostic work, as well as for repair service, parts, and labor. Time  
17 allowances for the diagnosis and performance of warranty service shall be  
18 reasonable and adequate for the work to be performed. The hourly rate paid to  
19 a dealer shall not be less than the rate charged by the dealer to customers for  
20 nonwarranty service and repairs. Each supplier shall compensate each of its  
21 dealers for parts used to fulfill warranty and recall obligations of repair and

1 ~~servicing at a rate not less than the rate charged by the dealer to its retail~~  
2 ~~customers for like parts for nonwarranty work.~~

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

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

16 Sec. 8. EFFECTIVE DATE

17 ~~This act shall take effect on July 1, 2016.~~

*Sec. 1. FINDINGS AND INTENT*

*(a) The General Assembly finds:*

*(1) Vermont has long relied on economic activity relating to working farms and forestland in the State. These working lands, and the people who work the land, are part of the State's cultural and ecological heritage, and Vermont has made major policy and budget commitments in recent years in support of working lands enterprises. Farm and forest enterprises need a robust system of infrastructure to support their economic and ecological*

activities, and that infrastructure requires a strong economic base consisting of dealers, manufacturers, and repair facilities. Initiatives to help strengthen farm and forest working land infrastructure are in the best interest of the State.

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

(3) The distribution and sale of equipment, snowmobiles, and all-terrain vehicles within this State vitally affects the general economy of the State and the public interest and the public welfare, and in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate equipment, snowmobile, and all-terrain vehicle suppliers and their representatives, and to regulate dealer agreements issued by suppliers who are doing business in this State, in order to protect and preserve the investments and properties of the citizens of this State.

(4) There continues to exist an inequality of bargaining power between equipment, snowmobile, and all-terrain vehicle suppliers and the independent dealer network. This inequality of bargaining power enables equipment, snowmobile, and all-terrain vehicle suppliers to compel dealers to execute dealer agreements, related contracts, and addenda that contain terms and conditions that would not routinely be agreed to by the equipment, snowmobile, and all-terrain vehicle dealer if this inequality did not exist. It therefore is in the public interest to enact legislation to prevent unfair or arbitrary treatment of equipment, snowmobile, and all-terrain vehicle dealers by equipment, snowmobile, and all-terrain vehicle suppliers. It is also in the public interest that Vermont consumers, municipalities, businesses, and others that purchase equipment, snowmobiles, and all-terrain vehicles in Vermont have access to a robust independent dealer network to obtain competitive prices when purchasing these items and to obtain warranty, recall, or other repair work.

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

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

CHAPTER 107. EQUIPMENT AND MACHINERY DEALERSHIPS

§ 4071. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

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

(A) “Inventory” means:

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

(I) tractors;

(II) equipment;

(III) implements;

(IV) machinery;

- (V) attachments;
- (VI) accessories; and
- (VII) repair parts;
- (ii) snowmobiles, as defined in 23 V.S.A. § 3201(5); and
- (iii) all-terrain vehicles, as defined in 23 V.S.A. § 3801(1).

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

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

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

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

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

~~*(a) Notwithstanding any agreement to the contrary, prior to the termination of a dealer agreement, a supplier shall notify the dealer of the termination not less than 120 days prior to the effective date of the termination. No supplier may terminate, cancel, or fail to renew a dealership agreement without cause. "Cause" means failure by an equipment dealer to comply with the requirements imposed upon the equipment dealer by the dealer agreement, provided the requirements are not substantially different from those requirements imposed upon other similarly situated equipment dealers in this State.*~~

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

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

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

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

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

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

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

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

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

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

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

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

#### TERMINATION OF DEALER AGREEMENT

(a) Requirements for notice.

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

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

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

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

(C) the effective date of termination.

(b) Termination by a supplier for cause.

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

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

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

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

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

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

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

(2) A supplier shall deliver an initial notice of termination to the dealer at least 18 months before the effective date of termination.

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

(4) If the dealer fails to meet reasonable marketing or market penetration requirements specified in the notice by the end of the 18-month period, the supplier may terminate the dealer agreement by providing a final notice of termination.

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

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

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

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

(2) The dealer makes an intentional and material misrepresentation regarding his or her financial status.

(3) The dealer defaults on a chattel mortgage or other security agreement between the dealer and the supplier.



(4) A person commences the voluntary or involuntary dissolution or liquidation of a dealer organized as a business entity.

(5) Without the prior written consent of the supplier:

(A) The dealer changes the business location specified in the dealer agreement or adds an additional dealership of the supplier's same brand.

(B) An individual proprietor, partner, or major shareholder withdraws from, or substantially reduces his or her interest in, the dealer.

(C) The dealer terminates a manager of the dealer.

(e) Termination by a dealer. Unless a provision of a dealer agreement provides otherwise, a dealer may terminate the dealer agreement by providing a notice of termination to the supplier at least 120 days before the effective date of termination.

\* \* \*

#### § 4074. REPURCHASE TERMS

(a)(1) 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.

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

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

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

(b) The supplier shall pay the dealer:

(1) 100 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, attachments, and accessories inventory, other than repair parts, purchased from the supplier within the 30-month period preceding the date of

*termination, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location.*

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

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

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

*(5) 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.*

*(6) ~~Repurchase at~~ 75 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. Specialized repair tools must be unique to the supplier's product line, must be no more than 10 years old, and must be complete and in usable condition.*

*(7) ~~Repurchase at average~~ Average as-is value shown in current industry guides; for 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 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.*

\* \* \*

§ 4077a. ~~PROHIBITED ACTS~~

~~No supplier shall:~~

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

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

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

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

#### PROHIBITED ACTS

~~(a) A supplier shall not coerce or attempt to coerce a dealer to accept delivery of inventory that the dealer has not voluntarily ordered, except inventory that is:~~

~~(1) necessary to maintain inventory generally sold in the dealer's area of responsibility; or~~

~~(2) safety-related and pertinent to inventory generally sold in the dealer's area of responsibility.~~

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

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

~~(2) A supplier shall not require, coerce, or attempt to coerce a dealer to provide a separate facility or personnel for a competing product line or make of inventory.~~

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

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

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

(C) remains in substantial compliance with the supplier's reasonable facility requirements, which shall not include a requirement to provide a separate facility or personnel for a competing product line or make of inventory.

(d) A supplier shall not discriminate in the prices it charges for inventory of like grade and quality it sells to similarly situated dealers, provided that a supplier may use differentials that allow for a difference in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which the supplier sells or delivers the inventory.

(e) A supplier shall not change the area of responsibility specified in a dealer agreement without good cause, which for purposes of this subsection includes changes in the dealer's vehicle or warranty registration pattern, demographics, and geographic barriers.

#### § 4078. WARRANTY OBLIGATIONS

(a) A supplier shall:

(1) specify in writing a dealer's reasonable obligation to perform warranty service on the supplier's inventory;

(2) provide the dealer a schedule of reasonable compensation for warranty service, including amounts for diagnostic work, parts, labor, and the time allowance for the performance of warranty service; and

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

(b) Time allowances for the diagnosis and performance of warranty service shall be reasonable and adequate for the service to be performed by a dealer that is equipped to complete the requirements of the warranty service.

(c) The hourly rate paid to a dealer shall not be less than the rate the dealer charges to customers for nonwarranty service.

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

(e)(1) 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.

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

(3) 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.

(f) A supplier violates this section if it:

(1) fails to perform its warranty obligations;

(2) fails 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

(3) fails to compensate a dealer for repairs required by a recall.

(g) A supplier shall not:

(1) impose an unreasonable requirement in the process a dealer must follow to file a warranty claim; or

(2) impose a surcharge or fee, or otherwise increase the prices or charges to a dealer, in order to recover the additional costs the supplier incurs from complying with the provisions of this section.

#### § 4079. REMEDIES

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

(b) A provision in a dealer agreement that purports to deny access to the procedures, forums, or remedies provided by the laws of this State is void and unenforceable.

(c) ~~Nothing contained in this chapter may prohibit~~ Notwithstanding subsection (b) of this section, a dealer agreement may include a provision for binding arbitration of disputes in an agreement. Any arbitration shall be consistent with the provisions of this chapter and 12 V.S.A. chapter 192, and the place of any arbitration shall be in the county in which the dealer's principal place of business is maintained in this State.

\* \* \*

*Sec. 3. APPLICABILITY TO EXISTING DEALER AGREEMENTS*

*Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in 9 V.S.A. § 4071, that is in effect on or before July 1, 2016, the provisions of this act shall apply on July 1, 2017.*

*Sec. 4. EFFECTIVE DATE*

*This act shall take effect on July 1, 2016.*