

U.S. UPDATE

NEW HAMPSHIRE AUTO DEALER BILL OF RIGHTS

New Hampshire has enacted a new law expanding automobile dealers' rights beyond the typical statutory scheme that exists in virtually all states, and beyond the Federal Automobile Dealers Day in Court Act. New Hampshire's new Auto Dealer Bill of Rights sailed through the state legislature earlier this year, passing the New Hampshire House by a vote of 338-30 and the Senate by a vote of 21-2. It is due to become law on September 23, 2013.

While many of the provisions in New Hampshire's new statute are similar to legislation in other states, certain provisions stand out. Specifically, the statute is extremely dealer-friendly with respect to a manufacturer's attempts to force the dealer to make costly renovations and with respect to reimbursement for warranty services.

On the subject of renovations, the New Hampshire Act provides that a manufacturer may not require, coerce or attempt to coerce any motor vehicle dealer to:

- 1) change location of the dealership;
- 2) construct, renovate, or make any substantial changes, alterations, remodeling to a motor vehicle dealer sales or service facilities;
- 3) Add to or replace a motor vehicle dealer's sales or service facility; or
- 4) Add to or replace or relocate purchased or leased signage or prohibit a dealer from substituting a sign owned by a dealer.

The manufacturer is not completely without an ability to require the dealer to modernize, but the burden is on the manufacturer to prove that any modernization requirement is reasonable and justifiable in light of the current and reasonably foreseeable economic conditions, financial expectations, availability of additional vehicle allocation, and the motor vehicle dealer's market for

the sales and service of vehicles, or that the modernization is reasonably required to effectively display and service a vehicle based on the technology of the vehicle. By putting the burden on the manufacturer to economically justify its modernization requirements, the legislation essentially gives the dealers the upper hand in resisting those requirements.

Regarding the warranty provisions, the legislation is designed to protect dealers with respect to the determination of rates for warranty service. The manufacturer must reimburse the dealer at the rate and price customarily charged by the dealer to the public. If the dealer and the manufacturer are unable to agree to a percentage markup, then the rate is to be established by the dealer submitting to the manufacturer 100 sequential non-warranty or customer-paid service repair orders or 90 consecutive days of non-warranty, customer-paid service repair orders, whichever is less, each of which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The retail rate so declared must be reasonable as compared to other dealers in the area. The dealer's declared retail rate will go into effect 30 days thereafter. If the manufacturer wishes to rebut the declared retail rate it must inform the dealer, after which a protest can be formally lodged. In resolving the protest, again the burden is on the manufacturer, this time to establish that the dealer's proposed submission is unreasonable as compared to other similar dealers.

In summary, it is clear that the New Hampshire dealers lobbied harder, or more effectively, than did the manufacturers. The new law is facing a judicial challenge even before its effective date. John Deere and several other manufacturers of farm equipment, tractors and other heavy-duty equipment are challenging the law as unconstitutional.