

Bill as Introduced

HB 169 - AS INTRODUCED

2011 SESSION

11-0462

05/04

HOUSE BILL **169**

AN ACT relative to the regulation of wood stove, wood pellet, and fireplace dealers.

SPONSORS: Rep. Scala, Carr 5; Rep. Fleck, Carr 5

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill regulates business practices of wood stove, wood pellet, and fireplace dealers, including dealer agreements, inventory repurchase criteria, and business transfer procedures.

.....

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the regulation of wood stove, wood pellet, and fireplace dealers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Regulation of Equipment Dealerships; Definition of Dealer; Wood Stove, Wood Pellet and
2 Fireplace Equipment Dealers Added. Amend the introductory paragraph of RSA 347-A:1, II to read
3 as follows:

4 II. “Dealer” means a person, corporation, or partnership primarily engaged in the business
5 of retail sales of farm and utility tractors, forestry equipment, light industrial equipment, farm
6 implements, farm machinery, yard and garden equipment, attachments, accessories, and repair
7 parts. The term “dealer” shall not include dealers primarily engaged in the retail sale of all-terrain
8 vehicles and motorcycles as defined by RSA 357-C:1. The term “dealer” shall also not include a
9 single line dealer primarily engaged in the retail sale and service of industrial, forestry, and
10 construction equipment. ***The term “dealer” shall include persons engaged in the retail sale of***
11 ***wood stove, wood pellet, and fireplace equipment.*** “Single line dealer” means a person,
12 partnership, or corporation who:

13 2 Definition of Inventory; Wood Stove, Wood Pellet, and Fireplace Equipment. Amend RSA 347-
14 A:1, IV to read as follows:

15 IV. “Inventory” means farm, utility, forestry, or light industrial equipment, implements,
16 machinery, yard, and garden equipment, attachments or repair parts. This term does not include
17 heavy construction equipment. ***The term includes wood stove, wood pellet, and fireplace***
18 ***equipment and repair parts.***

19 3 Repurchase Terms. Amend RSA 347-A:4, II(a) to read as follows:

20 (a) One hundred percent of the net cost of all new and undamaged and complete farm
21 and utility tractors, forestry equipment, light industrial equipment, farm implements, farm
22 machinery, yard and garden equipment, ***and wood stove, wood pellet, and fireplace equipment***
23 ***and repair parts***, purchased within the past 36 months from the supplier, less a reasonable
24 allowance for deterioration attributable to weather conditions at the dealer’s location, ***if applicable***
25 ***based on the nature and location of the inventory.***

26 4 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Rep. F. Rice, Rock. 15
Rep. Schlachman, Rock. 13
Rep. J. Sullivan, Rock. 1
January 25, 2011
2011-0065h
05/04



Amendment to HB 169

1 Amend the bill by replacing section 3 with the following:

2

3 3 Repurchase Terms. Amend RSA 347-A:4, II(a) to read as follows:

4 (a) One hundred percent of the net cost of all new and undamaged and complete farm
5 and utility tractors, forestry equipment, light industrial equipment, farm implements, farm
6 machinery, yard and garden equipment, *and wood stove, wood pellet, and fireplace equipment*
7 *and repair parts*, purchased within the past 36 months from the supplier, less a reasonable
8 allowance for deterioration attributable to weather conditions at the dealer's location.

Not Adopted

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 169

BILL TITLE: relative to the regulation of wood stove, wood pellet, and fireplace dealers.

DATE: January 25, 2011

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1319

Time Adjourned: 1353

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman.

Bill Sponsors: Reps. Scala and Fleck

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Dino Scala, prime sponsor – Introduced the bill. Brought bill forward for several constituents.

***Steve Dumais, representing self** – Supports the bill. In hearth business for several years. I originally had defined area for sales within a 25 mile radius. I now had a competitor in my area. I had no idea he had competition selling the same product line. I was never advised that I no longer was the representative from this manufacturer. I was stuck with several thousands of dollars of stoves and equipment they needed to take back. I had a dealer's agreement; not a formal contract. I was given a 25 mile radius for exclusive rights to sell their product. No notice has to be given under current rules.

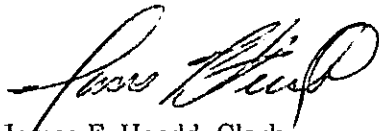
*** Al Guibord, Stove Shoppe** – Supports the bill. Own Stove Shoppe in Windham. Family run business for 40 years. North Hill Hearth unable to attend meeting today but sent letter which Mr. Guibord read into the record.

***Jim Tully, Woodman's Parts Plus** – Supports the bill. Hearth shop owner. The agreement we make with dealers is really a one way street. Protection is more for the dealers as apposed to the retailers; very one sided. We had our product line arbitrarily cancelled and we forfeited ten thousand dollars in product/parts and accessories.

***Jon Bergeron, Hearthworks FS, Inc.** – Supports the bill. Owns three shops in southern New Hampshire. I got stuck with about \$20,000 worth of product I could not sell. Wants this bill to pass to level the playing field; manufacturers take advantage of us.

Subcommittee established to include Reps. Rice, Schlachman and Sullivan.

Respectfully Submitted:

A handwritten signature in cursive script, appearing to read "James F. Headd". The signature is written in black ink and is positioned above the printed name.

James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

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Bill Sponsors: Reps. Scala and Fleck

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

- #1 Rep Dino Liala - introduced Bill -
Brought Bill forward for several constituent
- #2 STEVE DUMAIS - in HEARTH Business
for several years - I originally had
~~on a specific~~ defined area for sales within
a 25 mile radius. I now had a competitor
~~almost~~ ~~not~~ in my area. I had no idea I had
competitor selling the same product line. I was
never advised that I no longer was the Rep for this
manufacturer. I was stuck with several thousand
of dollars of stoves & equipment they needed to
take back

#2 HB 169

I had a Dealer agreement - not a formal contract. I was given a 25 mile radius for exclusive rights to sell their product. No notice has to be given under current rules

#3 AL GUIBORD - Stone Shop owner in Winthrop - Family run business 40 years -

North Hill Health - unable to attend meeting today but sent letter which Mr. Guibord read into the record

#4 Jim Tully - Towner Bille - Health Shop owner - The agreements we make with Dealers is really a one way street. Protection is more for the Dealer as opposed to the Retailer - very one sided. We had our product line arbitrarily cancelled & we had about Ten thousand dollars in product - parts and accessories -

#5 Tom Bergeron - owns 3 shops in southern NH - I got stuck with about \$20,000 worth of product I could not sell. Wants this Bill to pass to level the playing field - Manufacturers take advantage of us.

#3 HB 169

Written Testimony from Ms Tully

PAT & Don Mitchell, Jan Mitchell
and Steve DUMAIS.

Sup Committee —

Rep RICE
Schlachman
Sullivan

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 169

BILL TITLE: relative to the regulation of wood stove, wood pellet, and fireplace dealers.

DATE: 2-1-11

Subcommittee Members: Reps. Sullivan, Schlachman and Mauro

Comments and Recommendations: Bill had issues beyond amendment change. 1- Could not enforce on overseas manufacturer. 2 – Put US manufacturing in separate category of enforcement. 3- 36 month time frame too long. 4 – Included repair parts at 100%. ITL'd bill as amended.

Amendments:

Sponsor: Rep. Rice OLS Document #: 2011 0065h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Mauro

Seconded by Rep. Sullivan

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Mauro

Seconded by Rep. Sullivan

Vote: 3-0

Respectfully submitted,

Rep. Donna Schlachman
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 169

BILL TITLE: relative to the regulation of wood stove, wood pellet, and fireplace dealers.

DATE: 2-1-11

Subcommittee Members: Reps. Sullivan, Schlachman, Mauro

Comments and Recommendations: Bill had issues beyond amendment change (1) could not enforce on overseas manuf.

Amendments: 0065

Sponsor: Rep. ~~Mauro~~ Rice

OLS Document #: 0065 separate category of enforcement

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #: (3) 36-mo. time frame too long

Motions: (OTP, OTP/A, ITL, Retained (Please circle one.) on amendment (4) included repair parts at 100%

Moved by Rep. Mauro

Seconded by Rep. Sullivan

Vote: 3-0

Motions: OTP, OTP/A, (ITL) Retained (Please circle one.) Bill as amended

Moved by Rep. Mauro

Seconded by Rep. Sullivan

Vote: 3-0

Respectfully submitted,

Rep. {Type NAME}
Subcommittee Chairman/Clerk

Jonna Schlachman

Rep. F. Rice, Rock. 15
Rep. Schlachman, Rock. 13
Rep. J. Sullivan, Rock. 1
January 25, 2011
2011-0065h
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Amendment to HB 169

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6

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8

(a) One hundred percent of the net cost of all new and undamaged and complete farm and utility tractors, forestry equipment, light industrial equipment, farm implements, farm machinery, yard and garden equipment, *and wood stove, wood pellet, and fireplace equipment and repair parts*, purchased within the past 36 months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location.

Not Adopted

Testimony

**North Hill Hearth &
Casual Living Concepts**
206 Lafayette Road, North Hampton, NH 03862
Phone 603-964-7884 Fax 603-964-1324
www.north-hill.com

Jim Tully
Woodman's Parts Plus
PO Box 186
587 River Pond Road
East Wakefield, NH 03830

January 20, 2011

We are unable to attend the meeting with the legislators on Tuesday January 25th because of other commitments. Would you please present this letter on our behalf.

In the regards to the matter of Sales Reps and or Manufacturers taking certain lines away from a dealer, we have experienced this first hand. After many years of selling this particular brand of stoves and fireplaces, the sales rep informed us that he was removing the line from us. His excuse at the time was that are numbers had decreased significantly, but this was not the case at all, and when we brought this to his attention, he replied that it didn't matter, he was taking it away from us anyway. He then proceeded to give this line to a newly opened hearth store a few miles from us. The time frame all this occurred was shortly after we lost our entire hearth store to a major fire. We had increased our business in spite of this setback. We were very disturbed by this sales rep's actions and thought it was totally unfair, but our hands were tied.

It is definitely our belief that there should be some legislation in place to prevent large, powerful companies, such as the hearth manufacturers or distributors from taking this kind of action on small businesses.

Sincerely,

Pat & Don Mitchell
North Hill Hearth & Casual Living
206 Lafayette Road
North Hampton, NH 03862
603-964-7884

Woodman's Forge & Fireplace

*Post Office Box 186
579 Pine River Pond Road
Wakefield New Hampshire 03830*

Phone: (603)-522-3028 **Fax:** (603)-522-3754
Website: www.woodmansforgefireplace.com

January 24, 2011

To: Dina Scala
Joseph Fleck

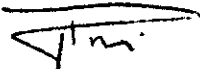
My reason for asking for HB169 is to help protect hearth dealers. In building their businesses hearth dealers also build the brand names of the hearth appliances they promote. The two become associated with one another in a symbiotic relationship. There are no contracts other than the verbal representations of the manufacturer. Product line promotion is done primarily by the dealer at his expense. Most manufacturers will assist in this with co-op funds paid 50/50 up to a limit of about 2% of a dealers purchases for the previous year.

The rules governing the relationship are all made by the manufacturer. These can be quite arbitrary and are always favorable to the manufacturer. We need help in leveling the playing field between the manufacturer and the dealer.

My wake up call came several years ago. We had just moved our retail store into a newly constructed store with 3,500 sq feet of showroom. We had taken on a new fireplace line the year before to upgrade our fireplace offering. The new store had six of this manufacturers units built into wall displays that were fully operational. Within a year of opening the new store we received a form letter that our dealership was being discontinued. There was no visit from the new representative and no reasons given. All accounts were current and sales were increasing. After several phone calls they took back one unit. We had to liquidate all six displays, our warehouse stock, assorted advertising items, and parts at a loss of over \$10,000.00.

As dealers, we are always apprehensive about the potential loss of the product lines we have built in our dealerships. This loose relationship and lack of recourse has cost most of us problems and profits.

Please assist us;



Jim Tully

Jon Bergeron
Hearthworks Fireside Systems
77 Londonderry Turnpike
Hooksett, N.H. 03106

January 22, 2011

To:
Jim, Tully
Woodman's Parts Plus
Box 186
E. Wakefield , N.H. 03830

Dear Jim,

Concerning the subject of manufacturers sticking their business partners (dealers) with inventory, our story stems from a manufacturer from British Columbia who literally left us with approximately 20,000.00 in old unsaleable inventory.

After numerous complaints by us and attempts to resolve parts and shipping issues we originally agreed to help transfer our inventory and distributorship to another party and all would come out even. Upon transferring all the newest updated product to the new distributorship, they put a hold on all unsold old inventory shipments to them, as they knew parts and saleability of these items would be difficult.

After some negotiating with this B.C. manufacturer, the best they could do was to send us a little compensation for all the unsold units we had and we were left to liquidate the inventory as best we could.

I must say that this inventory is almost no good without the manufacturer contact. Most of the parts needed to sell these items need to be newly made, as the old stock for old units has dried up.

The new distributor for these fireplaces immediately terminated our dealership after the transfer, hence no source for parts or technical service.

This " Johnny Come Lately" distributor never did like the fact of our presence in the territory, I'm sure the reason for the termination. Since early 2008 when this all took place, we have only been able to liquidate about \$4000.00 of the \$20,000.00 setback.

This foreign company left us high and dry after years of good performance breaking in a new line of fireplaces covering all of New England. Hearthworks was consistently among the average numbers nationally.

Perhaps the loyalties lie in the fact that the new distributor is a fellow Canadian based in Quebec, Canada!

I am definitely in favor of such legislation to discourage "easy in and easy out" business practices. The retail consumer is protected by numerous laws to protect him, it's time to protect the small business owner in his area of need.

Sincerely,
Jon Bergeron

Hearthworks Fireside Systems



HB169

My story starts with leisurely Friday afternoon motorcycle ride the first week of July 2009, as I drove by one of my newest competitors store, just 10 minutes from my store, I noticed a burn trailer for a specific MFG that I carried, parked out front of the new store all set up for display purposes, with sales banners waving above. This new dealer was well within my 25 mile "protected territory".

After making a call to my MFG representative on Monday morning, who got back to me two weeks later, that without any previous conversations, I was no longer the authorized sales and service dealer for that product line, and the new dealer had products for sale, and on display in their showroom for over a month at the time I saw the burn trailer. When I asked why the new store had the product, there was never a reply. Only to find out several months later "off the record" it was because they offered a \$100,000 start up order.

I had been and active dealer with this MFG always in good standings, advertising, marketing, selling, and servicing this particular hearth MFG products since 2001 in my so called "protected territory".

**163 DANIEL WEBSTER HIGHWAY
MEREDITH N.H. 03253 (603) 279-7961
ENERGYSAVERS.NH.COM**



I had just received my \$25,000 summer stocking order a few weeks before in June, for a product line that I would be no longer authorized to sell in my marketing area. Add that to \$36,000 worth of other inventory and parts that I already had in stock, I had \$61,000 worth of stuff to sell with no more MFG. support behind me for sales, service and warranty.

After several months of fighting with everyone up and down the corporate ladder at this MFG, In January, I was able to get them to take back all the products that were still in boxes, but there ended up being no easy way to handle things like showroom working displays, floor models, and parts. Also no real way to handle any of the expenses that had occurred over the past 10 years in my efforts to cultivate their brand by advertising and marketing their products, or time spend at home shows and fairs trying to establish their brand of products in my "protected territory".

The end result is that I have spent many hour of my time to get the MFG to do what they should have done before they took the dealership from me. I was able to eventually sell almost all of the display models, but I still have over \$8000 worth of items that I could not return.

A handwritten signature in black ink, appearing to read "Steve Dumais".

Steve Dumais

**163 DANIEL WEBSTER HIGHWAY
MEREDITH N.H. 03253 (603) 279-7961
ENERGYSAVERS.NH.COM**

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 169

BILL TITLE: relative to the regulation of wood stove, wood pellet, and fireplace dealers.

DATE: 2-9-11

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Sullivan

Seconded by Rep. Schlachman

Vote: 13-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 169

BILL TITLE: relative to the regulation of wood stove, wood pellet, and fireplace dealers.

DATE: 2-9-11

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Sullivan
Seconded by Rep. Schleichman
Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB169 Title: Regulation of wood glue, wood pallets, crates

PH Date: 1/1/11 Exec Session Date: 2/9/11

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	/	
Coffey, Jennifer R, V Chairman	/	
Belanger, Ronald J	/	
Flanders, Donald H	/	
Quandt, Matt J	/	
Headd, James F	/	
Nevins, Chris F	/	
Palfrey, David J	/	
Sullivan, James M	/	
Bergevin, Jerry E	/	
Manuse, Andrew J	/	
Mauro, Donna C	/	
McGuinness, Sean M	/	
Rice, Frederick C	/	
Taylor, Kathleen N	/	
Meador, David R	/	
Gidge, Kenneth N	/	
Schlachman, Donna L	/	
	13-0	
TOTAL VOTE:		

Committee Report

CONSENT CALENDAR

February 16, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on COMMERCE AND CONSUMER
AFFAIRS to which was referred HB169,**

**AN ACT relative to the regulation of wood stove, wood
pellet, and fireplace dealers. Having considered the
same, report the same with the following Resolution:
RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

Rep. James M Sullivan

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB169
Title:	relative to the regulation of wood stove, wood pellet, and fireplace dealers.
Date:	February 10, 2011
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The bill sought to relieve problems with dealers' agreements, inventory repurchase criteria and business transfer procedures by inserting dealers in these products into provisions of RSA 347-A1,II that covered farm, utility tractors and other types of heavy or industrial equipment. The existing provisions did not seem to fit the nature of wood stove, pellet or fireplace equipment, as to the nature of the inventory and its repair part valuation, and the lack of formal distribution agreements.

Vote 13-0.

Rep. James M Sullivan
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HB169, relative to the regulation of wood stove, wood pellet, and fireplace dealers.

INEXPEDIENT TO LEGISLATE.

Rep. James M Sullivan for COMMERCE AND CONSUMER AFFAIRS. The bill sought to relieve problems with dealers' agreements, inventory repurchase criteria and business transfer procedures by inserting dealers in these products into provisions of RSA 347-A1,II that covered farm, utility tractors and other types of heavy or industrial equipment. The existing provisions did not seem to fit the nature of wood stove, pellet or fireplace equipment, as to the nature of the inventory and its repair part valuation, and the lack of formal distribution agreements. **Vote 13-0.**

Original: House Clerk

Cc: Committee Bill File

HB 169
Rep. James Sullivan
ITL

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JBS

f.4

COMMITTEE REPORT

COMMITTEE: Commerce & Consumer Affairs
BILL NUMBER: HB 169
TITLE: relative to the regulation of wood stove, wood pellet and fireplace dealers
DATE: 2/9/11 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE
 INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

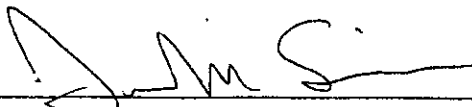
STATEMENT OF INTENT:

The bill sought to relieve problems with dealer agreements, inventory repurchase criteria and business transfer procedures by inserting dealers in these products into provisions of RSA 347-A1, II that covered lawn, utility tractors and other types of heavy or industrial equipment. The existing provisions did not seem to fit the nature of wood stove, pellet or fireplace equipment, as to the nature of the inventory and its repair part valuation and the lack of formal distribution agreements.

COMMITTEE VOTE: 13-0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. 
For the Committee