

ENGROSSED SENATE
BILL NO. 86

BY: TALIAFERRO, CAPPS and KERR
of the SENATE

and

GRIESER of the HOUSE

AN ACT RELATING TO CONTRACTS; AMENDING SECTIONS 1, 2
AND 3, CHAPTER 274, O.S.L. 1982 (15 O.S. SUPP.
1990, SECTIONS 245, 246 AND 247), WHICH RELATE TO
REPURCHASE OF INVENTORY; EXPANDING DEFINITIONS;
PROHIBITING CERTAIN ACTIONS; STIPULATING REPURCHASE
OF CERTAIN EQUIPMENT AT SPECIFIED PERCENTAGE;
EXPANDING EXEMPTIONS; PROVIDING FOR CODIFICATION;
AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 274, O.S.L.
1982 (15 O.S. Supp. 1990, Section 245), is amended to read as
follows:

Section 245. For the purposes of Sections 245 through 251 of
this title:

1. "Actual dealer cost" means the original invoice price the
retailer paid for the merchandise to the manufacturer, wholesaler or
distributor, less all applicable discounts allowed, plus the freight

cost from the location of the manufacturer, wholesaler or distributor to the location of the retailer;

2. ~~"Franchise" means any contract or agreement between a manufacturer, wholesaler or distributor, and a retailer as defined herein by which the retailer is authorized to conduct business or service in accordance with methods and procedures prescribed by such manufacturer, wholesaler or distributor~~ "Dealer agreement" means an oral or written contract or agreement of definite or indefinite duration, between a supplier and an equipment dealer, which provides for the rights and obligations of the parties with respect to purchase or sale of equipment;

3. "Inventory" means farm tractors, farm implements, utility and industrial tractors, outdoor power and lawn and garden equipment sold by retailers as defined herein, and the attachments and repair parts thereto;

4. "Current model" means a model listed in the current sales manual of the manufacturer, wholesaler or distributor or any supplements to the current sales manual;

5. "Current net price" means the price listed in the printed price list or catalog of the manufacturer, wholesaler or distributor in effect at the time the ~~franchise~~ dealer agreement is canceled or discontinued, less any applicable trade and cash discounts; ~~and~~

6. "Retailer" or "equipment dealer" or "equipment dealership" means any person having a ~~franchise~~ dealer agreement for selling and retailing farm tractors, utility and industrial tractors, farm implements, outdoor power and lawn and garden equipment and the attachments or repair parts thereto. but does not include retailers whose principal business is the sale of off-road construction equipment; and

7. "Supplier" means a person, partnership, corporation, association or other business enterprise engaged in the manufacturing, assembly or wholesale distribution of equipment. The

term shall also include any successor in interest, including a purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation or reorganization of the original supplier.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 245A of Title 15, unless there is created a duplication in numbering, reads as follows:

A. It shall be a violation of this article for a supplier:

1. Except as required by any applicable law or unless such special features or accessories are safety features or accessories required by a supplier, to coerce or compel any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered; or

2. To coerce or compel any equipment dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with such supplier unless such supplementary or amendatory agreement is imposed on all other similarly situated dealers in the state; or

3. To discriminate in the delivery of any equipment to any dealer in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, if such equipment covered by such dealer agreement was specifically represented by such supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this article if such failure is due to restrictions on extension of credit by the supplier to the equipment dealer, any breach of or default under the agreement by the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control; or

4. To coerce or compel an equipment dealer to accept late delivery of backordered items of equipment, when said backordered equipment is of special value in a particular time of year because of predictable seasonal demand, and when equipment is substantially less marketable and less valuable after the seasonal demand period has ended. If such backordered equipment is received by the retailer after the seasonal demand period has ended, and if the retailer requests the same in writing within ten (10) days of receipt of such backordered equipment, then the supplier shall take back any unwanted backordered equipment at no cost to the retailer, unless the supplier has given notice to the dealer of the status of the backordered equipment prior to the actual shipment to the dealer; or

5. To terminate, cancel or fail to renew a dealer agreement or substantially change the competitive circumstances of the dealer agreement without cause; or

6. To require as a condition of renewal or extension of a dealership agreement that the dealer complete substantial renovation of the dealer's place of business, or acquire new or additional space to serve as the dealer's place of business, unless the supplier provides at least one year's written notice of the condition which states all grounds supporting the condition. The supplier must provide a reasonable time for the dealer to complete the renovation or acquisition; or

7. To sell or offer to sell any new equipment to any retail outlet in which the supplier has any ownership interest at a lower actual price therefor than the actual price sold or offered to any other equipment dealer for the same equipment identically equipped or to utilize any device, including but not limited to sale promotion plans or programs, which results in such lesser actual price, or results in a fixed price predetermined solely by the supplier. Provided, however, the provisions of this subdivision

shall not apply to sales to an equipment dealer for resale to any unit or agency of the United States government, the state, or any of its political subdivisions, or any municipality located within this state or to any major fleet account or to any organization for testing or demonstration; or

8. To prevent by contract or otherwise, any equipment dealer or any officer, member, partner or stockholder of any equipment dealer from selling or transferring any part of the interest of any of them to any other party or parties. However, no equipment dealer, officer, partner, member or stockholder shall have the right to sell, transfer, or assign the equipment dealership or power of management or control thereunder without the written consent of the supplier, except that such consent shall not be unreasonably withheld; or

9. To unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's interest in the equipment dealership to a member or members of the family of the equipment dealer or the principal owner of the equipment dealership if the family member meets the reasonable financial, business experience and character standards of the supplier. Should a supplier determine that the designated family member is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objection and specific reasons for withholding its consent. A supplier shall have ninety (90) days to consider an equipment dealer's request to make a transfer to a family member. As used in this paragraph, "family" means and includes a spouse, parents, siblings, children, step-children, sons-in-law, daughters-in-law and lineal descendants, including those by adoption of the equipment dealer or principal owner of the equipment dealership. Notwithstanding the foregoing, in the event that a supplier and equipment dealer have duly executed an agreement

concerning succession rights prior to the equipment dealer's death, and if such agreement has not been revoked or otherwise terminated by either party, such agreement shall be observed; or

10. To require an equipment dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article.

B. Notwithstanding the provisions of paragraphs 8 and 9 of subsection A of this section, the supplier may determine that a dealer's area of responsibility or trade area does not afford sufficient sales potential to continue to reasonably support a dealer.

SECTION 3. AMENDATORY Section 2, Chapter 274, O.S.L. 1982 (15 O.S. Supp. 1990, Section 246), is amended to read as follows:

Section 246. A. If any retailer enters into a ~~franchise dealer~~ agreement, ~~evidenced by a written contract, or written sales agreement~~ with a ~~manufacturer, wholesaler or distributor~~ wherein the ~~retailer agrees to maintain an inventory~~ supplier and subsequently the ~~contract or written sales~~ dealer agreement is terminated, the ~~manufacturer, wholesaler or distributor~~ supplier shall repurchase the inventory as provided in this act. The retailer may keep the inventory if he desires and has a contractual right to do so. Upon such termination, the ~~manufacturer, wholesaler or distributor~~ supplier shall accept or reject all warranty claims made by the retailer within forty-five (45) days after receipt and shall pay accepted claims within sixty (60) days after receipt. All claims not specifically rejected within forty-five (45) days after receipt shall be deemed to have been accepted.

B. The ~~manufacturer, wholesaler or distributor~~ supplier shall repurchase that inventory previously purchased from him and held by the retailer on the date of termination of the ~~franchise dealer~~ agreement. The ~~manufacturer, wholesaler or distributor~~ supplier

shall pay to the retailer one hundred percent (100%) of the actual dealer cost of all new, unsold, undamaged and complete farm tractors, farm implements, utility and industrial tractors, and the attachments thereto or outdoor power equipment, lawn and garden equipment and attachments thereto, and eighty-five percent (85%) of the current net price on new, unused and undamaged repair parts. If the retailer has any outstanding debts to the ~~manufacturer,~~ wholesaler or distributor supplier, then the repurchase amount may be credited to the account of the retailer. The ~~manufacturer,~~ wholesaler or distributor supplier shall pay the retailer five percent (5%) of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The ~~manufacturer, wholesaler or distributor~~ supplier shall have the option of performing the handling, packing and loading in lieu of paying the five percent (5%) for these services. The retailer and the ~~manufacturer, wholesaler or distributor~~ supplier shall share equally the freight costs for the return of the merchandise to such ~~manufacturer, wholesaler or distributor~~ supplier.

C. The supplier shall repurchase at its fair market value or assume the lease responsibilities of any specific data processing hardware and software that the supplier required the retailer to purchase or lease, including computers, related software and peripheral equipment required and approved by the supplier to communicate with the supplier, to satisfy the minimum requirements of the dealership, and further that the supplier shall repurchase at seventy-five percent (75%) of the net retailer cost of specialized repair tools previously purchased in the previous three (3) years pursuant to requirements of the supplier and held by the retailer on the date of termination. Such specialized repair tools must be unique to the supplier product line and must be complete and in salable condition.

D. Upon payment of the repurchase amount to the retailer, the ~~title ownership~~ and right of possession to the repurchased inventory shall transfer to the ~~manufacturer, wholesaler or distributor~~ supplier who repurchases the inventory.

SECTION 4. AMENDATORY Section 3, Chapter 274, O.S.L. 1982 (15 O.S. Supp. 1990, Section 247), is amended to read as follows:

Section 247. The provisions of this act shall not require the repurchase from a retailer of:

1. Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries unless such items were purchased from the supplier within the twenty-four (24) months prior to date of termination;

2. Any repair part which is in a broken or damaged package;

3. Any single repair part which is priced as a set of two or more items;

4. Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;

5. Any inventory for which the retailer is unable to furnish evidence, satisfactory to the ~~manufacturer, wholesaler or distributor~~ supplier, of clear title;

6. Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

7. Any farm tractors, farm implements, utility and industrial tractors, and the attachments thereto, or outdoor power and lawn and garden equipment and attachments thereto which are not current models or which are not in new, undamaged or complete condition;

8. Any repair parts which are not in new, unused, undamaged or complete condition;

9. Any farm tractors, farm implements, utility and industrial tractors, or the attachments thereto, or outdoor power and lawn and garden equipment and attachments thereto which were purchased more

than twenty-four (24) months prior to notice of termination of the franchise dealer agreement;

10. Any inventory which was ordered by the retailer on or after the date of notification of termination of the franchise dealer agreement; and

11. Any inventory which was acquired by the retailer from any source other than the ~~manufacturer, wholesaler or distributor~~ supplier.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 12th day of March, 1991.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1991.

Speaker of the House of Representatives