

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 86

BY: TALIAFERRO, CAPPS and KERR
of the SENATE

and

GRIESER of the HOUSE

AS INTRODUCED

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

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 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 for selling and retailing farm tractors, farm implements, outdoor power and lawn and garden equipment and the attachments or repair parts thereto-;

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; and

8. "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.

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, compel or attempt 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, compel or attempt 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; or

3. To refuse to deliver to any equipment dealer in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, equipment covered by such dealer agreement specifically advertised or 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, compel, or attempt to coerce or compel, an equipment dealer to accept late delivery of a backordered item or items of equipment or parts, when said backordered equipment or parts are of special value in a particular time of year because of

predictable seasonable demand, and when said items are substantially less marketable and less valuable after the seasonal demand period has ended. If such backorders are received by the retailer after the seasonal demand period has ended, and if the retailer requests the same in writing within 10 days of receipt of such backordered goods, then the supplier shall take back any unwanted backordered items at no cost to the retailer; or

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

6. Requires 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 other equipment dealer at a lower actual price therefor than the actual price sold or offered to any other equipment dealer or supplier's retail outlet for the same equipment identically equipped or to utilize any device, including but not limited to, sale promotion plans or programs which result in such lesser actual price, or result 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 willfully discriminate, either directly or indirectly, in price, programs or terms of sale offered to equipment dealers, where the effect of such discrimination substantially lessens competition between directly competing dealers; or

9. To prevent or attempt to prevent, by contract or otherwise, any equipment dealer from changing the capital structure of the equipment dealership or the means by which the equipment dealership is financed, provided the equipment dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the equipment dealer and the supplier and provided such change by the equipment dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the equipment dealership; or

10. To prevent or attempt 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

11. 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; or

12. 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.

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 agreement, evidenced by a written contract, or written sales agreement with a manufacturer, wholesaler or distributor wherein the retailer agrees to maintain an inventory and subsequently the contract or written sales agreement is terminated, the manufacturer, wholesaler or distributor 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 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 shall repurchase that inventory previously purchased from him and held by the retailer on the date of termination of the franchise. The manufacturer, wholesaler or distributor 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, 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, then the repurchase amount may be credited to the account of the retailer. The manufacturer, wholesaler or distributor 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 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 shall share equally the freight costs for the return of the merchandise to such manufacturer, wholesaler or distributor.

C. The supplier shall repurchase at its fair market value or assume the lease responsibilities of any 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 pursuant to requirements of the supplier and held by the retailer on the date of termination.

D. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall

transfer to the manufacturer, wholesaler or distributor who repurchases the inventory.

SECTION 4. 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.

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