

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1309

By: Shurden, Capps, Kerr and
Mickle of the Senate

and

Beutler and Leist of the
House

COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 1991,
Sections 245 and 245A, which relate to equipment
dealers; modifying definition; expanding scope of
violations; providing procedure, requirements, and
limitations for payment of dealer claims by
suppliers; providing for codification; and
providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 1991, 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. "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 dealer agreement is canceled or discontinued, less any applicable trade and cash discounts or, for purposes of Section 3 of this act, at the time a claim for payment for services performed for a customer pursuant to a warranty issued by a supplier;

6. "Retailer" or "equipment dealer" or "equipment dealership" means any person having a 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. AMENDATORY 15 O.S. 1991, Section 245A, is amended to read as follows:

Section 245A. A. It shall be a violation of Section 245 et seq. of this article title 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, warranty agreement or otherwise, whether written or oral, supplementary to an existing dealer agreement with ~~such~~ the supplier unless ~~such~~ the supplementary or amendatory agreement is imposed on all other similarly situated dealers in ~~the~~ this 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;~~ however, the failure to deliver any such equipment shall not be considered a violation of Section 245 et seq. of this article title 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;~~ provided, 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 (1) year's written notice of the condition which states all grounds supporting the condition. ~~The;~~ the supplier, further, 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;~~ provided, however, the provisions of this

~~subdivision~~ paragraph shall not apply to sales to an equipment dealer for resale to any unit or agency of the United States government, ~~the~~ this 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;~~ 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;~~ provided, if a supplier ~~determine~~ determines 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;~~ provided, a supplier shall have ninety (90) days to consider an equipment dealer's request to make a transfer to a family member. ~~As;~~ further provided, as used in this paragraph, "family" means and includes a spouse, parents, siblings, children, stepchildren, 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;~~ and further provided, that

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 Section 245 et seq. of this article ~~article~~ title.

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250A of Title 15, unless there is created a duplication in numbering, reads as follows:

A. This section shall apply to a claim for payment for services performed for a customer pursuant to a warranty issued by the dealer's supplier:

1. While a dealer agreement is in effect which authorizes the dealer to perform services pursuant to a warranty; or

2. After the termination of a dealer agreement, if the claim is for work performed before the effective date of the termination.

B. Not later than thirty (30) days after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim. A claim rejected after the deadline is deemed accepted.

C. Not later than thirty (30) days after the date a claim is accepted or rejected, the supplier shall:

1. Pay an accepted claim; or

2. Send the dealer written notice of the reason for rejection of the claim.

D. A supplier who pays a claim may not pay less than the amount the dealer regularly charges for the labor and other expenses involved in performing the same or similar services for a retail customer who does not assert a warranty and the dealer's current net price plus fifteen percent (15%) for parts. The number of hours of labor claimed may not exceed one and three-tenths (1 3/10) times the supplier's recommended hours for the repair involved.

E. After payment of a claim, a supplier may not charge back, set off, or otherwise attempt to recover all or part of the amount of the claim unless:

1. The claim was fraudulent;

2. The services for which the claim was made were not properly performed or were unnecessary to comply with the warranty; or

3. The dealer did not substantiate the claim according to the written requirements of the supplier in effect when the claim arose.

SECTION 4. This act shall become effective November 1, 1998.

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