

SHORT TITLE: Equipment dealers; modifying definitions; prohibiting certain actions; requiring certain actions. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1309

By: Shurden of the Senate

and

Beutler of the House

AS INTRODUCED

An Act relating to equipment dealers; amending 15 O.S. 1991, Sections 245, 245A, 246, as amended by Section 1, Chapter 110, O.S.L. 1995, and 247 (15 O.S. Supp. 1997, Section 246), which relate to definitions, prohibited acts of equipment suppliers, repurchase of inventory, and exemptions; modifying certain definitions to include off-road construction equipment; conforming provisions to definition change; modifying exemptions; clarifying certain prohibition; specifying application to certain warranties; requiring supplier to accept or reject dealer's warranty claim within certain time period; requiring supplier to pay accepted claim or provide written notice of rejection of claim within certain time period; prohibiting payment of less than certain amount for certain services; prohibiting certain actions of supplier and providing exceptions; clarifying references; 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~~ Section 245 ~~through 251 et seq.~~ 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, off-road construction equipment, and 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;

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, off-road construction equipment, 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. AMENDATORY 15 O.S. 1991, Section 246, as amended by Section 1, Chapter 110, O.S.L. 1995 (15 O.S. Supp. 1997, Section 246), is amended to read as follows:

Section 246. A. If any retailer enters into a dealer agreement with a supplier and subsequently the dealer agreement is terminated, the 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 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 supplier shall repurchase that inventory previously purchased from him and held by the retailer on the date of termination of the dealer agreement. The 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, off-road construction equipment, 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. The retailer shall, within one hundred twenty (120) days after notice of termination by either party, provide to the supplier a detailed listing, including trade names, descriptions, and serial numbers where applicable, of whole goods merchandise furnished by the supplier, and in possession of the retailer, of such merchandise which qualifies under this act for reimbursement or credit memorandum by the supplier. The supplier shall have sixty (60) days from the date shown on the retailer's listing of merchandise to question any item. Any item of merchandise not protested in writing and received by the retailer within the sixty-day period shall be deemed to have been accepted by the supplier as part of the inventory in question. After the expiration of sixty (60) days, the supplier shall have thirty (30) additional days to tender the amount due to the retailer or to the retailer's named financial institution. If the retailer has any outstanding debts to the supplier, then the repurchase amount may be credited to the account of the retailer. The 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 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 supplier shall share equally the freight costs for the return of the merchandise to such

supplier or to such other retailers to whom the supplier wishes to send merchandise. The retailer's share of the cost of returning merchandise to other retailers shall be his share of the actual transportation costs, but not to exceed the retailer's share of the cost of returning the merchandise to the principal site of business of the supplier. Within sixty (60) days of the effective date of termination of a dealer agreement, a supplier shall advise the dealer in writing of the destination or destinations to which inventory items which qualify for reimbursement or credit memoranda are to be sent.

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 ownership and right of possession to the repurchased inventory shall transfer to the supplier who repurchases the inventory.

E. The time periods allowed in this section for action by any parties involved in the termination process of a retailer shall be considered as minimum standards which may be shortened or exceeded in a written agreement signed by both the supplier and the retailer executed after the effective date of the termination agreement.

SECTION 4. AMENDATORY 15 O.S. 1991, Section 247, is amended to read as follows:

Section 247. The provisions of ~~this act~~ Section 245 et seq. of this title 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 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, off-road construction equipment, 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 dealer agreement;
10. Any inventory which was ordered by the retailer on or after the date of notification of termination of the dealer agreement; and
11. Any inventory which was acquired by the retailer from any source other than the supplier.

SECTION 5. 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, parts, and other expenses involved in performing the same or similar services for a retail customer who does not assert a warranty. The number of hours of labor claimed may not exceed one and one-half (1 1/2) 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 6. This act shall become effective November 1, 1998.

46-2-2107

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