

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1603

6 By: Bingman

7 COMMITTEE SUBSTITUTE

8 An Act relating to contracts; amending 15 O.S. 2001,
9 Sections 245, as last amended by Section 1, Chapter
10 200, O.S.L. 2009, and 245A (15 O.S. Supp. 2009,
11 Section 245), which relate to definitions and
12 prohibited acts; modifying definitions; prohibiting
13 certain acts; stating exception; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 15 O.S. 2001, Section 245, as last
17 amended by Section 1, Chapter 200, O.S.L. 2009 (15 O.S. Supp. 2009,
18 Section 245), is amended to read as follows:

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

21 1. "Actual dealer cost" means the original invoice price the
22 retailer paid for the merchandise to the manufacturer, wholesaler or
23 distributor, less all applicable discounts allowed, plus the freight
24 cost from the location of the manufacturer, wholesaler or
distributor to the location of the retailer;

1 2. "Dealer agreement" means an oral or written contract or
2 agreement of definite or indefinite duration, between a supplier and
3 an equipment dealer, which provides for the rights and obligations
4 of the parties with respect to purchase or sale of equipment;

5 3. "Inventory" means farm tractors, farm implements, utility
6 and industrial tractors, all-terrain vehicles, forestry,
7 construction, industrial, maintenance, paving, outdoor power and
8 lawn and garden equipment sold by retailers as defined herein, and
9 the attachments and repair parts thereto;

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

13 5. "Current net price" means the price listed in the printed
14 price list or catalog of the manufacturer, wholesaler or distributor
15 in effect at the time the dealer agreement is canceled or
16 discontinued, less any applicable trade and cash discounts or, for
17 purposes of Section 250A of this title, at the time a claim for
18 payment is made for services performed for a customer pursuant to a
19 warranty issued by a supplier;

20 6. "Retailer" or "equipment dealer" or "equipment dealership"
21 means any person having a dealer agreement for selling and retailing
22 farm tractors, utility and industrial tractors, farm implements,
23 forestry, construction, industrial, maintenance, paving, outdoor
24 power and lawn and garden equipment and the attachments or repair

1 parts thereto; ~~and~~ provided, however, "retailer" or "equipment
2 dealer" or "equipment dealership" shall not include a single line
3 dealer;

4 7. "Single line dealer" means a person, partnership or
5 corporation who:

6 a. has purchased seventy-five percent (75%) or more of
7 the dealer's total new product inventory from a single
8 supplier, and

9 b. has a total annual average sales volume for the
10 previous three (3) years in excess of Twenty Million
11 Dollars (\$20,000,000.00) for the entire territory for
12 which the dealer is responsible; and

13 8. "Supplier" means a person, partnership, corporation,
14 association or other business enterprise engaged in the
15 manufacturing, assembly or wholesale distribution of equipment. The
16 term shall also include any successor in interest, including a
17 purchaser of assets or stock, or a surviving corporation resulting
18 from a merger, liquidation or reorganization of the original
19 supplier.

20 SECTION 2. AMENDATORY 15 O.S. 2001, Section 245A, is
21 amended to read as follows:

22 Section 245A. A. It shall be a violation of Section 245 et
23 seq. of this title for a supplier:

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

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

13 3. To discriminate in the delivery of any equipment to any
14 dealer in reasonable quantities and within a reasonable time after
15 receipt of the equipment dealer's order, if such equipment covered
16 by such dealer agreement was specifically represented by such
17 supplier to be available for immediate delivery; however, the
18 failure to deliver any such equipment shall not be considered a
19 violation of Section 245 et seq. of this title if such failure is
20 due to restrictions on extension of credit by the supplier to the
21 equipment dealer, any breach of or default under the agreement by
22 the equipment dealer, an act of God, work stoppage or delay due to a
23 strike or labor difficulty, a bona fide shortage of materials,

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1 freight embargo, or other cause over which the supplier has no
2 control;

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

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

19 6. To require as a condition of renewal or extension of a
20 dealership agreement that the dealer complete substantial renovation
21 of the dealer's place of business, or acquire new or additional
22 space to serve as the dealer's place of business, unless the
23 supplier provides at least one (1) year's written notice of the
24 condition which states all grounds supporting the condition; the

1 supplier, further, must provide a reasonable time for the dealer to
2 complete the renovation or acquisition;

3 7. To sell or offer to sell any new equipment to any retail
4 outlet in which the supplier has any ownership interest at a lower
5 actual price therefor than the actual price sold or offered to any
6 other equipment dealer for the same equipment identically equipped
7 or to utilize any device, including but not limited to sale
8 promotion plans or programs, which results in such lesser actual
9 price, or results in a fixed price predetermined solely by the
10 supplier; provided, however, the provisions of this paragraph shall
11 not apply to sales to an equipment dealer for resale to any unit or
12 agency of the United States government, this state, or any of its
13 political subdivisions, or any municipality located within this
14 state or to any major fleet account, or to any organization for
15 testing or demonstration;

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

1 9. To unreasonably withhold consent, in the event of the death
2 of the equipment dealer or the principal owner of the equipment
3 dealership, to the transfer of the equipment dealer's interest in
4 the equipment dealership to a member or members of the family of the
5 equipment dealer or the principal owner of the equipment dealership
6 if the family member meets the reasonable financial, business
7 experience and character standards of the supplier; provided, if a
8 supplier determines that the designated family member is not
9 acceptable, the supplier shall provide the equipment dealer with
10 written notice of the supplier's objection and specific reasons for
11 withholding its consent; provided, a supplier shall have ninety (90)
12 days to consider an equipment dealer's request to make a transfer to
13 a family member; further provided, as used in this paragraph,
14 "family" means and includes a spouse, parents, siblings, children,
15 stepchildren, sons-in-law, daughters-in-law, and lineal descendants,
16 including those by adoption of the equipment dealer or principal
17 owner of the equipment dealership; and further provided, that
18 notwithstanding the foregoing, in the event that a supplier and
19 equipment dealer have duly executed an agreement concerning
20 succession rights prior to the equipment dealer's death, and if such
21 agreement has not been revoked or otherwise terminated by either
22 party, such agreement shall be observed; ~~or~~

23 10. To require an equipment dealer to assent to a release,
24 assignment, novation, waiver, or estoppel which would relieve any

1 person from liability imposed by Section 245 et seq. of this title;
2 or

3 11. To coerce any equipment dealer into a refusal to purchase
4 equipment manufactured by another major manufacturer or supplier.

5 Provided that, it shall not be a violation of this paragraph for the
6 manufacturer or supplier to require separate facilities, financial
7 statements or sales staff for a major competing manufacturer or
8 supplier if the dealer is given not less than three (3) years'
9 notice of such requirement.

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

15 SECTION 3. This act shall become effective November 1, 2010.

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