

CS for SB 1603

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THE STATE SENATE
Monday, February 22, 2010

Committee Substitute for
Senate Bill No. 1603

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1603 - By: Bingman of the Senate and Thompson of the House.

[contracts - prohibiting acts - effective date]

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

SECTION 1. AMENDATORY 15 O.S. 2001, Section 245A, is amended to read as follows:

Section 245A. A. It shall be a violation of Section 245 et seq. of this 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;

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 the supplier unless the supplementary or amendatory agreement is imposed on all other similarly situated dealers in this state;

1 3. To discriminate in the delivery of any equipment to any
2 dealer in reasonable quantities and within a reasonable time after
3 receipt of the equipment dealer's order, if such equipment covered
4 by such dealer agreement was specifically represented by such
5 supplier to be available for immediate delivery; however, the
6 failure to deliver any such equipment shall not be considered a
7 violation of Section 245 et seq. of this title if such failure is
8 due to restrictions on extension of credit by the supplier to the
9 equipment dealer, any breach of or default under the agreement by
10 the equipment dealer, an act of God, work stoppage or delay due to a
11 strike or labor difficulty, a bona fide shortage of materials,
12 freight embargo, or other cause over which the supplier has no
13 control;

14 4. To coerce or compel an equipment dealer to accept late
15 delivery of backordered items of equipment, when said backordered
16 equipment is of special value in a particular time of year because
17 of predictable seasonal demand, and when equipment is substantially
18 less marketable and less valuable after the seasonal demand period
19 has ended; provided, if such backordered equipment is received by
20 the retailer after the seasonal demand period has ended, and if the
21 retailer requests the same in writing within ten (10) days of
22 receipt of such backordered equipment, then the supplier shall take
23 back any unwanted backordered equipment at no cost to the retailer,

1 unless the supplier has given notice to the dealer of the status of
2 the backordered equipment prior to the actual shipment to the
3 dealer;

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

7 6. To require as a condition of renewal or extension of a
8 dealership agreement that the dealer complete substantial renovation
9 of the dealer's place of business, or acquire new or additional
10 space to serve as the dealer's place of business, unless the
11 supplier provides at least one (1) year's written notice of the
12 condition which states all grounds supporting the condition; the
13 supplier, further, must provide a reasonable time for the dealer to
14 complete the renovation or acquisition;

15 7. To sell or offer to sell any new equipment to any retail
16 outlet in which the supplier has any ownership interest at a lower
17 actual price therefor than the actual price sold or offered to any
18 other equipment dealer for the same equipment identically equipped
19 or to utilize any device, including but not limited to sale
20 promotion plans or programs, which results in such lesser actual
21 price, or results in a fixed price predetermined solely by the
22 supplier; provided, however, the provisions of this paragraph shall
23 not apply to sales to an equipment dealer for resale to any unit or

1 agency of the United States government, this state, or any of its
2 political subdivisions, or any municipality located within this
3 state or to any major fleet account, or to any organization for
4 testing or demonstration;

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

14 9. To unreasonably withhold consent, in the event of the death
15 of the equipment dealer or the principal owner of the equipment
16 dealership, to the transfer of the equipment dealer's interest in
17 the equipment dealership to a member or members of the family of the
18 equipment dealer or the principal owner of the equipment dealership
19 if the family member meets the reasonable financial, business
20 experience and character standards of the supplier; provided, if a
21 supplier determines that the designated family member is not
22 acceptable, the supplier shall provide the equipment dealer with
23 written notice of the supplier's objection and specific reasons for

1 withholding its consent; provided, a supplier shall have ninety (90)
2 days to consider an equipment dealer's request to make a transfer to
3 a family member; further provided, as used in this paragraph,
4 "family" means and includes a spouse, parents, siblings, children,
5 stepchildren, sons-in-law, daughters-in-law, and lineal descendants,
6 including those by adoption of the equipment dealer or principal
7 owner of the equipment dealership; and further provided, that
8 notwithstanding the foregoing, in the event that a supplier and
9 equipment dealer have duly executed an agreement concerning
10 succession rights prior to the equipment dealer's death, and if such
11 agreement has not been revoked or otherwise terminated by either
12 party, such agreement shall be observed; ~~or~~

13 10. To require an equipment dealer to assent to a release,
14 assignment, novation, waiver, or estoppel which would relieve any
15 person from liability imposed by Section 245 et seq. of this title;
16 or

17 11. To coerce any equipment dealer into a refusal to purchase
18 equipment manufactured by another major manufacturer or supplier.
19 Provided that, it shall not be a violation of this paragraph for the
20 manufacturer or supplier to require separate facilities, financial
21 statements or sales staff for a major competing manufacturer or
22 supplier if the dealer is given not less than three (3) years'
23 notice of such requirement.

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

6 SECTION 2. This act shall become effective November 1, 2010.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-16-10 - DO
8 PASS, As Amended and Coauthored.