

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3970

By: Echols

COMMITTEE SUBSTITUTE

An Act relating to contracts; amending 15 O.S. 2021, Section 245, which relates to the defined terms within the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act; modifying equipment definition to exclude fixtures and related repair parts; and providing an effective date.

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

SECTION 1. AMENDATORY 15 O.S. 2021, Section 245, is amended to read as follows:

Section 245. For the purposes of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act:

1. "Current net parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued, or for purposes of Section 9 of this act, the price list or catalogue in effect at the time the repair parts were ordered. Current net parts price means, with respect to

1 superseded repair parts, the price listed in the supplier's price
2 list or catalogue in effect at the time the dealer agreement is
3 terminated or discontinued for the part that performs the same
4 function and purpose as the superseded part, but is simply listed
5 under a different part number;

6 2. "Current net parts cost" means the current net parts price
7 less any trade or cash discounts typically given to the dealer with
8 respect to such dealer's normal, ordinary course orders of repair
9 parts;

10 3. "Dealer" means any person primarily engaged in the business
11 of:

12 a. selling or leasing equipment or repair parts to the
13 ultimate consumer, and

14 b. repairing or servicing equipment;

15 4. "Dealer agreement" means either an oral or written agreement
16 or arrangement for a definite or indefinite period between a dealer
17 and a supplier that provides for the rights and obligations of the
18 parties with respect to the purchase or sale of equipment or repair
19 parts. Notwithstanding the foregoing, if a dealer has more than one
20 business location covered by the same dealer agreement, the
21 requirements of the Fair Practices of Equipment Manufacturers,
22 Distributors, Wholesalers and Dealers Act will be applied to the
23 repurchase of a dealer's inventory at a particular location upon the
24

1 closing of such location, unless the closing of the location occurs
2 without the permission of the supplier;

3 5. "Dealership" means the retail sale business engaged in by a
4 dealer under a dealer agreement;

5 6. "Demonstrator" means equipment in a dealer's inventory that
6 has never been sold at retail, but has had its usage demonstrated to
7 potential customers, either without charge or pursuant to a short-
8 term rental agreement, with the intent of encouraging the person to
9 purchase the equipment and which has been authorized for the use by
10 the supplier;

11 7. "Equipment" means:

12 a. all-terrain vehicles, utility task vehicles and
13 recreational off-highway vehicles, in each case,
14 regardless of how used, and

15 b. other machinery, equipment, implements or attachments
16 therefor, used for or in connection with the following
17 purposes:

18 (1) lawn, garden, golf course, landscaping or grounds
19 maintenance,

20 (2) planting, cultivating, irrigating, harvesting,
21 and producing of agricultural and/or forestry
22 products,
23
24

- 1 (3) raising, feeding, tending to or harvesting
2 products from livestock or any other activity in
3 connection therewith, or
4 (4) industrial, construction, maintenance, mining or
5 utility activities or applications.

6 Equipment shall not mean trailers or self-propelled vehicles
7 designed primarily for the transportation of persons or property on
8 a street or highway, or items constituting fixtures or otherwise
9 customarily intended to be permanently affixed to or incorporated
10 into real property and improvements attached thereto, and related
11 repair parts;

12 8. "Family member" means a spouse, child, son-in-law, daughter-
13 in-law or lineal descendant;

14 9. "Good cause" has the meaning as set forth in Section 5 or 6
15 of this act, as applicable;

16 10. "Index" means the United States Bureau of Labor Statistics
17 Producer Price Index (industry data) for construction machinery,
18 series identification number pcu333120333120 or any successor Index
19 measuring substantially similar information;

20 11. "Inventory" means equipment, repair parts, data processing
21 hardware or software, and specialized service or repair tools;

22 12. "Net equipment cost" means the price the dealer actually
23 paid to the supplier for equipment, plus:
24

- 1 a. freight, at the cost stated on the invoice, if
2 available, and if not the truckload rates in effect as
3 of the effective date of the termination of a dealer
4 agreement, if freight was paid by the dealer from the
5 supplier's location to the dealer's location, and
6 b. reimbursement for labor incurred in preparing the
7 equipment for retail sale or rental, also known as
8 set-up costs, which labor will be reimbursed at the
9 dealer's standard labor rate charged by the dealer to
10 its customers for nonwarranty repair work; provided,
11 however, if a supplier has established a reasonable
12 set-up time, such labor will be reimbursed at an
13 amount equal to the reasonable set-up time in effect
14 as of the date of delivery multiplied by the dealer's
15 standard labor rate;

16 13. "New equipment" means, for purposes of determining whether
17 a dealer is a single-line dealer, any equipment that could be
18 returned to the supplier upon a termination of a dealer agreement
19 pursuant to Sections 246 and 247 of this title;

20 14. "Person" means a natural person, corporation, partnership,
21 limited liability company, company, trust or any and all other forms
22 of business enterprise, including any other entity in which it has a
23 majority interest or of which it has control, as well as the
24

1 individual officers, directors and other persons in active control
2 of the activities of each entity;

3 15. "Repair parts" means all parts related to the repair of
4 equipment, including superseded parts;

5 16. "Single-line dealer" means a dealer that has:

- 6 a. purchased construction, industrial, forestry and
7 mining equipment from a single-line supplier
8 constituting seventy-five percent (75%) of the
9 dealer's new equipment that is construction,
10 industrial, forestry and mining equipment, calculated
11 on the basis of net equipment cost, and
12 b. a total annual average sales volume of equipment
13 acquired from the single-line supplier in excess of
14 Twenty-Five Million Dollars (\$25,000,000.00) for the
15 five (5) calendar years immediately preceding the
16 applicable determination date; provided, however, the
17 Twenty-Five-Million-Dollar threshold will be increased
18 each year by an amount equal to the then current
19 threshold multiplied by the percentage increase in the
20 Index from January of the immediately preceding year
21 to January of the current year;

22 17. "Single-line dealer agreement" means a dealer agreement
23 between a single-line dealer and a single-line supplier that only
24 provides for the rights and obligations of the parties with respect

1 to the purchase and sales of equipment that is construction,
2 forestry, industrial and mining equipment;

3 18. "Single-line supplier" means the supplier that is selling
4 the single-line dealer construction, industrial, forestry and mining
5 equipment constituting seventy-five percent (75%) of the dealer's
6 new equipment that is construction, industrial, forestry and mining
7 equipment;

8 19. "Specialty agricultural equipment" means equipment that is
9 designed for and used in:

10 a. planting, cultivating, irrigating, harvesting and
11 producing of the agricultural products, or

12 b. raising, feeding, tending to or harvesting products
13 from livestock;

14 20. "Specialty agricultural equipment supplier" means a
15 supplier of specialty agricultural equipment whose gross sales
16 revenue to the dealer is less than the threshold amount and whose
17 product line does not include farm tractors or combines and whose
18 sales of outdoor power equipment to the dealer does not exceed ten
19 percent (10%) of its total sales to the dealer during the one-year
20 period ending on the last day of the calendar month immediately
21 preceding the effective date of the termination of the dealer
22 agreement. Whether a supplier qualifies as a specialty agricultural
23 equipment supplier is determined on a case by case basis depending
24

1 on the sales of the applicable dealer and to the applicable dealer
2 by such specialty agricultural equipment supplier;

3 21. "Supplier" means any person engaged in the business of
4 manufacturing, assembly or wholesale distribution of equipment or
5 repair parts. The term shall also include any successor in
6 interest, including any receiver, trustee, liquidator, assignee,
7 purchaser of assets or stock, or a surviving corporation resulting
8 from a merger, liquidation or reorganization of the original
9 supplier. Purchasers of all, or substantially all, of the inventory
10 of a supplier or a supplier's division or product line will
11 constitute a purchaser of all or substantially all of the supplier's
12 assets;

13 22. "Terminate" or "termination" means to terminate, cancel,
14 fail to renew or substantially change the competitive circumstances
15 of a dealer agreement. For purposes of Section 9 of this act and
16 Sections 246 and 247 of this title, the terms shall not include the
17 phrase "substantially change the competitive circumstances of"; and

18 23. "Threshold amount" means that the lesser of:

19 a. ten percent (10%) of the dealer's gross sales revenue,
20 or

21 b. Three Hundred Fifty Thousand Dollars (\$350,000.00), in
22 each case based on net sales of the dealership during
23 the one year period ending on the last day of the
24 calendar month immediately preceding the effective

1 date of the termination of the dealer agreement;
2 provided, however, the Three-Hundred-Fifty-Thousand-
3 Dollar amount will be increased each year by an amount
4 equal to the then current amount multiplied by the
5 percentage increase in the Index from January of the
6 immediately preceding year to January of the current
7 year.

8 SECTION 2. This act shall become effective November 1, 2024.

9
10 59-2-10358 SW 02/21/24
11
12
13
14
15
16
17
18
19
20
21
22
23
24