

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 59th Legislature (2024)

4   COMMITTEE SUBSTITUTE  
5   FOR  
6   HOUSE BILL NO. 3970

By: Echols of the House

and

**Rader** of the Senate

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10                               COMMITTEE SUBSTITUTE

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

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

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

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

22           1.   "Current net parts price" means, with respect to current  
23   parts, the price for repair parts listed in the supplier's price  
24   list or catalogue in effect at the time the dealer agreement is

1 terminated or discontinued, or for purposes of Section 9 of this  
2 act, the price list or catalogue in effect at the time the repair  
3 parts were ordered. Current net parts price means, with respect to  
4 superseded repair parts, the price listed in the supplier's price  
5 list or catalogue in effect at the time the dealer agreement is  
6 terminated or discontinued for the part that performs the same  
7 function and purpose as the superseded part, but is simply listed  
8 under a different part number;

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

13 3. "Dealer" means any person primarily engaged in the business  
14 of:

- 15 a. selling or leasing equipment or repair parts to the  
16 ultimate consumer, and
- 17 b. repairing or servicing equipment;

18 4. "Dealer agreement" means either an oral or written agreement  
19 or arrangement for a definite or indefinite period between a dealer  
20 and a supplier that provides for the rights and obligations of the  
21 parties with respect to the purchase or sale of equipment or repair  
22 parts. Notwithstanding the foregoing, if a dealer has more than one  
23 business location covered by the same dealer agreement, the  
24 requirements of the Fair Practices of Equipment Manufacturers,

1 Distributors, Wholesalers and Dealers Act will be applied to the  
2 repurchase of a dealer's inventory at a particular location upon the  
3 closing of such location, unless the closing of the location occurs  
4 without the permission of the supplier;

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

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

13 7. "Equipment" means:

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

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

20 (1) lawn, garden, golf course, landscaping or grounds  
21 maintenance,

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

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:  
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- 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  
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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.

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10 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated  
11 02/22/2024 - DO PASS, As Amended and Coauthored.  
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