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April 1, 2024

ENGROSSED HOUSE
BILL NO. 3970

By: Echols of the House

and

Rader of the Senate

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 Current net parts price means, with respect to superseded repair parts, the price listed in the supplier's price

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3 function and purpose as the superseded part, but is simply listed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

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

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

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

13 b. repairing or servicing equipment;

14 4. "Dealer agreement" means either an oral or written agreement
15 or arrangement for a definite or indefinite period between a dealer
16 and a supplier that provides for the rights and obligations of the
17 parties with respect to the purchase or sale of equipment or repair
18 parts. Notwithstanding the foregoing, if a dealer has more than one
19 business location covered by the same dealer agreement, the
20 requirements of the Fair Practices of Equipment Manufacturers,
21 Distributors, Wholesalers and Dealers Act will be applied to the
22 repurchase of a dealer's inventory at a particular location upon the
23 closing of such location, unless the closing of the location occurs
24 without the permission of the supplier;

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

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

9 7. "Equipment" means:

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

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

16 (1) lawn, garden, golf course, landscaping or grounds
17 maintenance,

18 (2) planting, cultivating, irrigating, harvesting,
19 and producing of agricultural and/or forestry
20 products,

21 (3) raising, feeding, tending to or harvesting
22 products from livestock or any other activity in
23 connection therewith, or
24

1 (4) industrial, construction, maintenance, mining or
2 utility activities or applications.

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

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

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

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

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

19 12. "Net equipment cost" means the price the dealer actually
20 paid to the supplier for equipment, plus:

- 21 a. freight, at the cost stated on the invoice, if
22 available, and if not the truckload rates in effect as
23 of the effective date of the termination of a dealer
24

1 agreement, if freight was paid by the dealer from the
2 supplier's location to the dealer's location, and
3 b. reimbursement for labor incurred in preparing the
4 equipment for retail sale or rental, also known as
5 set-up costs, which labor will be reimbursed at the
6 dealer's standard labor rate charged by the dealer to
7 its customers for nonwarranty repair work; provided,
8 however, if a supplier has established a reasonable
9 set-up time, such labor will be reimbursed at an
10 amount equal to the reasonable set-up time in effect
11 as of the date of delivery multiplied by the dealer's
12 standard labor rate;

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

17 14. "Person" means a natural person, corporation, partnership,
18 limited liability company, company, trust or any and all other forms
19 of business enterprise, including any other entity in which it has a
20 majority interest or of which it has control, as well as the
21 individual officers, directors and other persons in active control
22 of the activities of each entity;

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

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

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

18 17. "Single-line dealer agreement" means a dealer agreement
19 between a single-line dealer and a single-line supplier that only
20 provides for the rights and obligations of the parties with respect
21 to the purchase and sales of equipment that is construction,
22 forestry, industrial and mining equipment;

23 18. "Single-line supplier" means the supplier that is selling
24 the single-line dealer construction, industrial, forestry and mining

1 equipment constituting seventy-five percent (75%) of the dealer's
2 new equipment that is construction, industrial, forestry and mining
3 equipment;

4 19. "Specialty agricultural equipment" means equipment that is
5 designed for and used in:

6 a. planting, cultivating, irrigating, harvesting and
7 producing of the agricultural products, or

8 b. raising, feeding, tending to or harvesting products
9 from livestock;

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

22 21. "Supplier" means any person engaged in the business of
23 manufacturing, assembly or wholesale distribution of equipment or
24 repair parts. The term shall also include any successor in

1 interest, including any receiver, trustee, liquidator, assignee,
2 purchaser of assets or stock, or a surviving corporation resulting
3 from a merger, liquidation or reorganization of the original
4 supplier. Purchasers of all, or substantially all, of the inventory
5 of a supplier or a supplier's division or product line will
6 constitute a purchaser of all or substantially all of the supplier's
7 assets;

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

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

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

16 b. Three Hundred Fifty Thousand Dollars (\$350,000.00), in
17 each case based on net sales of the dealership during
18 the one year period ending on the last day of the
19 calendar month immediately preceding the effective
20 date of the termination of the dealer agreement;
21 provided, however, the Three-Hundred-Fifty-Thousand-
22 Dollar amount will be increased each year by an amount
23 equal to the then current amount multiplied by the
24 percentage increase in the Index from January of the

1 immediately preceding year to January of the current
2 year.

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
5 April 1, 2024 - DO PASS
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