

An Act

ENROLLED SENATE
BILL NO. 377

By: Frix of the Senate

and

Bashore, Banning, and
Fetgatter of the House

An Act relating to equipment contracts; amending 15 O.S. 2021, Sections 245, as amended by Section 1, Chapter 62, O.S.L. 2024, 245A, 245A.1, and 245A.2 (15 O.S. Supp. 2024, Section 245), which relate to the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act; modifying definitions; updating statutory references; modifying certain prohibited actions; modifying certain consent requirements; updating statutory language; and providing an effective date.

SUBJECT: Equipment contracts

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

SECTION 1. AMENDATORY 15 O.S. 2021, Section 245, as amended by Section 1, Chapter 62, O.S.L. 2024 (15 O.S. Supp. 2024, 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~~ catalog in effect at the time the dealer agreement is terminated or discontinued, or for purposes of Section ~~9~~ 245A.5 of this ~~act~~ title, the price list or ~~catalogue~~ catalog 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means, with respect to superseded repair parts, the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number;

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

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

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

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

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

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

7. "Equipment" means:

- a. all-terrain vehicles, utility task vehicles and recreational off-highway vehicles, in each case, regardless of how used, and
- b. other machinery, equipment, implements or attachments therefor, used for or in connection with the following purposes:
 - (1) lawn, garden, golf course, landscaping or grounds maintenance,
 - (2) planting, cultivating, irrigating, harvesting, and producing of agricultural and/or forestry products,
 - (3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or
 - (4) industrial, construction, maintenance, mining or utility activities or applications.

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

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

9. "Good cause" has the meaning as set forth in Section ~~5 or 6~~ 245A.1 of this ~~act~~ title, as applicable; provided, that:

- a. a change in the executive management of the dealer shall not constitute good cause unless the supplier can demonstrate that the change is detrimental to the representation of the supplier's products, and

- b. for purposes of subsection B of Section 245A.2 of this title, good cause means showing that such sale or transfer would be detrimental to the representation of the supplier's product;

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

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

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

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

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

14. "Person" means a natural person, corporation, partnership, limited liability company, company, trust or any and all other forms of business enterprise, including any other entity in which it has a

majority interest or of which it has control, as well as the individual officers, directors and other persons in active control of the activities of each entity;

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

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

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

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

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

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

- a. planting, cultivating, irrigating, harvesting and producing of the agricultural products, or
- b. raising, feeding, tending to or harvesting products from livestock;

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

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

22. "Terminate" or "termination" means to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer agreement. For purposes of ~~Section 9 of this act and~~ Sections 245A.5, 246, and 247 of this title, the terms shall not include the phrase "substantially change the competitive circumstances of"; and

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

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

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

SECTION 2. AMENDATORY 15 O.S. 2021, Section 245A, is amended to read as follows:

Section 245A. It shall be a violation of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act for a supplier to take any one or more of the following actions:

1. To coerce, compel or require any dealer to accept delivery of any equipment or repair parts which the dealer has not voluntarily ordered, except as required by any applicable law or unless such equipment or repair parts are safety features required by a supplier;

2. To require any dealer to purchase goods or services as a condition to the sale by the supplier to the dealer of any equipment, repair parts or other goods or services, provided that nothing herein shall prohibit a supplier from requiring the dealer to purchase all repair parts, special tools and training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer;

3. ~~To coerce any dealer into a refusal to purchase equipment manufactured by another supplier. However,~~ prevent a dealer from being a party to a dealer agreement or holding an investment in a person that is a party to such a dealer agreement, that authorizes the dealer to sell competing product lines or makes of equipment or prevents a dealer from performing the dealer's obligations under such dealer agreement, or to require a dealer to provide separate facilities for competing product lines or makes of equipment. If a

dealer purchased equipment from a supplier constituting eighty percent (80%) of the dealer's new equipment, calculated on the basis of net equipment cost, at all retail sales facilities operated by such dealer and the total annual sales volume of equipment acquired from such supplier exceeds Forty Million Dollars (\$40,000,000.00), subject to adjustment after the effective date of this act on the same basis as calculated in subparagraph b of paragraph 16 of Section 245 of this title for single-line dealers, at such retail sales facilities for the five (5) calendar years immediately preceding the applicable determination date, then it shall not be a violation of this section to ~~require separate facilities, financial statements or sales staff for major competing lines so long as the dealer is given at least three (3) years notice of such requirement~~ the extent the dealer is prevented from selling major competing product lines or makes of equipment at such retail sales facilities of the dealer authorized to sell new equipment acquired from the supplier seeking to impose the restriction on sales of major competing product lines or makes of equipment;

4. To refuse to deliver in reasonable quantities and within a reasonable time, after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment will not be considered a violation of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act if such failure is due to prudent and reasonable restrictions on extensions of credit by the supplier to the dealer, an act of nature, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control or a business decision by the supplier to limit the production volume of the equipment;

5. To discriminate, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line;

6. To discriminate, directly or indirectly, in price between different dealers with respect to purchases of equipment or repair parts of like grade and quality and identical brand, where the

effect of such discrimination may be to substantially lessen competition, tend to create a monopoly in any line of commerce, or injure, destroy or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination; provided, however, different prices may be charged if:

- a. such differences are due to differences in the cost of manufacture, sale or delivery of the equipment or repair parts,
- b. the supplier can show that its lower price was made in good faith to meet an equally low price of a competitor, or
- c. such differences are related to the volume of equipment purchased by dealers or market share obtained by dealers;

7. To prevent by contract or otherwise, any dealer from changing its capital structure or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier, and provided the dealer at all times meets any reasonable capital standards required by the supplier pursuant to a right granted in the dealer agreement and imposed on similarly situated dealers; and

8. To require a dealer to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by ~~this act~~ the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act.

SECTION 3. AMENDATORY 15 O.S. 2021, Section 245A.1, is amended to read as follows:

Section 245A.1. A. The dealer must give the supplier at least thirty (30) ~~days~~ days prior written notice of termination. No supplier may terminate a dealer agreement without good cause. Except as otherwise specifically provided in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, "good cause" means the failure by a dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealer agreement, provided such requirements are not

different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

1. The dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent unless the supplier does not have the right to withhold consent under either the dealer agreement or under the terms of this act;

2. The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the business, or there has been a commencement of dissolution or liquidation of the dealer;

3. There has been a deletion, addition or change in dealer or dealership locations without the prior written approval of the supplier;

4. The dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier; provided, however, good cause will not exist if a person revokes any guarantee in connection with or following the transfer of such person's entire ownership interest in the dealer unless the supplier requires the person to execute a new guarantee of the dealer's present or future obligations in connection with the transfer of ownership interest;

5. The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

6. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and supplier;

7. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare or the representation or reputation of the supplier's product; or

8. The dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

B. The provisions of this section will not apply to single-line dealer agreements.

SECTION 4. AMENDATORY 15 O.S. 2021, Section 245A.2, is amended to read as follows:

Section 245A.2. A. Except as otherwise provided in this section, a supplier must provide a dealer at least one hundred eighty (180) ~~days~~ days prior written notice of termination of a dealer agreement. The notice must state all reasons constituting good cause for such termination and must state that the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice will be void. A supplier, other than a specialty agricultural equipment supplier, may not terminate a dealer agreement for the reason set forth in paragraph 8 of subsection A of Section ~~5~~ 245A.1 of this ~~act~~ title unless the supplier gives the dealer notice of such action at least two (2) years before the effective date of the action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice will be void and the dealer agreement will continue in full force and effect. The notice and right to cure provisions under this section shall not apply if the reason for termination is for any reason set forth in paragraphs 1 through 7 of subsection A of Section ~~5~~ 245A.1 of this ~~act~~ title.

B. If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest therein, the supplier shall approve or deny such a request within sixty (60) days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the sixty-day period, the request will be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subsection, the supplier must provide

the dealer with a written notice of the denial that states the reasons for the denial. A supplier may ~~only deny~~ not unreasonably withhold consent to a request based on the failure of the proposed transferees to meet the reasonable requirements consistently imposed by the supplier in determining approval of the transfer and/or approvals of new dealers for a sale or transfer of a dealer's business or an equity ownership interest in such business, and such consent may only be withheld for good cause. The supplier shall have the burden to prove that the denial of the request for sale or transfer complied with the requirements of this subsection.

C. If a dealer dies and the supplier has contractual authority to approve or deny a request for a sale or transfer of the dealer's business or equity ownership interest therein, the dealer's estate, or such other person with authority to transfer assets of the dealer, will have one hundred eighty (180) days to submit to the supplier a written request for a sale or transfer of the business or equity ownership interest. If the request is timely submitted, the supplier shall approve or deny the request in accordance with subsection B of this section. Notwithstanding anything to the contrary contained in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, any attempt by the supplier to terminate the dealer or the dealership as a result of the death of a dealer will be delayed until there has been compliance with the terms of this section or the one-hundred-eighty-day period has expired, as applicable.

D. The provisions of this section shall not apply to single-line dealer agreements.

SECTION 5. This act shall become effective November 1, 2025.

Passed the Senate the 24th day of March, 2025.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2025.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____