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Legislative Document

No. 187

H.P. 164

House of Representatives, January 27, 2011

An Act To Amend the Laws Regulating Dealers of Agricultural, Light Industrial and Forestry Equipment

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative BICKFORD of Auburn.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representatives: BURNS of Whiting, CLARK of Millinocket, DION of Portland,
EDGECOMB of Caribou, KNIGHT of Livermore Falls, LAJOIE of Lewiston, ROTUNDO of
Lewiston, TUTTLE of Sanford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA §1285, sub-§2**, as enacted by PL 1995, c. 462, Pt. A, §22 and
3 affected by §23, is amended to read:

4 **2. Dealer.** "Dealer" means a person, corporation or partnership primarily engaged in
5 the business of retail sales of farm and utility tractors, forestry equipment, light industrial
6 equipment, farm implements, farm machinery, yard and garden equipment, attachments,
7 accessories and repair parts. "Dealer" does not include a person, corporation or
8 partnership primarily engaged in the business of retail sales of heavy construction,
9 industrial and utility equipment, attachments, accessories and repair parts. "Dealer" does
10 not include a person, corporation or partnership primarily engaged in the retail sale of all-
11 terrain vehicles or motorcycles. "Dealer" does not include a single-line dealer as defined
12 in subsection 5-A.

13 **Sec. 2. 10 MRSA §1285, sub-§4**, as enacted by PL 1995, c. 462, Pt. A, §22 and
14 affected by §23, is amended to read:

15 **4. Inventory.** "Inventory" means farm, forestry, utility or light industrial equipment,
16 implements, machinery, yard and garden equipment, attachments or repair parts. These
17 terms do not include heavy construction equipment.

18 **Sec. 3. 10 MRSA §1285, sub-§5-A** is enacted to read:

19 **5-A. Single-line dealer.** "Single-line dealer" means a person, corporation or
20 partnership engaged in retail sales that:

21 A. Has purchased 75% or more of total new product inventory from a single
22 supplier; and

23 B. Has a total annual average sales volume for the previous 3 years in excess of
24 \$20,000,000 for the entire territory subject to the agreement with the supplier.

25 **Sec. 4. 10 MRSA §1287, sub-§1**, as enacted by PL 1995, c. 462, Pt. A, §22 and
26 affected by §23, is amended to read:

27 **1. Notice of termination.** Notwithstanding any agreement to the contrary, prior to
28 the termination of a dealer agreement, a supplier shall notify the dealer of the termination
29 not less than ~~90~~ 120 days prior to the effective date of the termination. The supplier may
30 immediately terminate the agreement at any time upon the occurrence of any of the
31 following events:

32 A. The filing of a petition for bankruptcy or for receivership either by or against the
33 dealer;

34 B. The making by the dealer of an intentional and material misrepresentation as to
35 the dealer's financial status;

36 C. Any default by the dealer under a chattel mortgage or other security agreement
37 between the dealer and the supplier;

1 ~~D. Discontinuance by the dealer of more than 50% of the dealer's business related to~~
2 ~~the handling of goods provided by the supplier;~~

3 E. The commencement of voluntary or involuntary dissolution or liquidation of the
4 dealer if the dealer is a partnership or corporation;

5 F. A change in location of the dealer's principal place of business as provided in the
6 agreement without the prior written approval of the supplier;

7 G. Withdrawal of an individual proprietor, partner, or major shareholder or the
8 involuntary termination of the manager of the dealership or a substantial reduction in
9 the interest of a partner or major shareholder without the prior written consent of the
10 supplier; or

11 H. Breach by the dealer of a written obligation contained in the agreement.

12 **Sec. 5. 10 MRSA §1287, sub-§2**, as enacted by PL 1995, c. 462, Pt. A, §22 and
13 affected by §23, is amended to read:

14 **2. Time of notice.** Unless there is an agreement to the contrary, a dealer who
15 intends to terminate a dealer agreement with a supplier shall notify the supplier of that
16 intent not less than ~~90~~ 120 days prior to the effective date of the termination.

17 **Sec. 6. 10 MRSA §1288, sub-§1, ¶A**, as enacted by PL 1995, c. 462, Pt. A, §22
18 and affected by §23, is repealed.

19 **Sec. 7. 10 MRSA §1289**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected
20 by §23, is amended to read:

21 **§1289. Repurchase terms**

22 **1. Examination of records.** Within 90 days from receipt of the written request of
23 the dealer, a supplier under the duty to repurchase inventory pursuant to section 1288
24 may examine any books or records of the dealer to verify the eligibility of any item for
25 repurchase. Except as otherwise provided in this chapter, the supplier shall repurchase
26 from the dealer all inventory, required signs, specialized repair tools, books, supplies,
27 data processing equipment and software previously purchased from the supplier and in
28 the possession of the dealer on the date of termination of the dealer agreement.

29 **2. Payment terms.** The supplier shall pay the dealer:

30 A. One hundred percent of the net cost of all new and undamaged and complete
31 farm, utility, forestry and light industrial equipment, implements, machinery, yard
32 and garden equipment and attachments purchased within the past 36 months from the
33 supplier, less a reasonable allowance for deterioration attributable to weather
34 conditions at the dealer's location;

35 B. Ninety percent of the current net prices of all new and undamaged repair parts;
36 ~~and~~

37 C. Eighty-five percent of the current net prices of all new and undamaged superseded
38 repair parts;

1 D. Eighty-five percent of the latest available published net price of all new and
2 undamaged noncurrent repair parts;

3 E. The fair market value of, or assume the lease responsibilities for, any specific data
4 processing equipment and software that the supplier required the dealer to purchase
5 to satisfy the reasonable requirements of the dealer agreement, including computer
6 systems equipment required or approved by the supplier to communicate with the
7 supplier;

8 F. Seventy-five percent of the net cost of specialized repair tools, signs, books and
9 supplies previously purchased, pursuant to requirements of the supplier and held by
10 the dealer on the date of termination. Only specialized repair tools that are unique to
11 the supplier product line, complete and in usable condition are required to be
12 repurchased under this paragraph; and

13 G. Average as-is value shown in current industry guides for a dealer-owned rental
14 fleet financed by the supplier or its finance subsidiary.

15 **3. Return costs.** The party that initiates the termination of the dealer agreement
16 shall pay the cost of the return, handling, packing and loading of the inventory.

17 **4. Payment date.** Payment to the dealer required under this section must be made
18 by the supplier not later than ~~60~~ 45 days after receipt of the inventory by the supplier.
19 The supplier shall pay to the dealer a penalty of 2% per day on any outstanding balance
20 over the 45 days. The supplier is entitled to apply any payment required under this
21 section to be made to the dealer; as a setoff against any amount owed by the dealer to the
22 supplier.

23 **Sec. 8. 10 MRSA §1290, sub-§1, ¶D,** as enacted by PL 1995, c. 462, Pt. A, §22
24 and affected by §23, is repealed.

25 **Sec. 9. 10 MRSA §1290, sub-§1, ¶F,** as enacted by PL 1995, c. 462, Pt. A, §22
26 and affected by §23, is amended to read:

27 F. Any inventory ordered by the dealer after receipt of notice of termination of the
28 dealer agreement by either the dealer or supplier; or

29 **Sec. 10. 10 MRSA §1290, sub-§1, ¶G,** as enacted by PL 1995, c. 462, Pt. A, §22
30 and affected by §23, is amended to read:

31 G. Any inventory that was acquired by the dealer from a source other than the
32 supplier; ~~or.~~

33 **Sec. 11. 10 MRSA §1290, sub-§1, ¶H,** as enacted by PL 1995, c. 462, Pt. A, §22
34 and affected by §23, is repealed.

35 **Sec. 12. 10 MRSA §1291, sub-§1,** as enacted by PL 1995, c. 462, Pt. A, §22 and
36 affected by §23, is amended to read:

37 **1. Transfer.** A supplier may not unreasonably withhold or delay consent to any
38 transfer of the dealer's business or transfer of the stock or other interest in the dealership,
39 whenever the dealer to be substituted meets the material and reasonable qualifications and

1 standards required of its dealers. If a supplier determines that a proposed transferee does
2 not meet its qualifications and standards, it shall give the dealer written notice thereof,
3 stating the specific reasons for withholding consent. A prospective transferee may not be
4 disqualified from being a dealer because it is a publicly held corporation. A supplier has
5 ~~45~~ 90 days to consider a dealer's request to make a transfer under this subsection.

6 **Sec. 13. 10 MRSA §1291, sub-§2**, as enacted by PL 1995, c. 462, Pt. A, §22 and
7 affected by §23, is amended to read:

8 **2. Transfer to family member or principal owner.** Notwithstanding subsection
9 1, ~~no~~ a supplier may not withhold consent to, or in any manner retain a right of prior
10 approval of, the transfer of the dealer's business to a member or members of the family of
11 the dealer or the principal owner of the ~~dealer~~ dealership. As used in this subsection,
12 "family" means and includes the spouse, parent, siblings, children, stepchildren and lineal
13 descendants, including those by adoption, of the dealer or principal owner of the ~~dealer~~
14 dealership.

15 **Sec. 14. 10 MRSA §1293, sub-§1, ¶B**, as enacted by PL 2005, c. 317, §1, is
16 amended to read:

17 B. A dealer that performs warranty work as provided for in this section must be
18 compensated for parts used in fulfilling such warranty work in an amount that is not
19 less than the ~~dealer's costs for such parts plus 15%~~ supplier's suggested retail price for
20 such parts, including all freight and handling charges applicable to such parts, to
21 reimburse the dealer's reasonable costs of doing business and providing such
22 warranty service on behalf of the supplier. If the warranty work is provided on behalf
23 of the supplier on a product sold by a nonservicing dealer, the compensation for parts
24 used in fulfilling such warranty work must be at an amount that is not less than the
25 supplier's suggested list price or dealer's cost plus 30%, whichever is greater, plus
26 freight and handling charges applicable to such parts.

27 **Sec. 15. Maine Revised Statutes headnote amended; revision clause.** In
28 the Maine Revised Statutes, Title 10, chapter 208-B, in the chapter headnote, the words
29 "farm machinery dealerships" are amended to read "farm machinery, forestry equipment
30 and light industrial equipment dealerships" and the Revisor of Statutes shall implement
31 this revision when updating, publishing or republishing the statutes.

32 SUMMARY

33 This bill expands the definition of "dealer" in the Maine Revised Statutes, Title 10,
34 chapter 208-B to include persons engaged in retail sales of forestry equipment and light
35 industrial equipment. Chapter 208-B contains provisions pertaining to agreements
36 between suppliers and dealers of farm and utility machinery and yard and garden
37 equipment. It contains repurchase provisions and warranty obligations.

38 This bill defines "single-line dealer" and excludes a single-line dealer from the
39 protections and obligations under this chapter. It extends from 90 days to 120 days the
40 advance notice required for a supplier or a dealer to notify the other of intent to terminate
41 a supplier-dealer agreement. It revises the requirements for a supplier to repurchase

1 inventory from a dealer. It reduces the period within which payment must be made from
2 60 to 45 days after receipt of the inventory by the supplier. It requires repurchase at
3 100% of net cost for all new and undamaged equipment purchased from the supplier
4 within 36 months of an agreement termination, instead of the current 30-month period. It
5 establishes rates for repurchase of parts and tools not covered under current law.

6 It extends from 45 to 90 days the time period a supplier is allowed to consider a
7 dealer's request to transfer a dealership. It specifies that a dealer performing work under
8 a supplier's warranty is entitled to compensation at the suggested retail price for parts.