

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

H.P. 164 - L.D. 187

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

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

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

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

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

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

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

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

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

B. Has a total annual average sales volume for the previous 3 years in excess of \$100,000,000 for the entire territory subject to the agreement with the supplier.

**Sec. 4. 10 MRSA §1286**, as amended by PL 2009, c. 325, Pt. B, §1 and affected by §27, is further amended to read:

**§1286. Usage of trade**

The terms "~~utility~~" "utility," "forestry," "construction" and "industrial," when used to refer to equipment, machinery, attachments, yard and garden equipment or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as usage of trade in accordance with Title 11, section 1-1303, subsection (3).

**Sec. 5. 10 MRSA §1287, sub-§1**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

- A. The filing of a petition for bankruptcy or for receivership either by or against the dealer;
- B. The making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;
- C. Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
- ~~D. Discontinuance by the dealer of more than 50% of the dealer's business related to the handling of goods provided by the supplier;~~
- E. The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;
- F. A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;
- G. Withdrawal of an individual proprietor, partner, or major shareholder or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier; or
- H. Breach by the dealer of a written obligation contained in the agreement.

**Sec. 6. 10 MRSA §1287, sub-§2**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

**Sec. 7. 10 MRSA §1288, sub-§1, ¶A**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

**Sec. 8. 10 MRSA §1289**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

**§1289. Repurchase terms**

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

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

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

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

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

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

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

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

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

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

**4. Payment date.** Payment to the dealer required under this section must be made by the supplier not later than ~~60~~ 45 days after receipt of the inventory by the supplier. The supplier shall pay to the dealer a penalty of 1 1/2% per day on any outstanding balance over the 45 days. The supplier is entitled to apply any payment required under

this section to be made to the dealer, as a setoff against any amount owed by the dealer to the supplier.

**Sec. 9. 10 MRSA §1290, sub-§1, ¶D**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

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

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

**Sec. 11. 10 MRSA §1290, sub-§1, ¶G**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

**Sec. 12. 10 MRSA §1290, sub-§1, ¶H**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

**Sec. 13. 10 MRSA §1291, sub-§1**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

**1. Transfer.** A supplier may not unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership, whenever the dealer to be substituted meets the material and reasonable qualifications and standards required of its dealers. If a supplier determines that a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent. A prospective transferee may not be disqualified from being a dealer because it is a publicly held corporation. A supplier has ~~45~~ 90 days to consider a dealer's request to make a transfer under this subsection.

**Sec. 14. 10 MRSA §1291, sub-§2**, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

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

B. A dealer that performs warranty work as provided for in this section must be compensated for parts used in fulfilling such warranty work in an amount that is not less than the dealer's costs for such parts plus ~~15%~~ 20% or the supplier's suggested

retail price for such parts, ~~including~~ whichever is greater, plus all freight and handling charges applicable to such parts, to reimburse the dealer's reasonable costs of doing business and providing such warranty service on behalf of the supplier. If the warranty work is provided on behalf of the supplier on a product sold by a nonservicing dealer, the compensation for parts used in fulfilling such warranty work must be at an amount that is not less than the supplier's suggested list price or dealer's cost plus 30%, whichever is greater, plus freight and handling charges applicable to such parts.

**Sec. 16. 10 MRSA §1293-A** is enacted to read:

**§1293-A. Prohibited acts**

A supplier may not:

**1. Coercion involving deliveries and orders.** Mandate, coerce or attempt to coerce any dealer to order or accept delivery of equipment or repair parts not required by law that have not been voluntarily ordered by the dealer, unless the equipment or repair parts are comprised of safety features required by the supplier;

**2. Interference in dealer's business.** Require any dealer to refrain from participation in the management or acquisition of, or investment in, any other business; or

**3. Coercion involving sale of equipment.** Prevent, coerce or attempt to coerce a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or makes of equipment or require the dealer to provide separate facilities for competing product lines or makes of equipment.

**Sec. 17. Legislative findings and intent.** The Legislature finds that the distribution of equipment primarily designed for or used in agriculture in the State vitally affects the general economy of the State and the public interest and public welfare and, in the exercise of the State's police power, it is necessary to regulate equipment primarily designed for or used in agriculture and related equipment suppliers, dealers and their representatives doing business in the State in order to prevent frauds, unfair business practices, unfair methods of competition, impositions and other abuses upon its citizens. The Legislature intends to protect the citizens of the State from the sudden loss of access to equipment and local parts and service for large and expensive pieces of machinery and to promote the public welfare by providing free and open trade of equipment primarily designed for or used in agriculture within the State.

**Sec. 18. Application.** This Act applies to all contracts and agreements in effect on the effective date of this Act that have no expiration date and are continuing contracts and all other contracts and agreements entered into, amended, renewed or extended after the effective date of this Act.

**Sec. 19. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 10, chapter 208-B, in the chapter headnote, the words "farm machinery dealerships" are amended to read "farm machinery, forestry equipment,

construction equipment and industrial equipment dealerships" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor