

No. 1987-86

## AN ACT

SB 429

Providing for the repurchase by the wholesaler, manufacturer or distributor, from dealers or heirs of dealers, of certain equipment, certain attachments and parts held for sale upon termination of agreement whereby the dealer agrees to maintain a stock of such implements, attachments and parts, and for the repurchase of certain tools.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Pennsylvania Fair Dealership Law.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Current net price.” The price, applicable to an individual dealer, listed in the printed price list or catalog or invoice in use by the supplier on the date the dealer agreement is terminated or canceled or has failed to be renewed.

“Dealer.” Any person, firm or corporation engaged primarily in the business of retail sale or repair of equipment. The term includes the heir or authorized representative of a person or majority stockholder of a corporation operating as a dealer in the event such person or stockholder dies or becomes incapacitated.

“Dealer agreement.” An oral or written contract, franchise agreement or security agreement between a dealer and supplier whereby the dealer agrees to acquire from the supplier and to maintain an inventory of equipment, repair parts or specialized repair tools.

“Equipment.” Machines designed for or adapted and used for agriculture, horticulture, floriculture, livestock raising, silviculture, landscaping and grounds maintenance, even though incidentally operated or used upon the highways, including, but not limited to, tractors, farm implements, loaders, backhoes, lawn mowers, rototillers, etc., and any business signs purchased by requirement of the supplier which are less than five years old. The term shall not include:

(1) equipment manufactured solely for the purpose of industrial construction; or

(2) all-terrain vehicles as defined in 75 Pa.C.S. § 7702 (relating to definitions).

“Net cost.” The amount paid by the dealer to the supplier, plus the cost of freight, if any, incurred by the dealer.

“Repair parts.” All parts related to repair of equipment.

“Specialized repair tools.” Tools and equipment, including diagnostic equipment, designed to be used or useful only in the maintenance and repair of equipment.

“Supplier.” A manufacturer of equipment or repair parts or a wholesaler or distributor of equipment or repair parts who has a valid existing contract with a manufacturer of equipment or repair parts, including the successors or assigns of such manufacturer, wholesaler or distributor.

### Section 3. Termination of dealer agreement.

(a) General provisions.—It shall be unlawful for a supplier to terminate, cancel or fail to renew a dealer agreement except as provided in subsection (b) or (c).

(b) Exceptions.—A supplier may terminate, cancel or fail to renew a dealer agreement if a dealer:

(1) Fails to consistently comply with essential and reasonable requirements imposed by the supplier.

(2) Has transferred ownership interest in the dealership without the manufacturer's or distributor's consent.

(3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing.

(4) Has pleaded guilty or has been convicted of a crime, or has been determined to be engaged in an unfair business practice, as defined in other laws of this Commonwealth, the effect of which would be detrimental to the manufacturer, distributor or dealership.

(5) Has failed to operate in a normal course of business for ten consecutive business days or has terminated or voluntarily abandoned said business.

(6) Has relocated the dealer's place of business without the manufacturer's or distributor's consent.

(7) Has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future financial obligations to the supplier.

(c) Other exceptions.—Subject to the provisions of this subsection, a supplier may terminate, cancel or fail to renew a dealer agreement under such conditions as may be provided for in the dealer agreement. When a dealer agreement is terminated or canceled or has failed to be renewed by the supplier under a condition provided for in the dealer agreement, other than a condition set forth in subsection (b), the supplier, upon written request of the dealer, shall pay to the dealer, or credit to the dealer's account if the dealer has outstanding any sums owing the supplier:

(1) A sum equal to 100% of the net cost of all equipment that the dealer purchased from the supplier and not previously sold and put into regular use or service preceding notification by either party of intent to cancel, terminate or fail to renew the dealer agreement.

(2) A sum equal to 100% of the current net price of repair parts, including superseded repair parts, previously purchased from the supplier and 75% of the current net price of specialized repair tools previously purchased pursuant to the requirements of the supplier and held by the dealer on the date of termination, cancellation or failure to renew the dealer agreement. In addition, the supplier shall pay the dealer, or credit to the dealer's account if the dealer has outstanding any sums owing the supplier, a sum equal to 5% of the current net price of all repair parts, excluding incoming freight cost, and specialized repair tools returned to the supplier to compensate the dealer for the inventory, packing and loading of the same to the supplier, provided that the supplier may perform such inventory, packing and loading in lieu of paying 5% to the dealer. Upon the payment or allowance of credit to the dealer's account, as applicable, in the sum required by this section, all of the dealer's title and interest in and to the equipment, repair parts and specialized repair tools shall pass to the supplier, and the supplier shall be entitled to the possession of the same. Payments or allowance of credit to the dealer, as applicable, required by this section shall be made no later than 90 days after such termination, cancellation or discontinuance or 60 days after the supplier's receipt of the equipment, repair parts or specialized repair tools.

(3) In the event a dealer terminates a dealer agreement, the obligation of the supplier to repurchase equipment, repair parts and specialized repair tools shall be governed by the terms and conditions then in effect in the dealer agreement between the supplier and the dealer and not by the provisions of this act.

(d) Burden of proof.—The supplier shall bear the burden of proof to establish that cancellation, termination or failure to renew was made for good cause as provided in this section.

(e) Written notice required.—No supplier shall terminate, cancel or fail to renew, either directly or indirectly, through any officer, agent or employee, a dealer agreement for the reasons specified in subsection (b)(1) or (2) without giving the dealer at least 90 days' written notice setting forth the reasons for such termination, cancellation or failure to renew. A supplier may terminate, cancel or fail to renew a dealer agreement for the reasons specified in subsection (b)(3) through (7) effective immediately upon receipt of written notice from the supplier to the dealer setting forth such reasons.

(f) Deficiencies may be cured.—Except for termination, cancellation or discontinuance for reasons set forth in subsection (b)(3) through (7), the supplier shall allow the dealer no less than 60 days to cure the deficiencies set forth in the notice required under subsection (e). Any such time provided to the dealer to cure deficiencies shall be calculated from the date of receipt of notice.

#### Section 4. Repurchases not required.

The provisions of this act shall not require the repurchase from a dealer of:

(1) any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;

(2) incomplete sets of repair parts which are customarily sold as a set of two or more items;

(3) any repair part which because of physical condition is not resellable as a new part without reconditioning;

(4) any equipment, repair part or specialized repair tool for which the dealer is unable to furnish evidence, satisfactory to the supplier, of title, free and clear of all claims, liens and encumbrances;

(5) any equipment, repair part or specialized repair tool that the dealer desires to keep, provided the dealer has a contractual right to do so;

(6) any equipment which is not in new, unused, undamaged or complete condition, other than company-authorized demonstrators;

(7) any repair parts which are not in new, unused or undamaged condition;

(8) any equipment which was purchased 36 months or more prior to notice of termination or cancellation of or failure to renew the dealer agreement;

(9) any equipment, repair part or specialized repair tool ordered by the dealer on or after the date of notification of termination or cancellation of or failure to renew the dealer agreement; or

(10) any equipment or repair part which was acquired by the dealer from any source other than the supplier.

#### Section 5. Death or incapacitation of dealer.

In the event of the death or incapacity of a dealer, the supplier shall repurchase, at the option of the heir or authorized representative of such person or stockholder, the equipment, repair parts and specialized repair tools of the dealer as if the supplier had terminated, canceled or failed to renew the contract. The heir or authorized representative shall have 120 days from the date of the death of such dealer or from the date such dealer is determined to be incapacitated or becomes totally disabled, as applicable, to exercise the option under this section. Nothing in this act requires the repurchase of any equipment, repair parts and specialized repair tools if the heir and supplier enter into a new contract to operate the retail dealership.

#### Section 6. Repurchase of unused specialized repair tools.

A supplier shall repurchase, upon the written request of a dealer, any specialized repair tool purchased by the dealer pursuant to the requirements of the supplier which remains unused for more than a 12-month period after the dealer receives the same. The repurchase price payable to the dealer under this section shall be the original cost to the dealer plus a handling charge equal to 10% of such original cost.

#### Section 7. Security interest and bulk sales.

Nothing in this act shall be construed to affect in any way any security interest which the supplier may have in the equipment, repair parts or specialized repair tools of the dealer, and any repurchase pursuant to this act is not subject to the provisions of 13 Pa.C.S. Ch. 61 (relating to bulk transfers).

Section 8. Failure to repurchase.

Any supplier that shall fail to repurchase and make the payments therefor as required by this act shall be liable to the dealer for interest on the unpaid balance of sums owed to the dealer as provided in section 3. Interest shall be simple interest at the rate published by the Secretary of Revenue pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, plus 10% per annum.

Section 9. No coercion.

It shall be a violation for any supplier to require, attempt to require, coerce or attempt to coerce any dealer in this Commonwealth to order or accept delivery of any equipment or repair parts not required by law which shall not have been voluntarily ordered by the dealer.

Section 10. Injunctive relief.

In any action brought by a dealer under this act, any violation of this act by the supplier shall be deemed an irreparable injury to the dealer sufficient to sustain issuance of a temporary injunction.

Section 11. General repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 12. Applicability.

The provisions of this act shall apply to existing dealer agreements which can be terminated at will and to dealer agreements entered into or renewed after the effective date of this act. Nothing contained in this section is intended to violate section 17 of Article I of the Constitution of Pennsylvania, relative to impairing the obligations of contracts.

Section 13. Effective date.

This act shall take effect immediately.

APPROVED—The 18th day of December, A. D. 1987.

ROBERT P. CASEY