

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 429

Session of  
1987

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INTRODUCED BY MADIGAN, HELFRICK, O'PAKE, STAPLETON, SHAFFER,  
STOUT, SHUMAKER, WILT AND PETERSON, FEBRUARY 27, 1987

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AS AMENDED ON THIRD CONSIDERATION, APRIL 7, 1987

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## AN ACT

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

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

9 Section 1. Short title.

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

12 Section 2. Definitions.

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

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

1 "Dealer." Any person, firm or corporation engaged primarily  
2 in the business of retail sale or repair of equipment. The term  
3 includes the heir or authorized representative of a person or  
4 majority stockholder of a corporation operating as a dealer in  
5 the event such person or stockholder dies or becomes  
6 incapacitated.

7 "Dealer agreement." An oral or written contract, franchise  
8 agreement or security agreement between a dealer and supplier  
9 whereby the dealer agrees to acquire from the supplier and to  
10 maintain an inventory of equipment, repair parts or specialized  
11 repair tools.

12 "Equipment." Machines designed for or adapted and used for  
13 agriculture, horticulture, floriculture, livestock raising,  
14 silviculture, landscaping and grounds maintenance even though  
15 incidentally operated or used upon the highways, including, but  
16 not limited to, tractors, farm implements, loaders, backhoes,  
17 lawn mowers, rototillers, etc., and any business signs with <—  
18 ~~respect thereto~~ PURCHASED BY REQUIREMENT OF THE SUPPLIER which <—  
19 are less than five years old. The term shall not include  
20 equipment manufactured solely for the purpose of industrial  
21 construction.

22 "Net cost." The amount paid by the dealer to the supplier  
23 plus the cost of freight, if any, incurred by the dealer.

24 "Repair parts." All parts related to repair of equipment. <—  
25 ~~and any business signs with respect thereto which are less than~~  
26 ~~five years old.~~

27 "Specialized repair tools." Tools and equipment, including  
28 diagnostic equipment, designed to be used or useful only in the  
29 maintenance and repair of equipment.

30 "Supplier." A manufacturer, wholesaler or distributor of

1 equipment or repair parts, including their successors and  
2 assigns.

3 Section 3. Obligation to repurchase upon termination,  
4 cancellation or failure to renew.

5 When a dealer agreement is terminated or canceled or has  
6 failed to be renewed BY THE SUPPLIER, EXCEPT AS PROVIDED IN <—  
7 SECTION 9(B), the supplier, upon written request of the dealer,  
8 shall pay to the dealer, or credit to the dealer's account if  
9 the dealer has outstanding any sums owing the supplier:

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

15 (2) A sum equal to 100% of the current net price of  
16 repair parts, including superseded repair parts, previously  
17 purchased from the supplier and 75% of the current net price  
18 of specialized repair tools previously purchased pursuant to  
19 the requirements of the supplier and held by the dealer on  
20 the date of termination, cancellation or failure to renew the  
21 dealer agreement. In addition, the supplier shall pay the  
22 dealer, or credit to the dealer's account if the dealer has  
23 outstanding any sums owing the supplier, a sum equal to 5% of  
24 the ~~net cost of equipment and~~ current net price of all repair <—  
25 parts, excluding incoming freight cost, and specialized  
26 repair tools returned to the supplier to compensate the  
27 dealer for the inventory, packing and loading of the same to  
28 the supplier, provided that the supplier may perform such  
29 inventory, packing and loading in lieu of paying 5% to the  
30 dealer. Upon the payment or allowance of credit to the

1 dealer's account, as applicable, in the sum required by this  
2 section, all of the dealer's title and interest in and to the  
3 equipment, repair parts and specialized repair tools shall  
4 pass to the supplier, and the supplier shall be entitled to  
5 the possession of the same. Payments or allowance of credit  
6 to the dealer, as applicable, required by this section shall  
7 be made no later than 90 days after such termination,  
8 cancellation or discontinuance or ~~30~~ 60 days after the <—  
9 supplier's receipt of the equipment, repair parts or  
10 specialized repair tools.

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

17 Section 4. Repurchases not required.

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

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

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

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

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

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

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

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

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

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

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

18   Section 5. Death or incapacitation of dealer.

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

1 retail dealership.

2 Section 6. Repurchase of unused specialized repair tools.

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

10 Section 7. Security interest and bulk sales.

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

17 Section 8. Failure to repurchase.

18 Any supplier that shall fail to repurchase and make the  
19 payments therefor as required by this act shall be liable in a <—  
20 ~~civil action to be brought by the dealer for 125% of the net~~  
21 ~~cost of the equipment, 135% of the current net price of repair~~  
22 ~~parts and 100% of the current net price of specialized repair~~  
23 ~~tools, plus attorney fees and court costs incurred by the dealer~~  
24 ~~and an additional 5% for handling, packing and loading, if~~  
25 ~~applicable.~~ TO THE DEALER FOR INTEREST ON THE UNPAID BALANCE OF <—  
26 SUMS OWED TO THE DEALER AS PROVIDED IN SECTION 3. INTEREST SHALL  
27 BE SIMPLE INTEREST AT THE RATE PUBLISHED BY THE SECRETARY OF  
28 REVENUE PURSUANT TO SECTION 806 OF THE ACT OF APRIL 9, 1929  
29 (P.L.343, NO.176), KNOWN AS THE FISCAL CODE, PLUS 10% PER ANNUM.

30 Section 9. Termination of dealer agreement.

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

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

6 (1) Fails to ~~substantially~~ CONSISTENTLY comply with <—  
7 essential and reasonable requirements imposed by the  
8 supplier.

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

11 (3) Has filed a voluntary petition in bankruptcy or has  
12 ~~been adjudicated bankrupt.~~ HAD AN INVOLUNTARY PETITION IN <—  
13 BANKRUPTCY FILED AGAINST IT WHICH HAS NOT BEEN DISCHARGED  
14 WITHIN 30 DAYS AFTER THE FILING.

15 (4) Has pleaded guilty or has been convicted of a crime,  
16 OR HAS BEEN DETERMINED TO BE ENGAGED IN AN UNFAIR BUSINESS <—  
17 PRACTICE, AS DEFINED IN OTHER LAWS OF THIS COMMONWEALTH, the  
18 effect of which would be detrimental to the manufacturer,  
19 distributor or dealership.

20 (5) Has failed to operate in a normal course of business  
21 for ten consecutive business days or has terminated OR <—  
22 VOLUNTARILY ABANDONED said business.

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

25 (7) HAS DEFAULTED UNDER ANY CHATTEL MORTGAGE OR OTHER <—  
26 SECURITY AGREEMENT BETWEEN THE DEALER AND THE SUPPLIER, OR  
27 THERE HAS BEEN A REVOCATION OR DISCONTINUANCE OF ANY  
28 GUARANTEE OF THE DEALER'S PRESENT OR FUTURE FINANCIAL  
29 OBLIGATIONS TO THE SUPPLIER.

30 (c) Burden of proof.--The supplier shall bear the burden of

1 proof to establish that cancellation, termination or failure to  
2 renew was made for good cause as provided in this section.

3 (d) Written notice required.--No supplier shall terminate,  
4 cancel or fail to renew, either directly or indirectly through  
5 any officer, agent or employee, a dealer agreement FOR THE <—  
6 REASONS SPECIFIED IN SUBSECTION (B)(1) OR (2) without giving the  
7 dealer at least 90 days' written notice setting forth all the <—  
8 reasons for such termination, cancellation or failure to renew, <—  
9 ~~provided that:~~

10 ~~(1) In the event the dealer voluntarily abandons such~~  
11 ~~dealer operation, written notice may be given 15 days in~~  
12 ~~advance of such termination, cancellation or failure to~~  
13 ~~renew.~~

14 ~~(2) In the event the dealer is convicted in a court of~~  
15 ~~competent jurisdiction of an offense directly related to the~~  
16 ~~business conducted pursuant to the dealer agreement,~~  
17 ~~termination, cancellation or discontinuance may be effective~~  
18 ~~immediately upon the delivery and receipt of written notice~~  
19 ~~of same at any time following such conviction. RENEW. A <—~~  
20 SUPPLIER MAY TERMINATE, CANCEL OR FAIL TO RENEW A DEALER  
21 AGREEMENT FOR THE REASONS SPECIFIED IN SUBSECTION (B)(3)  
22 THROUGH (7) EFFECTIVE IMMEDIATELY UPON RECEIPT OF WRITTEN  
23 NOTICE FROM THE SUPPLIER TO THE DEALER SETTING FORTH SUCH  
24 REASONS.

25 (e) Deficiencies may be cured.--Except for termination,  
26 cancellation or discontinuance ~~upon conviction as described in~~ <—  
27 ~~subsection (d)(2)~~ FOR REASONS SET FORTH IN SUBSECTION (B)(3) <—  
28 THROUGH (7), the supplier shall allow the dealer no less than 60  
29 days to cure the deficiencies set forth in the notice required  
30 under subsection (d). ~~In the case of voluntary abandonment as~~ <—



1 ~~set forth in subsection (d)(1), the supplier shall allow the~~  
2 ~~dealer ten days to cure such deficiency.~~ Any such time provided  
3 to the dealer to cure deficiencies shall be calculated from the  
4 date of receipt of notice.

5 Section 10. No coercion.

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

11 Section 11. Injunctive relief.

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

16 Section 12. General repeals.

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

19 Section 13. Applicability.

20 Notwithstanding the terms and provisions of any dealer  
21 agreement, the provisions of this act with respect to  
22 termination, cancellation or discontinuance of a dealer  
23 agreement shall apply to any termination, cancellation or  
24 discontinuance of any dealer agreement, notice of which shall  
25 have been given on or after the effective date hereof, and the  
26 repurchase obligation created under this act shall be in  
27 addition to any and all other rights or remedies of the dealer  
28 under the dealer agreement or law.

29 Section 14. Effective date.

30 This act shall take effect immediately.