

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1169 Session of
2011

INTRODUCED BY WAUGH, BAKER, SOLOBAY, SCHWANK, ALLOWAY, RAFFERTY,
YAW, WOZNIAK, EICHELBERGER AND FOLMER, JUNE 23, 2011

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, JUNE 23, 2011

AN ACT

1 Amending the act of December 18, 1987 (P.L.412, No.86), entitled
2 "An act providing for the repurchase by the wholesaler,
3 manufacturer or distributor, from dealers or heirs of
4 dealers, of certain equipment, certain attachments and parts
5 held for sale upon termination of agreement whereby the
6 dealer agrees to maintain a stock of such implements,
7 attachments and parts, and for the repurchase of certain
8 tools," further providing for definitions, for termination of
9 dealer agreement, for death or incapacitation of dealer and
10 for repurchase of unused specialized repair tools; repealing
11 provisions relating to coercion; and providing for violations
12 of act, for warranty, for remedies and enforcement and for
13 waiver.

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

16 Section 1. Section 2 of the act of December 18, 1987
17 (P.L.412, No.86), known as the Pennsylvania Fair Dealership Law,
18 is amended to read:

19 Section 2. Definitions.

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

23 "Construction equipment manufacturer." A manufacturer of

1 construction, industrial, forestry, paving and mining equipment,
2 repair parts or specialized repair tools that does not
3 manufacture consumer or farming equipment either by itself or
4 through an affiliate.

5 "Consumer equipment." Machinery designed and manufactured
6 primarily for household use.

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

11 "Dealer." Any person, firm or corporation engaged primarily
12 in the business of retail sale or repair of equipment. The term
13 includes the heir or authorized representative of a person or
14 majority stockholder of a corporation operating as a dealer in
15 the event such person or stockholder dies or becomes
16 incapacitated. The term does not include a person, firm or
17 corporation that complies with all of the following:

18 (1) Has purchased new equipment from a single
19 construction equipment manufacturer, constituting no less
20 than 75% of the person's, firm's or corporation's new
21 equipment, calculated on the basis of net cost.

22 (2) Has an annual average sales volume in excess of
23 \$100,000,000 over the seven-calendar-year period immediately
24 preceding the applicable determination date; provided,
25 however, the \$100,000,000 threshold shall be increased each
26 year by an amount equal to the then-current threshold
27 multiplied by the percentage increase in the index from
28 January of the immediately preceding calendar year to January
29 of the current year.

30 (3) Directly employs over 250 persons.

1 (4) Has a written agreement with a construction
2 equipment manufacturer that requires the construction
3 equipment manufacturer to compensate the person, firm or
4 corporation for warranty labor costs either as:

5 (i) a discount in the pricing of the equipment to
6 the person, firm or corporation; or

7 (ii) a lump sum payment to the person, firm or
8 corporation that is made within 90 days of the sale of
9 the construction equipment manufacturer's new equipment.

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

15 "Equipment." Machines, implements of husbandry, golf, turf
16 and grounds maintenance machines, outdoor power equipment,
17 utility vehicles and machine attachments, accessories,
18 completing packages and bundles designed for or adapted and used
19 for agriculture, horticulture, floriculture, construction,
20 livestock raising, silviculture, landscaping and grounds
21 maintenance, even though incidentally operated or used upon the
22 highways, including, but not limited to, tractors, farm
23 implements, loaders, backhoes, lawn mowers, rototillers, etc.,
24 and any business signs purchased by requirement of the supplier
25 which are less than five years old. The term shall not include[:

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

28 (2)] all-terrain vehicles as defined in 75 Pa.C.S. §
29 7702 (relating to definitions).

30 "Farming equipment." Machinery designed and used for

1 agricultural operations, including farm tractors, choppers,
2 balers, reapers, mowers, pickers, threshers, combines, plows,
3 harrows, planters and any other vehicles or machines primarily
4 designed for use as implements of husbandry or multipurpose
5 agricultural vehicles.

6 "Index." The producer price index prepared by the United
7 States Department of Labor, Bureau of Labor Statistics, as it
8 relates to construction, mining and forestry equipment.

9 "Mining equipment." Machinery designed and used in the
10 production process at a mine site, including off-highway mining
11 trucks, large-wheel loaders, large track-type tractors, large-
12 wheel dozers, mining motor graders, open bowl scrapers and
13 underground mining trucks.

14 "Net cost." The amount paid by the dealer to the supplier,
15 plus the cost of freight, if any, incurred by the dealer[.], as
16 long as the manufacturer initiates the termination or
17 nonrenewal. The term does not include the cost of freight if the
18 dealer initiates the termination or nonrenewal.

19 "Nonservicing dealer." A dealer that sells equipment but
20 does not provide parts and service.

21 "Paving equipment." Machinery designed and used for asphalt
22 paving, including asphalt pavers, cold planers, asphalt
23 compactors, pneumatic compactors and rotary mixers.

24 "Repair parts." All parts, component parts and superseded
25 parts related to a sale and related to repair of equipment. The
26 term includes bundled parts, which means several related parts,
27 components or accessories, bound together as one inclusive item
28 or priced as an inclusive item.

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

1 maintenance and repair of equipment.

2 "Supplier." [A manufacturer of equipment or repair parts or
3 a wholesaler or distributor of equipment or repair parts who has
4 a valid existing contract with a manufacturer of equipment or
5 repair parts, including the successors or assigns of such
6 manufacturer, wholesaler or distributor.] A distributor,
7 manufacturer or wholesaler of equipment, repair parts or
8 specialized repair tools who enters into a dealer agreement with
9 a dealer.

10 Section 2. Section 3(a) and (f) of the act are amended and
11 the section is amended by adding a subsection to read:

12 Section 3. Termination of dealer agreement.

13 (a) General provisions.--

14 (1) A dealer may terminate a dealer agreement with good
15 cause. A dealer shall give the supplier at least 30 -days'
16 prior notice via registered letter mailed to the last known
17 address of the supplier.

18 (2) It shall be unlawful for a supplier to terminate,
19 cancel or fail to renew a dealer agreement or substantially
20 change the competitive circumstances of a dealer agreement
21 without good cause except as provided in subsection (b) or
22 (c).

23 * * *

24 (f) Deficiencies may be cured.--Except for termination,
25 cancellation or discontinuance for reasons set forth in
26 subsection (b) (3) through (7), the supplier shall allow the
27 dealer no less than [60] 90 days to cure the deficiencies set
28 forth in the notice required under subsection (e). Any such time
29 provided to the dealer to cure deficiencies shall be calculated
30 from the date of receipt of notice.

1 (g) Definition.--As used in this section, the term "good
2 cause" means the failure by a dealer to substantially comply
3 with the requirements imposed upon the dealer by the dealer
4 agreement, as long as the requirements are not different from
5 requirements imposed on other dealers of the same size,
6 geographic region and market demographics, either by their terms
7 or in the manner of their enforcement.

8 Section 3. Sections 5 and 6 of the act are amended to read:

9 Section 5. Death or incapacitation of dealer.

10 In the event of the death or incapacity of a dealer, the
11 supplier shall repurchase, at the option of the heir or
12 authorized representative of such person or stockholder, the
13 equipment, repair parts and specialized repair tools of the
14 dealer as if the supplier had terminated, canceled or failed to
15 renew the contract. The heir or authorized representative shall
16 have [120 days] one year from the date of the death of such
17 dealer or from the date such dealer is determined to be
18 incapacitated or becomes totally disabled, as applicable, to
19 exercise the option under this section. Nothing in this act
20 requires the repurchase of any equipment, repair parts and
21 specialized repair tools if the heir and supplier enter into a
22 new contract to operate the retail dealership.

23 Section 6. Repurchase of [unused specialized repair tools]
24 specialized support products required by
25 manufacturer.

26 (a) General rule.--A supplier shall repurchase, upon the
27 written request of a dealer, any specialized repair tool
28 purchased by the dealer pursuant to the requirements of the
29 supplier which remains unused for more than a 12-month period
30 after the dealer receives the same. The repurchase price payable

1 to the dealer under this section shall be the original cost to
2 the dealer plus a handling charge equal to 10% of such original
3 cost. A supplier shall repurchase at fair market value any
4 specific signage, data processing hardware, computer equipment,
5 communications equipment or software the supplier required the
6 dealer to acquire or purchase to satisfy the requirements of the
7 supplier. Fair market value of property subject to repurchase
8 pursuant to this section shall include the acquisition cost,
9 including any installation, shipping, handling, and set-up fees,
10 less straight line depreciation of such acquisition cost over
11 five years.

12 (b) Amount.--Specialized repair tools shall be repurchased
13 at a sum equal to 75% of the last published net cost, including
14 shipping, handling and set-up fees, of all specialized repair
15 tools previously purchased pursuant to requirements of the
16 supplier. The specialized repair tools must be complete and in
17 working condition and must have been purchased within ten years
18 prior to the date of notification of termination of the dealer
19 agreement.

20 Section 4. Section 9 of the act is repealed:

21 [Section 9. No coercion.

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

27 Section 5. The act is amended by adding sections to read:

28 Section 9.1. Violations of act.

29 It shall be a violation for any supplier:

30 (1) To mandate or coerce a dealer concerning the

1 opportunity to represent, purchase or sell competitive
2 equipment.

3 (2) To mandate or coerce a dealer to order or accept
4 delivery of equipment or repair parts not required by law
5 which have not been voluntarily ordered by the dealer unless
6 the equipment or repair parts are safety features required by
7 the supplier.

8 (3) To refuse a dealer the opportunity to participate in
9 the management or investment to acquire any other business.

10 (4) To refuse to deliver in reasonable quantities and
11 within a reasonable time, after receipt of the dealer's
12 order, to a dealer having a dealer agreement for the retail
13 sale of new equipment sold or distributed by the supplier,
14 equipment covered by the dealer agreement specifically
15 advertised or represented by the supplier to be available for
16 immediate delivery. The failure to deliver the equipment
17 shall not be considered a violation of this act if the
18 failure is due to prudent and reasonable restrictions on
19 extension of credit by the supplier to the dealer, an act of
20 God, work stoppage or delay due to strike or labor
21 difficulty, a bona fide shortage of materials, freight
22 embargo or other cause over which the supplier has no
23 control.

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

28 (6) To discriminate, directly or indirectly, in price
29 between different dealers with respect to purchases of
30 equipment or repair parts of like quality, if the effect of

1 the discrimination may be to substantially lessen
2 competition; to tend to create a monopoly in a line of
3 commerce; or to injure, destroy or prevent competition with a
4 dealer that either grants or knowingly receives the benefit
5 of the discrimination. However, different prices may be
6 charged if:

7 (i) the differences are due to the cost of
8 manufacture, sale or delivery of the equipment or repair
9 parts;

10 (ii) the supplier can show that its lower price was
11 made in good faith to meet an equally low price of a
12 competitor; or

13 (iii) the supplier can show that the difference in
14 price is due to a volume-based incentive program or
15 volume-based discounts.

16 (7) To require a dealer to assent to a release,
17 assignment, novation, waiver or estoppel which would relieve
18 any person from liability imposed by this act.

19 Section 9.2. Warranty.

20 (a) General rule.--Warranty obligations include product
21 improvement programs, product upgrade programs and recalls and
22 warranty work. Warranty compensation shall include compensation
23 for diagnostic time, repair service time, parts and a dealer's
24 transportation costs of equipment to the dealership for needed
25 warranty repairs and the return of the equipment to the
26 customer. Transportation costs paid by the supplier must be
27 based upon the distance to the nearest in-line dealer from the
28 customer's location. Compensation and labor rate shall be at the
29 publicly posted shop labor rate.

30 (b) Payment of warranty claim.--Whenever a supplier and a

1 dealer enter into an agreement providing the dealer's customer
2 warranties, the supplier shall pay any warranty claim made by
3 the dealer for warranty parts or service within 30 days after
4 its receipt and approval. The supplier shall approve or
5 disapprove a warranty claim within 30 days after its receipt. If
6 a claim is not specifically disapproved in writing within 30
7 days after its receipt, it is deemed to be approved and payment
8 shall be made by the supplier within 30 days. The following
9 apply:

10 (1) A dealer that performs warranty work as provided for
11 in this section shall be compensated for the dealer's labor
12 in an amount that is not less than the reasonable and
13 customary amount of time required to complete the work,
14 expressed in hours and fraction of hours, multiplied by the
15 dealer's posted hourly labor rate.

16 (2) A dealer that performs warranty work as provided for
17 in this section shall be compensated for parts used in
18 fulfilling the warranty work in accordance with the
19 manufacturer's stated warranty policy but in no case in an
20 amount that is less than the dealer's costs for the parts
21 plus 20%, plus all freight and handling charges applicable to
22 such parts, to reimburse the dealer's reasonable costs of
23 doing business and providing the warranty service on behalf
24 of the supplier. If the warranty work is provided on behalf
25 of the supplier on a product sold by a nonservicing dealer,
26 the compensation for parts used in fulfilling the warranty
27 work must be at an amount that is not less than the
28 supplier's suggested list price or dealer's cost plus a
29 minimum of 30%, whichever is greater, plus freight and
30 handling charges applicable to the parts.

1 (c) Indemnity.--If a supplier and a dealer enter into a
2 dealer agreement, the supplier shall indemnify and hold harmless
3 the dealer against any judgment for damages arising from breach
4 of warranty or rescission of the sale by the supplier as long as
5 the dealer has no independent liability for misstatement or
6 misrepresentation to the customer regarding the supplier's
7 product or product warranty.

8 Section 9.3. Remedies and enforcement.

9 The provisions of this act shall be supplemental to any
10 dealer agreement between the dealer and the supplier which
11 provides the dealer with greater protection. The dealer may
12 elect to pursue its contract remedy or the remedy provided by
13 State law, or both; and an election by the dealer to pursue such
14 remedies shall not bar its right to exercise any other remedies
15 that may be granted at law or in equity. If a supplier violates
16 this act, a dealer may bring an action against the supplier in a
17 court of competent jurisdiction for damages sustained by the
18 dealer as a consequence of the supplier's violation, including
19 consequential damages and incidental damages, court costs,
20 attorney fees and costs of arbitrators. The dealer also may be
21 granted injunctive relief against unlawful termination,
22 cancellation, nonrenewal or substantial change of competitive
23 circumstances. The remedies set forth in this section shall not
24 be deemed exclusive and shall be in addition to any other
25 remedies permitted by law.

26 Section 9.4. Waiver.

27 (a) Waiver of act void.--An attempted waiver of a provision
28 of this act shall be void. Any provision in a dealer agreement
29 that purports to elect the application of the law of a state
30 other than Pennsylvania shall be void. Any provision in a dealer

1 agreement that requires a dealer to pay attorney fees incurred
2 by a supplier shall be void.

3 (b) Waiver of right to trial by jury.--No supplier may
4 require a dealer to waive the right to a trial by jury as a
5 remedy to a supplier and dealer contract or agreement dispute.

6 Section 6. This act shall take effect immediately.