

AN ACT

To amend sections 1353.01 and 1353.02 and to enact section 1353.06 of the Revised Code to include compact tractors as a type of farm machinery in the law governing the relationship between dealers and suppliers of farm machinery or construction equipment; to prohibit a supplier of farm machinery or construction equipment, without good cause, from terminating, failing to renew, or substantially altering the competitive circumstances of certain agreements that the supplier has entered into with a dealer of farm machinery or construction equipment; and to require a supplier to provide written notice to a dealer before terminating or not renewing such an agreement.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1353.01 and 1353.02 be amended and section 1353.06 of the Revised Code be enacted to read as follows:

Sec. 1353.01. As used in this chapter:

(A) "Attachments" means equipment designed to be used on or in conjunction with farm ~~implements~~ and machinery or construction equipment.

(B) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the dealer agreement is terminated, less all applicable discounts.

(C) "Dealer agreement" means a written or implied contract, sales agreement, or security agreement between a supplier and a dealer ~~which that~~ authorizes the dealer to engage in the retail sale and service of farm ~~implements and machinery or construction equipment, or the attachments, special service tools, or repair parts for such implements, machinery, or equipment~~ in accordance with methods and procedures prescribed by the supplier and includes any data processing hardware the supplier requires the

dealer to purchase to satisfy the minimum requirements of the dealer agreement.

(D) "Supplier" means a manufacturer, wholesaler, or distributor of farm ~~implements and machinery or construction equipment, or the attachments, special service tools, or repair parts for such implements, machinery, or equipment~~ to dealers under a dealer agreement and who also may require the dealer to purchase data processing hardware to satisfy the minimum requirements of the dealer agreement.

(E) "Inventory" means farm ~~implements and machinery or construction equipment, or the attachments, or special service tools, or repair parts for such implements, machinery, or equipment~~ held by a dealer for sale or lease and also means any data processing hardware that the supplier requires the dealer to purchase.

(F) "Net cost" means the original invoice price that the dealer paid for the merchandise to a supplier, less all applicable discounts allowed, plus freight charges incurred by the dealer from the supplier's location to the dealer's location.

(G) "Dealer" means a person engaged in the business of the retail sale of farm ~~implements and machinery or construction equipment, or the attachments, special service tools, or repair parts for such implements, machinery, or equipment~~ under a dealer agreement, which also may include a requirement to purchase data processing hardware.

(H) "Farm machinery" means farm implements and machinery together with the attachments, special service tools, or repair parts for such implements and machinery. "Farm machinery" includes compact tractors, but does not include a motor vehicle as defined in section 4501.01 of the Revised Code.

(I) "Compact tractors" means garden and small utility tractors and riding mowers. "Compact tractors" are not motor vehicles as defined in section 4501.01 of the Revised Code.

(J) "Construction equipment" means construction equipment and the attachments, special service tools, or repair parts for such equipment together with mobile, motorized utility maintenance equipment used in construction or road maintenance. "Construction equipment" does not include a motor vehicle as defined in section 4501.01 of the Revised Code.

Sec. 1353.02. (A) If a dealer enters into a dealer agreement with a supplier that is evidenced by a written or implied contract, sales agreement, or security agreement in which the dealer agrees to maintain an inventory, and the dealer agreement is subsequently terminated by the supplier in violation of section 1353.06 of the Revised Code or of the terms of the

dealer agreement or because of the merger or consolidation of the supplier with or into another corporation, the supplier shall repurchase the inventory of the dealer in accordance with this chapter. The dealer may choose to keep the inventory if the dealer has a contractual right to do so.

(B) Except as provided in division (D) of this section, the supplier shall repurchase inventory previously purchased from ~~him~~ the supplier and held by the dealer at the time the dealer agreement was terminated. The supplier shall pay eighty-five per cent of the current net price for all used special service tools in good condition ~~and for all new, unused, and undamaged repair parts.~~ The supplier shall pay the average "as-is" value shown in current industry guides for each component of a rental fleet of farm machinery or construction equipment that is owned by the dealer or financed by the supplier or its finance subsidiary, provided that the component was purchased from the supplier not more than thirty months prior to the date of termination of the dealer agreement. The supplier shall pay the net cost for all other new, unused, and undamaged inventory, except that the supplier shall repurchase at its fair market value any data processing hardware that ~~he~~ the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer agreement or shall assume any computer hardware lease responsibilities of the dealer when ~~he~~ the supplier required the dealer to lease the hardware from a specific supplier. The supplier may handle, pack, and load all new, unused, and undamaged repair parts and special service tools or pay five per cent of the current net price of the parts and tools to cover the cost of handling, packing, and loading. The dealer shall pay the freight charges for shipping repurchased inventory to the supplier's nearest warehouse or to another mutually agreeable site. The supplier may furnish a representative to inspect all parts and to certify their acceptability when packed for shipment. The supplier may set off against the repurchase amount debts owed by the dealer to the supplier at the time of repurchase, except ~~he~~ the supplier may not set off debts disputed by the dealer in good faith.

(C) The supplier shall tender payment of the repurchase amount less any allowable set-off to the dealer within ninety days after ~~receipt of the supplier~~ receives the inventory. If the supplier fails to pay the repurchase amount to the dealer within ninety days after receipt of the inventory, ~~he~~ the supplier shall pay interest on the current net price of the inventory computed at the interest rate established pursuant to division (A) of section 1343.03 of the Revised Code from the ninety-first day after receipt of the inventory. Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.

(D) Division (B) of this section does not require a supplier to repurchase any of the following:

(1) Any repair part that has a limited storage life or shows evidence of deterioration;

(2) Any single repair part priced as, or only sold as, a part of a set of two or more items;

(3) Any repair part in such condition as not to be resaleable as a new part, and repair parts in damaged or broken packages;

(4) Inventory for which the dealer cannot furnish evidence, satisfactory to the supplier, of title free and clear of all claims, liens, and encumbrances;

(5) Inventory that the dealer chooses to keep and has a contractual right to keep;

(6) Inventory that is not in new, unused, undamaged, complete, and saleable condition;

(7) Special service tools not in good condition or not currently available on a new basis;

(8) Inventory purchased thirty or more months prior to notice of termination of the dealer agreement;

(9) Inventory ordered by the dealer on or after notice of termination of the dealer agreement;

(10) Inventory acquired by the dealer from a source other than the supplier.

Sec. 1353.06. (A)(1) No supplier, without good cause, shall terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement that is entered into by the supplier and a dealer on or after the effective date of this section or that is a continuing contract with no expiration date.

(2) Circumstances that constitute good cause for a supplier to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include failure by the dealer to comply with the requirements imposed on the dealer by a dealer agreement if the requirements are not materially different from those imposed on other dealers similarly situated in this state or surrounding states. In addition, circumstances that constitute good cause include those in which the dealer consistently does any of the following:

(a) Engages in business practices that are detrimental to the consumer or the supplier, including engaging in misleading advertising or failing to provide service and replacement parts or to perform warranty obligations;

(b) Fails to provide adequate sales, service, or parts personnel in accordance with the dealer agreement;

(c) Fails to meet reasonable building and housekeeping requirements;

(d) Fails to comply with applicable licensing laws with respect to any of the products and services that the dealer represents as being sold or provided by the dealer on behalf of the supplier;

(e) Fails to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier of the supplier's requirements.

(3) Circumstances that do not constitute good cause for a supplier to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include, without limitation, any of the following:

(a) The dealer's refusal to purchase or accept delivery from the supplier of any inventory or other commodity or service that the dealer did not order under the terms of the dealer agreement except as required by any applicable law or unless the inventory is comprised of safety parts or accessories that are required by the supplier;

(b) The sole fact that the supplier desires further penetration of the market unless the dealer consistently has failed to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier of the supplier's requirements;

(c) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest.

(B) Prior to a supplier's termination of or failure to renew a dealer agreement, the supplier shall provide the dealer with not fewer than one hundred eighty days' prior written notice of the intent to terminate or not renew it. The notice shall explain the deficiencies on the part of the dealer that have resulted in the supplier's intent to terminate or not renew the dealer agreement. The dealer shall submit to the supplier a plan for correcting the deficiencies. The supplier, when making the final determination regarding termination of the agreement, shall consider corrective actions taken by the dealer.

SECTION 2. That existing sections 1353.01 and 1353.02 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 200

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____