

As Introduced

**124th General Assembly
Regular Session
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H. B. No. 200

REPRESENTATIVES Calvert, Hollister, Redfern, Allen, Brinkman

A B I L L

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 and
construction equipment in the law governing the
relationship between dealers and suppliers of farm
machinery and construction equipment; to prohibit a
supplier of farm machinery and 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 and 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~~ and

construction equipment. 21

(B) "Current net price" means the price listed in the 22
supplier's price list or catalog in effect at the time the dealer 23
agreement is terminated, less all applicable discounts. 24

(C) "Dealer agreement" means a written or implied contract, 25
sales agreement, or security agreement between a supplier and a 26
dealer ~~which that~~ that authorizes the dealer to engage in the retail 27
sale and service of farm ~~implements and machinery or and~~ 28
construction equipment, ~~or the attachments, special service tools,~~ 29
~~or repair parts for such implements, machinery, or equipment~~ in 30
accordance with methods and procedures prescribed by the supplier 31
and includes any data processing hardware the supplier requires 32
the dealer to purchase to satisfy the minimum requirements of the 33
dealer agreement. 34

(D) "Supplier" means a manufacturer, wholesaler, or 35
distributor of farm ~~implements and machinery or and~~ construction 36
equipment, ~~or the attachments, special service tools, or repair~~ 37
~~parts for such implements, machinery, or equipment~~ to dealers 38
under a dealer agreement ~~and~~ who also may require the dealer to 39
purchase data processing hardware to satisfy the minimum 40
requirements of the dealer agreement. 41

(E) "Inventory" means farm ~~implements and machinery or and~~ 42
construction equipment, ~~or the attachments, or special service~~ 43
~~tools, or repair parts for such implements, machinery, or~~ 44
~~equipment~~ held by a dealer for sale or lease and also means any 45
data processing hardware that the supplier requires the dealer to 46
purchase. 47

(F) "Net cost" means the original invoice price that the 48
dealer paid for the merchandise to a supplier, less all applicable 49
discounts allowed, plus freight charges incurred by the dealer 50
from the supplier's location to the dealer's location. 51

(G) "Dealer" means a person engaged in the business of the retail sale of farm ~~implements and machinery or~~ and 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 and construction equipment" means farm implements and machinery or construction equipment together with the attachments, special service tools, or repair parts for such implements, machinery, or equipment. "Farm machinery and construction equipment" includes compact tractors and mobile, motorized utility maintenance and industrial equipment used in construction, maintenance, or materials handling, 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.

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 83
agreement was terminated. The supplier shall pay eighty-five per 84
cent of the current net price for all used special service tools 85
in good condition ~~and for all new, unused, and undamaged repair~~ 86
~~parts.~~ The supplier shall pay the average "as-is" value shown in 87
current industry guides for each component of a rental fleet of 88
farm machinery and construction equipment that is owned by the 89
dealer and financed by the supplier or its finance subsidiary. The 90
supplier shall pay the net cost for all other new, unused, and 91
undamaged inventory, except that the supplier shall repurchase at 92
its fair market value any data processing hardware that ~~he~~ the 93
supplier required the dealer to purchase to satisfy the minimum 94
requirements of the dealer agreement or shall assume any computer 95
hardware lease responsibilities of the dealer when ~~he~~ the supplier 96
required the dealer to lease the hardware from a specific 97
supplier. The supplier may handle, pack, and load all new, unused, 98
and undamaged repair parts and special service tools or pay five 99
per cent of the current net price of the parts and tools to cover 100
the cost of handling, packing, and loading. The dealer shall pay 101
the freight charges for shipping repurchased inventory to the 102
supplier's nearest warehouse or to another mutually agreeable 103
site. The supplier may furnish a representative to inspect all 104
parts and to certify their acceptability when packed for shipment. 105
The supplier may set off against the repurchase amount debts owed 106
by the dealer to the supplier at the time of repurchase, except ~~he~~ 107
the supplier may not set off debts disputed by the dealer in good 108
faith. 109

(C) The supplier shall tender payment of the repurchase 110
amount less any allowable set-off to the dealer within ninety days 111
after ~~receipt of~~ the supplier receives the inventory. If the 112
supplier fails to pay the repurchase amount to the dealer within 113
ninety days after receipt of the inventory, ~~he~~ the supplier shall 114
pay interest on the current net price of the inventory computed at 115

the interest rate established pursuant to division (A) of section 116
1343.03 of the Revised Code from the ninety-first day after 117
receipt of the inventory. Upon payment of the repurchase amount to 118
the dealer, the title and right of possession to the repurchased 119
inventory shall transfer to the supplier. 120

(D) Division (B) of this section does not require a supplier 121
to repurchase any of the following: 122

(1) Any repair part that has a limited storage life or shows 123
evidence of deterioration; 124

(2) Any single repair part priced as, or only sold as, a part 125
of a set of two or more items; 126

(3) Any repair part in such condition as not to be resaleable 127
as a new part, and repair parts in damaged or broken packages; 128
129

(4) Inventory for which the dealer cannot furnish evidence, 130
satisfactory to the supplier, of title free and clear of all 131
claims, liens, and encumbrances; 132

(5) Inventory that the dealer chooses to keep and has a 133
contractual right to keep; 134

(6) Inventory that is not in new, unused, undamaged, 135
complete, and saleable condition; 136

(7) Special service tools not in good condition or not 137
currently available on a new basis; 138

(8) Inventory purchased thirty or more months prior to notice 139
of termination of the dealer agreement; 140

(9) Inventory ordered by the dealer on or after notice of 141
termination of the dealer agreement; 142

(10) Inventory acquired by the dealer from a source other 143
than the supplier. 144

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, to attend
a reasonable number of sales meetings, or to purchase at the
dealer's expense a reasonable amount of promotional materials,
display devices, or display decorations or materials.

(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.