

**As Passed by the House**

**124th General Assembly**

**Regular Session**

**2001-2002**

**Sub. H. B. No. 200**

**REPRESENTATIVES Calvert, Hollister, Redfern, Allen, Brinkman, Rhine,  
Lendrum, Flowers, Kearns, Webster, Evans, Peterson, Schaffer, Willamowski,  
Hagan, Fessler, Latta, Hughes, Goodman, Coates, Setzer, Collier, Schmidt,  
Manning, Hartnett, Faber, Aslanides, Barrett, Cirelli, Latell, DeWine, Roman,  
Carmichael, Widowfield**

---

**A B I L L**

To amend sections 1353.01 and 1353.02 and to enact 1  
section 1353.06 of the Revised Code to include 2  
compact tractors as a type of farm machinery in the 3  
law governing the relationship between dealers and 4  
suppliers of farm machinery or construction 5  
equipment; to prohibit a supplier of farm machinery 6  
or construction equipment, without good cause, from 7  
terminating, failing to renew, or substantially 8  
altering the competitive circumstances of certain 9  
agreements that the supplier has entered into with 10  
a dealer of farm machinery or construction 11  
equipment; and to require a supplier to provide 12  
written notice to a dealer before terminating or 13  
not renewing such an agreement. 14  
15

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1353.01 and 1353.02 be amended and 16  
section 1353.06 of the Revised Code be enacted to read as follows: 17

Sec. 1353.01. As used in this chapter: 18

(A) "Attachments" means equipment designed to be used on or 19  
in conjunction with farm ~~implements and~~ machinery or construction 20  
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~~ authorizes the dealer to engage in the retail 27  
sale and service of farm ~~implements and~~ machinery or construction 28  
equipment, ~~or the attachments, special service tools, or repair~~ 29  
~~parts for such implements, machinery, or equipment~~ in accordance 30  
with methods and procedures prescribed by the supplier and 31  
includes any data processing hardware the supplier requires the 32  
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 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 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 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" includes construction equipment and the attachments, special service tools, or repair parts for such equipment together with mobile, motorized utility maintenance and industrial equipment used in construction, maintenance, or materials handling. "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 79  
repurchase the inventory of the dealer in accordance with this 80  
chapter. The dealer may choose to keep the inventory if the dealer 81  
has a contractual right to do so. 82

(B) Except as provided in division (D) of this section, the 83  
supplier shall repurchase inventory previously purchased from ~~him~~ 84  
the supplier and held by the dealer at the time the dealer 85  
agreement was terminated. The supplier shall pay eighty-five per 86  
cent of the current net price for all used special service tools 87  
in good condition ~~and for all new, unused, and undamaged repair~~ 88  
~~parts. The supplier shall pay the average "as-is" value shown in~~ 89  
current industry guides for each component of a rental fleet of 90  
farm machinery or construction equipment that is owned by the 91  
dealer or financed by the supplier or its finance subsidiary, 92  
provided that the component was purchased from the supplier not 93  
more than thirty months prior to the date of termination of the 94  
dealer agreement. The supplier shall pay the net cost for all 95  
other new, unused, and undamaged inventory, except that the 96  
supplier shall repurchase at its fair market value any data 97  
processing hardware that ~~he~~ the supplier required the dealer to 98  
purchase to satisfy the minimum requirements of the dealer 99  
agreement or shall assume any computer hardware lease 100  
responsibilities of the dealer when ~~he~~ the supplier required the 101  
dealer to lease the hardware from a specific supplier. The 102  
supplier may handle, pack, and load all new, unused, and undamaged 103  
repair parts and special service tools or pay five per cent of the 104  
current net price of the parts and tools to cover the cost of 105  
handling, packing, and loading. The dealer shall pay the freight 106  
charges for shipping repurchased inventory to the supplier's 107  
nearest warehouse or to another mutually agreeable site. The 108  
supplier may furnish a representative to inspect all parts and to 109  
certify their acceptability when packed for shipment. The supplier 110

may set off against the repurchase amount debts owed by the dealer 111  
to the supplier at the time of repurchase, except ~~he~~ the supplier 112  
may not set off debts disputed by the dealer in good faith. 113

114

(C) The supplier shall tender payment of the repurchase 115  
amount less any allowable set-off to the dealer within ninety days 116  
after ~~receipt of the supplier receives~~ the inventory. If the 117  
supplier fails to pay the repurchase amount to the dealer within 118  
ninety days after receipt of the inventory, ~~he~~ the supplier shall 119  
pay interest on the current net price of the inventory computed at 120  
the interest rate established pursuant to division (A) of section 121  
1343.03 of the Revised Code from the ninety-first day after 122  
receipt of the inventory. Upon payment of the repurchase amount to 123  
the dealer, the title and right of possession to the repurchased 124  
inventory shall transfer to the supplier. 125

(D) Division (B) of this section does not require a supplier 126  
to repurchase any of the following: 127

(1) Any repair part that has a limited storage life or shows 128  
evidence of deterioration; 129

(2) Any single repair part priced as, or only sold as, a part 130  
of a set of two or more items; 131

(3) Any repair part in such condition as not to be resaleable 132  
as a new part, and repair parts in damaged or broken packages; 133

134

(4) Inventory for which the dealer cannot furnish evidence, 135  
satisfactory to the supplier, of title free and clear of all 136  
claims, liens, and encumbrances; 137

(5) Inventory that the dealer chooses to keep and has a 138  
contractual right to keep; 139

(6) Inventory that is not in new, unused, undamaged, 140  
complete, and saleable condition; 141

(7) Special service tools not in good condition or not  
currently available on a new basis; 142  
143

(8) Inventory purchased thirty or more months prior to notice  
of termination of the dealer agreement; 144  
145

(9) Inventory ordered by the dealer on or after notice of  
termination of the dealer agreement; 146  
147

(10) Inventory acquired by the dealer from a source other  
than the supplier. 148  
149

Sec. 1353.06. (A)(1) No supplier, without good cause, shall 150  
terminate, fail to renew, or substantially alter the competitive 151  
circumstances of a dealer agreement that is entered into by the 152  
supplier and a dealer on or after the effective date of this 153  
section or that is a continuing contract with no expiration date. 154

(2) Circumstances that constitute good cause for a supplier 155  
to terminate, fail to renew, or substantially alter the 156  
competitive circumstances of a dealer agreement include failure by 157  
the dealer to comply with the requirements imposed on the dealer 158  
by a dealer agreement if the requirements are not materially 159  
different from those imposed on other dealers similarly situated 160  
in this state or surrounding states. In addition, circumstances 161  
that constitute good cause include those in which the dealer 162  
consistently does any of the following: 163

(a) Engages in business practices that are detrimental to the 164  
consumer or the supplier, including engaging in misleading 165  
advertising or failing to provide service and replacement parts or 166  
to perform warranty obligations; 167

(b) Fails to provide adequate sales, service, or parts 168  
personnel in accordance with the dealer agreement; 169

(c) Fails to meet reasonable building and housekeeping 170  
requirements; 171

(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; 172  
173  
174  
175

(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. 176  
177  
178

(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: 179  
180  
181  
182

(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; 183  
184  
185  
186  
187  
188

(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; 189  
190  
191  
192  
193

(c) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest. 194  
195

(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 196  
197  
198  
199  
200  
201  
202

deficiencies. The supplier, when making the final determination  
regarding termination of the agreement, shall consider corrective  
actions taken by the dealer.

203

204

205

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

206

207