

As Passed by the Senate

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**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**

**SENATORS Mumper, Armbruster, Brady, Carnes, Hagan, Harris, Jordan,
Spada, White, DiDonato, Prentiss, Ryan**

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

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

Section 1. That sections 1353.01 and 1353.02 be amended and 15

section 1353.06 of the Revised Code be enacted to read as follows: 16

Sec. 1353.01. As used in this chapter: 17

(A) "Attachments" means equipment designed to be used on or 18
in conjunction with farm ~~implements and~~ machinery or construction 19
equipment. 20

(B) "Current net price" means the price listed in the 21
supplier's price list or catalog in effect at the time the dealer 22
agreement is terminated, less all applicable discounts. 23

(C) "Dealer agreement" means a written or implied contract, 24
sales agreement, or security agreement between a supplier and a 25
dealer ~~which that~~ authorizes the dealer to engage in the retail 26
sale and service of farm ~~implements and~~ machinery or construction 27
equipment, ~~or the attachments, special service tools, or repair~~ 28
~~parts for such implements, machinery, or equipment~~ in accordance 29
with methods and procedures prescribed by the supplier and 30
includes any data processing hardware the supplier requires the 31
dealer to purchase to satisfy the minimum requirements of the 32
dealer agreement. 33

(D) "Supplier" means a manufacturer, wholesaler, or 34
distributor of farm ~~implements and~~ machinery or construction 35
equipment, ~~or the attachments, special service tools, or repair~~ 36
~~parts for such implements, machinery, or equipment~~ to dealers 37
under a dealer agreement ~~and~~ who also may require the dealer to 38
purchase data processing hardware to satisfy the minimum 39
requirements of the dealer agreement. 40

(E) "Inventory" means farm ~~implements and~~ machinery or 41
construction equipment, ~~or the attachments, or special service~~ 42
~~tools, or repair parts for such implements, machinery, or~~ 43
~~equipment~~ held by a dealer for sale or lease and also means any 44
data processing hardware that the supplier requires the dealer to 45

purchase. 46

(F) "Net cost" means the original invoice price that the 47
dealer paid for the merchandise to a supplier, less all applicable 48
discounts allowed, plus freight charges incurred by the dealer 49
from the supplier's location to the dealer's location. 50

(G) "Dealer" means a person engaged in the business of the 51
retail sale of farm ~~implements and~~ machinery or construction 52
equipment, ~~or the attachments, special service tools, or repair~~ 53
~~parts for such implements, machinery, or equipment~~ under a dealer 54
agreement, which also may include a requirement to purchase data 55
processing hardware. 56

(H) "Farm machinery" means farm implements and machinery 57
together with the attachments, special service tools, or repair 58
parts for such implements and machinery. "Farm machinery" includes 59
compact tractors, but does not include a motor vehicle as defined 60
in section 4501.01 of the Revised Code. 61

(I) "Compact tractors" means garden and small utility 62
tractors and riding mowers. "Compact tractors" are not motor 63
vehicles as defined in section 4501.01 of the Revised Code. 64

(J) "Construction equipment" means construction equipment and 65
the attachments, special service tools, or repair parts for such 66
equipment together with mobile, motorized utility maintenance 67
equipment used in construction or road maintenance. "Construction 68
equipment" does not include a motor vehicle as defined in section 69
4501.01 of the Revised Code. 70

Sec. 1353.02. (A) If a dealer enters into a dealer agreement 71
with a supplier that is evidenced by a written or implied 72
contract, sales agreement, or security agreement in which the 73
dealer agrees to maintain an inventory, and the dealer agreement 74
is subsequently terminated by the supplier in violation of section 75
1353.06 of the Revised Code or of the terms of the dealer 76

agreement or because of the merger or consolidation of the 77
supplier with or into another corporation, the supplier shall 78
repurchase the inventory of the dealer in accordance with this 79
chapter. The dealer may choose to keep the inventory if the dealer 80
has a contractual right to do so. 81

(B) Except as provided in division (D) of this section, the 82
supplier shall repurchase inventory previously purchased from ~~him~~ 83
the supplier and held by the dealer at the time the dealer 84
agreement was terminated. The supplier shall pay eighty-five per 85
cent of the current net price for all used special service tools 86
in good condition ~~and for all new, unused, and undamaged repair~~ 87
~~parts.~~ The supplier shall pay the average "as-is" value shown in 88
current industry guides for each component of a rental fleet of 89
farm machinery or construction equipment that is owned by the 90
dealer or financed by the supplier or its finance subsidiary, 91
provided that the component was purchased from the supplier not 92
more than thirty months prior to the date of termination of the 93
dealer agreement. The supplier shall pay the net cost for all 94
other new, unused, and undamaged inventory, except that the 95
supplier shall repurchase at its fair market value any data 96
processing hardware that ~~he~~ the supplier required the dealer to 97
purchase to satisfy the minimum requirements of the dealer 98
agreement or shall assume any computer hardware lease 99
responsibilities of the dealer when ~~he~~ the supplier required the 100
dealer to lease the hardware from a specific supplier. The 101
supplier may handle, pack, and load all new, unused, and undamaged 102
repair parts and special service tools or pay five per cent of the 103
current net price of the parts and tools to cover the cost of 104
handling, packing, and loading. The dealer shall pay the freight 105
charges for shipping repurchased inventory to the supplier's 106
nearest warehouse or to another mutually agreeable site. The 107
supplier may furnish a representative to inspect all parts and to 108

certify their acceptability when packed for shipment. The supplier 109
may set off against the repurchase amount debts owed by the dealer 110
to the supplier at the time of repurchase, except ~~he~~ the supplier 111
may not set off debts disputed by the dealer in good faith. 112

(C) The supplier shall tender payment of the repurchase 114
amount less any allowable set-off to the dealer within ninety days 115
after ~~receipt of the supplier receives~~ the inventory. If the 116
supplier fails to pay the repurchase amount to the dealer within 117
ninety days after receipt of the inventory, ~~he~~ the supplier shall 118
pay interest on the current net price of the inventory computed at 119
the interest rate established pursuant to division (A) of section 120
1343.03 of the Revised Code from the ninety-first day after 121
receipt of the inventory. Upon payment of the repurchase amount to 122
the dealer, the title and right of possession to the repurchased 123
inventory shall transfer to the supplier. 124

(D) Division (B) of this section does not require a supplier 125
to repurchase any of the following: 126

(1) Any repair part that has a limited storage life or shows 127
evidence of deterioration; 128

(2) Any single repair part priced as, or only sold as, a part 129
of a set of two or more items; 130

(3) Any repair part in such condition as not to be resaleable 131
as a new part, and repair parts in damaged or broken packages; 132

(4) Inventory for which the dealer cannot furnish evidence, 134
satisfactory to the supplier, of title free and clear of all 135
claims, liens, and encumbrances; 136

(5) Inventory that the dealer chooses to keep and has a 137
contractual right to keep; 138

(6) Inventory that is not in new, unused, undamaged, 139

complete, and saleable condition; 140

(7) Special service tools not in good condition or not 141
currently available on a new basis; 142

(8) Inventory purchased thirty or more months prior to notice 143
of termination of the dealer agreement; 144

(9) Inventory ordered by the dealer on or after notice of 145
termination of the dealer agreement; 146

(10) Inventory acquired by the dealer from a source other 147
than the supplier. 148

Sec. 1353.06. (A)(1) No supplier, without good cause, shall 149
terminate, fail to renew, or substantially alter the competitive 150
circumstances of a dealer agreement that is entered into by the 151
supplier and a dealer on or after the effective date of this 152
section or that is a continuing contract with no expiration date. 153

(2) Circumstances that constitute good cause for a supplier 154
to terminate, fail to renew, or substantially alter the 155
competitive circumstances of a dealer agreement include failure by 156
the dealer to comply with the requirements imposed on the dealer 157
by a dealer agreement if the requirements are not materially 158
different from those imposed on other dealers similarly situated 159
in this state or surrounding states. In addition, circumstances 160
that constitute good cause include those in which the dealer 161
consistently does any of the following: 162

(a) Engages in business practices that are detrimental to the 163
consumer or the supplier, including engaging in misleading 164
advertising or failing to provide service and replacement parts or 165
to perform warranty obligations; 166

(b) Fails to provide adequate sales, service, or parts 167
personnel in accordance with the dealer agreement; 168

<u>(c) Fails to meet reasonable building and housekeeping requirements;</u>	169 170
<u>(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;</u>	171 172 173 174
<u>(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.</u>	175 176 177
<u>(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:</u>	178 179 180 181
<u>(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;</u>	182 183 184 185 186 187
<u>(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;</u>	188 189 190 191 192
<u>(c) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest.</u>	193 194
<u>(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</u>	195 196 197 198 199

supplier's intent to terminate or not renew the dealer agreement. 200
The dealer shall submit to the supplier a plan for correcting the 201
deficiencies. The supplier, when making the final determination 202
regarding termination of the agreement, shall consider corrective 203
actions taken by the dealer. 204

Section 2. That existing sections 1353.01 and 1353.02 of the 205
Revised Code are hereby repealed. 206