

An Act

ENROLLED HOUSE
BILL NO. 3970

By: Echols of the House

and

Rader of the Senate

An Act relating to contracts; amending 15 O.S. 2021, Section 245, which relates to the defined terms within the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act; modifying equipment definition to exclude fixtures and related repair parts; and providing an effective date.

SUBJECT: Contracts

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 15 O.S. 2021, Section 245, is amended to read as follows:

Section 245. For the purposes of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act:

1. "Current net parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued, or for purposes of Section 9 of this act, the price list or catalogue in effect at the time the repair parts were ordered. Current net parts price means, with respect to superseded repair parts, the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number;

2. "Current net parts cost" means the current net parts price less any trade or cash discounts typically given to the dealer with

respect to such dealer's normal, ordinary course orders of repair parts;

3. "Dealer" means any person primarily engaged in the business of:

- a. selling or leasing equipment or repair parts to the ultimate consumer, and
- b. repairing or servicing equipment;

4. "Dealer agreement" means either an oral or written agreement or arrangement for a definite or indefinite period between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts. Notwithstanding the foregoing, if a dealer has more than one business location covered by the same dealer agreement, the requirements of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act will be applied to the repurchase of a dealer's inventory at a particular location upon the closing of such location, unless the closing of the location occurs without the permission of the supplier;

5. "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement;

6. "Demonstrator" means equipment in a dealer's inventory that has never been sold at retail, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short-term rental agreement, with the intent of encouraging the person to purchase the equipment and which has been authorized for the use by the supplier;

7. "Equipment" means:

- a. all-terrain vehicles, utility task vehicles and recreational off-highway vehicles, in each case, regardless of how used, and
- b. other machinery, equipment, implements or attachments therefor, used for or in connection with the following purposes:
 - (1) lawn, garden, golf course, landscaping or grounds maintenance,

- (2) planting, cultivating, irrigating, harvesting, and producing of agricultural and/or forestry products,
- (3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or
- (4) industrial, construction, maintenance, mining or utility activities or applications.

Equipment shall not mean trailers or self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway, or items constituting fixtures or otherwise customarily intended to be permanently affixed to or incorporated into real property and improvements attached thereto, and related repair parts;

8. "Family member" means a spouse, child, son-in-law, daughter-in-law or lineal descendant;

9. "Good cause" has the meaning as set forth in Section 5 or 6 of this act, as applicable;

10. "Index" means the United States Bureau of Labor Statistics Producer Price Index (industry data) for construction machinery, series identification number pcu333120333120 or any successor Index measuring substantially similar information;

11. "Inventory" means equipment, repair parts, data processing hardware or software, and specialized service or repair tools;

12. "Net equipment cost" means the price the dealer actually paid to the supplier for equipment, plus:

- a. freight, at the cost stated on the invoice, if available, and if not the truckload rates in effect as of the effective date of the termination of a dealer agreement, if freight was paid by the dealer from the supplier's location to the dealer's location, and
- b. reimbursement for labor incurred in preparing the equipment for retail sale or rental, also known as set-up costs, which labor will be reimbursed at the

dealer's standard labor rate charged by the dealer to its customers for nonwarranty repair work; provided, however, if a supplier has established a reasonable set-up time, such labor will be reimbursed at an amount equal to the reasonable set-up time in effect as of the date of delivery multiplied by the dealer's standard labor rate;

13. "New equipment" means, for purposes of determining whether a dealer is a single-line dealer, any equipment that could be returned to the supplier upon a termination of a dealer agreement pursuant to Sections 246 and 247 of this title;

14. "Person" means a natural person, corporation, partnership, limited liability company, company, trust or any and all other forms of business enterprise, including any other entity in which it has a majority interest or of which it has control, as well as the individual officers, directors and other persons in active control of the activities of each entity;

15. "Repair parts" means all parts related to the repair of equipment, including superseded parts;

16. "Single-line dealer" means a dealer that has:

- a. purchased construction, industrial, forestry and mining equipment from a single-line supplier constituting seventy-five percent (75%) of the dealer's new equipment that is construction, industrial, forestry and mining equipment, calculated on the basis of net equipment cost, and
- b. a total annual average sales volume of equipment acquired from the single-line supplier in excess of Twenty-Five Million Dollars (\$25,000,000.00) for the five (5) calendar years immediately preceding the applicable determination date; provided, however, the Twenty-Five-Million-Dollar threshold will be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year;

17. "Single-line dealer agreement" means a dealer agreement between a single-line dealer and a single-line supplier that only

provides for the rights and obligations of the parties with respect to the purchase and sales of equipment that is construction, forestry, industrial and mining equipment;

18. "Single-line supplier" means the supplier that is selling the single-line dealer construction, industrial, forestry and mining equipment constituting seventy-five percent (75%) of the dealer's new equipment that is construction, industrial, forestry and mining equipment;

19. "Specialty agricultural equipment" means equipment that is designed for and used in:

- a. planting, cultivating, irrigating, harvesting and producing of the agricultural products, or
- b. raising, feeding, tending to or harvesting products from livestock;

20. "Specialty agricultural equipment supplier" means a supplier of specialty agricultural equipment whose gross sales revenue to the dealer is less than the threshold amount and whose product line does not include farm tractors or combines and whose sales of outdoor power equipment to the dealer does not exceed ten percent (10%) of its total sales to the dealer during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement. Whether a supplier qualifies as a specialty agricultural equipment supplier is determined on a case by case basis depending on the sales of the applicable dealer and to the applicable dealer by such specialty agricultural equipment supplier;

21. "Supplier" means any person engaged in the business of manufacturing, assembly or wholesale distribution of equipment or repair parts. The term shall also include any successor in interest, including any receiver, trustee, liquidator, assignee, purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation or reorganization of the original supplier. Purchasers of all, or substantially all, of the inventory of a supplier or a supplier's division or product line will constitute a purchaser of all or substantially all of the supplier's assets;

22. "Terminate" or "termination" means to terminate, cancel, fail to renew or substantially change the competitive circumstances

of a dealer agreement. For purposes of Section 9 of this act and Sections 246 and 247 of this title, the terms shall not include the phrase "substantially change the competitive circumstances of"; and

23. "Threshold amount" means that the lesser of:

- a. ten percent (10%) of the dealer's gross sales revenue, or
- b. Three Hundred Fifty Thousand Dollars (\$350,000.00), in each case based on net sales of the dealership during the one year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement; provided, however, the Three-Hundred-Fifty-Thousand-Dollar amount will be increased each year by an amount equal to the then current amount multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year.

SECTION 2. This act shall become effective November 1, 2024.

Passed the House of Representatives the 7th day of March, 2024.

Presiding Officer of the House
of Representatives

Passed the Senate the 16th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____