
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1553 Session of
2015

INTRODUCED BY TALLMAN, HARHART, GIBBONS, LONGIETTI, DUSH,
ZIMMERMAN, MURT, BAKER, MALONEY, COHEN, TOBASH, DIAMOND,
PICKETT AND WARD, OCTOBER 28, 2015

REFERRED TO COMMITTEE ON COMMERCE, OCTOBER 28, 2015

AN ACT

1 Amending the act of December 18, 1987 (P.L.412, No.86), entitled
2 "An act providing for the repurchase by the wholesaler,
3 manufacturer or distributor, from dealers or heirs of
4 dealers, of certain equipment, certain attachments and parts
5 held for sale upon termination of agreement whereby the
6 dealer agrees to maintain a stock of such implements,
7 attachments and parts, and for the repurchase of certain
8 tools," further providing for the definitions of "dealer" and
9 "equipment," for termination of dealer agreement, for death
10 or incapacitation of dealer and for repurchase of unused
11 specialized repair tools; repealing provisions relating to
12 coercion; and providing for violations of act, for warranty,
13 for remedies and enforcement and for waiver.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The title of the act of December 18, 1987
17 (P.L.412, No.86), known as the Pennsylvania Fair Dealership Law,
18 is amended to read:

AN ACT

19 Providing for the repurchase by the [wholesaler, manufacturer or
20 distributor] supplier, from dealers or heirs of dealers, of
21 certain equipment, certain attachments and parts held for
22 sale upon termination of agreement whereby the dealer agrees

1 to maintain a stock of such implements, attachments and
2 parts, and for the repurchase of certain tools.

3 Section 2. The definitions of "dealer" and "equipment" in
4 section 2 of the act are amended to read:

5 Section 2. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 * * *

10 "Dealer." Any person, firm or corporation engaged primarily
11 in the business of retail sale [or] and repair of equipment. The
12 term includes the heir or authorized representative of a person
13 or majority stockholder of a corporation operating as a dealer
14 in the event such person or stockholder dies or becomes
15 incapacitated.

16 * * *

17 "Equipment." Machines designed primarily for or adapted and
18 used primarily for agriculture, horticulture, floriculture,
19 livestock raising[, silviculture,] and landscaping and grounds
20 maintenance, even though incidentally operated or used upon the
21 highways, [including, but not limited to, tractors, farm
22 implements, loaders, backhoes, lawn mowers, rototillers, etc.,]
23 and any business signs purchased by requirement of the supplier
24 which are less than five years old. The term shall not include:

25 (1) equipment manufactured solely for the purpose of
26 industrial construction; or

27 (2) all-terrain vehicles as defined in 75 Pa.C.S. § 7702
28 (relating to definitions).

29 * * *

30 Section 3. Section 3(a), (b), (c) and (f) of the act are

1 amended and the section is amended by adding a subsection to
2 read:

3 Section 3. Termination of dealer agreement.

4 (a) General provisions.--

5 (1) A dealer may terminate a dealer agreement with good
6 cause. A dealer shall give the supplier at least 90 days'
7 notice via registered letter mailed to the last known address
8 of the supplier.

9 (2) It shall be unlawful for a supplier to terminate,
10 cancel or fail to renew a dealer agreement or substantially
11 change the competitive circumstances of a dealer agreement
12 without good cause except as provided in subsection (b) [or
13 (c)].

14 (b) Exceptions.--A supplier may terminate, cancel or fail to
15 renew a dealer agreement if a dealer:

16 (1) Fails to consistently comply with essential and
17 reasonable requirements imposed by the supplier.

18 (2) Has transferred ownership interest in the dealership
19 without the [manufacturer's or distributor's] supplier's
20 consent.

21 (3) Has filed a voluntary petition in bankruptcy or has
22 had an involuntary petition in bankruptcy filed against it
23 which has not been discharged within 30 days after the
24 filing.

25 (4) Has pleaded guilty or has been convicted of a crime,
26 or has been determined to be engaged in an unfair business
27 practice, as defined in other laws of this Commonwealth, the
28 effect of which would be detrimental to the [manufacturer,
29 distributor] supplier or dealership.

30 (5) Has failed to operate in a normal course of business

1 for ten consecutive business days or has terminated or
2 voluntarily abandoned said business.

3 (6) Has relocated the dealer's place of business without
4 the [manufacturer's or distributor's] supplier's consent.

5 (7) Has defaulted under any chattel mortgage or other
6 security agreement between the dealer and the supplier, or
7 there has been a revocation or discontinuance of any
8 guarantee of the dealer's present or future financial
9 obligations to the supplier.

10 (c) [Other exceptions] Repurchase.--[Subject to the
11 provisions of this subsection, a supplier may terminate, cancel
12 or fail to renew a dealer agreement under such conditions as may
13 be provided for in the dealer agreement.] When a dealer
14 agreement is terminated or canceled or has failed to be renewed
15 [by the supplier under a condition provided for in the dealer
16 agreement, other than] for a condition set forth in subsection
17 (b), the supplier, upon written request of the dealer, shall pay
18 to the dealer, or credit to the dealer's account [if the dealer
19 has outstanding any sums owing] any outstanding sums owed to the
20 supplier:

21 (1) A sum equal to 100% of the net cost of all equipment
22 that the dealer purchased from the supplier and not
23 previously sold and put into regular use or service preceding
24 notification by either party of intent to cancel, terminate
25 or fail to renew the dealer agreement.

26 (2) A sum equal to 100% of the current net price of
27 repair parts, including superseded repair parts, previously
28 purchased from the supplier and 75% of the current net price
29 of specialized repair tools previously purchased pursuant to
30 the requirements of the supplier and held by the dealer on

1 the date of termination, cancellation or failure to renew the
2 dealer agreement. In addition, the supplier shall pay the
3 dealer, or credit to the dealer's account if the dealer has
4 outstanding any sums owing the supplier, a sum equal to 5% of
5 the current net price of all repair parts, excluding incoming
6 freight cost, and specialized repair tools returned to the
7 supplier to compensate the dealer for the inventory, packing
8 and loading of the same to the supplier, provided that the
9 supplier may perform such inventory, packing and loading in
10 lieu of paying 5% to the dealer. Upon the payment or
11 allowance of credit to the dealer's account, as applicable,
12 in the sum required by this section, all of the dealer's
13 title and interest in and to the equipment, repair parts and
14 specialized repair tools shall pass to the supplier, and the
15 supplier shall be entitled to the possession of the same.
16 Payments or allowance of credit to the dealer, as applicable,
17 required by this section shall be made no later than 90 days
18 after such termination, cancellation or discontinuance or 60
19 days after the supplier's receipt of the equipment, repair
20 parts or specialized repair tools.

21 (3) In the event a dealer terminates a dealer agreement,
22 the [obligation of the supplier to repurchase equipment,
23 repair parts and specialized repair tools shall be governed
24 by the terms and conditions then in effect in the dealer
25 agreement between the supplier and the dealer and not by the
26 provisions of this act.] supplier shall not be obligated to
27 pay the dealer, or credit to the dealer's account if the
28 dealer has outstanding sums owed to the supplier, a sum equal
29 to 5% of the current net price of all repair parts, excluding
30 incoming freight cost, to compensate the dealer for the

1 packing, loading and shipping of inventory to the supplier.

2 * * *

3 (f) Deficiencies may be cured.--Except for termination,
4 cancellation or discontinuance for reasons set forth in
5 subsection (b)(3) through (7), the supplier shall allow the
6 dealer no less than [60] 90 days to cure the deficiencies set
7 forth in the notice required under subsection (e). Any such time
8 provided to the dealer to cure deficiencies shall be calculated
9 from the date of receipt of notice.

10 (g) Definition.--As used in this section, the term "good
11 cause" means the failure by a dealer to substantially comply
12 with the requirements imposed upon the dealer by the dealer
13 agreement, as long as the requirements are not different from
14 the requirements imposed on other dealers of comparable size,
15 geographic region and market demographics, either by their terms
16 or in the manner of their enforcement.

17 Section 4. Sections 5 and 6 of the act are amended to read:
18 Section 5. Death or incapacitation of dealer.

19 In the event of the death or incapacity of a dealer, the
20 supplier shall repurchase, at the option of the heir or
21 authorized representative of such person or stockholder, the
22 equipment, repair parts and specialized repair tools of the
23 dealer as if the supplier had terminated, canceled or failed to
24 renew the contract. The heir or authorized representative shall
25 have [120 days] one year from the date of the death of such
26 dealer or from the date such dealer is determined to be
27 incapacitated or becomes totally disabled, as applicable, to
28 exercise the option under this section. Nothing in this act
29 requires the repurchase of any equipment, repair parts and
30 specialized repair tools if the heir and supplier enter into a

1 new contract to operate the retail dealership.

2 Section 6. Repurchase of [unused specialized repair tools]
3 specialized support products required by supplier.

4 (a) General rule.--A supplier shall repurchase, upon the
5 written request of a dealer, any specialized repair tool
6 purchased by the dealer pursuant to the requirements of the
7 supplier which remains unused for more than a 12-month period
8 after the dealer receives the same. The repurchase price payable
9 to the dealer under this section shall be the original cost to
10 the dealer plus a handling charge equal to 10% of such original
11 cost. A supplier shall repurchase at fair market value any
12 specific signage, data processing hardware, computer equipment,
13 communications equipment or software the supplier required the
14 dealer to acquire or purchase to satisfy the requirements of the
15 supplier. Fair market value of property subject to repurchase
16 under this section shall include the acquisition cost, including
17 any installation, shipping, handling and setup fees, less
18 straight line depreciation of such acquisition cost over five
19 years.

20 (b) Amount.--Specialized repair tools shall be repurchased
21 at a sum equal to 75% of the last published net cost, including
22 shipping, handling and setup fees of all specialized repair
23 tools previously purchased pursuant to requirements of the
24 supplier. The specialized repair tools must be complete and in
25 working condition and must have been purchased within ten years
26 prior to the date of notification of termination of the dealer
27 agreement.

28 Section 5. Section 9 of the act is repealed:

29 [Section 9. No coercion.

30 It shall be a violation for any supplier to require, attempt

1 to require, coerce or attempt to coerce any dealer in this
2 Commonwealth to order or accept delivery of any equipment or
3 repair parts not required by law which shall not have been
4 voluntarily ordered by the dealer.]

5 Section 6. The act is amended by adding sections to read:

6 Section 9.1. Violations of act.

7 It shall be a violation for any supplier:

8 (1) To mandate, coerce or attempt to coerce a dealer
9 concerning the opportunity to own, invest in or participate
10 in the management of another business or a dealership
11 contract for the sale of another line-make of equipment, or
12 otherwise prevent a dealer from establishing another line-
13 make of equipment in the same dealership facilities as those
14 of the supplier, if the dealer maintains a reasonable line of
15 credit for each line-make of equipment.

16 (2) To mandate, coerce or attempt to coerce, a dealer to
17 order or accept delivery of equipment or repair parts not
18 required by law which have not been voluntarily ordered by
19 the dealer unless the equipment or repair parts are safety
20 features required by the supplier.

21 (3) To refuse a dealer the opportunity to participate in
22 the management, investment or the acquisition of any other
23 business.

24 (4) To refuse to deliver in reasonable quantities and
25 within a reasonable time, after receipt of the dealer's
26 order, to a dealer having a dealer agreement for the retail
27 sale of new equipment sold or distributed by the supplier,
28 equipment covered by the dealer agreement specifically
29 advertised or represented by the supplier to be available for
30 immediate delivery. The failure to deliver the equipment

1 shall not be considered a violation of this act if the
2 failure is due to:

3 (i) prudent and reasonable restrictions on extension
4 of credit by the supplier to the dealer;

5 (ii) an act of God;

6 (iii) work stoppage or delay due to strike or labor
7 difficulty;

8 (iv) a bona fide shortage of materials;

9 (v) freight embargo; or

10 (vi) other cause over which the supplier has no
11 control.

12 (5) To discriminate, directly or indirectly, in filling
13 an order placed by a dealer for retail sale or lease of new
14 equipment under a dealer agreement between dealers of the
15 same product line.

16 (6) To discriminate, directly or indirectly, in price
17 between different dealers with respect to purchases of
18 equipment or repair parts of like quality, if the effect of
19 the discrimination may be to substantially lessen
20 competition, create a monopoly in a line of commerce or to
21 injure, destroy or prevent competition with a dealer that
22 either grants or knowingly receives the benefit of the
23 discrimination. Different prices may be charged if:

24 (i) the differences are due to the cost of
25 manufacture, sale or delivery of the equipment or repair
26 parts;

27 (ii) the supplier can show that its lower price was
28 made in good faith to meet an equally low price of a
29 competitor; or

30 (iii) the supplier can show that the difference in

1 price is due to a volume-based incentive program or
2 volume-based discounts.

3 (7) To require a dealer to assent to a release,
4 assignment, novation, waiver or estoppel which would relieve
5 any person from liability imposed by this act.

6 (8) To recover supplier cost of reimbursement paid to a
7 dealer for equipment, repair parts or labor for which the
8 dealer has been reimbursed by the supplier.

9 (9) To impose, directly or indirectly, unreasonable
10 restrictions on the dealer relative to transfer, renewal,
11 termination, location or site control.

12 Section 9.2. Warranty.

13 (a) General rule.--Warranty obligations include product
14 improvement programs, product upgrade programs and recalls and
15 warranty work. Warranty compensation shall include compensation
16 for diagnostic time, repair service time, and repair parts
17 needed for warranty repairs. Compensation labor rate shall be at
18 the publicly posted shop labor rate.

19 (b) Payment of warranty claim.--Whenever a supplier and a
20 dealer enter into an agreement providing the dealer's customer
21 warranties, the supplier shall pay any warranty claim made by
22 the dealer for warranty parts or service within 30 days after
23 its receipt and approval. The supplier shall approve or
24 disapprove a warranty claim within 30 days after its receipt. If
25 a claim is not specifically disapproved in writing within 30
26 days after its receipt, it is deemed to be approved and payment
27 shall be made by the supplier within 30 days. The following
28 apply:

29 (1) A dealer that performs warranty repairs as provided
30 for under this section shall be compensated for the dealer's

1 labor in an amount that is not less than the reasonable and
2 customary amount of time required to complete the work,
3 expressed in hours and fraction of hours, multiplied by the
4 dealer's posted hourly labor rate.

5 (2) A dealer that performs warranty work as provided for
6 under this section shall be compensated for repair parts used
7 in fulfilling the warranty work in accordance with the
8 supplier's stated warranty policy, but in no case in an
9 amount that is less than the dealer's net cost for the repair
10 parts plus 20%, to reimburse the dealer's reasonable costs of
11 doing business and providing the warranty service on behalf
12 of the supplier. If the warranty work is provided on behalf
13 of the supplier on a product sold by a nonservicing dealer,
14 the compensation for repair parts used in fulfilling the
15 warranty work must be at an amount that is not less than the
16 supplier's suggested list price or dealer's net cost plus a
17 minimum of 30%, whichever is greater, plus freight and
18 handling charges applicable to the repair parts.

19 (c) Indemnity.--If a supplier and a dealer enter into a
20 dealer agreement, the supplier shall indemnify and hold harmless
21 the dealer against any judgment for damages arising from breach
22 of warranty or rescission of the sale by the supplier as long as
23 the dealer has no independent liability for misstatement or
24 misrepresentation to the customer regarding the supplier's
25 product or product warranty.

26 Section 9.3. Remedies and enforcement.

27 The provisions of this act shall be supplemental to any
28 dealer agreement between the dealer and the supplier which
29 provides the dealer with greater protection. The dealer may
30 elect to pursue its contract remedy or the remedy provided by

1 State law, or both. An election by the dealer to pursue such
2 remedies shall not bar its right to exercise any other remedies
3 that may be granted by law or in equity. If a supplier violates
4 this act, a dealer may bring an action against the supplier in a
5 court of competent jurisdiction for damages sustained by the
6 dealer as a consequence of the supplier's violation, including
7 consequential damages and incidental damages, court costs,
8 attorney fees and costs of arbitrators. A dealer may seek
9 injunctive relief against unlawful termination, cancellation,
10 nonrenewal or substantial change of competitive circumstances.
11 The remedies set forth under this section shall not be deemed
12 exclusive and shall be in addition to any other remedies
13 permitted by law.

14 Section 9.4. Waiver.

15 (a) Waiver of act void.--The following are void:

16 (1) An attempted waiver of a provision of this act.

17 (2) Any provision in a dealer agreement that purports to
18 elect the application of the law of a state other than this
19 Commonwealth.

20 (3) Any provision in a dealer agreement that requires a
21 dealer to pay attorney fees incurred by a supplier.

22 (b) Waiver of right to trial by jury.--No supplier may
23 require a dealer to waive the right to a trial by jury as a
24 remedy to a supplier and dealer contract or agreement dispute.

25 Section 7. This act shall take effect immediately.