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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1348 Session of  
2017

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INTRODUCED BY TALLMAN, MAY 11, 2017

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
MAY 11, 2017

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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 title of act, for termination  
9 of dealer agreement, for death or incapacitation of dealer  
10 and for repurchase of unused specialized repair tools;  
11 repealing provisions relating to coercion; providing for  
12 violations of act, for warranty, for definitions, for  
13 remedies and enforcement and for waiver; and making an  
14 editorial change.

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

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

20 AN ACT

21 Providing for the repurchase by the [wholesaler, manufacturer or  
22 distributor] supplier, from dealers or heirs of dealers, of  
23 certain equipment, certain attachments and parts held for  
24 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, if the requirements are not different from the  
14 requirements imposed on other dealers of comparable size,  
15 geographic region and market demographics, either by the terms  
16 of the requirements or in the manner of the enforcement of the  
17 requirements.

18 Section 4. Sections 5 and 6 of the act are amended to read:

19 Section 5. Death or incapacitation of dealer.

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

1 specialized repair tools if the heir and supplier enter into a  
2 new contract to operate the retail dealership.

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

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

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

29 Section 5. Section 9 of the act is repealed:  
30 [Section 9. No coercion.

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

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

7 Section 9.1. Violations of act.

8 It shall be a violation for any supplier:

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

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

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

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

1 immediate delivery. The failure to deliver the equipment  
2 shall not be considered a violation of this act if the  
3 failure is due to:

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

6 (ii) an act of God;

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

9 (iv) a bona fide shortage of materials;

10 (v) freight embargo; or

11 (vi) another cause over which the supplier has no  
12 control.

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

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

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

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

1           (iii) the supplier can show that the difference in  
2           price is due to a volume-based incentive program or  
3           volume-based discounts.

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

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

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

13 Section 9.2. Warranty.

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

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

30           (1) A dealer that performs warranty repairs as provided

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

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

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

27 Section 9.3. Remedies and enforcement.

28 The provisions of this act shall be supplemental to any  
29 dealer agreement between the dealer and the supplier which  
30 provides the dealer with greater protection. The dealer may

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

15 Section 9.4. Waiver.

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

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

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

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

23 (b) Waiver of right to trial by jury.--A supplier may not  
24 require a dealer to waive the right to a trial by jury as a  
25 remedy to a supplier and dealer contract or agreement dispute.

26 Section 7. This act shall take effect immediately.