

No. 182

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

SENATE BILL NO. 182

(By Senator Flawse)



PASSED March 15, 1989

In Effect 90 days from Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED
Senate Bill No. 182

(BY SENATOR HAWSE)

[Passed March 15, 1989; in effect ninety days from passage.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time requirements with respect to such notice; providing for certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing

for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any actions brought pursuant to said article.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-f, to read as follows:

ARTICLE 11F. FARM EQUIPMENT DEALER CONTRACT ACT.

§47-11F-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Farm Equipment Dealer Contract
3 Act."

§47-11F-2. Definitions.

1 (a) As used in this article, unless the context in
2 which used clearly requires otherwise:

3 (1) "Agreement" or "contract" means a written or
4 oral agreement or contract between a dealer and a
5 supplier, by the terms of which the dealer is granted
6 the right to sell the supplier's equipment and the
7 dealer is required to order and maintain inventory
8 from such supplier in excess of ten thousand dollars at
9 current net price.

10 (2) "Current net price" means the price listed in the
11 supplier's price list in effect at the time an agreement
12 is terminated, less any applicable discount allowed.

13 (3) "Dealer" means any person, firm, partnership,
14 association, corporation or other business entity
15 engaged in the business of selling, at retail, farm,
16 construction, industrial or outdoor power equipment
17 or any combination of the foregoing and who
18 maintains a total inventory of new equipment and
19 repair parts having an aggregate value of not less than
20 twenty-five thousand dollars at current net price and
21 who provides repair service for such equipment.

22 (4) "Inventory" means the tractors, implements,
23 attachments, equipment, and repair parts that the

24 dealer purchased from the supplier, including, but not
25 limited to, any data processing hardware and software,
26 special service tools, and business signs the supplier
27 has required the dealer to purchase and maintain.

28 (5) "Net cost" means the price paid by the dealer to
29 the supplier for the inventory, less all applicable
30 discounts allowed, plus the amount the dealer paid for
31 freight costs from the supplier's location to the
32 dealer's location and the reasonable cost of assembly
33 incurred or performed by the dealer.

34 (6) "Supplier" means a wholesaler, manufacturer or
35 distributor who enters into an agreement with a
36 dealer and who supplies inventory to such dealer.

37 (7) "Termination" means the termination, cancella-
38 tion, nonrenewal or discontinuation of an agreement.

39 (b) The terms "farm," "construction," "industrial"
40 or "outdoor power," when used to refer to tractors,
41 implements, attachments or repair parts shall have the
42 meaning commonly used and understood among
43 dealers and suppliers subject to this article.

§47-11F-3. Notice of termination of agreement or contract.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, a supplier who terminates a contract
3 or agreement with a dealer shall notify such dealer of
4 the termination not less than six months prior to the
5 effective date thereof: *Provided*, That the supplier may
6 terminate the agreement at anytime after the occur-
7 rence of any of the following described events:

8 (1) The filing of a petition for bankruptcy or for
9 receivership filed either by or against the dealer;

10 (2) The dealer defaults under a chattel mortgage or
11 other security agreement between the dealer and the
12 supplier;

13 (3) The dealer has made an intentional misrepresen-
14 tation with the intent to defraud the supplier;

15 (4) The close out or sale or discontinuance of all or
16 at least fifty percent of the dealer's business related to

17 the handling of goods or products of the supplier;

18 (5) If the dealer is a partnership or corporation, the
19 commencement of dissolution or liquidation, whether
20 voluntary or involuntary of such dealer;

21 (6) A change in location of the dealer's principal
22 place of business as provided in the agreement without
23 the prior written approval of the supplier;

24 (7) The withdrawal of an individual proprietor,
25 partner, major shareholder, or the involuntary termi-
26 nation of the manager of the dealership or a substan-
27 tial reduction in the interest of a partner or major
28 shareholder without the prior written approval of the
29 supplier. If the dealership is operated from more than
30 one location, the involuntary termination of a man-
31 ager at one or more branch locations without the prior
32 written approval of the supplier shall not be grounds
33 for termination of the dealership by the supplier;

34 (8) The revocation or discontinuance by a guarantor
35 or of any guarantee of the dealer's present or future
36 obligations to the supplier.

37 (b) The provisions of any agreement to the contrary
38 notwithstanding, a dealer who terminates an agree-
39 ment or contract with a supplier shall notify such
40 supplier of the termination not less than six months
41 prior to the effective date thereof.

42 (c) Any agreement or contract may also be
43 terminated by the written mutual consent of the
44 parties; and the effective date of such termination may
45 be such as is mutually agreed upon by the parties.

46 (d) Notification under this section shall be in writing
47 and shall be given by certified mail, return receipt
48 requested, or by personal delivery to the recipient and
49 the receipt thereof acknowledged in writing by such
50 recipient. Any such notice of termination shall contain
51 (i) a statement of intention to terminate the agree-
52 ment; (ii) a statement of the reasons for such termina-
53 tion; and (iii) the date on which the termination is to
54 take effect.

§47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, whenever an agreement or contract
3 between a dealer and a supplier is terminated by
4 either party, the supplier shall repurchase the dealer's
5 inventory as provided in this article unless the dealer
6 chooses to keep the inventory and so advises the
7 supplier in writing.

8 (b) The supplier's obligation to repurchase the
9 dealer's inventory shall apply to any successor in
10 interest or assignee of that supplier. A successor in
11 interest includes any purchaser of assets or stock, any
12 surviving corporation resulting from a merger or
13 liquidation, any receiver, or any trustee of the original
14 supplier.

15 (c) If the dealer dies or becomes incompetent, the
16 supplier shall, at the option of the heir, repurchase the
17 inventory to the same extent as if the agreement had
18 been terminated. The heir has one year from the date
19 of the death of the dealer or from the date such dealer
20 is determined to be incompetent to exercise the
21 options of the dealer under this article.

22 (d) The supplier shall repurchase from the dealer
23 within ninety days from the date of termination of the
24 agreement or contract all inventory previously
25 purchased from the supplier that remains unsold on
26 the date of termination of the agreement or contract,
27 including, but not limited to, all data processing
28 hardware and software, special services tools, and
29 business signs that the supplier required the dealer to
30 purchase.

31 (e) The supplier shall pay the dealer:

32 (1) One hundred percent of the net cost of all new,
33 unused, undamaged and complete inventory, except
34 repair parts, special service tools, business signs and
35 data processing equipment, less a reasonable allowance
36 for deterioration attributable to weather conditions at
37 the dealer's location; and

38 (2) Ninety percent of the current net price of all
39 new, unused, and undamaged repair parts that are
40 currently listed in the supplier's price book as of the
41 effective date of such termination; and

42 (3) Seventy-five percent of the net cost of all
43 undamaged special service tools and business signs in
44 the possession of the dealer which are currently
45 available; and

46 (4) Net cost less twenty percent per year deprecia-
47 tion of all data processing hardware and software that
48 the supplier required the dealer to purchase or the
49 supplier shall assume all data processing hardware and
50 software lease responsibilities of the dealer if the
51 supplier required the dealer to lease the data
52 processing hardware and software from a specific
53 supplier of such hardware and/or software.

54 (f) The inventory shall be returned F.O.B. (which
55 means "free on board") the dealership and the dealer
56 shall bear the expenses and risk of putting them into
57 the possession of the carrier. The supplier may per-
58 form the handling, packing, and loading of repair parts
59 returned and withhold, as a charge for these services,
60 five percent of the current net price of the returned
61 repair parts. The dealer and the supplier may each
62 furnish a representative to inspect all inventory and
63 certify as to its acceptability before being returned.

64 (g) The supplier shall pay the full repurchase
65 amount as required by subsection (d) of this section
66 not later than ninety days after receipt of the inven-
67 tory by the supplier.

§47-11F-5. Exceptions to repurchase requirement.

1 Any other provisions of this article to the contrary
2 notwithstanding, a supplier shall not be required to
3 repurchase from the dealer (i) a repair part of or with
4 a limited storage life or which is otherwise subject to
5 deterioration; that is to say by way of example and not
6 in limitation thereof, such items as gaskets or batter-
7 ies; (ii) multiple packaged repair parts when the
8 package has been broken; (iii) a repair part that

9 because of its condition is not resalable as a new part
10 without repackaging or reconditioning; (iv) any por-
11 tion of the inventory that the dealer chooses to retain;
12 or (v) any inventory that was acquired by the dealer
13 from a source other than the supplier, except for data
14 processing hardware and software, special service
15 tools, and business signs that the supplier required the
16 dealer to purchase; and (vi) any tractor, implement,
17 attachment or equipment that the dealer purchased
18 from the supplier more than thirty-six months before
19 the date of the termination notice.

§47-11F-6. Applicability of uniform commercial practices.

1 (a) The provisions of this article do not affect a
2 security interest of the supplier in the inventory of the
3 dealer.

4 (b) A repurchase of inventory pursuant to this
5 article shall not be subject to the bulk transfer
6 provisions of article six, chapter forty-six of this code.

§47-11F-7. Warranty claims.

1 If after the termination of a contract or agreement,
2 the dealer submits a warranty claim to the supplier
3 for work performed prior to the effective date of the
4 termination of such contract or agreement, the sup-
5 plier shall accept or reject such claim within a
6 minimum of forty-five days from the day the supplier
7 received the warranty claim. A warranty claim not
8 rejected before the expiration of such forty-five-day
9 period shall be deemed to be accepted by the supplier.
10 In the event a warranty claim is accepted by the
11 supplier as prescribed in this section, such claim shall
12 be paid by such supplier not later than sixty days from
13 the date the supplier received the claim.

§47-11F-8. Civil remedies applicable.

1 (a) The provisions of any agreement to the contrary
2 notwithstanding, if a supplier fails or refuses without
3 just cause to repurchase any inventory or portion
4 thereof when required to do so under the provisions of
5 this article within the time periods prescribed thereby,
6 such supplier shall be civilly liable for (i) one hundred

7 percent of the current net price of the inventory or
8 portion thereof not repurchased; (ii) the amount the
9 dealer paid for freight costs from the supplier's
10 location to the dealer's location; (iii) the reasonable
11 cost of assembly performed by the dealer; (iv) reason-
12 able attorney's fees and court costs incurred by the
13 dealer in requiring the supplier to comply with this
14 article of the code; and (v) interest on the current net
15 price of the inventory or portion thereof not
16 repurchased, computed at the prime rate of interest
17 commencing the ninety-first day after termination of
18 the contract agreement, and recomputed quarterly
19 thereafter.

20 (b) Any person who suffers monetary loss due to a
21 violation of this article or because he or she refuses to
22 accede to a proposal for an arrangement that, if
23 consummated, is in violation of this article, may bring
24 civil action to enjoin further violation and to recover
25 damages sustained by him or her together with the
26 costs of the suit, including reasonable attorney's fees
27 and court costs.

28 (c) In the event of failure to provide the required
29 notice of termination or otherwise comply with
30 provisions of this article, the supplier shall be civilly
31 liable for the dealer's loss of business for the time
32 period the supplier is in violation of the notice of
33 termination provisions of the article, plus reasonable
34 attorney's fees and court costs.

35 (d) The provisions of this section are in addition to
36 all legal or equitable remedies available at law, as well
37 as any remedies available pursuant to any agreement
38 between the supplier and dealer.

39 (e) A civil action commenced under the provisions of
40 this article may be brought until the expiration of five
41 years after the violation complained of is or reasonably
42 should have been discovered, whichever occurs first.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Irvid C. Willis
.....
Clerk of the Senate

Donald E. Kopp
.....
Clerk of the House of Delegates

James A. ...
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is* approved this the *25th*
day of *March* 198*8*.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20

Time 1:40