

Act No. 296
Public Act of 1989
December 29, 1989
Filed by the Secretary of State
December 29, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Hickner and DeMars
Rep. Gnodtke named cosponsor

ENROLLED HOUSE BILL No. 4412

AN ACT to amend the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Act No. 341 of the Public Acts of 1984, entitled "An act to provide for the repurchase of farm tractors and equipment and utility tractors and equipment subject to a franchise agreement; to provide for the repurchase of repair parts; and to impose certain duties and responsibilities; and to provide remedies," being sections 445.1451, 445.1452, 445.1453, 445.1454, 445.1455, 445.1456, 445.1457, 445.1458, 445.1459, and 445.1460 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Act No. 341 of the Public Acts of 1984, being sections 445.1451, 445.1452, 445.1453, 445.1454, 445.1455, 445.1456, 445.1457, 445.1458, 445.1459, and 445.1460 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to provide for the repurchase by a manufacturer of farm tractors and equipment and utility tractors and equipment subject to a dealer, wholesaler, or distributor agreement; to provide for the repurchase of repair parts; to impose certain duties and responsibilities; and to provide remedies.

Sec. 1. This act shall be known and may be cited as the "farm and utility equipment act".

Sec. 2. As used in this act unless the context clearly requires otherwise:

(a) "Attachments" means machinery or any part of a piece of machinery designed to be used on or in conjunction with farm tractors, farm equipment, utility tractors, and utility equipment.

(b) "Current net price" means the price listed in the supplier's or manufacturer's printed price lists or catalogs in effect at the time a contract is canceled or discontinued, less all applicable discounts.

(c) "Dealer" means a person engaged in the business of the retail sale of farm tractors and equipment, utility tractors and equipment, or the attachments to or repair parts for that equipment.

(d) "Equipment" means motorized machines designed for or adapted and used for agriculture, horticulture, livestock raising, forestry, grounds maintenance, lawn and garden, construction, materials handling, and earth moving.

(e) "Agreement" means a written or implied contract, sales agreement, security agreement, or franchise agreement between a supplier or manufacturer and a dealer, wholesaler, or distributor by which the dealer, wholesaler, or distributor is authorized to engage in the business of the retail sale and service, wholesale sale and service, or the distribution of tractors and equipment in accordance with methods and procedures prescribed by the supplier or manufacturer.

(f) "Inventory" means farm tractors and equipment, utility tractors and equipment, and the attachments to and repair parts for those tractors and equipment.

(g) "Net cost" means an amount equal to the original invoice price that the dealer paid for the merchandise to the manufacturer, wholesaler, or distributor, less all applicable discounts allowed, plus the freight cost incurred by the dealer from the location of the manufacturer, wholesaler, or distributor to the location of the dealer.

(h) "Person" means a sole proprietorship, partnership, corporation, or any other form of business organization.

(i) "Supplier" means a wholesaler or distributor of farm and utility tractors and farm and utility equipment, or the attachments to or repair parts for that equipment.

Sec. 3. If a dealer, wholesaler, or distributor enters into an agreement with a supplier or manufacturer that is evidenced by a written or implied contract, sales agreement, security agreement, or franchise agreement, and the contract, sales agreement, security agreement, or franchise agreement is subsequently terminated, the supplier or manufacturer shall repurchase any inventory of the dealer, wholesaler, or distributor as provided in this act. The dealer, wholesaler, or distributor may choose to keep the inventory if there exists a contractual right to do so.

Sec. 4. (1) The supplier or manufacturer shall repurchase inventory previously purchased from the supplier or manufacturer and held by the dealer, wholesaler, or distributor at the date of termination of the contract. The supplier or manufacturer shall pay 100% of the net cost of all new, unused, undamaged, and complete tractors, equipment, and attachments, and 90% of the current net price of all new, unused, and undamaged repair parts. The supplier or manufacturer shall pay the dealer, wholesaler, or distributor 5% of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The supplier or manufacturer may perform the handling, packing, and loading in lieu of paying the 5% for services.

(2) Upon payment of the repurchase amount to the dealer, wholesaler, or distributor, the title and right of possession to the repurchased inventory shall transfer to the supplier or manufacturer.

(3) The supplier or manufacturer may subtract from the sums due under subsection (1) the amount of debts owed by the dealer, wholesaler, or distributor to the supplier or manufacturer.

Sec. 5. (1) The provisions of this act are supplemental to any agreement between the dealer, wholesaler, or distributor and the supplier or manufacturer governing the return of inventory and the dealer, wholesaler, or distributor may elect to pursue either a contract remedy or the remedy provided in this act.

(2) An election by the dealer, wholesaler, or distributor to pursue a contract remedy does not bar the right of the dealer, wholesaler, or distributor to the remedy provided in this act as to that inventory not affected by the contract remedy.

(3) Notwithstanding anything contained in this act, the rights of a supplier or manufacturer to charge back to the dealer's, wholesaler's, or distributor's account amounts previously paid or credited as a discount incident to the dealer's, wholesaler's, or distributor's purchase of the inventory repurchased shall not be affected.

Sec. 6. The provisions of this act shall not require the repurchase of the following by a supplier or manufacturer from a dealer, wholesaler, or distributor:

(a) Any repair part that has a limited storage life or shows evidence of deterioration.

(b) Any single repair part that is priced as, or is only sold as, a set of 2 or more items.

(c) Any repair part that, because of its condition, is not resaleable as a new part.

(d) Any inventory for which the dealer, wholesaler, or distributor is unable to furnish evidence, satisfactory to the supplier or manufacturer, of title free and clear of all claims, liens, and encumbrances.

(e) Any inventory that the dealer chooses to keep and has a contractual right to keep.

(f) Any farm tractors and equipment, utility tractors and equipment, and attachments that are not in new, unused, undamaged, complete, and saleable condition.

(g) Any farm tractors and equipment, utility tractors and equipment, or attachments purchased 30 or more months prior to notice of termination of the contract.

(h) Any inventory that was ordered by the dealer, wholesaler, or distributor on or after the date of notification of termination of the contract.

(i) Any inventory that was acquired by the dealer, wholesaler, or distributor from any source other than the supplier or manufacturer.

Sec. 7. If any supplier or manufacturer fails or refuses to pay or credit the account of the dealer, wholesaler, or distributor for any inventory required to be repurchased by section 3 within 90 days after receipt by the supplier or manufacturer of that inventory, he or she shall be liable for 100% of the current net price of the inventory plus any freight charges paid by the dealer, wholesaler, or distributor, reasonable attorney's fees, court costs, and interest on the current net price computed at the legal interest rate from the sixty-first day after receipt of the inventory.

Sec. 8. Upon the death of the dealer, wholesaler, or distributor or the majority stockholder of a corporation or a partner in a partnership operating as a dealer, wholesaler, or distributor, the supplier or manufacturer shall, at the option of the heirs, repurchase the inventory from the surviving spouse or the heir or heirs of the dealer, wholesaler, or distributor or majority stockholder as if the contract had been terminated. The heir or heirs shall have 200 days from the date of the death of the dealer, wholesaler, or distributor or majority stockholder to exercise their options under this act. The repurchase of an inventory is not required if the heirs or the supplier or manufacturer enter into an agreement to operate the dealership, wholesale business, or distributorship.

Sec. 9. The provisions of this act shall not be construed to affect in any way any security interest which any financial institution, person, or supplier or manufacturer has in the inventory of the dealer, wholesaler, or distributor, and any repurchase shall not be subject to article 6 of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.6101 to 440.6111 of the Michigan Compiled Laws. The supplier or manufacturer may furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

Sec. 10. The provisions of this act shall apply to all agreements, contracts, sales agreements, security agreements, or franchise agreements written or implied in force and effect on or after December 27, 1984.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.