

MISSOURI

Equipment Dealer Contract Act

CHAPTER 407 Merchandising Practices

Dealerships for farm implements, industrial maintenance, construction power equipment and outdoor power equipment -- changes in ownership, rights of the dealer.

407.307. 1. The provisions of this section shall apply to:

- (1) Farm implement dealerships, as provided in sections 407.838 to 407.880;
- (2) Industrial maintenance and construction power equipment dealerships, as provided in sections 407.750 to 407.756; and
- (3) Outdoor power equipment dealerships, as provided in sections 407.890 to 407.898.

2. A manufacturer, wholesaler or distributor shall have ninety days in which to consider and make a determination on a request by a dealer/retailer to sell or transfer any portion of his or her business ownership to another party or to enter into an agreement to operate the dealership with another party. The dealer/retailer's request shall include the reasonable financial information, personal background, character references and work histories as required by the manufacturer to render such a determination. In the event the manufacturer or distributor determines that the request is not acceptable, the manufacturer or distributor shall provide the dealer/retailer with a written notice of its determination with the stated reasons for nonacceptance.

Sec. 407.750, 407.751, 407.752, 407.890, 407.892, 407.893 were deleted by HOUSE BILL 2008 2002 Mo. HB 2008 July 12, 2002.

Law applicable to machinery sold after January 1, 1988, not to affect prior contracts -- dealers reimbursed for labor, rate

407.592. Sections 407.585 to 407.592. shall apply to any new farm machinery sold after January 1, 1988, but no provision of sections 407.585 to 407.592 shall operate or be construed to invalidate, impair, or otherwise infringe upon the specific requirements of any contract between a dealer and a manufacturer entered into prior to September 28, 1987, and which is in effect on September 28, 1987; provided, however, that in any case wherein warranty repair work is performed for a consumer by a farm equipment dealer under the provisions of a manufacturer's express warranty, the manufacturer shall reimburse the dealer at an hourly labor rate that is the same or greater than the hourly labor rate the dealer currently charges consumers for nonwarranty repair work.

(L.1987, H.B.No.76 6.)

Manufacturer, wholesaler or distributor not to terminate contract except for good cause -- good cause, how established.

407.753. 1. Any manufacturer, wholesaler or distributor of industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications and repair parts therefor, who enters into a written or parol contract with any person, firm, or corporation engaged in the business of selling and repairing industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications and repair parts therefor, whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments, shall not terminate, cancel, or fail to renew any such contract without good cause. "Good cause" means failure by the retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract if such requirements are not different from those requirements imposed on other similarly situated retailers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

- (1) The retailer has transferred an interest in the retailer business without the manufacturer's, wholesaler's or distributor's written consent, or there has been a withdrawal from the retailer's business of an individual proprietor, partner, major shareholder, or the manager of the retailer's business, or there has been a substantial reduction in interest of a partner or major stockholder without the written consent of the manufacturer, wholesaler, or distributor;
- (2) The retailer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, or there has been a closeout or sale of a substantial part of the retailer's assets related to the retailer's business or there has been a commencement or dissolution or liquidation of the retailer's business;
- (3) There has been a change, without the prior written approval of the manufacturer, wholesaler, or distributor, in the location of the retailer's principal place of business under the retailer's agreement with the manufacturer, wholesaler, or distributor;
- (4) The retailer has defaulted under any chattel mortgage or other security agreement between the retailer and the manufacturer, wholesaler, or distributor, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the manufacturer, wholesaler, or distributor;
- (5) The retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned his business, except for reasonable and customary closures of business;
- (6) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the manufacturer, wholesaler, or distributor;
- (7) The retailer has engaged in conduct which is injurious or detrimental to the retailer's customers or the public welfare;
- (8) The retailer has consistently failed to meet the manufacturer's, wholesaler's or distributor's requirements for reasonable market penetration based on the manufacturer's, wholesaler's, or distributor's experience in other comparable marketing areas.

2. Except as otherwise provided in this section, a supplier shall provide a retailer at least ninety-days prior written notice of termination, cancellation, or nonrenewal of the contract. The notice shall state all reasons constituting good cause for termination, cancellation or nonrenewal and shall provide that the dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days the notice shall be void. The notice and right-to-cure provisions under this section shall not apply if the reason for termination, cancellation or nonrenewal is for any reason set forth in subdivisions (1) to (8) of this section.

How to apply to successors in interest -- successor in interest defined.

407.754. The obligations of any wholesaler, manufacturer or distributor created by the provisions of sections 407.750 to 407.754 apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A “successor in interest” includes any purchaser of substantially all of the assets or over fifty percent of the stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer or distributor.

Action for damages and costs by retailer for violations -- remedy not exclusive.

407.755. If a manufacturer, wholesaler or distributor violates any provisions of sections 407.753 and 407.754, a retailer may bring an action against such manufacturer, wholesaler, or distributor in any court of competent jurisdiction for damages sustained by the retailer as a consequence of the violation, together with the actual costs of the action, including reasonable attorney’s fees. The court may award court costs and reasonable attorney fees to the prevailing party. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.

Law, applicability to existing and future contracts.

407.756. The provisions of sections 407.750 to 407.756 shall apply to all continuing or nonrenewable contracts and all other contracts entered into, amended, or renewed after August 28, 1991. Any contract in force and effect on August 28, 1991, which, by its terms, will terminate on a date subsequent thereto, is governed by the law as it existed before August 28, 1991.

Going-out-of-business sales, requirements, limitations, extension -- exceptions.

407.800. Any person, except a licensed auctioneer as defined in section 343.010, RSMo, who advertises or conducts a going-out-of-business sale or any sale of merchandise which indicates the person conducting the sale is terminating or liquidating the person’s trade, commerce or business for any reason shall inform the attorney general, in writing, not less than ten days prior to the sale of the duration of the sale by indicating the first and last days of the sale. Any person who informs the attorney general that the person is going to conduct a going-out-of-business sale shall submit to the attorney general information regarding the items which will be offered for sale during the going-out-of-business sale. The inventory shall not be supplemented after the beginning of such sale. The going-out-of-business sale shall not exceed a period of sixty days unless an extension has been registered with the attorney general’s office by affidavit. Such affidavit shall indicate the duration of such extension and the reasons therefor, and the time extension shall not exceed a reasonable time period as determined by the attorney general based upon the information provided to the attorney general by the person conducting the sale. Any affidavit supporting the request for an extension shall describe the efforts made by the person and the person’s plan to dispose of such sale items, and shall state why the items remain unsold, and shall contain any other information requested by the attorney general. A violation of this section shall be considered a violation of section 407.020 and shall be remedied pursuant to section

407.100. If the attorney general fails to take action within one hundred twenty days after a violation of this section occurs, the prosecuting attorney or circuit attorney of the appropriate jurisdiction may take action as provided in sections 407.020 and 407.100.

Definitions.

407.838. As used in sections 407.838 to 407.848, the following terms shall mean:

- (1) "Farm equipment", equipment including, but not limited to, tractors, trailers, combines, tillage implements, bailers and other equipment including attachments and repair parts thereof used in the planting, cultivating, irrigation, harvesting and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway;
- (2) "Farm equipment manufacturer" or "manufacturer", any person, partnership, corporation, association or other form of business enterprise engaged in the manufacturing, assembly or wholesale distribution of farm equipment;
- (3) "Farm equipment dealer", "farm equipment dealership" or "dealer", any person, partnership, corporation, association or other form of business enterprise engaged in the retail sale of farm equipment;
- (4) "Dealership agreement", a written or oral agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

Dealership agreement, termination -- cancellation -- failure to renew to be based on good cause -- good cause defined.

407.840. No farm equipment manufacturer, directly or through any officer, agent or employee may terminate, cancel or fail to renew a dealership agreement or substantially change the competitive circumstances of a farm equipment dealership without good cause. Good cause means failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement if such requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

- (1) The farm equipment dealer has transferred an interest in the farm equipment dealership without the manufacturer's written consent, or there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or there has been a substantial reduction in interest of a partner or major stockholder without the written consent of the manufacturer;
- (2) The farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment dealership or there has been a commencement or dissolution or liquidation of the farm equipment dealership;
- (3) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;
- (4) The farm equipment dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future obligations to the farm

equipment manufacturer;

(5) The farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned his* business;

(6) The farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;

(7) The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare;

(8) The farm equipment dealer has consistently failed to meet the manufacturer's requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas.

Notice to dealer of cancellation, content -- dealer has sixty days to rectify -- exceptions.

407.842. Except as otherwise provided in this section, a farm equipment manufacturer shall provide a farm equipment dealer at least ninety days' prior written notice of termination, cancellation or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for termination, cancellation or nonrenewal and shall provide that the dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The notice and right to cure provisions under this section shall not apply if the reason for termination, cancellation or nonrenewal is for any reason set forth in subdivisions (1) to (8) of section 407.840.

Farm equipment manufacturers, certain acts prohibited.

407.844. No farm equipment manufacturer shall:

(1) Coerce, or attempt to coerce, any farm equipment dealer to accept delivery of any farm equipment, parts or accessories therefor, which such farm equipment dealer has not voluntarily ordered;

(2) To condition or attempt to condition the sale of any farm equipment on a requirement that the farm equipment dealer also purchase any other goods or services but nothing contained in sections 407.838 to 407.848 shall prevent the farm equipment manufacturer from requiring the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area;

(3) To coerce or attempt to coerce any farm equipment dealer into a refusal to purchase the farm equipment manufactured by another farm equipment manufacturer;

(4) To discriminate in the prices charged for farm equipment of like grade and quality sold by the farm equipment manufacturer to similarly situated farm equipment dealers, but nothing con-

tained in sections 407.838 to 407.848 shall prevent differentials which make only due allowance for difference in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such farm equipment is sold or delivered, by the farm equipment manufacturer.

Law applicable to dealer's agreements, when.

407.846. The provisions of sections 407.838 to 407.848 shall apply to all dealership agreements

now in effect and all other dealership agreements entered into or renewed after September 28, 1987.

Damages in civil action or injunction for dealer against manufacturer, when.

407.848. If any farm equipment manufacturer violates any provision of sections 407.838 to 407.848, a farm equipment dealer may bring an action against such manufacturer in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the manufacturer's violation, together with the actual costs of the action, including reasonable attorneys fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.

Definitions.

407.850. As used in sections 407.850 to 407.885, the following terms mean:

- (1) "Current model", a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;
- (2) "Current net price", the price listed in the wholesaler's, manufacturer's or distributor's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;
- (3) "Inventory", equipment, implements, machinery, attachments and repair parts;
- (4) "Net cost", the price the retailer actually paid for the merchandise to the wholesaler, manufacturer or distributor, plus freight from the wholesaler's, manufacturer's or distributor's location to the dealer's location;
- (5) "Retailer", any person, firm or corporation engaged in the business of selling, repairing and retailing:
 - (a) Farm implements, machinery, attachments or repair parts;
 - (b) Industrial, maintenance and construction power equipment; or
 - (c) Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance;

but shall not include retailers of petroleum and motor vehicles and related automotive care and replacement products normally sold by such retailers.

Repurchase of farm machinery inventory on termination of dealership -- repurchase amount credited to debt of retailers -- interest to be paid on credit, when, rate.

407.855. Whenever any retailer enters into a written or oral contract with a wholesaler, manufacturer or distributor wherein the retailer agrees to maintain an inventory and the contract is terminated by the wholesaler, manufacturer, distributor, or retailer, or upon the retailer's retirement at sixty-two years of age or older, then the retailer may require the repurchase of the inventory as provided for in sections 407.850 to 407.885. In the event of the death of the retailer or the majority stockholder of a corporation operating as a retailer, the wholesaler, manufacturer or distributor shall repurchase the inventory as provided for in section 407.880. If the retailer has

any outstanding debts to the wholesaler, manufacturer or distributor, then the repurchase amount may be credited to the retailer's account. All payments or allowances of credit due retailer shall be paid or credited within sixty days after the return of implements, machinery, attachments or repair parts. After sixty days all payments or allowances shall include interest at the rate stated in section 408.040, RSMo.

Reimbursement for warranty work performed by certain retail sellers of power equipment.

407.857. Retailers who sell and service industrial, maintenance and construction power equipment or outdoor power equipment as defined in section 407.850, and who do warranty repair work for a consumer under provisions of a manufacturer's express warranty, shall be reimbursed by the manufacturer for the warranty work at an hourly rate that is the same or greater than the hourly labor rate the retailer currently charges consumers for nonwarranty repair work.

Inventory qualifying for repurchase -- percentage to be paid -- cost of transportation to warehouse to be paid by retailer -- packing and loading, how paid -- transferee of manufacturer or distributors, law to apply, when.

407.860. 1. The wholesaler, manufacturer or distributor shall repurchase that inventory previously purchased from him and held by the retailer at the date of termination of the contract. The provisions of sections 407.850 to 407.885 shall apply to the transferee of such wholesaler, manufacturer or distributor if such transferee acquired substantially all of the assets of such wholesaler, manufacturer or distributor. The wholesaler, manufacturer or distributor shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete equipment, implements, machinery, and attachments and ninety-five percent of the current net price of all new, unused and undamaged repair parts. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site. The wholesaler, manufacturer or distributor shall pay the retailer five percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The wholesaler, manufacturer or distributor shall have the option of performing the handling, packing and loading in lieu of paying the five percent for these services. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site.

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

Repurchase not to affect security interest in inventory and to be subject to bulk sales law.

407.865. The provisions of sections 407.850 to 407.885 shall not be construed to affect in any way any security interest which any financial institution, person, wholesaler, manufacturer or distributor may have in the inventory of the retailer, and any repurchase under the provisions of sections 407.850 to 407.885 shall be subject to the provisions of the bulk sales law.

Inventory which does not qualify for repurchase.

407.870. The provisions of sections 407.850 to 407.885 shall not require the repurchase from a retailer of:

- (1) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (2) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;
- (3) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (4) Any equipment, implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;
- (5) Any repair parts which are not in new, unused, or undamaged condition;
- (6) Any equipment, implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
- (7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
- (8) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor unless such inventory was acquired from any source authorized or arranged by the manufacturer.

Liability for failure to repurchase inventory.

407.875. If any wholesaler, manufacturer or distributor shall fail or refuse to repurchase any inventory as required by section 407.860, he shall be civilly liable for one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney's fees, and court costs.

Death of retailer or majority stockholder -- option of surviving spouse or heir for repurchase of inventory, time limitation, exception.

407.880. In the event of the death of the retailer or the spouse of a surviving retailer if the retailer is operating as a tenancy by the entireties or the majority stockholder of a corporation operating as a retailer, the wholesaler, manufacturer or distributor shall, at the option of the surviving spouse or the heir or heirs, repurchase the inventory from the surviving spouse or the heir or heirs of the retailer or majority stockholder as if the wholesaler, manufacturer or distributor had terminated the contract. The surviving spouse or the heir or heirs shall have one year from the date of the death of the retailer or majority stockholder to exercise their options under sections 407.850 to 407.885. Nothing in sections 407.850 to 407.885 shall require the repurchase of any inventory if the surviving spouse or the heir or heirs and wholesaler, manufacturer or distributor enter into a new contract to operate the retail dealership.

Application to existing contracts and future contracts.

407.885. The provisions of sections 407.850 to 407.885 shall apply to all valid contracts now in effect which have no expiration date and are continuing contracts, and all other contracts entered into or renewed after September 28, 1987. Any contract in force and effect on September 28,

1987, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to September 28, 1987.

Manufacturer, wholesaler or distributor not to terminate contract except for good cause -- good cause established, how.

407.895. Any manufacturer, wholesaler or distributor of outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, and repair parts therefor, who enters into a written or parol contract with any person, firm, or corporation engaged in the business of selling and repairing outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance and repair parts therefor, whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments, shall not terminate, cancel, or fail to renew any such contract without good cause. "Good cause" means failure by the retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract if such requirements are not different from those requirements imposed on other similarly situated retailers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

- (1) The retailer has transferred an interest in the retailer business without the manufacturer's, wholesaler's or distributor's written consent, or there has been a withdrawal from the retailer's business of an individual proprietor, partner, major shareholder, or the manager of the retailer's business, or there has been a substantial reduction in interest of a partner or major stockholder without the written consent of the manufacturer, wholesaler, or distributor;
- (2) The retailer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, or there has been a closeout or sale of a substantial part of the retailer's assets related to the retailer's business or there has been a commencement or dissolution or liquidation of the retailer's business;
- (3) There has been a change, without the prior written approval of the manufacturer, wholesaler, or distributor, in the location of the retailer's principal place of business under the retailer's agreement with the manufacturer, wholesaler, or distributor;
- (4) The retailer has defaulted under any chattel mortgage or other security agreement between the retailer and the manufacturer, wholesaler, or distributor, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the manufacturer, wholesaler, or distributor;
- (5) The retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned his business, except for reasonable and customary closures of business;
- (6) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the manufacturer, wholesaler, or distributor;
- (7) The retailer has engaged in conduct which is injurious or detrimental to the retailer's customers or the public welfare;
- (8) The retailer has consistently failed to meet the manufacturer's, wholesaler's or distributor's requirements for reasonable market penetration based on the manufacturer's, wholesaler's, or distributor's experience in other comparable marketing areas.

Law to apply to successors in interest -- not applicable, when -- application to existing contracts and future contracts.

407.897. 1. The obligations of any wholesaler, manufacturer or distributor created by the provisions of sections 407.890 to 407.898 apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of substantially all of the assets or over fifty percent of the stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer or distributor.

2. The provisions of sections 407.890 to 407.898 shall not apply to such manufacturer in the state of Missouri who employs less than fifty employees or to any distributor who distributes solely within the state of Missouri and who employs less than five employees for the two-year period prior to the dealer termination and shall apply to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after August 31, 1989. Any contract in force and effect on September 1, 1989, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before September 1, 1989.

Civil action for unlawful termination of contract, authorized -- costs and attorney fees recoverable.

407.898. If a manufacturer, wholesaler or distributor violates any provisions of sections 407.895 and 407.897, a retailer may bring an action against such manufacturer, wholesaler, or distributor in any court of competent jurisdiction for damages sustained by the retailer as a consequence of the violation, together with the actual costs of the action, including reasonable attorney fees, and the retailer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or substantial change of competitive circumstances. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.