

Arkansas Farm Equipment Retailer Franchise Protection Act

4-72-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements thereto;
- (2) "Current net price" means 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) "Retailer" means any person, firm, or corporation engaged in the business of selling and retailing farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, attachments, or repair parts but shall not include retailers of petroleum and motor vehicle and related automobile care and replacement products normally sold by those retailers;
- (4) "Inventory" means farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, attachments, and repair parts;
- (5) "Net cost" means the price the retailer paid for the merchandise to the wholesaler, manufacturer, or distributor, less all applicable discounts allowed;
- (6) "Manufacturer, wholesaler, or distributor" means a person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing, assembly, or wholesale distribution of farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments. The term also includes any successor in interest of the farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments manufacturer, including any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or assignee, or any trustee of the original farm implements, machinery, utility and industrial equipment and attachments manufacturer; and
- (7) "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm implements, machinery, utility and industrial equipment and attachments manufacturer, and a dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of that equipment.

4-72-302. Applicability of subchapter - Subchapter cumulative.

(a) The provisions of this subchapter shall apply to all contracts which have no expiration date and are continuing contracts and all other contracts entered into or renewed after July 1, 1979.

(b) Any contract in force and effect on June 1, 1977, which by its own terms will terminate on a date subsequent thereto, shall be governed by the law as it existed prior to this subchapter.

(c) The provisions of this subchapter shall apply only to inventory purchased after April 10, 1979.

(d) This subchapter is not intended and shall not be construed to repeal any provision of § 4-72-201 et seq.

4-72-303. Security interests unaffected by subchapter - Bulk sales law inapplicable.

The provisions of this subchapter shall not be construed to affect in any way any security interest which the wholesaler, manufacturer, or distributor may have in the inventory of the retailer, and any repurchase under the provisions of this subchapter shall not be subject to the provisions of the bulk sales law. The retailer, wholesaler, manufacturer, or distributor may furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

4-72-304. Wholesaler, manufacturer, or distributor to repurchase undamaged goods and cover cost of return.

(a) The wholesaler, manufacturer, or distributor shall repurchase that inventory previously purchased from him or her and held by the retailer on the date of termination of the contract.

(b) The wholesaler, manufacturer, or distributor shall pay one hundred percent (100%) of the net cost of all new, unsold, undamaged, and complete farm implements, machinery, utility and industrial equipment, and attachments, and one hundred percent (100%) of the current net price of all new, unused, and undamaged repair parts.

(c)(1) The wholesaler, manufacturer, or distributor shall pay the retailer five percent (5%) of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading.

(2) The wholesaler, manufacturer, or distributor shall have the option of performing the handling, packing, and loading in lieu of paying the five percent (5%) for these services.

4-72-305. Retailer's option on merchandise at termination of franchise.

Whenever any retailer enters into a franchise agreement, evidenced by a written contract with a wholesaler, manufacturer, or distributor wherein the retailer agrees to maintain an inventory, and the contract is terminated, then the wholesaler, manufacturer, or distributor shall repurchase the inventory as provided in this subchapter. The retailer may keep the inventory if he or she desires. 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.

4-72-306. Death of retailer equivalent to termination.

(a) 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, at the option of the heir or heirs, repurchase the inventory from the heir or heirs of the retailer or majority stockholder as if the wholesaler, manufacturer, or distributor had terminated the contract. The heir or heirs shall have one (1) year from the date of the death of the retailer or majority stockholder to exercise their options under this subchapter.

(b) Nothing in this subchapter shall require the repurchase of any inventory if the heir or heirs and the wholesaler, manufacturer, or distributor enter into a new contract to operate the retail dealership.

4-72-307. Inventory not required to be repurchased.

The provisions of this subchapter shall not require the repurchase from a retailer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or batteries;
- (2) Any repair part which is in a broken or damaged package;
- (3) Any single repair part which is priced as a set of two (2) or more items;
- (4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) Any inventory for which the retailer is unable to furnish satisfactory evidence to the wholesaler, manufacturer, or distributor of clear title, free and clear of all claims, liens, and encumbrances;
- (6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
- (7) Any farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments which are not current models or which are not in new, unused, undamaged, complete condition;

(8) Any repair parts which are not in new, unused, undamaged condition;

(9) Any farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, or attachments which were purchased twenty-four (24) months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract; or

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer, or distributor.

4-72-308. Title and possession of inventory.

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.

4-72-309. Liability for failure to repurchase.

If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory covered under the provisions of this subchapter within sixty (60) days after shipment of the inventory, he or she shall be civilly liable for one hundred percent (100%) of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney's fees, court costs, and interest on the current net price computed at the legal interest rate from the sixty-first day after shipment.

4-72-310. Violations.

(a) It is a violation of this subchapter for a manufacturer, wholesaler, or distributor to coerce a dealer to accept delivery of parts, accessories, or specialized tools which the dealer has not voluntarily ordered.

(b) It is a violation of this subchapter for a manufacturer to:

(1)(A) Condition or attempt to condition the sale of farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments on a dealer also purchasing other goods or services, except that a manufacturer may require the dealer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area and to purchase or lease such telecommunication equipment, including computer software, as is substantially and reasonably necessary to communicate with the manufacturer.

(B) Provided, however, that upon termination, nonrenewal, or cancellation of an equipment dealer franchise, the equipment manufacturer must reimburse the equipment dealer for all telecommunications equipment, including computer software, purchased by the equipment dealer in order to comply with the requirements of the equipment

manufacturer that the dealer returns or offers to return to the equipment manufacturer, subject to a reasonable reduction for depreciation;

(2) Coerce or attempt to coerce a dealer into refusing to purchase the equipment manufactured by another equipment manufacturer;

(3)(A) Discriminate in the prices charged for equipment of like grade and quality sold by the equipment manufacturer to similarly situated equipment dealers.

(B) This does not prevent the use of volume discount or a differential which makes only due allowance for differences in the cost of manufacture, sale, or delivery, or for the differing methods by which or quantities in which the equipment is sold or delivered by the equipment manufacturer; or

(4) Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership agreement based on the result of a natural disaster, including a sustained drought in the dealership market area, labor dispute, or other circumstances beyond the dealer's control.

4-72-311. Warranties.

(a) This section applies to a warranty claim submitted by a dealer.

(b)(1) Claims filed for payment under warranty agreements shall either be approved or disapproved within thirty (30) days of receipt by a manufacturer, wholesaler, or distributor.

(2) All claims for payment shall be paid within thirty (30) days of their approval.

(3)(A) If a claim is disapproved, the manufacturer, wholesaler, or distributor shall notify the dealer within thirty (30) days stating the specific grounds upon which the disapproval is based.

(B) If a claim is not specifically disapproved within thirty (30) days of receipt, it shall be deemed approved and payment by the manufacturer, wholesaler, or distributor shall follow within thirty (30) days.

(4) If, after termination of a contract, the dealer submits a claim to the manufacturer, wholesaler, or distributor for warranty work performed prior to the effective date of the termination, the manufacturer, wholesaler, or distributor shall accept or reject the claim within thirty (30) days of receipt.

(5) If a claim is not paid within the time allowed under this subsection, interest shall accrue at the maximum lawful interest rate.

(c)(1)(A) Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours.

(B) The time shall be multiplied by the dealer's established customer hourly retail labor rate, which shall have previously been made known to the manufacturer, wholesaler, or distributor.

(2) Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer shall not be included nor required to be paid on requests for compensation from the dealer for warranty work performed.

(3)(A) All parts used by the dealer in performing the warranty work shall be paid to the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of fifteen percent (15%).

(B) The additional amount is to reimburse the dealer for reasonable costs of doing business in performing the warranty service on behalf of the manufacturer, wholesaler, or distributor, including, but not limited to, freight and handling costs incurred.

(4) The manufacturer, wholesaler, or distributor has the right to adjust compensation for errors discovered during audit, and if necessary, to adjust claims paid in error.

(d) The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.