

Title 10: COMMERCE AND TRADE
Chapter 208-B: FARM MACHINERY, FORESTRY EQUIPMENT,
CONSTRUCTION EQUIPMENT AND INDUSTRIAL EQUIPMENT DEALERSHIPS

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Maine Revised Statutes

Title 10: COMMERCE AND TRADE

Chapter 208-B: FARM MACHINERY, FORESTRY EQUIPMENT, CONSTRUCTION EQUIPMENT AND INDUSTRIAL EQUIPMENT DEALERSHIPS

§1285. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

1. Current net price. "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the dealer agreement is terminated, less any applicable discounts allowed.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

2. Dealer. "Dealer" means a person, corporation or partnership primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts. "Dealer" does not include a person, corporation or partnership primarily engaged in the retail sale of all-terrain vehicles or motorcycles. "Dealer" does not include a single-line dealer as defined in subsection 5-A.

[2011, c. 236, §1 (AMD); 2011, c. 236, §18 (AFF) .]

3. Dealer agreement. "Dealer agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer or distributor by which the dealer is granted the right to sell or distribute goods or services or to use a trade name, trademark, service mark, logotype or advertising or other commercial symbol.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

4. Inventory. "Inventory" means farm, forestry, utility or industrial equipment, construction equipment, implements, machinery, yard and garden equipment, attachments or repair parts.

[2011, c. 236, §2 (AMD); 2011, c. 236, §18 (AFF) .]

5. Net cost. "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly or disassembly performed by the dealer.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

5-A. Single-line dealer. "Single-line dealer" means a person, corporation or partnership engaged in retail sales that:

A. Has purchased 75% or more of total new product inventory from a single supplier; and [2011, c. 236, §3 (NEW); 2011, c. 236, §18 (AFF).]

B. Has a total annual average sales volume for the previous 3 years in excess of \$100,000,000 for the entire territory subject to the agreement with the supplier. [2011, c. 236, §3 (NEW); 2011, c. 236, §18 (AFF).]

[2011, c. 236, §3 (NEW); 2011, c. 236, §18 (AFF) .]

6. Supplier. "Supplier" means a wholesaler, manufacturer or distributor of inventory as defined in this chapter who enters into a dealer agreement with a dealer.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

7. Termination. "Termination" of a dealer agreement means the cancellation, nonrenewal or noncontinuance of the agreement.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §§1-3 (AMD). 2011, c. 236, §18 (AFF).

§1286. USAGE OF TRADE

The terms "utility," "forestry," "construction" and "industrial," when used to refer to equipment, machinery, attachments, yard and garden equipment or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as usage of trade in accordance with Title 11, section 1-1303, subsection (3). [2011, c. 236, §4 (AMD); 2011, c. 236, §18 (AFF).]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2009, c. 325, Pt. B, §1 (AMD). 2009, c. 325, Pt. B, §27 (AFF). 2011, c. 236, §4 (AMD). 2011, c. 236, §18 (AFF).

§1287. NOTICE OF TERMINATION OF DEALER AGREEMENTS

1. Notice of termination. Notwithstanding any agreement to the contrary, prior to the termination of a dealer agreement, a supplier shall notify the dealer of the termination not less than 120 days prior to the effective date of the termination. The supplier may immediately terminate the agreement at any time upon the occurrence of any of the following events:

- A. The filing of a petition for bankruptcy or for receivership either by or against the dealer; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]
- B. The making by the dealer of an intentional and material misrepresentation as to the dealer's financial status; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]
- C. Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]
- E. The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]
- F. A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]
- G. Withdrawal of an individual proprietor, partner or major shareholder or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier; or [2011, c. 236, §5 (AMD); 2011, c. 236, §18 (AFF).]

H. Breach by the dealer of a written obligation contained in the agreement. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

[2011, c. 236, §5 (AMD); 2011, c. 236, §18 (AFF) .]

2. Time of notice. Unless there is an agreement to the contrary, a dealer who intends to terminate a dealer agreement with a supplier shall notify the supplier of that intent not less than 120 days prior to the effective date of the termination.

[2011, c. 236, §6 (AMD); 2011, c. 236, §18 (AFF) .]

3. Notice in writing. Notification required by this section must be in writing and be made by certified mail or by personal delivery and must contain:

A. A statement of intention to terminate the dealer agreement; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

B. A statement of the reasons for the termination; and [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

C. The date on which the termination is effective. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §§5, 6 (AMD). 2011, c. 236, §18 (AFF).

§1288. SUPPLIER'S DUTY TO REPURCHASE

1. Repurchase. Whenever a dealer enters into a dealer agreement under which the dealer agrees to maintain an inventory, and the agreement is terminated by either party as provided in this chapter, the supplier, upon written request of the dealer filed within 30 days of the effective date of the termination, shall repurchase the dealer's inventory as provided in this chapter. There is no requirement for the supplier to repurchase inventory pursuant to this section if:

A. [2011, c. 236, §18 (AFF); 2011, c. 236, §7 (RP).]

B. The dealer has made an intentional and material misrepresentation as to the dealer's financial status; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

C. The dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier; or [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

D. The dealer has filed a voluntary petition in bankruptcy. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

[2011, c. 236, §7 (AMD); 2011, c. 236, §18 (AFF) .]

2. Death of dealer. Whenever a dealer enters into a dealer agreement in which the dealer agrees to maintain an inventory and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as

if the agreement had been terminated. The heir, personal representative, guardian or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this chapter.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §7 (AMD). 2011, c. 236, §18 (AFF).

§1289. REPURCHASE TERMS

1. Examination of records. Within 90 days from receipt of the written request of the dealer, a supplier under the duty to repurchase inventory pursuant to section 1288 may examine any books or records of the dealer to verify the eligibility of any item for repurchase. Except as otherwise provided in this chapter, the supplier shall repurchase from the dealer all inventory, required signs, specialized repair tools, books, supplies, data processing equipment and software previously purchased from the supplier and in the possession of the dealer on the date of termination of the dealer agreement.

[2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF) .]

2. Payment terms. The supplier shall pay the dealer:

A. One hundred percent of the net cost of all new and undamaged and complete farm, utility, forestry, industrial and construction equipment, implements, machinery, yard and garden equipment and attachments purchased within the past 36 months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location; [2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF).]

B. Ninety percent of the current net prices of all new and undamaged repair parts; [2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF).]

C. Eighty-five percent of the current net prices of all new and undamaged superseded repair parts; [2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF).]

D. Eighty-five percent of the latest available published net price of all new and undamaged noncurrent repair parts; [2011, c. 236, §8 (NEW); 2011, c. 236, §18 (AFF).]

E. The fair market value of, or assume the lease responsibilities for, any specific data processing equipment and software that the supplier required the dealer to purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment required or approved by the supplier to communicate with the supplier; [2011, c. 236, §8 (NEW); 2011, c. 236, §18 (AFF).]

F. Seventy-five percent of the net cost of specialized repair tools, signs, books and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination. Only specialized repair tools that are unique to the supplier product line, complete and in usable condition are required to be repurchased under this paragraph; and [2011, c. 236, §8 (NEW); 2011, c. 236, §18 (AFF).]

G. Average as-is value shown in current industry guides for a dealer-owned rental fleet financed by the supplier or its finance subsidiary. [2011, c. 236, §8 (NEW); 2011, c. 236, §18 (AFF).]

[2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF) .]

3. Return costs. The party that initiates the termination of the dealer agreement shall pay the cost of the return, handling, packing and loading of the inventory.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

4. Payment date. Payment to the dealer required under this section must be made by the supplier not later than 45 days after receipt of the inventory by the supplier. The supplier shall pay to the dealer a penalty of 1 1/2% per day on any outstanding balance over the 45 days. The supplier is entitled to apply any payment required under this section to be made to the dealer as a setoff against any amount owed by the dealer to the supplier.

[2011, c. 236, §8 (AMD); 2011, c. 236, §18 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §8 (AMD). 2011, c. 236, §18 (AFF).

§1290. EXCEPTIONS TO REPURCHASE REQUIREMENT

1. Exceptions. The provisions of this chapter do not require the repurchase from a dealer of:

A. A repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries, but excluding industrial "press on" or industrial pneumatic tires; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

B. A single repair part normally priced and sold in a set of 2 or more items; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

C. A repair part that, because of its condition, can not be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

D. [2011, c. 236, §18 (AFF); 2011, c. 236, §9 (RP) .]

E. Any inventory that the dealer elects to retain; [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

F. Any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier; or [2011, c. 236, §10 (AMD); 2011, c. 236, §18 (AFF) .]

G. Any inventory that was acquired by the dealer from a source other than the supplier. [2011, c. 236, §11 (AMD); 2011, c. 236, §18 (AFF) .]

H. [2011, c. 236, §18 (AFF); 2011, c. 236, §12 (RP) .]

[2011, c. 236, §§9-12 (AMD); 2011, c. 236, §18 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §§9-12 (AMD). 2011, c. 236, §18 (AFF).

§1291. TRANSFER OF BUSINESS

1. Transfer. A supplier may not unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership, whenever the dealer to be substituted meets the material and reasonable qualifications and standards required of its dealers. If a supplier determines that

a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent. A prospective transferee may not be disqualified from being a dealer because it is a publicly held corporation. A supplier has 90 days to consider a dealer's request to make a transfer under this subsection.

[2011, c. 236, §13 (AMD); 2011, c. 236, §18 (AFF) .]

2. Transfer to family member or principal owner. Notwithstanding subsection 1, a supplier may not withhold consent to, or in any manner retain a right of prior approval of, the transfer of the dealer's business to a member or members of the family of the dealer or the principal owner of the dealership. As used in this subsection, "family" means and includes the spouse, parent, siblings, children, stepchildren and lineal descendants, including those by adoption, of the dealer or principal owner of the dealership.

[2011, c. 236, §14 (AMD); 2011, c. 236, §18 (AFF) .]

3. Assume obligations. Whenever a transfer of a dealer's business occurs, the transferee shall assume all the obligations imposed on and succeed to all the rights held by the selling dealer by virtue of any agreement, consistent with this chapter, entered into prior to the transfer between the selling dealer and one or more suppliers.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

4. Burden of proof. In any dispute as to whether a supplier has denied consent in violation of this section, the supplier has the burden of proving a substantial and reasonable justification for the denial of consent.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2011, c. 236, §§13, 14 (AMD). 2011, c. 236, §18 (AFF).

§1292. UNIFORM COMMERCIAL PRACTICE

1. Security interest. Nothing contained in this chapter may be construed to release or terminate a perfected security interest of the supplier in the inventory of the dealer.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

§1293. WARRANTY OBLIGATIONS

1. Payment of warranty claim. Whenever a supplier and a dealer enter into an agreement providing consumer warranties, the supplier shall pay any warranty claim made by the dealer for warranty parts or service within 30 days after its receipt and approval. The supplier shall approve or disapprove a warranty claim within 30 days after its receipt. If a claim is not specifically disapproved in writing within 30 days after its receipt, it is deemed to be approved and payment must be made by the supplier within 30 days.

A. A dealer that performs warranty work as provided for in this section must be compensated for the dealer's labor in an amount that is not less than the reasonable and customary amount of time required to complete such work, expressed in hours and fractions of hours, multiplied by the dealer's established hourly labor rate. Prior to filing a claim for warranty work, the dealer shall notify the supplier of the dealer's hourly retail labor rate. [2005, c. 317, §1 (NEW) .]

B. A dealer that performs warranty work as provided for in this section must be compensated for parts used in fulfilling such warranty work in an amount that is not less than the dealer's costs for such parts plus 20% or the supplier's suggested retail price for such parts, whichever is greater, plus all freight and handling charges applicable to such parts, to reimburse the dealer's reasonable costs of doing business and providing such warranty service on behalf of the supplier. If the warranty work is provided on behalf of the supplier on a product sold by a nonservicing dealer, the compensation for parts used in fulfilling such warranty work must be at an amount that is not less than the supplier's suggested list price or dealer's cost plus 30%, whichever is greater, plus freight and handling charges applicable to such parts. [2011, c. 236, §15 (AMD); 2011, c. 236, §18 (AFF).]

[2011, c. 236, §15 (AMD); 2011, c. 236, §18 (AFF) .]

2. Indemnity. Whenever a supplier and a dealer enter into a dealer agreement, the supplier shall indemnify and hold harmless the dealer against any judgment for damages arising from breach of warranty or rescission of the sale by the supplier.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF). 2005, c. 317, §1 (AMD). 2011, c. 236, §15 (AMD). 2011, c. 236, §18 (AFF).

§1293-A. PROHIBITED ACTS

A supplier may not: [2011, c. 236, §16 (NEW); 2011, c. 236, §18 (AFF).]

1. Coercion involving deliveries and orders. Mandate, coerce or attempt to coerce any dealer to order or accept delivery of equipment or repair parts not required by law that have not been voluntarily ordered by the dealer, unless the equipment or repair parts are comprised of safety features required by the supplier;

[2011, c. 236, §16 (NEW); 2011, c. 236, §18 (AFF) .]

2. Interference in dealer's business. Require any dealer to refrain from participation in the management or acquisition of, or investment in, any other business;

[2013, c. 41, §1 (AMD) .]

3. Coercion involving sale of equipment. Prevent, coerce or attempt to coerce a dealer from having an investment in or holding a dealership contract for the sale of competing product lines or makes of equipment or require the dealer to provide separate facilities for competing product lines or makes of equipment; or

[2013, c. 41, §1 (AMD) .]

4. Recover costs for reimbursement. If the supplier has reimbursed a dealer for equipment, repair parts or labor to avoid a violation of this section, recover the supplier's costs of that reimbursement.

[2013, c. 41, §1 (NEW) .]

SECTION HISTORY

2011, c. 236, §16 (NEW). 2011, c. 236, §18 (AFF). 2013, c. 41, §1 (AMD).

§1294. REMEDIES

1. Jurisdiction. Concurrent jurisdiction under this chapter is in the District Court or Superior Court of the city or county where the dealer has its principal place of business. The court may grant equitable relief as is necessary to remedy the effects of conduct that it finds to exist and is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

2. Recovery. In addition to any other remedies available at law or in equity, if a supplier has attempted or accomplished an annulment, cancellation or termination, or refused to continue or renew an agreement without good cause or withheld or delayed consent in violation of section 1287 or 1291, then the dealer is entitled to recover losses and damages, together with the cost of the action and reasonable legal fees. These damages include compensation for the value of the agreement and the good will of the dealer's business.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

3. Arbitration. Nothing contained in this section may bar the right of an agreement to provide for binding arbitration of disputes. Any arbitration must be consistent with the provisions of this chapter and Title 14, chapter 706, and the place of any arbitration must be in the city or county in which the dealer maintains the dealer's principal place of business in the State.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

4. Renewal of agreement. No supplier may cancel, terminate or refuse to continue to renew an agreement during the 90-day period set forth in section 1287 or during the pendency of litigation or arbitration, except under the conditions set forth in section 1287, subsection 1.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

§1295. MANAGEMENT

A supplier may not require or prohibit any change in management or personnel of any dealer unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the supplier for its dealers. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

§1296. WAIVER OF CHAPTER VOID

The provisions of this chapter are deemed to be incorporated in every agreement and supersede and control all other provisions of the agreement. A supplier may not require any dealer to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter may be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

§1297. APPLICABILITY

This chapter applies to agreements in effect as of October 1, 1989. In addition, this chapter applies to any agreements entered into after October 1, 1989. The provisions of this chapter are also applicable to any renewal or amendment of the agreements. [1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF).]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

§1298. REASONABLENESS AND GOOD FAITH

1. Good faith. Every agreement entered into under this chapter imposes on the parties the obligation to act in good faith.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

2. Reasonableness. This chapter imposes on every term and provision of any agreement a requirement of reasonableness. Every term or provision of any agreement must be interpreted so that the requirements or obligations imposed are reasonable.

[1995, c. 462, Pt. A, §22 (NEW); 1995, c. 462, Pt. A, §23 (AFF) .]

SECTION HISTORY

1995, c. 462, §A22 (NEW). 1995, c. 462, §A23 (AFF).

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