

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

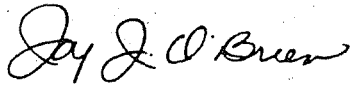
No. 959

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S.P. 358

In Senate, March 28, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

  
JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot.

Cosponsored by Representative ALLEN of Washington, Representative REED of Falmouth and Representative STEVENS of Sabattus.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Provide Dealership Protection to Farm Equipment and Machinery.

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1 Be it enacted by the People of the State of Maine as follows:

3 29 MRSA c. 5, sub-c. VI is enacted to read:

5 SUBCHAPTER VI

7 FARM MACHINERY DEALERSHIPS

9 §481. Definitions

11 As used in this subchapter, unless the context otherwise  
13 indicates, the following terms have the following meanings.

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

19 2. Dealer. "Dealer" means a person, corporation or  
21 partnership primarily engaged in the business of retail sales of  
farm and utility tractors, farm implements, farm machinery, yard  
23 and garden equipment, attachments, accessories and repair parts.

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

31 4. Inventory. "Inventory" means farm, utility or  
33 industrial equipment, implements, machinery, yard and garden  
equipment, attachments or repair parts. These terms do not  
35 include heavy construction equipment.

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

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

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

49 §482. Usage of trade

51 The terms "utility" and "industrial", when used to refer to  
equipment, machinery, attachments, yard and garden equipment or

1 repair parts, shall have the meanings commonly used and  
3 understood among dealers and suppliers of farm equipment as usage  
of trade in accordance with Title 11, section 1-205, subsection 2.

5 **§483. Notice of termination of dealer agreements**

7 1. Notice of termination. Notwithstanding any agreement to  
9 the contrary, prior to the termination of a dealer agreement a  
11 supplier shall notify the dealer of the termination not less than  
13 90 days prior to the effective date of the termination. The  
15 supplier may immediately terminate the agreement at any time upon  
17 the occurrence of any of the following events:

19 A. The filing of a petition for bankruptcy or for  
21 receivership either by or against the dealer;

23 B. The making by the dealer of an intentional and material  
25 misrepresentation as to the dealer's financial status;

27 C. Any default by the dealer under a chattel mortgage or  
29 other security agreement between the dealer and the supplier;

31 D. Discontinuance by the dealer of more than 50% of the  
33 dealer's business related to the handling of goods provided  
35 by the supplier;

37 E. The commencement of voluntary or involuntary dissolution  
39 or liquidation of the dealer if the dealer is a partnership  
41 or corporation;

43 F. A change in location of the dealer's principal place of  
45 business as provided in the agreement without the prior  
47 written approval of the supplier;

49 G. Withdrawal of an individual proprietor, partner, major  
51 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

H. Breach by the dealer of a written obligation contained  
in the agreement.

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 90 days prior to the effective date of the termination.

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

1           A. A statement of intention to terminate the dealer  
2           agreement;

3           B. A statement of the reasons for the termination; and

4           C. The date on which the termination shall be effective.

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7           §484. Supplier's duty to repurchase

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

17  
18           A. The supplier and dealer have made a written agreement  
19 with respect to repurchase;

20           B. The dealer has made an intentional and material  
21 misrepresentation as to the dealer's financial status;

22           C. The dealer has defaulted under a chattel mortgage or  
23 other security agreement between the dealer and supplier; or

24           D. The dealer has filed a voluntary petition in bankruptcy.

25  
26           2. Death of dealer. Whenever a dealer enters into a dealer  
27 agreement in which the dealer agrees to maintain an inventory and  
28 the dealer or the majority stockholder of the dealer, if the  
29 dealer is a corporation, dies or becomes incompetent, the  
30 supplier shall, at the option of the heir, personal  
31 representative, or guardian of the dealer, or the person who  
32 succeeds to the stock of the majority stockholder, repurchase the  
33 inventory as if the agreement had been terminated. The heir,  
34 personal representative, guardian or succeeding stockholder has  
35 one year from the date of the death of the dealer or majority  
36 stockholder to exercise the option under this subchapter.

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38           §485. Repurchase terms

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40           1. Examination of records. Within 90 days from receipt of  
41 the written request of the dealer, a supplier under the duty to  
42 repurchase inventory pursuant to section 484 may examine any  
43 books or records of the dealer to verify the eligibility of any  
44 item for repurchase. Except as otherwise provided in this  
45 subchapter, the supplier shall repurchase from the dealer all  
46 inventory previously purchased from the supplier in the  
47 possession of the dealer on the date of termination of the dealer  
48 agreement.

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

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4                   A. One hundred percent of the net cost of all new and  
5                   undamaged and complete farm, utility and industrial  
6                   equipment, implements, machinery, yard and garden equipment  
7                   and attachments, less a reasonable allowance for  
8                   deterioration attributable to weather conditions at the  
9                   dealer's location;

11                   B. Ninety percent of the current net prices of all new and  
12                   undamaged repair parts; and

13                   C. Eighty-five percent of the current net prices of all new  
14                   and undamaged superseded repair parts.

15  
16                   3. Return costs. The party that initiates the termination  
17                   of the dealer agreement shall pay the cost of the return,  
18                   handling, packing and loading of the inventory.

19  
20                   4. Payment date. Payment to the dealer required under this  
21                   section shall be made by the supplier not later than 30 days  
22                   after receipt of the inventory by the supplier. The supplier  
23                   shall be entitled to apply any payment required under this  
24                   section to be made to the dealer, as a setoff against any amount  
25                   owed by the dealer to the supplier.

26                   §486. Exceptions to repurchase requirement

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28                   1. Exceptions. The provisions of this subchapter shall not  
29                   require the repurchase from a dealer of:

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31                   A. A repair part with a limited storage life or otherwise  
32                   subject to physical or structural deterioration including,  
33                   but not limited to, gaskets or batteries, but excluding  
34                   industrial "press on" or industrial pneumatic tires;

35  
36                   B. A single repair part normally priced and sold in a set  
37                   of 2 or more items;

38                   C. A repair part that, because of its condition, cannot be  
39                   marketed as a new part without repackaging or reconditioning  
40                   by the supplier or manufacturer;

41                   D. An item of inventory for which the dealer does not have  
42                   title free of all claims, liens and encumbrances other than  
43                   those of the supplier;

44                   E. Any inventory that the dealer elects to retain;

1           F. Any inventory ordered by the dealer after receipt of  
3           notice of termination of the dealer agreement by either the  
          dealer or supplier;

5           G. Any inventory that was acquired by the dealer from a  
7           source other than the supplier; or

9           H. Any farm, utility or industrial equipment, implements,  
11           machinery, yard and garden equipment or attachments which  
          were purchased by the dealer more than 30 months prior to  
          the termination of the dealer agreement.

13        §487. Transfer of business

15           1. Transfer. No supplier may unreasonably withhold or  
17           delay consent to any transfer of the dealer's business or  
          transfer of the stock or other interest in the dealership,  
19           whenever the dealer to be substituted meets the material and  
          reasonable qualifications and standards required of its dealers.  
21           If a supplier determines that a proposed transferee does not meet  
          its qualifications and standards, it shall give the dealer  
23           written notice thereof, stating the specific reasons for  
          withholding consent. No prospective transferee may be  
25           disqualified to be a dealer because it is a publicly held  
          corporation. A supplier shall have 45 days to consider a  
27           dealer's request to make a transfer under this subsection.

29           2. Withhold consent. Notwithstanding subsection 1, no  
          supplier may withhold consent to, or in any manner retain a right  
31           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  
33           owner of the dealer. As used in this subsection, "family" means  
          and includes the spouse, parent, siblings, children, stepchildren  
35           and lineal descendants, including those by adoption of the dealer  
          or principal owner of the dealer.

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

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

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§488. Uniform commercial practice

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

2. Repurchase of inventory. A repurchase of inventory under this subchapter shall not be subject to the bulk sales provisions of Title 11, section 6-101, et seq.

§489. 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 shall be deemed to be approved and payment shall be made by the supplier within 30 days.

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.

§490. Remedies

1. Jurisdiction. Concurrent jurisdiction under this subchapter shall be 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 which it finds to exist and which is prohibited under this subchapter, including, but not limited to, declaratory judgment and injunctive relief.

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 483 or 487, then the dealer shall be entitled to recover losses and damages, together with the cost of the action and reasonable legal fees. These damages shall include compensation for the value of the agreement and the good will of the dealer's business.

3. Arbitration. Nothing contained in this section may bar the right of an agreement to provide for binding arbitration of disputes. Any arbitration shall be consistent with the



1 provisions of this subchapter and Title 14, chapter 706, and the  
3 place of any arbitration shall be in the city or county in which  
the dealer maintains the dealer's principal place of business in  
5 the State.

7 4. Renewal of agreement. No supplier may cancel, terminate  
or refuse to continue to renew an agreement during the 90-day  
9 period set forth in section 483 or during the pendency of  
litigation or arbitration, except under the conditions set forth  
11 in section 483, subsection 1.

13 §491. Management

15 No supplier may require or prohibit any change in management  
or personnel of any dealer unless the current or potential  
17 management or personnel fails to meet reasonable qualifications  
and standards required by the supplier for its dealers.

19 §492. Waiver of subchapter void

21 The provisions of this subchapter shall be deemed to be  
23 incorporated in every agreement and shall supersede and control  
all other provisions of the agreement. No supplier may require  
25 any dealer to waive compliance with any provision of this  
subchapter. Any contract or agreement purporting to do so is  
27 void and unenforceable to the extent of the waiver or variance.  
Nothing in this subchapter may be construed to limit or prohibit  
29 good faith settlements of disputes voluntarily entered into  
between the parties.

31 §493. Applicability

33 This subchapter shall apply to agreements in effect as of  
35 October 1, 1989. In addition, the subchapter shall apply to any  
agreements entered into after October 1, 1989. The provisions of  
37 this subchapter are also applicable to any renewal or amendment  
of the agreements.

39 §494. Reasonableness and good faith

41 1. Good faith. Every agreement entered into under this  
43 subchapter shall impose on the parties the obligation to act in  
good faith.

45 2. Reasonableness. This subchapter shall impose on every  
47 term and provision of any agreement a requirement of  
reasonableness. Every term or provision of any agreement shall  
49 be interpreted so that the requirements or obligations imposed  
are reasonable.

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## STATEMENT OF FACT

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5       The purpose of this bill is to define the rights and  
responsibilities of suppliers and dealers of farm machinery;  
7       establish conditions for the continuation of farm machinery  
dealerships; foster fair business relationships between suppliers  
and dealers of farm machinery; prohibit unfair treatment of  
9       dealers of farm machinery; and promote compliance with farm  
machinery equipment dealership agreements.