## MAINE STATE LEGISLATURE

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1	L.D. 187
2	Date: 5/23/11 (Filing No. H-324)
3	LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT
4	Reproduced and distributed under the direction of the Clerk of the House.
5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	125TH LEGISLATURE
8	FIRST REGULAR SESSION
9 10 11	COMMITTEE AMENDMENT "A" to H.P. 164, L.D. 187, Bill, "An Act To Amend the Laws Regulating Dealers of Agricultural, Light Industrial and Forestry Equipment"
12	Amend the bill by striking out the title and substituting the following:
13 14	'An Act To Amend the Laws Regulating Dealers of Agricultural, Industrial, Construction and Forestry Equipment'
15 16	Amend the bill in section 1 by striking out all of subsection 2 (page 1, lines 4 to 12 in L.D.) and inserting the following:
17 18 19 20 21 22 23 24 25	'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 business of retail sales of heavy construction, industrial and utility 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.'
26 27	Amend the bill in section 2 by striking out all of subsection 4 (page 1, lines 15 to 17 in L.D.) and inserting the following:
28 29 30	'4. Inventory. "Inventory" means farm, <u>forestry</u> , utility or industrial equipment, <u>construction equipment</u> , implements, machinery, yard and garden equipment, attachments or repair parts. These terms do not include heavy construction equipment.'
31 32 33	Amend the bill in section 3 in subsection 5-A in paragraph B in the last line (page 1, line 24 in L.D.) by striking out the following: "\$20,000,000" and inserting the following: '\$100,000,000'
34	Amend the bill by inserting after section 3 the following:

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### COMMITTEE AMENDMENT " to H.P. 164, L.D. 187

	, ,
1 2	'Sec. 4. 10 MRSA §1286, as amended by PL 2009, c. 325, Pt. B, §1 and affected by §27, is further amended to read:
3	§1286. Usage of trade
4 5 6 7	The terms "utility" "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).'
8 9 10	Amend the bill in section 7 in §1289 in subsection 2 in paragraph A in the 2nd line (page 2, line 31 in L.D.) by striking out the following: "and light industrial equipment," and inserting the following: 'and, industrial and construction equipment'
11 12	Amend the bill in section 7 in §1289 in subsection 4 in the 3rd line (page 3, line 19 in L.D.) by striking out the following: " $2\%$ " and inserting the following: ' $11/2\%$ '
13 14	Amend the bill in section 14 by striking out all of paragraph B (page 4, lines 17 to 26 in L.D.) and inserting the following:
15 16 17 18 19 20 21 22 23 24 25	'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 15% 20% or the supplier's suggested retail price for such parts, including 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.'
26	Amend the bill by inserting after section 14 the following:
27	'Sec. 15. 10 MRSA §1293-A is enacted to read:
28	§1293-A. Prohibited acts
29	A supplier may not:
30 31 32 33	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;
34 35	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; or
36 37 38 39	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.

- Sec. 16. Legislative findings and intent. The Legislature finds that the distribution of equipment primarily designed for or used in agriculture in the State vitally affects the general economy of the State and the public interest and public welfare and, in the exercise of the State's police power, it is necessary to regulate equipment primarily designed for or used in agriculture and related equipment suppliers, dealers and their representatives doing business in the State in order to prevent frauds, unfair business practices, unfair methods of competition, impositions and other abuses upon its citizens. The Legislature intends to protect the citizens of the State from the sudden loss of access to equipment and local parts and service for large and expensive pieces of machinery and to promote the public welfare by providing free and open trade of equipment primarily designed for or used in agriculture within the State.
- **Sec. 17. Application.** This Act applies to all contracts and agreements in effect on the effective date of this Act that have no expiration date and are continuing contracts and all other contracts and agreements entered into, amended, renewed or extended after the effective date of this Act.'

Amend the bill in section 15 in the 3rd and 4th lines (page 4, lines 29 and 30 in L.D.) by striking out the following: "equipment and light" and inserting the following: 'equipment, construction equipment and'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

#### **SUMMARY**

This amendment changes the title of the bill to include construction and industrial equipment. It also makes the following changes to the bill.

- 1. It amends the definition of "dealer" to restore the inclusion of persons that sell all industrial equipment, instead of light industrial equipment as in the bill, and adds persons that sell construction equipment. It removes the exclusion in the definition of "dealer" for heavy construction, industrial and utility equipment.
- 2. It amends the definition of "inventory" to restore the inclusion of all industrial equipment, instead of light industrial equipment as in the bill, and adds construction equipment.
- 3. It amends the definition of "single-line dealer" by increasing the total annual average sales volume for the previous 3 years to in excess of \$100,000,000 instead of \$20,000,000 for the entire territory subject to the agreement with the supplier.
- 4. It makes changes to the repurchase terms by decreasing the penalty the supplier is required to pay to the dealer from 2% to 1 1/2% per day on any outstanding balance over 45 days.
- 5. It makes changes to the laws governing warranty obligations by requiring that the dealer that performs warranty work be compensated for parts in fulfilling the 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 freight and handling charges.

# COMMITTEE AMENDMENT " to H.P. 164, L.D. 187

- 6. It prohibits a supplier from mandating, coercing or attempting 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; requiring any dealer to refrain from participation in the management or acquisition of, or investment in, any other business; or preventing, coercing or attempting to coerce a dealer from selling competing products lines or makes of equipment or requiring the dealer to provide separate facilities for competing product lines or makes of equipment.
- 7. It adds a statement of legislative findings and intent and adds an application section that provides that the provisions of the bill apply to all contracts and agreements in effect on the effective date of the bill that have no expiration date and are continuing contracts and all other contracts and agreements entered into, amended, renewed or extended after the effective date of the bill.

#### FISCAL NOTE REQUIRED

(See attached)



### 125th MAINE LEGISLATURE

LD 187

LR 197(02)

An Act To Amend the Laws Regulating Dealers of Agricultural, Light Industrial and Forestry Equipment

Fiscal Note for Bill as Amended by Committee Amendment "
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

#### **Fiscal Note**

Minor cost increase - General Fund Minor revenue increase - General Fund

#### **Correctional and Judicial Impact Statements**

Establishes new civil violations.

The collection of additional fines may also increase General Fund revenue by minor amounts.