

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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harm to the hospital's ability to provide services to the community, and that the adjustment would be in the public interest and whether it is necessary to avoid significant harm. In determining whether the adjustment is in the public interest and, if so, in what amount the adjustment shall be made, the commission shall consider the following factors, as well as any other matters pertinent to the findings and purposes set forth in section 381:

(1) The reasonableness of the rate at which the hospital's expenses have increased since the 4th payment year;

(2) The hospital's reasons for exceeding its currently approved level of financial requirements;

(3) The hospital's financial requirements, volume and case-mix as compared to those of other comparable hospitals;

(4) The hardship to the hospital in the absence of relief under this subsection;

(5) The impact on quality and accessibility of health care; and

(6) The effect on payors and purchasers of providing relief under this subsection.

E. No hospital may receive more than one adjustment under this subsection, nor shall any hospital be eligible for such an adjustment if the commission, after hearing, has made a final decision denying the adjustment. An adjustment under this subsection shall become part of payment year financial requirements for purposes of computing subsequent payment year financial requirements pursuant to section 396-C.

F. This subsection is repealed October 1, 1991.

Sec. 2. 22 MRSA §398, sub-§2, as amended by PL 1987, c. 51, §2, is further amended to read:

2. Interim adjustments. Upon application by a hospital, affiliated interest, payor or group of purchasers, for an interim adjustment to financial requirements permitted under section 396-D, or upon application by a payor or group of purchasers for a modification of its approved differential or of the apportionment of the gross patient service revenue, and after opportunity for hearing, a final order shall be promulgated within 120 days from the date a completed application was filed, except that the commission may extend the 120-day period by an additional 60 days with respect to an application for an adjustment under section 396-D, subsection 9-A or 9-B. Any proposed change shall take effect upon the date specified in the order. At any time during the period between the filing date and the commission's final decision on the request, the commission may extend provisional approval to any part of the request. This provisional approval shall be superseded by the commission's final

decision on the request. The commission may establish reasonable limits on the frequency of requests filed under this subsection.

Sec. 3. Findings. The Legislature finds the following.

1. Certain hospitals have financial requirements per case well below those of other hospitals of comparable size.

2. Some of the hospitals having relatively low financial requirements per case have, over a period of several years, experienced expense increases that have caused total costs to exceed substantially their total financial requirements as determined by the Maine Health Care Finance Commission.

3. The financial difficulties arising from the facts stated above may, for a few hospitals, be severe enough and sufficiently justified to require relief more rapid than that which will be afforded by phasing in a "standard component" of financial requirements over a 5-year period.

4. To allow a hospital to increase its financial requirements per case more rapidly than the annual amount of the contemplated standard component adjustment, a special adjustment should be provided.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 20, 1989.

CHAPTER 387

S.P. 358 - L.D. 959

An Act to Provide Dealership Protection to Farm Equipment and Machinery

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

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

SUBCHAPTER VI

FARM MACHINERY DEALERSHIPS

§481. Definitions

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

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.

2. Dealer. “Dealer” means a person, corporation or partnership primarily engaged in the business of retail sales of farm and utility tractors, 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.

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.

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

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.

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

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

§482. Usage of trade

The terms “utility” and “industrial”, when used to refer to equipment, machinery, attachments, yard and garden equipment or repair parts, shall have the meanings commonly used and understood among dealers and suppliers of farm equipment as usage of trade in accordance with Title 11, section 1-205, subsection 2.

§483. 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 90 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;

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

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

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

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

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;

G. Withdrawal of an individual proprietor, partner, 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

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:

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

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

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

§484. 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 subchapter, 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 subchapter. There shall be no requirement for the supplier to repurchase inventory pursuant to this section if:

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

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

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

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

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 subchapter.

§485. 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 484 may examine any books or records of the dealer to verify the eligibility of any item for repurchase. Except as otherwise provided in this subchapter, the supplier shall repurchase from the dealer all inventory previously purchased from the supplier in the possession of the dealer on the date of termination of the dealer agreement.

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 and industrial equipment, implements, machinery, yard and garden equipment and attachments, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location;

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

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

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.

4. Payment date. Payment to the dealer required under this section shall be made by the supplier not later than 60 days after receipt of the inventory by the supplier. The supplier shall be 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.

§486. Exceptions to repurchase requirement

1. Exceptions. The provisions of this subchapter shall 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;

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

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

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

E. Any inventory that the dealer elects to retain;

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

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

H. Any farm, utility or industrial equipment, implements, 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.

§487. Transfer of business

1. Transfer. No supplier may 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. No prospective transferee may be disqualified to be a dealer because it is a publicly held corporation. A supplier shall have 45 days to consider a dealer's request to make a transfer under this subsection.

2. Withhold consent. Notwithstanding subsection 1, no supplier may 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 dealer. 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 dealer.

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 subchapter, entered into prior to the transfer between the selling dealer and one or more suppliers.

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

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

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 483 or during the pendency of litigation or arbitration, except under the conditions set forth in section 483, subsection 1.

§491. Management

No supplier may 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.

§492. Waiver of subchapter void

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

§493. Applicability

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

§494. Reasonableness and good faith

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

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

See title page for effective date.

CHAPTER 388

S.P. 339 - L.D. 900

An Act Relating to Reemployment of Injured Workers Under the Workers' Compensation Act

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

39 MRSA §66-A, sub-§3, as enacted by PL 1987, c. 559, Pt. B, §35, is amended to read: