

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

Oxford	762,168
Penobscot	931,781
Piscataquis	966,856
Somerset	1,140,379
Washington	808,442
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TOTAL COUNTY SERVICES	\$6,527,993
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TOTAL REQUIREMENTS	\$20,485,306
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COMPUTATION OF ASSESSMENT	
Requirements	\$20,485,306
Less Deductions:	
General -	
State Revenue Sharing	\$175,000
Homestead Reimbursement	96,000
Miscellaneous Revenues	100,000
Transfer from undesignated fund balance	2,000,000
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TOTAL	\$2,371,000
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Educational -	
Land Reserved Trust	\$57,854
Tuition/Travel	193,000
Miscellaneous	5,000
Special - Teacher Retirement	218,508
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TOTAL	\$474,362
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TOTAL DEDUCTIONS	\$2,845,362
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TAX ASSESSMENT	\$17,639,944

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 6, 2011.

**CHAPTER 236
H.P. 164 - L.D. 187**

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

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

Sec. 1. 10 MRSA §1285, sub-§2, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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.

Sec. 2. 10 MRSA §1285, sub-§4, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

Sec. 3. 10 MRSA §1285, sub-§5-A is enacted to read:

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

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.

Sec. 4. 10 MRSA §1286, as amended by PL 2009, c. 325, Pt. B, §1 and affected by §27, is further amended to read:

§1286. Usage of trade

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).

Sec. 5. 10 MRSA §1287, sub-§1, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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~~ 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;
- 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, 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
- H. Breach by the dealer of a written obligation contained in the agreement.

Sec. 6. 10 MRSA §1287, sub-§2, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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~~ 120 days prior to the effective date of the termination.

Sec. 7. 10 MRSA §1288, sub-§1, ¶A, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

Sec. 8. 10 MRSA §1289, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

§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.

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 and 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;
- 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; ~~;~~
- D. Eighty-five percent of the latest available published net price of all new and undamaged non-current repair parts;
- 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;
- 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

G. Average as-is value shown in current industry guides for a dealer-owned rental fleet financed by the supplier or its finance subsidiary.

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 must be made by the supplier not later than ~~60~~ 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.

Sec. 9. 10 MRSA §1290, sub-§1, ¶D, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

Sec. 10. 10 MRSA §1290, sub-§1, ¶F, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

Sec. 11. 10 MRSA §1290, sub-§1, ¶G, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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

Sec. 12. 10 MRSA §1290, sub-§1, ¶H, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is repealed.

Sec. 13. 10 MRSA §1291, sub-§1, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

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 ~~45~~ 90 days to consider a dealer's request to make a transfer under this subsection.

Sec. 14. 10 MRSA §1291, sub-§2, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

2. Transfer to family member or principal owner. Notwithstanding subsection 1, ~~no~~ 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 ~~dealer 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 ~~dealer dealership.~~

Sec. 15. 10 MRSA §1293, sub-§1, ¶B, as enacted by PL 2005, c. 317, §1, is amended to read:

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 ~~45%~~ 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.

Sec. 16. 10 MRSA §1293-A is enacted to read:

§1293-A. Prohibited acts

A supplier may not:

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;

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

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. 17. Legislative findings and intent. The Legislature finds that the distribution of equip-

ment 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. 18. 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.

Sec. 19. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 10, chapter 208-B, in the chapter headnote, the words "farm machinery dealerships" are amended to read "farm machinery, forestry equipment, construction equipment and industrial equipment dealerships" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 237

H.P. 274 - L.D. 348

An Act To Continue Limited Entry in the Scallop Fishery

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect as soon as possible in order to clarify who is eligible to obtain a license to take scallops; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §6706, sub-§2, as enacted by PL 2007, c. 607, Pt. A, §4, is amended to read:

2. License eligibility in subsequent years. Except as provided in subsection 3, the commissioner may not issue a hand fishing scallop license or a scallop dragging license to any person in any year subsequent to 2009 unless that person possessed that license in the previous calendar year or is eligible to obtain a license in accordance with the limited entry system established under subsection 3.

Sec. 2. 12 MRSA §6706, sub-§3, as enacted by PL 2007, c. 607, Pt. A, §4, is amended to read:

3. Scallop license limited entry system. Notwithstanding subsection 2, the commissioner shall establish by rule a limited entry system under which a person who did not hold a hand fishing scallop license or a scallop dragging license in the previous calendar year may become eligible to obtain that license. The rules for a limited entry system must include provisions for the method and administration of the program. Rules adopted pursuant to this subsection are ~~routine-technical~~ major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 12 MRSA §6706, sub-§4, as enacted by PL 2007, c. 607, Pt. A, §4, is repealed.

Sec. 4. Review. The Commissioner of Marine Resources shall review the composition of the Scallop Advisory Council under the Maine Revised Statutes, Title 12, section 6729-B. The commissioner shall compare the geographic representation of members of the Scallop Advisory Council to the geographic distribution of scallop hand fishing and scallop dragging license holders and determine whether council membership accurately represents the geographic distribution of license holders and recommend any changes necessary to ensure appropriate representation. The commissioner shall compare the number of licenses issued to scallop harvesters who hold hand fishing scallop licenses to the number of scallop harvesters who hold scallop dragging licenses, determine whether the number of members on the Scallop Advisory Council representing each type of license holder accurately represents the relative numbers of each type of license holder and recommend any changes necessary to ensure appropriate representation.

By December 7, 2011, the Commissioner of Marine Resources shall report to the Joint Standing Committee on Marine Resources on the commissioner's findings and recommendations and shall submit draft legislation necessary to implement the commissioner's recommendations concerning the composition of the Scallop Advisory Council. The Joint Standing Committee on Marine Resources may report out a bill on the subject of the report to the Second Regular Session of the 125th Legislature.