

1 **SENATE FLOOR VERSION**

2 February 20, 2025

3 COMMITTEE SUBSTITUTE
4 FOR
SENATE BILL NO. 377

By: Frix of the Senate

5 and

6 Bashore of the House

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9 An Act relating to equipment contracts; amending 15
10 O.S. 2021, Sections 245, as amended by Section 1,
Chapter 62, O.S.L. 2024, 245A, 245A.1, and 245A.2 (15
11 O.S. Supp. 2024, Section 245), which relate to the
Fair Practices of Equipment Manufacturers,
Distributors, Wholesalers and Dealers Act; modifying
definitions; updating statutory references; modifying
certain prohibited actions; modifying certain consent
requirements; updating statutory language; and
providing an effective date.

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17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 15 O.S. 2021, Section 245, as
19 amended by Section 1, Chapter 62, O.S.L. 2024 (15 O.S. Supp. 2024,
20 Section 245), is amended to read as follows:

21 Section 245. For the purposes of the Fair Practices of
22 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act:

23 1. "Current net parts price" means, with respect to current
24 parts, the price for repair parts listed in the supplier's price

1 list or ~~catalogue~~ catalog in effect at the time the dealer agreement
2 is terminated or discontinued, or for purposes of Section ~~9~~ 245A.5
3 of this ~~act~~ title, the price list or ~~catalogue~~ catalog in effect at
4 the time the repair parts were ordered. Current net parts price
5 means, with respect to superseded repair parts, the price listed in
6 the supplier's price list or catalogue in effect at the time the
7 dealer agreement is terminated or discontinued for the part that
8 performs the same function and purpose as the superseded part, but
9 is simply listed under a different part number;

10 2. "Current net parts cost" means the current net parts price
11 less any trade or cash discounts typically given to the dealer with
12 respect to such dealer's normal, ordinary course orders of repair
13 parts;

14 3. "Dealer" means any person primarily engaged in the business
15 of:

16 a. selling or leasing equipment or repair parts to the
17 ultimate consumer, and

18 b. repairing or servicing equipment;

19 4. "Dealer agreement" means either an oral or written agreement
20 or arrangement for a definite or indefinite period between a dealer
21 and a supplier that provides for the rights and obligations of the
22 parties with respect to the purchase or sale of equipment or repair
23 parts. Notwithstanding the foregoing, if a dealer has more than one
24 business location covered by the same dealer agreement, the

1 requirements of the Fair Practices of Equipment Manufacturers,
2 Distributors, Wholesalers and Dealers Act will be applied to the
3 repurchase of a dealer's inventory at a particular location upon the
4 closing of such location, unless the closing of the location occurs
5 without the permission of the supplier;

6 5. "Dealership" means the retail sale business engaged in by a
7 dealer under a dealer agreement;

8 6. "Demonstrator" means equipment in a dealer's inventory that
9 has never been sold at retail, but has had its usage demonstrated to
10 potential customers, either without charge or pursuant to a short-
11 term rental agreement, with the intent of encouraging the person to
12 purchase the equipment and which has been authorized for the use by
13 the supplier;

14 7. "Equipment" means:

15 a. all-terrain vehicles, utility task vehicles and
16 recreational off-highway vehicles, in each case,
17 regardless of how used, and
18 b. other machinery, equipment, implements or attachments
19 therefor, used for or in connection with the following
20 purposes:
21 (1) lawn, garden, golf course, landscaping or grounds
22 maintenance,

- (2) planting, cultivating, irrigating, harvesting, and producing of agricultural and/or forestry products,
- (3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or
- (4) industrial, construction, maintenance, mining or utility activities or applications.

9 Equipment shall not mean trailers or self-propelled vehicles
10 designed primarily for the transportation of persons or property on
11 a street or highway, or items constituting fixtures or otherwise
12 customarily intended to be permanently affixed to or incorporated
13 into real property and improvements attached thereto, and related
14 repair parts;

15 8. "Family member" means a spouse, child, son-in-law, daughter-
16 in-law or lineal descendant;

17 9. "Good cause" has the meaning as set forth in Section 5 or 6
18 245A.1 of this act title, as applicable; provided, that:

- a. a change in the executive management of the dealer shall not constitute good cause unless the supplier can demonstrate that the change is detrimental to the representation of the supplier's products, and
- b. for purposes of subsection B of Section 245A.2 of this title, good cause means showing that such sale or

1 transfer would be detrimental to the representation of
2 the supplier's product;

3 10. "Index" means the United States Bureau of Labor Statistics
4 Producer Price Index ~~(industry data)~~ Industry Data for construction
5 machinery manufacturing, series identification number
6 pcu333120333120 or any successor Index measuring substantially
7 similar information;

8 11. "Inventory" means equipment, repair parts, data processing
9 hardware or software, and specialized service or repair tools;

10 12. "Net equipment cost" means the price the dealer actually
11 paid to the supplier for equipment, plus:

- 12 a. freight, at the cost stated on the invoice, if
13 available, and if not the truckload rates in effect as
14 of the effective date of the termination of a dealer
15 agreement, if freight was paid by the dealer from the
16 supplier's location to the dealer's location, and
- 17 b. reimbursement for labor incurred in preparing the
18 equipment for retail sale or rental, also known as
19 set-up costs, which labor will be reimbursed at the
20 dealer's standard labor rate charged by the dealer to
21 its customers for nonwarranty repair work; provided,
22 however, if a supplier has established a reasonable
23 set-up time, such labor will be reimbursed at an
24 amount equal to the reasonable set-up time in effect

1 as of the date of delivery multiplied by the dealer's
2 standard labor rate;

3 13. "New equipment" means, for purposes of determining whether
4 a dealer is a single-line dealer, any equipment that could be
5 returned to the supplier upon a termination of a dealer agreement
6 pursuant to Sections 246 and 247 of this title;

7 14. "Person" means a natural person, corporation, partnership,
8 limited liability company, company, trust or any and all other forms
9 of business enterprise, including any other entity in which it has a
10 majority interest or of which it has control, as well as the
11 individual officers, directors and other persons in active control
12 of the activities of each entity;

13 15. "Repair parts" means all parts related to the repair of
14 equipment, including superseded parts;

15 16. "Single-line dealer" means a dealer that has:

16 a. purchased construction, industrial, forestry and
17 mining equipment from a single-line supplier
18 constituting seventy-five percent (75%) of the
19 dealer's new equipment that is construction,
20 industrial, forestry and mining equipment, calculated
21 on the basis of net equipment cost, and

22 b. a total annual average sales volume of equipment
23 acquired from the single-line supplier in excess of
24 Twenty-Five Twenty-five Million Dollars

(\$25,000,000.00) for the five (5) calendar years immediately preceding the applicable determination date; provided, however, the ~~Twenty-Five Million-~~
~~Dollar~~ twenty-five-million-dollar threshold will be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year;

9 17. "Single-line dealer agreement" means a dealer agreement
10 between a single-line dealer and a single-line supplier that only
11 provides for the rights and obligations of the parties with respect
12 to the purchase and sales of equipment that is construction,
13 forestry, industrial and mining equipment;

14 18. "Single-line supplier" means the supplier that is selling
15 the single-line dealer construction, industrial, forestry and mining
16 equipment constituting seventy-five percent (75%) of the dealer's
17 new equipment that is construction, industrial, forestry and mining
18 equipment;

19 19. "Specialty agricultural equipment" means equipment that is
20 designed for and used in:

- a. planting, cultivating, irrigating, harvesting and producing of the agricultural products, or
 - b. raising, feeding, tending to or harvesting products from livestock;

1 20. "Specialty agricultural equipment supplier" means a
2 supplier of specialty agricultural equipment whose gross sales
3 revenue to the dealer is less than the threshold amount and whose
4 product line does not include farm tractors or combines and whose
5 sales of outdoor power equipment to the dealer does not exceed ten
6 percent (10%) of its total sales to the dealer during the one-year
7 period ending on the last day of the calendar month immediately
8 preceding the effective date of the termination of the dealer
9 agreement. Whether a supplier qualifies as a specialty agricultural
10 equipment supplier is determined on a ~~case-by-case~~ case-by-case
11 basis depending on the sales of the applicable dealer and to the
12 applicable dealer by such specialty agricultural equipment supplier;

13 21. "Supplier" means any person engaged in the business of
14 manufacturing, assembly or wholesale distribution of equipment or
15 repair parts. The term shall also include any successor in
16 interest, including any receiver, trustee, liquidator, assignee,
17 purchaser of assets or stock, or a surviving corporation resulting
18 from a merger, liquidation or reorganization of the original
19 supplier. Purchasers of all, or substantially all, of the inventory
20 of a supplier or a supplier's division or product line will
21 constitute a purchaser of all or substantially all of the supplier's
22 assets;

23 22. "Terminate" or "termination" means to terminate, cancel,
24 fail to renew or substantially change the competitive circumstances

1 of a dealer agreement. For purposes of ~~Section 9 of this act and~~
2 Sections 245A.5, 246, and 247 of this title, the terms shall not
3 include the phrase "substantially change the competitive
4 circumstances of"; and

5 23. "Threshold amount" means that the lesser of:

- 6 a. ten percent (10%) of the dealer's gross sales revenue,
7 or
8 b. Three Hundred Fifty Thousand Dollars (\$350,000.00), in
9 each case based on net sales of the dealership during
10 the ~~one-year~~ one-year period ending on the last day of
11 the calendar month immediately preceding the effective
12 date of the termination of the dealer agreement;
13 provided, however, the ~~Three-Hundred-Fifty-Thousand-~~
14 ~~Dollar~~ three-hundred-fifty-thousand-dollar amount will
15 be increased each year by an amount equal to the then
16 current amount multiplied by the percentage increase
17 in the Index from January of the immediately preceding
18 year to January of the current year.

19 SECTION 2. AMENDATORY 15 O.S. 2021, Section 245A, is

20 amended to read as follows:

21 Section 245A. It shall be a violation of the Fair Practices of
22 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act
23 for a supplier to take any one or more of the following actions:
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1 1. To coerce, compel or require any dealer to accept delivery
2 of any equipment or repair parts which the dealer has not
3 voluntarily ordered, except as required by any applicable law or
4 unless such equipment or repair parts are safety features required
5 by a supplier;

6 2. To require any dealer to purchase goods or services as a
7 condition to the sale by the supplier to the dealer of any
8 equipment, repair parts or other goods or services, provided that
9 nothing herein shall prohibit a supplier from requiring the dealer
10 to purchase all repair parts, special tools and training reasonably
11 necessary to maintain the safe operation or quality of operation in
12 the field of any equipment offered for sale by the dealer;

13 3. To ~~coerce any dealer into a refusal to purchase equipment~~
14 ~~manufactured by another supplier. However, prevent a dealer from~~
15 being a party to a dealer agreement or holding an investment in a
16 person that is a party to such a dealer agreement, that authorizes
17 the dealer to sell competing product lines or makes of equipment or
18 prevents a dealer from performing the dealer's obligations under
19 such dealer agreement, or to require a dealer to provide separate
20 facilities for competing product lines or makes of equipment. If a
21 dealer purchased equipment from a supplier constituting eighty
22 percent (80%) of the dealer's new equipment, calculated on the basis
23 of net equipment cost, at all retail sales facilities operated by
24 such dealer and the total annual sales volume of equipment acquired

1 from such supplier exceeds Forty Million Dollars (\$40,000,000.00),
2 subject to adjustment after the effective date of this act on the
3 same basis as calculated in subparagraph b of paragraph 16 of
4 Section 245 of this title for single-line dealers, at such retail
5 sales facilities for the five (5) calendar years immediately
6 preceding the applicable determination date, then it shall not be a
7 violation of this section to require separate facilities, financial
8 statements or sales staff for major competing lines so long as the
9 dealer is given at least three (3) years notice of such requirement
10 the extent the dealer is prevented from selling major competing
11 product lines or makes of equipment at such retail sales facilities
12 of the dealer authorized to sell new equipment acquired from the
13 supplier seeking to impose the restriction on sales of major
14 competing product lines or makes of equipment;

15 4. To refuse to deliver in reasonable quantities and within a
16 reasonable time, after receipt of the dealer's order, to any dealer
17 having a dealer agreement for the retail sale of new equipment sold
18 or distributed by such supplier, equipment covered by such dealer
19 agreement specifically advertised or represented by such supplier to
20 be available for immediate delivery. The failure to deliver any
21 such equipment will not be considered a violation of the Fair
22 Practices of Equipment Manufacturers, Distributors, Wholesalers and
23 Dealers Act if such failure is due to prudent and reasonable
24 restrictions on extensions of credit by the supplier to the dealer,

1 | an act of nature, work stoppage or delay due to a strike or labor
2 | difficulty, a bona fide shortage of materials, freight embargo, or
3 | other cause over which the supplier has no control or a business
4 | decision by the supplier to limit the production volume of the
5 | equipment;

6 | 5. To discriminate, directly or indirectly, in filling an order
7 | placed by a dealer for retail sale or lease of new equipment under a
8 | dealer agreement as between dealers of the same product line;

9 | 6. To discriminate, directly or indirectly, in price between
10 | different dealers with respect to purchases of equipment or repair
11 | parts of like grade and quality and identical brand, where the
12 | effect of such discrimination may be to substantially lessen
13 | competition, tend to create a monopoly in any line of commerce, or
14 | injure, destroy or prevent competition with any dealer who either
15 | grants or knowingly receives the benefit of such discrimination;
16 | provided, however, different prices may be charged if:

17 | a. such differences are due to differences in the cost of
18 | manufacture, sale or delivery of the equipment or
19 | repair parts,

20 | b. the supplier can show that its lower price was made in
21 | good faith to meet an equally low price of a
22 | competitor, or

1 c. such differences are related to the volume of
2 equipment purchased by dealers or market share
3 obtained by dealers;

4 7. To prevent by contract or otherwise, any dealer from
5 changing its capital structure or the means by or through which the
6 dealer finances its operations, so long as the dealer gives prior
7 notice to the supplier, and provided the dealer at all times meets
8 any reasonable capital standards required by the supplier pursuant
9 to a right granted in the dealer agreement and imposed on similarly
10 situated dealers; and

11 8. To require a dealer to assent to a release, assignment,
12 novation, waiver, or estoppel which would relieve any person from
13 liability imposed by ~~this act~~ the Fair Practices of Equipment
14 Manufacturers, Distributors, Wholesalers and Dealers Act.

15 SECTION 3. AMENDATORY 15 O.S. 2021, Section 245A.1, is
16 amended to read as follows:

17 Section 245A.1. A. The dealer must give the supplier at least
18 thirty (30) ~~days~~ days' prior written notice of termination. No
19 supplier may terminate a dealer agreement without good cause.
20 Except as otherwise specifically provided in the Fair Practices of
21 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act,
22 "good cause" means the failure by a dealer to substantially comply
23 with essential and reasonable requirements imposed upon the dealer
24 by the dealer agreement, provided such requirements are not

1 different from those requirements imposed on other similarly
2 situated dealers either by their terms or in the manner of their
3 enforcement. In addition, good cause shall exist whenever:

4 1. The dealer or dealership has transferred a controlling
5 ownership interest in its business without the supplier's consent
6 unless the supplier does not have the right to withhold consent
7 under either the dealer agreement or under the terms of this act;

8 2. The dealer has filed a voluntary petition in bankruptcy or
9 has had an involuntary petition in bankruptcy filed against it which
10 has not been discharged within thirty (30) days after the filing, or
11 there has been a closeout or sale of a substantial part of the
12 dealer's assets related to the business, or there has been a
13 commencement of dissolution or liquidation of the dealer;

14 3. There has been a deletion, addition or change in dealer or
15 dealership locations without the prior written approval of the
16 supplier;

17 4. The dealer has defaulted under any chattel mortgage or other
18 security agreement between the dealer and the supplier, or there has
19 been a revocation of any guarantee of the dealer's present or future
20 obligations to the supplier; provided, however, good cause will not
21 exist if a person revokes any guarantee in connection with or
22 following the transfer of such person's entire ownership interest in
23 the dealer unless the supplier requires the person to execute a new

1 | guarantee of the dealer's present or future obligations in
2 | connection with the transfer of ownership interest;

3 | 5. The dealer has failed to operate in the normal course of
4 | business for seven (7) consecutive days or has otherwise abandoned
5 | its business;

6 | 6. The dealer has pleaded guilty to or has been convicted of a
7 | felony affecting the relationship between the dealer and supplier;

8 | 7. The dealer has engaged in conduct which is injurious or
9 | detrimental to the dealer's customers or to the public welfare or
10 | the representation or reputation of the supplier's product; or

11 | 8. The dealer has consistently failed to meet and maintain the
12 | supplier's requirements for reasonable standards and performance
13 | objectives, so long as the supplier has given the dealer reasonable
14 | standards and performance objectives that are based on the
15 | manufacturer's experience in other comparable market areas.

16 | B. The provisions of this section will not apply to single-line
17 | dealer agreements.

18 | SECTION 4. AMENDATORY 15 O.S. 2021, Section 245A.2, is
19 | amended to read as follows:

20 | Section 245A.2. A. Except as otherwise provided in this
21 | section, a supplier must provide a dealer at least one hundred
22 | eighty (180) ~~days~~ days' prior written notice of termination of a
23 | dealer agreement. The notice must state all reasons constituting
24 | good cause for such termination and must state that the dealer has

1 sixty (60) days in which to cure any claimed deficiency. If the
2 deficiency is rectified within sixty (60) days, the notice will be
3 void. A supplier, other than a specialty agricultural equipment
4 supplier, may not terminate a dealer agreement for the reason set
5 forth in paragraph 8 of subsection A of Section § 245A.1 of this ~~act~~
6 title unless the supplier gives the dealer notice of such action at
7 least two (2) years before the effective date of the action. If the
8 dealer achieves the supplier's requirements for reasonable standards
9 or performance objectives before the expiration of the two-year
10 notice period, the notice will be void and the dealer agreement will
11 continue in full force and effect. The notice and right to cure
12 provisions under this section shall not apply if the reason for
13 termination is for any reason set forth in paragraphs 1 through 7 of
14 subsection A of Section § 245A.1 of this ~~act~~ title.

15 B. If a supplier has contractual authority to approve or deny a
16 request for a sale or transfer of a dealer's business or an equity
17 ownership interest therein, the supplier shall approve or deny such
18 a request within sixty (60) days after receiving a written request
19 from the dealer. If the supplier has neither approved nor denied
20 the request within the sixty-day period, the request will be deemed
21 approved. The dealer's request shall include reasonable financial,
22 personal background, character references and work history
23 information for the acquiring persons. If a supplier denies a
24 request made pursuant to this subsection, the supplier must provide

1 the dealer with a written notice of the denial that states the
2 reasons for the denial. A supplier may only deny not unreasonably
3 withhold consent to a request based on the failure of the proposed
4 transferees to meet the reasonable requirements consistently imposed
5 by the supplier in determining approval of the transfer and/or
6 approvals of new dealers for a sale or transfer of a dealer's
7 business or an equity ownership interest in such business, and such
8 consent may only be withheld for good cause. The supplier shall
9 have the burden to prove that the denial of the request for sale or
10 transfer complied with the requirements of this subsection.

11 C. If a dealer dies and the supplier has contractual authority
12 to approve or deny a request for a sale or transfer of the dealer's
13 business or equity ownership interest therein, the dealer's estate,
14 or such other person with authority to transfer assets of the
15 dealer, will have one hundred eighty (180) days to submit to the
16 supplier a written request for a sale or transfer of the business or
17 equity ownership interest. If the request is timely submitted, the
18 supplier shall approve or deny the request in accordance with
19 subsection B of this section. Notwithstanding anything to the
20 contrary contained in the Fair Practices of Equipment Manufacturers,
21 Distributors, Wholesalers and Dealers Act, any attempt by the
22 supplier to terminate the dealer or the dealership as a result of
23 the death of a dealer will be delayed until there has been
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1 compliance with the terms of this section or the one-hundred-eighty-
2 day period has expired, as applicable.

3 D. The provisions of this section shall not apply to single-
4 line dealer agreements.

5 SECTION 5. This act shall become effective November 1, 2025.

6 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND INSURANCE
February 20, 2025 - DO PASS AS AMENDED BY CS

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