

SENATE BILL REPORT

SHB 2893

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, February 28, 2002

Title: An act relating to equipment dealers.

Brief Description: Regulating the business relationship between suppliers and dealers of certain machinery and equipment.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Clements and Conway).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/26/02, 2/28/02 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Benton, Deccio, Fairley, Franklin, Gardner, Hochstatter, Honeyford, Rasmussen, Regala and Winsley.

Staff: Dave Cheal (786-7576)

Background: State law governs certain aspects of the relationship between retail sellers and manufacturers, wholesalers, and distributors of agricultural equipment. For example, state law regulates repurchase payments for unsold merchandise, prohibits suppliers from committing certain acts, and establishes processes for termination and nonrenewal of dealer agreements. State law does not regulate warranty claims, safety work, or product improvement work.

Repurchase Payments: When either a retail seller or a manufacturer, wholesaler, or distributor wants to cancel or discontinue a contract, the manufacturer, wholesaler, or distributor must pay the retail seller for unsold merchandise. The manufacturer, wholesaler, or distributor must repurchase equipment from the retail seller at a price equal to 100 percent of the net cost for unused equipment, including transportation costs, and repurchase repair parts at a price equal to 85 percent of net prices for repair parts shown in the current price list or catalog. The manufacturer, wholesaler, or distributor also must pay the retailer a handling fee equal to 5 percent of the current net price of repair parts. Upon payment, the title to the merchandise passes to the manufacturer, wholesaler, or distributor, and the manufacturer, wholesaler, or distributor is entitled to possess the merchandise.

Violations: A dealer may bring an action against a supplier if the supplier commits a specified violation. Among the prohibited acts are several dealing with succession and termination. They include:

- Terminating, canceling, or failing to renew a dealer agreement or substantially changing the dealer's competitive circumstances or attempting or threatening these actions without good cause;
- Unreasonably withholding consent from a dealership to change its capital structure or means of financing; and
- Preventing a dealer from selling or transferring a dealership so long as the dealer has the written consent of the supplier and the supplier does not unreasonably withhold consent.

Succession: A supplier must not unreasonably withhold consent to the sale or transfer of a dealership if the buyer meets the supplier's financial, business experience, and character standards.

Termination: In certain circumstances, a supplier may terminate a dealer agreement or substantially change a dealer's competitive circumstances with good cause. In some circumstances, the supplier must give the dealer 90 days' written notice of its intent to terminate the agreement or substantially change the competitive circumstances. The notice must state reasons constituting good cause for termination, and must give the dealer 60 days to cure any claimed deficiency. In other circumstances, notice and an opportunity to cure are not required.

Remedies: If a manufacturer, wholesaler, or distributor fails to pay repurchase payments to a dealer, the retailer may bring a civil action against the manufacturer, wholesaler, or distributor for the payments. If a manufacturer, wholesaler, or distributor commits a specified violation, the dealer may bring an action against the supplier for damages sustained as a consequence of the supplier's violation, together with costs and reasonable attorneys' fees, and injunctive relief.

Summary of Bill: Modifications are made to existing provisions regulating repurchase payments, prohibiting suppliers from committing certain acts, and establishing processes for termination of dealerships. New provisions are added governing warranty claims, safety work, and product improvement work. Clarifications are made to the definitions in state law regulating certain aspects of the relationship between dealers and suppliers of farm equipment.

Repurchase Payments: As noted above, modifications are made to provisions regulating repurchase payments for equipment, repair parts, and other goods.

Requirements for the repurchase of equipment are modified as follows:

- The supplier must reimburse the dealer for services related to the assembly and pre-delivery inspection of the equipment.
- The repurchase price for equipment is equal to 100 percent of the net cost of the invoiced price, or if the invoiced price is not available, 100 percent of the net cost in a current price book. A weather adjustment is made for equipment purchased more than 24 months prior to cancellation of the dealer agreement.

Requirements for the repurchase of repair parts are modified as follows:

- The repurchase price for repair parts is increased from 85 percent to 95 percent of the net price as shown in the current price list or catalog.
- The handling fee is not required if a supplier inventories, packs, and loads the repair parts.
- A supplier must pay a dealer within 90 days of the return of the repair parts or the transfer of the equipment.
- After 90 days, payments accrue interest at a rate of 18 percent per year.

Requirements for the repurchase of other goods are established as follows:

- A supplier must repurchase required hardware and software at a price equal to the original net cost less 20 percent per year.
- A supplier must repurchase specialized repair tools at a price equal to the original net cost for new tools, and the original net cost less 20 percent per year for used tools.
- A supplier must repurchase current signage at a price equal to the original net cost less 20 percent per year, but not less than 50 percent of the original net cost.

The title to the goods is transferred from the dealer to the supplier at the dealer location.

Violations: In addition to acts already prohibited, the following acts are prohibited:

- Preventing a dealer from changing management control, capital structure, or financing, unless the change results in control by a person who does not meet the supplier's reasonable written standards regarding character, capital, or business experience;
- Withholding consent to a transfer of interest in a dealership unless written proof establishes a supplier's claim that the dealer's area of responsibility does not reasonably support a dealer;
- Penalizing a dealer for acting as a dealer for another supplier or for servicing the product of another supplier;
- Failing to pay a dealer a reasonable commission on the sale or lease of equipment that the supplier sells or leases for use within the state; or
- Failing to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery or services.

Succession: A supplier may withhold its consent to a sale, transfer, or assignment of the dealership only if the buyer does not meet the suppliers reasonable written standards regarding character, capital, or business experience. The supplier must give the dealer written notice of its reasons for rejecting the proposed sale within 60 days of receipt of notice of a proposed sale. The supplier bears the burden of proving that its consent was properly withheld.

New Dealerships: A supplier must give notice of an agreement to establish a new dealer or relocate an existing dealer to existing dealers whose assigned areas of responsibility are contiguous to the proposed location of the new or relocated dealership. If no area of responsibility has been assigned, the supplier must notify all dealers within a 75-mile radius of the proposed new location.

Termination: A supplier may terminate a dealer agreement for good cause if the dealer transfers a controlling ownership interest in the dealership to a person who does not meet the supplier's reasonable written standards regarding character, capital, or business experience.

A supplier also may terminate a dealer agreement for a good cause for failure to meet reasonable marketing criteria or market penetration. Before doing so, however, the supplier must provide one year's written notice of its intent. After one year, if the supplier terminates the agreement, the supplier must give written notice specifying the reasons that the dealer failed to meet marketing criteria or market penetration, and that the termination is effective 180 days from the date of the notice.

Warranty Claims: Requirements for processing warranty claims are established as follows:

- The supplier must approve or disapprove in writing a claim within 30 days of receipt;
- The supplier must pay the dealer an approved claim within 30 days of approval;
- The supplier must state in writing the specific reasons for disapproving a claim;
- If the supplier disapproves a claim for procedural or technical reasons, the dealer may resubmit the claim within 30 days of receipt of the notice of disapproval; and
- If the claim is not specifically disapproved within 30 days of receipt, the claim is deemed to be approved and must be paid within 30 days.

A supplier may audit warranty claims for a period of up to one year following payment of the claim and charge back to the dealer any amount shown by audit to be false or fraudulent. In addition, a supplier may setoff warranty claims against obligations owed by the dealer to the supplier.

Safety Work: If the supplier requires the dealer to work on equipment to enhance its safe operation, the supplier must reimburse the dealer for parts, labor, and transportation of equipment or personnel to perform the work.

Product Improvement Work: If a supplier requires a dealer to perform product improvement work on equipment, the supplier must reimburse the dealer for parts and labor.

Remedies: A dealer may bring an action against a supplier for injunctive relief or for damages sustained as a result of a prohibited act or for payment of a warranty claim. If the dealer prevails, the court must award the dealer costs and reasonable attorneys fees. In addition, a party to a dealer agreement may demand that the other party enter into binding arbitration as the exclusive remedy to resolve a dispute. The losing party must pay costs and reasonable attorneys fees.

Definitions: The definitions of dealer and equipment, are clarified to make the statute applicable only to persons engaged primarily in the sale, distribution, and manufacture of farm equipment.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Farm equipment companies are affected by the downturn in the agricultural economy. As a result, more rules are required to govern return of inventory, succession, and termination of dealerships. This bill is the result of several years of negotiations between manufacturers, distributors and dealers, and is a good, balanced compromise.

Testimony Against: None.

Testified: Frank Warnke, Advocate (pro); Ray Schindler, PNW AG Equipment Dealers Assn. (pro); Mike Ryherd, Equipment Mfr's Institute (pro).