

Enrolled House Bill 3164

Sponsored by Representatives BENTZ, HOYLE; Representatives CLEM, EVANS, GILLIAM, HUFFMAN, KOMP, OLSON (at the request of Pacific Northwest Hardware and Implement Association)

CHAPTER

AN ACT

Relating to retailer agreements for farm implement purchasing; creating new provisions; amending ORS 646A.300, 646A.312 and 646A.322; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646A.300 is amended to read:

646A.300. As used in ORS 646A.300 to 646A.322:

(1) "Catalog" [*includes catalogs*] **means a catalog** published in any medium, including an electronic [*catalogs*] **catalog**.

(2) "Change in competitive circumstances" means **an event, act or omission that has** a material detrimental effect on a retailer's ability to compete with another retailer [*who*] **that** sells the same brand of farm implements.

(3) "Current model" means a model **that is** listed in the supplier's current sales manual or any supplements to the manual.

(4) "Current net price" means:

(a) The price of parts or farm implements **that are** listed in [*the*] a supplier's price list or catalog **that is** in effect at the time [*the*] a contract is canceled or discontinued, less any applicable trade, volume or cash discounts, or [*when the*] **at the time that** a retailer made a warranty claim.

(b) [*For superseded parts,*] The price listed **for superseded parts** in [*the*] a supplier's price list or catalog [*when the*] **at the time a** retailer purchased the parts.

(5) "Current signs" means [*the*] principal outdoor signs that:

(a) [*The*] **A** supplier requires a retailer to obtain;

(b) Identify the supplier; and

(c) Identify the retailer as representing the supplier or the supplier's farm implements or machinery.

(6) "Dealership" means [*the*] **a** location from which a retailer buys, sells, leases, trades, stores, takes on consignment or in any other manner deals in farm implements.

(7) "Distributor" means a person who sells or distributes new farm implements to a retailer.

(8) "Farm implements" means:

(a) Any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways;

(b) Auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural operations;

(c) Other consumer products **used** for agricultural purposes, including lawn and garden equipment powered by an engine, **that a supplier supplies to a** [supplied by the supplier to the] retailer [pursuant to] **under** a retailer agreement;

(d) Attachments and accessories used in [the] planting, cultivating, irrigating, harvesting and marketing [of] agricultural, horticultural or livestock products; and

(e) Outdoor power equipment, including, but not limited to, self-propelled equipment used to maintain lawns and gardens or used in landscape, turf or golf course maintenance.

(9) "F.O.B." has the meaning given that term in ORS 72.3190.

(10) "Inventory" means farm implements, machinery and repair parts.

(11) "Manufacturer" means a person [who] **that** manufactures or assembles new or unused farm implements.

(12) "Net cost" means the price [the] a retailer actually [paid for the] **paid a supplier for** merchandise [to the supplier].

(13) "Retailer" means any person [engaged] **that engages** in the business of retailing farm implements, machinery or repair parts in this state.

(14) "Retailer agreement" means an agreement between a supplier and a retailer that provides for the rights and obligations of the [parties] **supplier and retailer** with respect to [purchase or sale of] **selling or purchasing** farm implements.

(15) "Specialized tool" means a tool that:

(a) [The] **A** supplier requires a retailer to obtain; and

(b) Is [unique to the diagnosis or repair of] **uniquely suited for the purpose of diagnosing or repairing** the supplier's farm implements or machinery.

(16) "Supplier" means:

(a) A wholesaler, manufacturer, manufacturer's representative or distributor.

(b) A successor in interest of a manufacturer, manufacturer's representative or distributor, including, but not limited to:

(A) A purchaser of assets or shares of stock;

(B) A corporation or entity [resulting] **that results** from a merger, liquidation or reorganization;

or

(C) A receiver or trustee.

(c) The assignee of a supplier.

(17) "Warranty claim" means a claim for payment [submitted by] **that** a retailer **submits** to a supplier for service or parts **the retailer** provided to a customer under a warranty [issued by] **that** the supplier **issued**.

SECTION 2. ORS 646A.312 is amended to read:

646A.312. (1) As used in this section:

(a) "Good cause" means a retailer's:

[*(A) Failing to comply with a term of a retail agreement that is the same as a term in the supplier's agreements with similarly situated retailers, including failure to meet marketing criteria;*]

(A) Failing to comply with a term in a retailer agreement that also appears in a retailer agreement that similarly situated retailers have with the same supplier, including a term that requires the retailer to meet marketing criteria;

(B) Transferring a controlling ownership interest in the retailer's business without the supplier's consent;

(C) Making a material misrepresentation or falsification of a record, contract, report or other document that the retailer has submitted to the supplier;

(D) Filing a voluntary petition in bankruptcy;

(E) Being placed involuntarily in bankruptcy and not discharging the bankruptcy within 60 days after the filing;

(F) Becoming insolvent;

(G) Being placed in a receivership;

(H) Pleading guilty to, being convicted of or being imprisoned for a felony;

(I) Failing to operate in the normal course of business for seven consecutive business days or terminating business;

(J) Relocating or establishing a new or additional place or places of business without the supplier's consent;

(K) Failing to satisfy a payment obligation as *[it]* **the payment obligation** comes due and payable to the supplier;

(L) Failing to promptly account to the supplier for any proceeds *[of the sale of]* **from selling** farm implements or otherwise failing to hold the proceeds in trust for the benefit of the supplier;

(M) Consistently engaging in business practices that are detrimental to the consumer or supplier, including, but not limited to, excessive pricing, misleading advertising or *[failure]* **failing** to provide service and replacement parts or to perform warranty obligations;

(N) Inadequately representing the supplier, causing lack of performance in sales, service or warranty areas, and failing to achieve satisfactory market penetration at levels **that are** consistent with similarly situated retailers based on available documented information;

(O) Consistently failing to meet building and housekeeping requirements; or

(P) Consistently failing to comply with the licensing laws that apply to the supplier's products and services.

(b) "Similarly situated retailer" means a retailer **that**:

(A) **Is** in a similar geographic area;

(B) *[With]* **Has** similar sales volumes; and

(C) **Is** in a similar market for farm implements, machinery and repair parts.

[(2) With good cause, a supplier, directly or through an officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a retailer agreement. The termination, cancellation, nonrenewal or change becomes effective upon notice to the retailer. The notice shall state the reasons constituting good cause for the termination, cancellation, nonrenewal or change.]

[(3)(a) Except as provided in subsection (2) of this section, a supplier shall give a retailer 90 calendar days' written notice of the supplier's intent to terminate, cancel or fail to renew a retailer agreement or change the competitive circumstances of a retailer agreement.]

[(b) The notice shall:]

[(A) State the reasons for termination, cancellation, nonrenewal or change; and]

[(B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency.]

[(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.]

[(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination, cancellation, failure to renew or change in competitive circumstances becomes effective on the date specified in the notice.]

[(4)(a) Notwithstanding subsection (3) of this section, a supplier shall give a retailer one year's written notice of the retailer's failure to meet reasonable marketing criteria.]

[(b) The notice shall:]

[(A) State the reasonable marketing criteria that the retailer has failed to meet; and]

[(B) Provide the retailer one year in which to meet the criteria.]

[(c)(A) If the retailer fails to meet the criteria within the year, the supplier may give notice of the termination, cancellation, failure to renew the retail agreement or change to the retail agreement.]

[(B) A termination, cancellation, failure to renew or change under this paragraph is effective 180 calendar days after the supplier gives notice.]

(2)(a) A supplier that has a basis for asserting good cause may, directly or through an officer, agent or employee, terminate, cancel or not renew a retailer agreement or may cause a change in competitive circumstances for a retailer. Except as provided in subsections (3) and (4) of this section, a termination, cancellation, nonrenewal or change in competitive circumstances becomes effective upon notice to the retailer. The notice must state the reasons that constitute good cause for the termination, cancellation, nonrenewal or change in competitive circumstances.

(b) A provision or allowance in a retailer agreement for an event, act or omission may be considered but does not control whether the event, act or omission resulted in a change in competitive circumstances.

(3)(a) If a supplier's basis for asserting good cause is a retailer's failure under subsection (1)(a)(A) of this section, other than a failure to meet marketing criteria, the supplier shall give the retailer 90 calendar days' written notice of the supplier's intent to terminate, cancel or not renew the retailer agreement or to cause a change in competitive circumstances for the retailer.

(b) The notice described in paragraph (a) of this subsection must:

(A) State the supplier's reasons for terminating, canceling or not renewing the retailer agreement or for causing a change in competitive circumstances for the retailer; and

(B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency.

(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.

(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination, cancellation, nonrenewal or change in competitive circumstances becomes effective on the date specified in the notice.

(4)(a) If a supplier's basis for asserting good cause is a retailer's failure to meet marketing criteria under subsection (1)(a)(A) of this section or a provision of subsection (1)(a)(N) of this section, the supplier shall give the retailer 18 months' written notice of the supplier's intent to terminate, cancel or not renew the retailer agreement or to cause a change in competitive circumstances for the retailer.

(b) The notice described in paragraph (a) of this subsection must:

(A) State the supplier's reasons for terminating, canceling or not renewing the retailer agreement or for causing a change in competitive circumstances for the retailer; and

(B) Provide that the retailer has one year in which to cure a claimed deficiency.

(c) If the retailer cures the claimed deficiency within one year, the notice is void.

(d) If the retailer fails to cure the claimed deficiency within one year, the termination, cancellation, nonrenewal or change in competitive circumstances becomes effective on the date specified in the notice.

SECTION 3. ORS 646A.322 is amended to read:

646A.322. (1)(a) [Any] A party to a retailer agreement **that is** aggrieved by the conduct of [the other] **another** party to the agreement under ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320 may seek arbitration of the issues under ORS 36.600 to 36.740. Unless the parties agree to different arbitration rules, the arbitration [shall] **must** be conducted pursuant to the commercial arbitration rules of the American Arbitration Association. If the parties agree, the arbitration [shall be] **is** the parties' only remedy and the findings and conclusions of the arbitrator or panel of arbitrators [shall be] **are** binding upon [both] **the** parties.

(b) The arbitrator or arbitrators may award the prevailing party:

(A) The costs of witness fees and other fees in the case;

(B) Reasonable attorney fees; and

(C) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(2) Notwithstanding subsection (1) of this section, [any] a retailer has a civil cause of action in circuit court against a supplier for damages sustained by the retailer as a consequence of the supplier's violation of ORS 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320, together with:

(a) The actual costs of the action;

(b) Reasonable attorney fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(3) A supplier bears the burden of proving that a retailer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the retailer. The supplier's proof must be in writing.

(4) The remedies set forth in this section are not exclusive and are in addition to any other remedies permitted by law, unless the parties have chosen binding arbitration under subsection (1) of this section.

SECTION 4. The amendments to ORS 646A.300, 646A.312 and 646A.322 by sections 1 to 3 of this 2015 Act apply to retailer agreements that are executed or renewed on and after the effective date of this 2015 Act.

SECTION 5. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House April 23, 2015

Received by Governor:

Repassed by House June 11, 2015

.....M.,....., 2015

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2015

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 9, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State