

SENATE BILL No. 426

By Committee on Federal and State Affairs

2-19

1 AN ACT concerning contracts; relating to dealership agreements for farm
2 equipment, outdoor power equipment and lawn and garden equipment;
3 amending K.S.A. 16-120, 16-1002, 16-1202, 16-1203, 16-1204, 16-
4 1205, 16-1302, 16-1305, 16-1306, 16-1307, 16-1309, 16-1402, 16-
5 1405, 16-1406, 16-1407 and 16-1409 and repealing the existing
6 sections.

7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 16-120 is hereby amended to read as follows: 16-
10 120. (a) As used in this section:

11 (1) "Contract" has the meaning provided by K.S.A. 16-1302 or 16-
12 1402, and amendments thereto.

13 (2) "Dealer" includes farm equipment dealers, as defined in K.S.A.
14 16-1202, and amendments thereto, or retailers, as defined in K.S.A. 16-
15 1302 or 16-1402, and amendments thereto.

16 (3) "Dealership agreement" has the meaning provided by K.S.A. 16-
17 1202, and amendments thereto.

18 (4) "Equipment" includes farm equipment, as defined in K.S.A. 16-
19 1202, and amendments thereto, outdoor power equipment, as defined in
20 K.S.A. 16-1302, and amendments thereto, or equipment, as defined in
21 K.S.A. 16-1402, and amendments thereto.

22 (5) "Manufacturer" includes farm equipment manufacturers as
23 defined in K.S.A. 16-1202, and amendments thereto, or suppliers, as
24 defined in K.S.A. 16-1302 or 16-1402, and amendments thereto.

25 (b) With respect to any equipment sold on or after July 1, ~~2000~~ 2018,
26 any warranty repair work performed for a consumer by a dealer under the
27 provisions of a manufacturer's express warranty, ~~shall require the~~
28 ~~manufacturer to reimburse the dealer at an hourly labor rate which is the~~
29 ~~same as the hourly labor rate the dealer currently charges consumers for~~
30 ~~nonwarranty repair work.~~

31 (c) ~~Nothing in this act shall apply to, or operate or be construed to~~
32 ~~invalidate, impair or otherwise infringe upon the specific requirements of~~
33 ~~any contract or dealership agreement between a dealer and a manufacturer~~
34 ~~entered into prior to the effective date of this act, if such contract or~~
35 ~~dealership agreement is in effect on the effective date of this act.~~

36 (d) ~~The provisions of this section shall not apply to a manufacturer~~

1 who provides in a written dealer agreement for compensation to a dealer
2 for warranty labor costs either as (1) a discount in the pricing of the
3 equipment to the dealer or, (2) a lump sum payment to the dealer, provided
4 such payment is not less than 5% of the suggested retail price of the
5 equipment will be subject to the following:

6 (1) (A) If a dealer submits a warranty claim to a manufacturer while
7 the contract or dealership agreement is in effect or within 60 days after
8 the termination of such contract or dealership agreement and the claim is
9 for work performed before the termination or expiration of such contract
10 or dealership agreement, the manufacturer must accept or reject such
11 warranty claim by written notice to the dealer within 30 days after the
12 manufacturer's receipt thereof. If the manufacturer does not reject the
13 warranty claim within 30 days, the claim will be deemed to be accepted.

14 (B) If the manufacturer accepts the warranty claim, the manufacturer
15 must pay or credit to the dealer's account all amounts owed with respect to
16 the claim to the dealer within 30 days after it is accepted. If the
17 manufacturer rejects a warranty claim, the manufacturer must give the
18 dealer written or electronic notice of the grounds for rejection, which
19 reasons must be consistent with the manufacturer's reasons for rejecting
20 warranty claims of other dealers, both in their terms and manner of
21 enforcement. If no grounds for rejection are given, the claim will be
22 deemed to be accepted.

23 (2) Any claim that is disapproved by the manufacturer based upon the
24 dealer's failure to properly follow the procedural or technical
25 requirements for submission of warranty claims may be resubmitted in
26 proper form by the dealer within 30 days of receipt by the dealer of the
27 manufacturer's notification of the disapproval.

28 (3) Warranty work performed by the dealer shall be compensated in
29 accordance with the reasonable and customary amount of time required to
30 complete the work, expressed in hours and fractions thereof multiplied by
31 the dealer's established customer hourly retail labor rate for non-warranty
32 repair work, which shall have previously been made known to the
33 manufacturer. Repair parts used in warranty repair work shall be
34 reimbursed at the current net parts cost to purchase such parts from the
35 manufacturer plus 15% and the cost of freight.

36 (4) For purposes of this section, any repair work or installation of
37 replacement parts performed with respect to the dealer's equipment in
38 inventory or equipment of the dealer's customers at the request of the
39 manufacturer, including work performed pursuant to a product
40 improvement program, will be deemed to create a warranty claim for
41 which the dealer shall be paid pursuant to this section.

42 (5) A manufacturer may audit warranty claims submitted by a dealer
43 for a period of up to one year following payment of the claims and may

1 charge back to the dealer any amounts paid based upon claims shown by
2 audit to be misrepresented. If a warranty claim is misrepresented, then
3 warranty claims submitted within the three-year period ending with the
4 date a claim is shown by audit to be misrepresented may be audited.

5 (6) The requirements of paragraphs (1), (2) and (3) shall apply to all
6 warranty claims submitted by a dealer to a manufacturer in which the
7 dealer has complied with the manufacturer's reasonable policies and
8 procedures for warranty reimbursement and such claims are warranted
9 claims under the manufacturer's warranty policy. A manufacturer's
10 warranty reimbursement policies and procedures shall be deemed
11 unreasonable to the extent they conflict with any of the provisions of this
12 section.

13 Sec. 2. K.S.A. 16-1002 is hereby amended to read as follows: 16-
14 1002. (a) Whenever any person, firm or corporation engaged in the
15 business of selling and retailing farm implements, machinery, attachments
16 or repair parts therefor enters into a written or parol contract, sales
17 agreement or security agreement evidenced by a franchise agreement
18 whereby such retailer agrees to maintain a stock of parts or complete or
19 whole implements, machines or attachments with any wholesaler,
20 manufacturer or distributor of such implements, machinery, attachments or
21 repair parts, and either such wholesaler, manufacturer or distributor or the
22 retailer desires to cancel or discontinue the contract, such wholesaler,
23 manufacturer or distributor shall pay to such retailer or credit to such
24 retailer's account, if the retailer has outstanding any sums owing the
25 wholesaler, manufacturer or distributor, unless the retailer should desire to
26 keep such merchandise, a sum equal to 100% of the net cost of all new,
27 unused, undamaged, complete farm implements, machinery and
28 attachments and 95% of the current net prices on new, unused, undamaged
29 repair parts, including superseded parts, which implements, machinery,
30 attachments and parts had previously been purchased from such
31 wholesaler, manufacturer, distributor or transferee of such wholesaler,
32 manufacturer or distributor if the transferee acquired substantially all of
33 the assets of such wholesaler, manufacturer or distributor, and held by such
34 retailer on the date of the cancellation or discontinuance of such contract.
35 The wholesaler, manufacturer or distributor shall also pay such retailer a
36 sum equal to 5% of the current net price of all parts returned for the
37 handling, packing and loading of such parts for return to the wholesaler,
38 manufacturer or distributor, except that such 5% shall not be paid or
39 credited to the retailer if the wholesaler, manufacturer or distributor elects
40 to perform the handling, packing, loading and transportation of the parts
41 itself. Upon the payment or allowance of credit to the retailer's account of
42 the sum required by this section, the title to such farm implements,
43 machinery, attachments and repair parts therefor shall pass to the

1 manufacturer, wholesaler or distributor making such payment, and such
2 manufacturer, wholesaler or distributor shall be entitled to the possession
3 of such farm implements, machinery, attachments or repair parts. All
4 payments or allowances of credit due retailers shall be paid or credited
5 within 60 days after the return of implements, machinery, attachments or
6 repair parts. After 60 days, all payments or allowances shall include
7 interest at the rate prescribed by K.S.A. 16-204, and amendments thereto.

8 (b) The provisions of this section relating to a retailer's right to cancel
9 or discontinue a contract and receive payment for implements, machines,
10 attachments and parts returned shall apply to all contracts now in effect
11 which have no expiration date and are a continuing contract, and all other
12 contracts entered into or renewed after July 1, 1976. The provisions for a
13 retailer to receive payment for implements, machines, attachments and
14 parts returned shall apply only to implements, machines, attachments and
15 parts purchased after the effective date of this act. Any contract in force
16 and effect on July 1, 1976, which by its own terms will terminate on a date
17 subsequent thereto shall be governed by the law as it existed prior to this
18 act.

19 (c) The provisions of this section shall not be construed to affect in
20 any way any security interest which the wholesaler, manufacturer or
21 distributor may have in the inventory of the retailer, except that any
22 repurchase hereunder shall not be subject to the provisions of the bulk
23 sales law or to the claims of any secured or unsecured creditors of the
24 wholesaler, manufacturer or distributor or any assignee of the wholesaler,
25 manufacturer or distributor until such time the retailer has received
26 payment in full subject to any offset the retailer may owe to the
27 wholesaler, manufacturer or distributor.

28 (d) *Any term of a contract, either expressed or implied, that is*
29 *inconsistent with the terms of this act shall be void and unenforceable and*
30 *shall not waive any rights that are provided to any person by this act.*

31 Sec. 3. K.S.A. 16-1202 is hereby amended to read as follows: 16-
32 1202. As used in this act:

33 (a) *"Change in competitive circumstances" means an event, act or*
34 *omission that has a detrimental effect on a farm equipment dealer's ability*
35 *to compete with another farm equipment dealer that sells the same brand*
36 *of farm equipment, including, but not limited to, approval of a new*
37 *authorized retail dealership location or relocation of an existing retail*
38 *dealership location, termination of a farm equipment dealer's*
39 *authorization to sell a type of equipment or product line or termination of*
40 *a farm equipment dealer's authorization to sell the manufacturer's*
41 *equipment, or any type of product line thereof, from one or more business*
42 *locations operated by the farm equipment dealer.*

43 (b) "Farm equipment" means equipment including, but not limited to,

1 tractors, trailers, combines, tillage implements, bailers and other
 2 equipment, including attachments and repair parts therefor, used in
 3 planting, cultivating, irrigation, harvesting and marketing of agricultural
 4 products, excluding self-propelled machines designed primarily for the
 5 transportation of persons or property on a street or highway.

6 ~~(b)~~ (c) "Farm equipment manufacturer" means any person,
 7 partnership, corporation, association or other form of business enterprise
 8 engaged in the manufacturing, assembly or wholesale distribution of farm
 9 equipment.

10 ~~(e)~~ (d) "Farm equipment dealer" or "farm equipment dealership"
 11 means any person, partnership, corporation, association or other form of
 12 business enterprise engaged in the retail sale of farm equipment.

13 ~~(d)~~ (e) "Dealership agreement" means an oral or written agreement of
 14 definite or indefinite duration between a farm equipment manufacturer and
 15 a farm equipment dealer which provides for the rights and obligations of
 16 the parties with respect to the purchase or sale of farm equipment.

17 Sec. 4. K.S.A. 16-1203 is hereby amended to read as follows: 16-
 18 1203. (a) No farm equipment manufacturer, directly or through any officer,
 19 agent or employee may terminate, cancel; *or fail to renew a dealership*
 20 *agreement*, or substantially change the competitive circumstances of a
 21 *farm equipment dealership agreement*, without good cause. *A provision or*
 22 *allowance in a dealership agreement for an event, act or omission may be*
 23 *considered but does not control whether the event, act or omission resulted*
 24 *in a change in competitive circumstances.*

25 (b) For the purposes of this ~~subsection~~ *section*, good cause means and
 26 includes the failure by a farm equipment dealer to substantially comply
 27 with essential and reasonable requirements imposed upon the dealer by the
 28 dealership agreement, provided such requirements are not different from
 29 those requirements imposed on other similarly situated dealers either by
 30 their terms or in the manner of their enforcement. In addition, good cause
 31 shall exist whenever:

32 ~~(a)~~ (1) *Except for transfers that are not prohibited pursuant to K.S.A.*
 33 *16-1205, and amendments thereto*, the farm equipment dealer has
 34 transferred an interest in the farm equipment dealership without the
 35 manufacturer's consent, or there has been a withdrawal from the dealership
 36 of an individual proprietor, partner, major shareholder, or the manager of
 37 the dealership, or there has been a substantial reduction in interest of a
 38 partner or major stockholder without the consent of the manufacturer;

39 ~~(b)~~ (2) the farm equipment dealer has filed a voluntary petition in
 40 bankruptcy or has had an involuntary petition in bankruptcy filed against it
 41 ~~which~~ *that* has not been discharged within 30 days after the filing, or there
 42 has been a closeout or sale of a substantial part of the dealer's assets
 43 related to the farm equipment business, or there has been a commencement

1 of dissolution or liquidation of the dealer;

2 (e) (3) there has been a change, without the prior written approval of
3 the manufacturer, in the location of the dealer's principal place of business
4 under the dealership agreement;

5 (d) (4) the farm equipment dealer has defaulted under any chattel
6 mortgage or other security agreement between the dealer and the farm
7 equipment manufacturer, or there has been a revocation or discontinuance
8 of any guarantee of the dealer's present or future obligations to the farm
9 equipment manufacturer;

10 (e) (5) the farm equipment dealer has failed to operate in the normal
11 course of business for seven consecutive days or has otherwise abandoned
12 its business;

13 (f) (6) the farm equipment dealer has pleaded guilty to or has been
14 convicted of a felony affecting the relationship between the dealer and
15 manufacturer;

16 (g) (7) the dealer has engaged in conduct which is injurious or
17 detrimental to the dealer's customers or to the public welfare; *or*

18 (h) (8) the farm equipment dealer has consistently failed to meet the
19 manufacturer's requirements for reasonable market penetration based on
20 the manufacturer's experience in other comparable marketing areas.

21 Sec. 5. K.S.A. 16-1204 is hereby amended to read as follows: 16-
22 1204. (a) Except as otherwise provided in this section, a farm equipment
23 manufacturer shall provide a farm equipment dealer at least ~~ninety days~~
24 *90 days* prior written notice of termination, cancellation or nonrenewal of
25 the dealership agreement *or a substantial change in competitive*
26 *circumstances of a farm equipment dealership*. The notice shall state all
27 reasons constituting good cause for termination, cancellation or
28 nonrenewal *or substantial change in competitive circumstances* and shall
29 provide that the dealer has 60 days in which to cure any claimed
30 deficiency. If the deficiency is rectified within 60 days the notice shall be
31 void. The notice and right to cure provisions under this section shall not
32 apply if the reason for termination, cancellation or nonrenewal *or*
33 *substantial change in competitive circumstances* is for any reason set forth
34 in ~~subsections (a) through (h)~~ of K.S.A. 16-1203, and amendments thereto.

35 (b) In the event that a farm equipment manufacturer has contractual
36 authority to approve or deny a request by a farm equipment dealer to sell
37 or transfer any portion the dealer's business ownership to another party or
38 to enter into an agreement to operate the dealership with another party, the
39 manufacturer shall approve or deny such a request within ~~90~~ 60 days after
40 receiving the request. If the manufacturer has neither approved nor denied
41 the request within ~~90~~ 60 days, the request shall be deemed approved. The
42 farm equipment dealer's request shall include the reasonable financial
43 information, personal background, character references and work ~~histories~~

1 ~~as required by the manufacturer to render such a determination~~ *history of*
2 *the person to whom business ownership or the dealership is proposed to*
3 *be sold or transferred.* In the event the manufacturer denies the request,
4 the manufacturer shall provide the farm equipment dealer with a written
5 notice of its determination with the stated reasons for the denial. *A farm*
6 *equipment manufacturer may only deny a request based on the failure of*
7 *the proposed transferee to meet the reasonable requirements consistently*
8 *imposed by the farm equipment manufacturer in determining approval of*
9 *the transfer or approval of new farm equipment dealers.*

10 Sec. 6. K.S.A. 16-1205 is hereby amended to read as follows: 16-
11 1205. (a) It is a violation of this act for a farm equipment manufacturer to
12 coerce, or attempt to coerce, any farm equipment dealer to accept delivery
13 of any farm equipment, parts or accessories therefor, which the farm
14 equipment dealer has not voluntarily ordered.

15 (b) It is a violation of this act for a farm equipment manufacturer to:

16 (1) ~~To~~Condition, or attempt to condition, the sale of any farm
17 equipment on a requirement that the farm equipment dealer also purchase
18 other goods or services; except that nothing herein shall prohibit a farm
19 equipment manufacturer from requiring the dealer to purchase all parts
20 reasonably necessary to maintain the quality of operation in the field of
21 any farm equipment used in such dealer's trade area;

22 (2) ~~to~~coerce or attempt to coerce any farm equipment dealer into a
23 refusal to purchase the farm equipment manufactured by another farm
24 equipment manufacturer; ~~or~~

25 (3) ~~to~~discriminate in the prices charged for farm equipment of like
26 grade and quality sold by the farm equipment manufacturer to similarly
27 situated farm equipment dealers, except that nothing herein shall prevent
28 differentials which make only due allowance for differences in the cost of
29 manufacture, sale or delivery resulting from the differing methods or
30 quantities in which such farm equipment is sold or delivered, by the farm
31 equipment manufacturer; *or*

32 (4) *prevent, by contract or otherwise, the issuance or transfer of a*
33 *non-controlling ownership interest in a farm equipment dealer.*

34 Sec. 7. K.S.A. 16-1302 is hereby amended to read as follows: 16-
35 1302. As used in this act:

36 (a) *"Change in competitive circumstances" means an event, act or*
37 *omission that has a detrimental effect on a retailer's ability to compete*
38 *with another retailer that sells the same brand of outdoor power*
39 *equipment, including, but not limited to, approval of a new authorized*
40 *retail dealership location or relocation of an existing retail dealership*
41 *location, termination of a retailer's authorization to sell a type of*
42 *equipment or product line or termination of a retailer's authorization to*
43 *sell the supplier's equipment, or any type of product line thereof, from one*

1 *or more business locations operated by the retailer.*

2 (b) "Outdoor power equipment" means and includes machinery,
3 equipment, attachments or repair parts therefor, used for industrial,
4 construction, maintenance or utility purposes.

5 ~~(b)~~ (c) "Retailer" means any person, partnership, firm, corporation,
6 association, or other form of business enterprise engaged in the business
7 of:

8 (1) Selling or leasing outdoor power equipment to the ultimate
9 consumer thereof; and

10 (2) repairing or servicing outdoor power equipment.

11 ~~(c)~~ (d) "Contract" means either a written or parol agreement or
12 arrangement for a definite or indefinite period between a retailer and a
13 supplier which provides for the rights and obligations of the parties with
14 respect to the purchase or sale of outdoor power equipment, and which
15 agreement, regardless of the retailer's territorial scope, contemplates the
16 establishment or maintenance by the retailer of a location within the state
17 of Kansas at which outdoor power equipment and services for the same are
18 displayed, and offered or demonstrated for sale.

19 ~~(d)~~ (e) "Net cost" means the amount of money actually paid by a
20 retailer to the supplier.

21 ~~(e)~~ (f) "Current net price" means the price listed in a supplier's price
22 list or catalogue in effect on the date of termination of a contract, less any
23 applicable trade and cash discounts.

24 ~~(f)~~ (g) "Supplier" means any person, partnership, corporation,
25 association, or any and all other forms of business enterprise engaged in
26 the business of manufacturing, assembly or wholesale distribution of
27 outdoor power equipment. The term "supplier" and the provisions of this
28 act shall be interpreted liberally, with regard to the equities of the retailer,
29 and in a manner not limited to traditional doctrines of corporate successor
30 liability, and the obligations of a supplier hereunder shall consequently
31 apply to any actual successor in interest to a supplier, including but not
32 limited to, a purchaser of substantial assets or substantial stock, any
33 receiver, trustee or assignee, or any surviving corporation resulting from a
34 merger, liquidation or reorganization of the original or any intermediate
35 successor supplier.

36 Sec. 8. K.S.A. 16-1305 is hereby amended to read as follows: 16-
37 1305. (a) In the event that any supplier, after such supplier or the retailer
38 terminates, cancels, fails to renew, or in fact substantially discontinues
39 such contract *or substantially changes the competitive circumstances of a*
40 *retailer*; fails or refuses to make payment to such retailer as required by the
41 provisions of K.S.A. 16-1303, and amendments thereto, such supplier shall
42 be liable in a civil action to the retailer for:

43 (1) The actual costs of the action, including attorney, paralegal and

- 1 expert witness fees; ~~for~~
 2 (2) interest as provided in K.S.A. 16-1303, and amendments thereto;
 3 ~~for~~
 4 (3) 100% of the net cost of such machinery, plus transportation
 5 charges which have been paid by the retailer; and ~~for~~
 6 (4) 100% of the current net price of the repair parts, plus 5% for
 7 handling, packing and loading plus freight charges which have been paid
 8 by the retailer.

9 (b) In any ~~such~~ action pursuant to subsection (a), it shall be the
 10 burden of the supplier to establish that the terms of K.S.A. 16-1304, and
 11 amendments thereto, may apply to except any particular item of outdoor
 12 power equipment from the terms of K.S.A. 16-1303, and amendments
 13 thereto.

14 Sec. 9. K.S.A. 16-1306 is hereby amended to read as follows: 16-
 15 1306. (a) No supplier, directly or through any officer, agent or employee,
 16 may terminate, cancel or fail to renew a contract, or substantially change
 17 the competitive circumstances of a retailer, without good cause.

18 (b) For the purposes of this section, good cause means and includes
 19 the failure by a retailer to substantially comply with essential and
 20 reasonable requirements imposed upon the retailer by the contract ~~if~~,
 21 provided such requirements are not different from those requirements
 22 imposed on similarly situated dealers either by their terms or in the manner
 23 of their enforcement. In addition, good cause shall exist whenever:

24 ~~(a)~~ (1) Except for transfers that are not prohibited pursuant to K.S.A.
 25 16-1307, and amendments thereto, the retailer has transferred a controlling
 26 interest in the retailer business without the supplier's consent;

27 ~~(b)~~ (2) the retailer has filed a voluntary petition in bankruptcy or has
 28 had an involuntary petition in bankruptcy filed against it which has not
 29 been discharged within 30 days after the date of filing, or there has been a
 30 closeout or sale of a substantial part of the retailer's assets related to the
 31 retailer's business or there has been a commencement or dissolution or
 32 liquidation of the retailer's business;

33 ~~(c)~~ (3) there has been a change, without the prior written approval of
 34 the supplier, in the location of retailer's principal place of business if such
 35 approval is required under the retailer's agreement with the supplier;

36 ~~(d)~~ (4) the retailer has defaulted under any reasonable and essential
 37 term of a chattel mortgage or other security agreement between the retailer
 38 and supplier, or there has been a revocation or discontinuance of any
 39 guarantee of the retailer's present or future obligations to the supplier;

40 ~~(e)~~ (5) the retailer has failed to operate in the normal course of
 41 business for seven consecutive days or has otherwise abandoned such
 42 retailer's business, except for reasonable and customary closures of
 43 business;

1 ~~(f)~~ (6) the retailer has pleaded guilty to or has been convicted of a
2 felony affecting the relationship between the retailer and supplier;

3 ~~(g)~~ (7) the retailer has engaged in conduct ~~which~~ *that* is injurious or
4 detrimental to the retailer's customers or the public welfare; or

5 ~~(h)~~ (8) following receipt of written notices of the supplier's
6 requirements and of written notices of the supplier's determination of the
7 retailer's initial and persisting failures to meet the supplier's requirements,
8 the retailer has consistently failed to meet the supplier's requirements for
9 reasonable market penetration based on the supplier's experience in other
10 identified and comparable market areas.

11 Sec. 10. K.S.A. 16-1307 is hereby amended to read as follows: 16-
12 1307. (a) Except as otherwise provided in this section, a supplier shall
13 provide a retailer at least 90 days' prior notice of termination, cancellation,
14 or nonrenewal of the contract *or a substantial change in competitive*
15 *circumstances of a retailer*. The notice shall state all reasons constituting
16 good cause for termination, cancellation or nonrenewal *or substantial*
17 *change in competitive circumstances* and shall provide that the dealer has
18 60 days in which to cure any claimed deficiency. If the deficiency is
19 rectified within 60 days, the notice shall be void. The notice and right to
20 cure provisions under this section shall not apply if the reason for
21 termination, cancellation or nonrenewal *or substantial change in*
22 *competitive circumstances* is for any reason set forth in ~~subsections (a)~~
23 ~~through (h)~~ of K.S.A. 16-1306, *and amendments thereto*.

24 (b) In the event that a "supplier" of outdoor power equipment has
25 contractual authority to approve or deny a request by a "retailer" to sell or
26 transfer any portion of the retailer's business ownership to another party or
27 to enter into an agreement to operate the dealership with another party, the
28 supplier shall approve or deny the request within ~~90~~ 60 days after
29 receiving such a request. If the supplier has neither approved nor denied
30 the request within ~~90~~ 60 days, the request shall be deemed approved. The
31 retailer's request shall include the reasonable financial information,
32 personal background, character references and work ~~histories~~ *as required*
33 ~~by the supplier to render such a determination~~ *history of the person to*
34 *whom business ownership or the dealership is proposed to be sold or*
35 *transferred*. In the event the supplier denies the request, the supplier shall
36 provide the retailer with a written notice of its determination with the
37 stated reasons for the denial. *A supplier may only deny a request based on*
38 *the failure of the proposed transferee to meet the reasonable requirements*
39 *consistently imposed by the supplier in determining approval of the*
40 *transfer or approval of new retailers*.

41 (c) *It is a violation of this act for a supplier to:*

42 (1) *Coerce, or attempt to coerce, any retailer to accept delivery of*
43 *any outdoor power equipment that the retailer has not voluntarily ordered;*

1 (2) *condition, or attempt to condition, the sale of any outdoor power*
 2 *equipment on a requirement that the retailer also purchase other goods or*
 3 *services, except that nothing herein shall prohibit a supplier from*
 4 *requiring the retailer to purchase all parts reasonably necessary to*
 5 *maintain the quality of operation in the field of any outdoor power*
 6 *equipment used in such dealer's trade area;*

7 (3) *coerce or attempt to coerce any retailer into a refusal to purchase*
 8 *the outdoor power equipment manufactured by another supplier;*

9 (4) *discriminate in the prices charged for outdoor power equipment*
 10 *of like grade and quality sold by the supplier to similarly situated*
 11 *retailers, except that nothing herein shall prevent differentials that make*
 12 *only due allowance for differences in the cost of manufacture, sale or*
 13 *delivery resulting from the differing methods or quantities in which such*
 14 *outdoor power equipment is sold or delivered by the supplier; or*

15 (5) *prevent, by contract or otherwise, the issuance or transfer of a*
 16 *non-controlling ownership interest in a retailer.*

17 Sec. 11. K.S.A. 16-1309 is hereby amended to read as follows: 16-
 18 1309. (a) Except for ~~subsection (b) of~~ K.S.A. 16-1307(b), and
 19 *amendments thereto*, the provisions of this act shall apply to all continuing
 20 and nonrenewable contracts, and all other contracts entered into, renewed,
 21 amended, assigned or transferred by a supplier to a transferee on or after
 22 July 1, 1991, and shall apply only to outdoor power equipment and repair
 23 parts purchased after the effective date of this act. The provisions of
 24 ~~subsection (b) of~~ K.S.A. 16-1307(b), and *amendments thereto*, shall apply
 25 only to those contracts executed after July 1, 1998. Any contract in force
 26 and effect on July 1, 1991, or with respect to the provisions of ~~subsection~~
 27 ~~(b) of~~ K.S.A. 16-1307(b), and amendments thereto, on July 1, 1998, which
 28 by its own terms will terminate on a date certain subsequent thereto shall
 29 be governed by the law as it existed prior to this act unless renewed,
 30 amended, assigned or transferred as described above.

31 (b) *Any term of a contract, either expressed or implied, that is*
 32 *inconsistent with the terms of this act shall be void and unenforceable and*
 33 *shall not waive any rights that are provided to any person by this act.*

34 Sec. 12. K.S.A. 16-1402 is hereby amended to read as follows: 16-
 35 1402. As used in this act:

36 (a) *"Change in competitive circumstances" means an event, act or*
 37 *omission that has a detrimental effect on a retailer's ability to compete*
 38 *with another retailer that sells the same brand of equipment, including,*
 39 *but not limited to, approval of a new authorized retail dealership location*
 40 *or relocation of an existing retail dealership location, termination of a*
 41 *retailer's authorization to sell a type of equipment or product line or*
 42 *termination of a retailer's authorization to sell the supplier's equipment, or*
 43 *any type of product line thereof, from one or more business locations*

1 *operated by the retailer.*

2 (b) "Equipment" means and includes machinery, equipment,
3 attachments or repair parts therefor, used for lawn, garden, golf course,
4 landscaping or grounds maintenance purposes.

5 ~~(b)~~ (c) "Retailer" means any person, partnership, firm, corporation,
6 association, or other form of business enterprise engaged in the business
7 of:

8 (1) Selling or leasing lawn and garden equipment to the ultimate
9 consumer thereof; and

10 (2) repairing or servicing lawn and garden equipment.

11 ~~(c)~~ (d) "Contract" means either a written or parol agreement or
12 arrangement for a definite or indefinite period between a retailer and a
13 supplier which provides for the rights and obligations of the parties with
14 respect to the purchase or sale of lawn and garden equipment, and which
15 agreement, regardless of the retailer's territorial scope, contemplates the
16 establishment or maintenance by the retailer of a location within the state
17 of Kansas at which lawn and garden equipment and services for the same
18 are displayed, and offered or demonstrated for sale.

19 ~~(d)~~ (e) "Net cost" means the amount of money actually paid by a
20 retailer to the supplier.

21 ~~(e)~~ (f) "Current net price" means the price listed in a supplier's price
22 list or catalogue in effect on the date of termination of a contract, less any
23 applicable trade and cash discounts.

24 ~~(f)~~ (g) "Supplier" means any person, partnership, corporation,
25 association, or any and all other forms of business enterprise engaged in
26 the business of manufacturing, assembly or wholesale distribution of lawn
27 and garden equipment. The term "supplier" and the provisions of this act
28 shall be interpreted liberally, with regard to the equities of the retailer, and
29 in a manner not limited to traditional doctrines of corporate successor
30 liability, and the obligations of a supplier hereunder shall consequently
31 apply to any actual successor in interest to a supplier, including but not
32 limited to, a purchaser of substantial assets or substantial stock, any
33 receiver, trustee or assignee, or any surviving corporation resulting from a
34 merger, liquidation or reorganization of the original or any intermediate
35 successor supplier.

36 Sec. 13. K.S.A. 16-1405 is hereby amended to read as follows: 16-
37 1405. (a) In the event that any supplier, after such supplier terminates,
38 cancels, fails to renew, or in fact substantially discontinues such contract,
39 *or substantially changes the competitive circumstances of a retailer*, fails
40 or refuses to make payment to such retailer as required by the provisions
41 of K.S.A. 16-1403, and amendments thereto, such supplier shall be liable
42 in a civil action to the retailer for:

43 (1) The actual costs of the action, including attorney, paralegal and

1 expert witness fees; for interest as provided in K.S.A. 16-1403, and
 2 amendments thereto; ~~for~~

3 (2) 100% of the net cost of such machinery, plus transportation
 4 charges which have been paid by the retailer; and ~~for~~

5 (3) 100% of the current net price of the repair parts, plus 5% for
 6 handling, packing and loading plus freight charges which have been paid
 7 by the retailer.

8 (b) In any ~~such~~ action pursuant to subsection (a), it shall be the
 9 burden of the supplier to establish that the terms of K.S.A. 16-1404, and
 10 amendments thereto, may apply to except any particular item of lawn and
 11 garden equipment from the terms of K.S.A. 16-1403, and amendments
 12 thereto.

13 Sec. 14. K.S.A. 16-1406 is hereby amended to read as follows: 16-
 14 1406. (a) No supplier, directly or through any officer, agent or employee,
 15 may terminate, cancel or fail to renew a contract, or substantially change
 16 the competitive circumstances of a retailer, without good cause.

17 (b) For the purposes of this section, good cause means and includes
 18 the failure by a retailer to substantially comply with essential and
 19 reasonable requirements imposed upon the retailer by the contract ~~if~~,
 20 provided such requirements are not different from those requirements
 21 imposed on similarly situated dealers either by their terms or in the manner
 22 of their enforcement. In addition, good cause shall exist whenever:

23 ~~(a)~~ (1) Except for transfers that are not prohibited pursuant to K.S.A.
 24 16-1407, and amendments thereto, the retailer has transferred a controlling
 25 interest in the retailer business without the supplier's consent;

26 ~~(b)~~ (2) the retailer has filed a voluntary petition in bankruptcy or has
 27 had an involuntary petition in bankruptcy filed against it which has not
 28 been discharged within 30 days after the date of filing, or there has been a
 29 closeout or sale of a substantial part of the retailer's assets related to the
 30 retailer's business or there has been a commencement or dissolution or
 31 liquidation of the retailer's business;

32 ~~(c)~~ (3) there has been a change, without the prior written approval of
 33 the supplier, in the location of retailer's principal place of business if such
 34 approval is required under the retailer's agreement with the supplier;

35 ~~(d)~~ (4) the retailer has defaulted under any reasonable and essential
 36 term of a chattel mortgage or other security agreement between the retailer
 37 and supplier, or there has been a revocation or discontinuance of any
 38 guarantee of the retailer's present or future obligations to the supplier;

39 ~~(e)~~ (5) the retailer has failed to operate in the normal course of
 40 business for seven consecutive days or has otherwise abandoned such
 41 retailer's business, except for reasonable and customary closures of
 42 business;

43 ~~(f)~~ (6) the retailer has pleaded guilty to or has been convicted of a

1 felony affecting the relationship between the retailer and supplier;

2 ~~(g)~~ (7) the retailer has engaged in conduct which is injurious or
3 detrimental to the retailer's customers or the public welfare; or

4 ~~(h)~~ (8) following receipt of written notices of the supplier's
5 requirements and of written notices of the supplier's determination of the
6 retailer's initial and persisting failures to meet the supplier's requirements,
7 the retailer has consistently failed to meet the supplier's requirements for
8 reasonable market penetration based on the supplier's experience in other
9 identified and comparable market areas.

10 Sec. 15. K.S.A. 16-1407 is hereby amended to read as follows: 16-
11 1407. (a) Except as otherwise provided in this section, a supplier shall
12 provide a retailer at least 90 days' prior notice of termination, cancellation,
13 or nonrenewal of the contract *or a substantial change in competitive*
14 *circumstances of a retailer*. The notice shall state all reasons constituting
15 good cause for termination, cancellation or nonrenewal *or substantial*
16 *change in competitive circumstances* and shall provide that the dealer has
17 60 days in which to cure any claimed deficiency. If the deficiency is
18 rectified within 60 days, the notice shall be void. The notice and right to
19 cure provisions under this section shall not apply if the reason for
20 termination, cancellation or nonrenewal *or substantial change in*
21 *competitive circumstances* is for any reason set forth in ~~subsections (a)~~
22 ~~through (h)~~ of K.S.A. 16-1406, *and amendments thereto*.

23 (b) In the event that a supplier of lawn and garden equipment has
24 contractual authority to approve or deny a request by a retailer to sell or
25 transfer any portion of the retailer's business ownership to another party or
26 to enter into an agreement to operate the dealership with another party, the
27 supplier shall approve or deny the request within ~~90~~ 60 days of receiving
28 such a request. If the supplier has neither denied nor approved the request
29 within ~~90~~ 60 days, the request shall be deemed approved. The retailer's
30 request shall include the reasonable financial information, personal
31 background, character references and work ~~histories as required by the~~
32 ~~supplier to render such a determination~~ *history of the person to whom*
33 *business ownership or the dealership is proposed to be sold or transferred*.
34 In the event the supplier denies the request, the supplier shall provide the
35 retailer with a written notice of its determination with the stated reasons
36 for the denial. *A supplier may only deny a request based on the failure of*
37 *the proposed transferee to meet the reasonable requirements consistently*
38 *imposed by the supplier in determining approval of the transfer or*
39 *approval of new retailers.*

40 (c) *It is a violation of this act for a supplier to:*

41 (1) *Coerce, or attempt to coerce, any retailer to accept delivery of*
42 *any equipment that the retailer has not voluntarily ordered;*

43 (2) *condition, or attempt to condition, the sale of any equipment on a*

1 *requirement that the retailer also purchase other goods or services, except*
2 *that nothing herein shall prohibit a supplier from requiring the retailer to*
3 *purchase all parts reasonably necessary to maintain the quality of*
4 *operation in the field of any equipment used in such dealer's trade area;*

5 *(3) coerce or attempt to coerce any retailer into a refusal to purchase*
6 *the equipment manufactured by another supplier;*

7 *(4) discriminate in the prices charged for equipment of like grade*
8 *and quality sold by the supplier to similarly situated retailers, except that*
9 *nothing herein shall prevent differentials that make only due allowance for*
10 *differences in the cost of manufacture, sale or delivery resulting from the*
11 *differing methods or quantities in which such equipment is sold or*
12 *delivered by the supplier; or*

13 *(5) prevent, by contract or otherwise, the issuance or transfer of a*
14 *non-controlling ownership interest in a retailer.*

15 Sec. 16. K.S.A. 16-1409 is hereby amended to read as follows: 16-
16 1409. *(a) Except for the provisions of ~~subsection (b) of~~ K.S.A. 16-*
17 *1407(b), and amendments thereto, the provisions of this act shall apply to*
18 *all continuing and nonrenewable contracts, and all other contracts entered*
19 *into, renewed, amended, assigned or transferred by a supplier to a*
20 *transferee on or after July 1, 1992, and shall apply only to lawn and garden*
21 *equipment and repair parts purchased after the effective date of this act.*
22 *The provisions of ~~subsection (b) of~~ K.S.A. 16-1407(b), and amendments*
23 *thereto, shall apply only to those contracts executed after July 1, 1998.*
24 *Any contract in force and effect on July 1, 1992, or with respect to*
25 *~~subsection (b) of~~ K.S.A. 16-1407(b), and amendments thereto, on July 1,*
26 *1998, which by its own terms will terminate on a date certain subsequent*
27 *thereto shall be governed by the law as it existed prior to this act unless*
28 *renewed, amended, assigned or transferred as described above.*

29 *(b) Any term of a contract, either expressed or implied, that is*
30 *inconsistent with the terms of this act shall be void and unenforceable and*
31 *shall not waive any rights that are provided to any person by this act.*

32 Sec. 17. K.S.A. 16-120, 16-1002, 16-1202, 16-1203, 16-1204, 16-
33 1205, 16-1302, 16-1305, 16-1306, 16-1307, 16-1309, 16-1402, 16-1405,
34 16-1406, 16-1407 and 16-1409 are hereby repealed.

35 Sec. 18. This act shall take effect and be in force from and after its
36 publication in the statute book.