

SENATE BILL 302

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By: **Senator Glassman**

Introduced and read first time: January 27, 2010

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: February 23, 2010

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Equipment Dealer Contract Act – Outdoor Power Sports**
3 **Equipment**

4 FOR the purpose of expanding the scope of the Equipment Dealer Contract Act to
5 include outdoor power sports equipment; defining a certain term; altering
6 certain definitions; and generally relating to the Equipment Dealer Contract
7 Act.

8 BY repealing and reenacting, with amendments,
9 Article – Commercial Law
10 Section 19–101, 19–202, and 19–203
11 Annotated Code of Maryland
12 (2005 Replacement Volume and 2009 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Commercial Law**

16 19–101.

17 (a) In this title, unless the context requires otherwise, the following words
18 have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (b) "Contract" means a written or oral contract or agreement between a
2 dealer and a wholesaler, manufacturer, or distributor by which:

3 (1) The dealer is granted the right to sell or distribute goods or
4 services; or

5 (2) The dealer is granted the right to use a trade name, trademark,
6 service mark, logo type, or advertising or other commercial symbol.

7 (c) "Current model" means a model listed in a wholesaler's, manufacturer's,
8 or distributor's current sales manual or a supplement to the current sales manual.

9 (d) "Current net price" means the price listed in the supplier's price list or
10 catalog in effect at the time the contract agreement is terminated, less any applicable
11 discount allowed.

12 (e) (1) "Dealer" means a person engaged in the business of selling at retail
13 construction, farm, utility, or industrial equipment, implements, machinery,
14 attachments, outdoor power equipment, **OUTDOOR POWER SPORTS EQUIPMENT**, or
15 repair parts.

16 (2) "Dealer" includes a person engaged in the business of selling, on
17 commission or at retail, commercial heating, ventilation, and air-conditioning
18 equipment or repair parts.

19 (f) "Family member" means a spouse, sibling, parent, grandparent, child,
20 grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent,
21 or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

22 (g) "Good cause" means failure by a dealer to comply with requirements
23 imposed on the dealer by a contract if the requirements are not different from
24 requirements imposed on other dealers similarly situated in the State.

25 (h) (1) "Inventory" means farm implements or machinery, construction,
26 utility, and industrial equipment, consumer products, outdoor power equipment,
27 **OUTDOOR POWER SPORTS EQUIPMENT**, attachments, or repair parts.

28 (2) "Inventory" includes commercial heating, ventilation, and
29 air-conditioning equipment or repair parts.

30 (i) "Net cost" means the price the dealer paid the supplier for the inventory,
31 less all applicable discounts allowed, plus the amount the dealer paid for freight costs
32 from the supplier's location to the dealer's location, plus the reasonable cost of
33 assembly or disassembly performed by the dealer.

1 **(J) “OUTDOOR POWER SPORTS EQUIPMENT” MEANS THE FOLLOWING**
2 **VEHICLES AND ANY ATTACHMENTS OR REPAIR PARTS FOR THE FOLLOWING**
3 **VEHICLES:**

4 **(1) A MOTOR-ASSISTED OR MOTOR-DRIVEN VEHICLE THAT:**

5 **(I) IS DESIGNED TO CARRY ONLY THE OPERATOR OF THE**
6 **VEHICLE ON A SEAT OR SADDLE DESIGNED TO BE STRADDLED BY THE**
7 **OPERATOR OR IS DESIGNED TO CARRY ONLY THE OPERATOR OF THE VEHICLE**
8 **AND ONE PASSENGER; AND**

9 **(II) IS COMMONLY KNOWN AS AN ALL-TERRAIN VEHICLE;**

10 **(2) A MOTORCYCLE THAT:**

11 **(I) IS DESIGNED FOR OFF-HIGHWAY OPERATION AND IS**
12 **NOT ELIGIBLE FOR REGISTRATION AS A CLASS D (MOTORCYCLE) VEHICLE**
13 **UNDER THE TRANSPORTATION ARTICLE; AND**

14 **(II) IS COMMONLY KNOWN AS A DIRT BIKE; OR**

15 **(3) A SNOWMOBILE.**

16 **[(j)] (K) “Superseded part” means a part that will provide the same**
17 **function as a currently available part as of the date of cancellation of a contract.**

18 **[(k)] (L) “Supplier” means:**

19 **(1) A wholesaler, manufacturer, or distributor who enters into a**
20 **contract with a dealer; or**

21 **(2) A purchaser of assets or stock of a surviving corporation resulting**
22 **from a merger or liquidation, a receiver or assignee, or a trustee of the original**
23 **manufacturer, wholesaler, or distributor who enters into a contract with a dealer.**

24 **[(l)] (M) “Termination” means the termination, cancellation, nonrenewal, or**
25 **noncontinuation of a contract.**

26 **[(m)] (N) “Utility” and “industrial”, when used to refer to equipment,**
27 **implements, machinery, attachments, or repair parts, have the meanings commonly**
28 **used and understood among dealers and suppliers of farm equipment as a usage of**
29 **trade.**

30 19-202.

1 (a) Within 90 days after termination of the contract the supplier shall
2 repurchase from the dealer all inventory, previously purchased from the supplier, that
3 remains unsold on the date the contract terminates.

4 (b) (1) The supplier shall pay the dealer:

5 (i) 100 percent of the current net price of all new, unused,
6 unsold, undamaged, and complete farm, construction, utility, and industrial
7 equipment, implements, machinery, outdoor power equipment, **OUTDOOR POWER**
8 **SPORTS EQUIPMENT**, and attachments;

9 (ii) 90 percent of the current net price of all new, unused, and
10 undamaged repair parts and superseded parts;

11 (iii) 75 percent of the net cost of all specialized repair tools
12 purchased in the previous 3 years and 50 percent of the net cost of all specialized
13 repair tools purchased in the previous 4 through 6 years in accordance with the
14 requirements of the supplier and held by the dealer on the date of termination, if the
15 specialized repair tools are unique to the supplier's product line and are in complete
16 and resalable condition;

17 (iv) The agreed depreciated value of farm implements,
18 machinery, utility and industrial equipment, [and] outdoor power equipment, **AND**
19 **OUTDOOR POWER SPORTS EQUIPMENT** used in demonstrations, including
20 equipment leased primarily for demonstration or lease; and

21 (v) At its amortized value, the price of any specific data
22 processing hardware and software and telecommunications equipment that the
23 supplier required the dealer to purchase within the past 5 years.

24 (2) (i) The supplier shall pay:

25 1. The cost of shipping the inventory from the dealer's
26 location; and

27 2. The dealer 10 percent of the current net price of all
28 new, unused, and undamaged repair parts returned to cover the cost of handling,
29 packing, and loading.

30 (ii) The supplier may perform the handling, packing, and
31 loading of repair parts instead of paying the 10 percent for the services.

32 (iii) The dealer and the supplier may each furnish a
33 representative to inspect all parts and certify the acceptability of any part when
34 packed for shipment.

1 (c) (1) The supplier shall pay the full repurchase amount to the dealer not
2 later than 30 days after receipt of the inventory.

3 (2) If the dealer has any outstanding debts to the supplier, the
4 repurchase amount shall be credited to the dealer's account.

5 (d) (1) On payment of the repurchase amount to the dealer, the title and
6 right of possession to the repurchased inventory shall transfer to the supplier.

7 (2) At the end of each calendar year or after termination or
8 cancellation of the contract, a supplier or lender may not debit the dealer's reserve
9 account for recourse, retail sale, or lease contracts for any deficiency unless the dealer
10 or the heirs of the dealer have been given at least 7 business days' notice by certified
11 or registered United States mail, return receipt requested, of any proposed sale of the
12 financed equipment and an opportunity to purchase the equipment.

13 (3) The former dealer or the heirs of the dealer shall be given
14 quarterly status reports on any remaining outstanding recourse contracts.

15 (4) As the recourse contracts are reduced, any reserve account funds
16 shall be returned to the dealer or the heirs of the dealer in direct proportion to the
17 outstanding liabilities.

18 (e) (1) In the event of the death of the dealer or the majority stockholder
19 of a corporation operating as a dealer, the supplier shall, at the option of the heir of
20 the dealer or majority stockholder, repurchase the inventory from the heir of the
21 dealer or majority stockholder as if the supplier had terminated the contract.

22 (2) Within 1 year after the date of the death of the dealer or majority
23 stockholder, the heir shall exercise the heir's options under this section.

24 (3) Nothing in this section shall require the repurchase of any
25 inventory if the heir and the supplier enter into a new contract to operate the retail
26 dealership.

27 (f) (1) Within 90 days a supplier shall consider and make a determination
28 on a request by a family member to enter into a new contract to operate the
29 dealership.

30 (2) If the supplier determines that the requesting family member is
31 not acceptable, the supplier shall provide the family member with a written notice of
32 its determination with the stated reasons for nonacceptance.

33 (3) This section does not entitle an heir, personal representative, or
34 family member to operate a dealership without the specific written consent of the
35 supplier.

1 (g) Notwithstanding the provisions of this section, if a supplier and a dealer
2 have executed an agreement concerning succession rights prior to the dealer's death,
3 and if the agreement has not been revoked, the agreement shall be enforced even if it
4 designates someone other than the surviving spouse or heir of the decedent as the
5 successor.

6 19–203.

7 This title does not require the repurchasing from a dealer of:

8 (1) A repair part with a limited storage life or otherwise subject to
9 deterioration, such as a gasket or battery, except for industrial “press on” industrial
10 pneumatic tires;

11 (2) A single repair part that is priced as a set of two or more items;

12 (3) A repair part that, because of its condition, is not resalable as a
13 new part without repackaging or reconditioning;

14 (4) A repair part that is not in new, unused, and undamaged
15 condition;

16 (5) An item of inventory for which a dealer does not have title free of
17 all claims, liens, and encumbrances other than those of the supplier;

18 (6) Any inventory that the dealer chooses to retain;

19 (7) Any inventory that was ordered by the dealer after either party's
20 receipt of notice of termination of a franchise agreement;

21 (8) Any farm implements or machinery, construction, utility, or
22 industrial equipment, outdoor power equipment, **OUTDOOR POWER SPORTS**
23 **EQUIPMENT**, or attachments that are not current models or that are not in new,
24 unused, undamaged, complete condition, provided that equipment that is used in
25 demonstrations or leased under § 19–202 of this title shall be considered new and
26 unused;

27 (9) Any farm implements or machinery, construction, utility, or
28 industrial equipment, outdoor power equipment, **OUTDOOR POWER SPORTS**
29 **EQUIPMENT**, or attachments that were purchased more than 36 months before notice
30 of termination of the contract; or

31 (10) Any inventory that was acquired by the dealer from a source other
32 than the supplier.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2010.