

SECOND REGULAR SESSION

SENATE BILL NO. 1269

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Read 1st time March 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4981S.011

AN ACT

To repeal sections 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892 and 407.893, RSMo, and to enact in lieu thereof three new sections relating to merchandising practices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892 and 407.893, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 407.850, 407.860 and 407.870, to read as follows:

407.850. As used in sections 407.850 to 407.885, the following terms mean:

(1) "Current model", a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;

(2) "Current net price", the price listed in the wholesaler's, manufacturer's or distributor's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;

(3) "Inventory", [farm] **equipment**, implements, machinery, attachments and repair parts;

(4) "Net cost", the price the retailer actually paid for the merchandise to the wholesaler, manufacturer or distributor, plus freight from the wholesaler's, manufacturer's or distributor's location to the dealer's location;

(5) "Retailer", any person, firm or corporation engaged in the business of selling, repairing and retailing;

(a) Farm implements, machinery, attachments or repair parts;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

- (b) Industrial, maintenance and construction power equipment; or
- (c) Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance;

but shall not include retailers of petroleum and motor vehicles and related automotive care and replacement products normally sold by such retailers.

407.860. 1. The wholesaler, manufacturer or distributor shall repurchase that inventory previously purchased from him and held by the retailer at the date of termination of the contract. The provisions of sections 407.850 to 407.885 shall apply to the transferee of such wholesaler, manufacturer or distributor if such transferee acquired substantially all of the assets of such wholesaler, manufacturer or distributor. The wholesaler, manufacturer or distributor shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete **[farm] equipment**, implements, machinery, and attachments and ninety-five percent of the current net price of all new, unused and undamaged repair parts. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site. The wholesaler, manufacturer or distributor shall pay the retailer five percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The wholesaler, manufacturer or distributor shall have the option of performing the handling, packing and loading in lieu of paying the five percent for these services. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site.

2. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the wholesaler, manufacturer or distributor.

407.870. The provisions of sections 407.850 to 407.885 shall not require the repurchase from a retailer of:

(1) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(2) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(3) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(4) Any **equipment**, implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(5) Any repair parts which are not in new, unused, or undamaged condition;

(6) Any **equipment**, implements, machinery or attachments which were purchased

twenty-four months or more prior to notice of termination of the contract;

(7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(8) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor **unless such inventory was acquired from any source authorized or arranged by the manufacturer.**

[407.750. Whenever any person, firm, or corporation engaged in the business of selling and repairing industrial, maintenance and construction power equipment enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of industrial, maintenance and construction power equipment used for industrial, maintenance or construction applications and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications including transportation charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in a dealer's inventory for more than two years shall be returned for ninety percent of his original purchase cost. "Net cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

(1) Any repair part which has a limited storage life or is otherwise subject to

deterioration, such as rubber items, gaskets or batteries;

(2) Any repair part which is in a broken or damaged package;

(3) Any single repair part which is priced as a set of two or more items;

(4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(8) Any repair parts which are not in new, unused, or undamaged condition;

(9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;

(12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.]

[407.751. The provisions of section 407.750 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those equipment and repair parts not affected by the contract remedy.]

[407.752. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.750, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorney's fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the

retailer and one hundred percent of the current net price of the repair parts.]

[407.890. Whenever any person, firm, or corporation engaged in the business of selling and repairing outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, including transportation charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in dealer's inventory for more than two years shall be returned for ninety percent of his original purchase cost. "Net cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

- (1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
- (2) Any repair part which is in a broken or damaged package;
- (3) Any single repair part which is priced as a set of two or more items;
- (4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
- (5) Any inventory for which the retailer is unable to furnish evidence, satisfactory

to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(8) Any repair parts which are not in new, unused, or undamaged condition;

(9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;

(12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.]

[407.892. The provisions of section 407.890 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to remedy provided herein as to those equipment and repair parts not affected by the contract remedy.]

[407.893. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for outdoor power equipment used for lawn, garden, golf course, landscaping or ground maintenance, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.890, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorneys' fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.]