

SENATE BILL NO. 263

BY SENATORS THOMPSON, BROOME, DORSEY-COLOMB, GUILLORY,  
KOSTELKA, LONG, JOHN SMITH AND WARD AND  
REPRESENTATIVES BURRELL, CHANEY, GUILLORY, GUINN,  
HOFFMANN, JACKSON, LEBAS, NORTON, SMITH AND THIBAUT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 51:481(A) and (B)(1) and (3), and 482; and to enact R.S.  
51:481(B)(5), 481.1, 483.1, and 490.1, relative to repurchase of farm, industrial, and  
lawn and garden equipment by wholesaler; to provide for definitions; to provide for  
agreements between a dealer and an agent; to provide for termination and  
cancellation of agreements; to provide for remedies; to provide for indemnity; to  
provide for liability; to provide for applicability; to provide certain terms, conditions,  
and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 51:481(A) and (B)(1) and (3), and 482 are hereby amended and  
reenacted and R.S. 51:481(B)(5), 481.1, 483.1, and 490.1 are hereby enacted to read as  
follows:

§481. Applicability of Part

A. The provisions of this Part shall apply to written contracts or oral  
agreements of definite or indefinite duration between any person, firm or corporation  
engaged in the business of selling, distributing or retailing farm, construction,  
forestry, heavy industrial material handling, utility and lawn and garden equipment,

1 engines, implements, machinery, attachments and repair parts for such equipment  
 2 and any wholesaler, manufacturer or distributor of such equipment and repair parts,  
 3 whereby the retailer agrees with the wholesaler, manufacturer or distributor to  
 4 maintain a stock of such parts, or complete equipment or machines, or attachments.  
 5 Any successor in interest of the manufacturer, wholesaler, or distributor shall include  
 6 any purchaser of assets or stock, any surviving corporation resulting from merger or  
 7 liquidation, any receiver or assignee, or any trustee of the original equipment  
 8 manufacturer, wholesaler or distributor.

9 B. For the purposes of this Part, the following words and phrases shall have  
 10 the following meanings:

11 (1) "Farm equipment", "construction equipment", **"forestry equipment"**,  
 12 "heavy industrial equipment", "material handling equipment", "utility equipment"  
 13 and "lawn and garden equipment" shall include every vehicle designed or adapted  
 14 and used exclusively for agricultural, construction, **forestry**, industrial material  
 15 handling, utility or lawn and garden operations, although incidentally operated or  
 16 used upon the highways.

17 \* \* \*

18 (3) "Dealer" shall mean any farm dealer, heavy industrial equipment dealer,  
 19 construction equipment dealer, **forestry equipment dealer**, material handling  
 20 equipment dealer, utility equipment dealer, engines equipment dealer, lawn and  
 21 garden equipment dealer or retail equipment distributor dealer.

22 \* \* \*

23 **(5) "Dealer agreement" shall mean a written or oral agreement between**  
 24 **a dealer and an agent that provides for the rights and obligations of the parties**  
 25 **with respect to the sale or purchase of equipment or repair parts.**

26 **§481.1. Choice of remedy**

27 **The remedies provided in this Part are in addition and supplemental to**  
 28 **remedies provided in any dealer agreement. A dealer may elect to pursue its**  
 29 **contract remedy, the remedies provided by law, or both. An election by the**  
 30 **dealer to pursue remedies as provided in the dealer agreement shall not**

1 preclude or prohibit the dealer from exercising his right to any other remedies  
 2 provided by law. Any provision included in an agreement between an agent and  
 3 a dealer that attempts to limit or otherwise preclude or prohibit a dealer from  
 4 exercising any rights or protections provided in this Section shall be null, void,  
 5 and unenforceable.

6 §482. Terminations or cancellations

7 A.(1) No agent, directly through an officer or an employee, may terminate,  
 8 cancel, fail to renew, or substantially change the competitive circumstances of a  
 9 dealership agreement or contract without good cause, or if he failed to act in good  
 10 faith.

11 (2) An agent shall bear the burden of proof that he has acted in good  
 12 faith and that there was good cause for the termination or cancellation of any  
 13 dealership agreement or contract.

14 (3) "Good cause" shall mean failure by a dealer to substantially comply with  
 15 essential and reasonable requirements imposed upon the dealer by the dealership  
 16 contract or agreement, if such requirements are not different from those imposed on  
 17 other dealers similarly situated, either by its terms or the manner of enforcements.

18 B. Good cause exists whenever:

19 (1) An individual proprietor, partner, or major shareholder who owns more  
 20 than twenty-five percent of the control of the dealership has withdrawn from the  
 21 dealership, and a replacement individual proprietor, partner, or major  
 22 shareholder, who meets the qualifying criteria typically applied by the agent in  
 23 approving new dealers and agrees to be bound by the terms and conditions of  
 24 the manufacturer's standard dealer agreement, has not previously been  
 25 identified or is not identified within a reasonable time frame.

26 (2) There has been a substantial reduction in interest of a substantial partner  
 27 or major stockholder, and such interest is not being transferred to one or more  
 28 replacement partners or major shareholders, each of whom meets the qualifying  
 29 criteria typically applied by the agent in approving new dealers.

30 (3) The dealer has filed or had filed against it a petition in bankruptcy that has

1 not been discharged within sixty days after the filing, has ~~been~~ sold a substantial part  
 2 of the dealer's assets related to the equipment business **outside of the ordinary**  
 3 **course of business**, or has commenced dissolution or liquidation.

4 (4) The dealer has changed its principal place of business without prior  
 5 approval of the agent, which shall not be unreasonably withheld.

6 ~~(5) The equipment dealer has substantially defaulted under chattel mortgage~~  
 7 ~~or other security agreement between the dealer and the agent, or there has been a~~  
 8 ~~revocation or discontinuance of a guarantee of a present or future obligation to the~~  
 9 ~~agent.~~

10 ~~(6)(5) The **Except as due to force majeure, the** equipment dealer has failed~~  
 11 ~~to operate in the normal course of business for fourteen days.~~

12 ~~(7)(6) The dealer has pleaded guilty to or has been convicted of a felony~~  
 13 ~~substantially affecting the relationship between the dealer and the agent.~~

14 ~~(8)(7) The dealer has engaged in conduct which is substantially injurious or~~  
 15 ~~detrimental to the dealer's customers or to the public.~~

16 **(8) The equipment dealer has substantially defaulted under chattel**  
 17 **mortgage or other security agreement between the dealer and the agent, or**  
 18 **there has been a revocation or discontinuance of a guarantee of a present or**  
 19 **future obligation to the agent.**

20 (9)**(a)** After receiving at least twelve months' notice from the agent of its  
 21 specific and achievable requirements for reasonable market penetration based on the  
 22 **performance standards that are applied uniformly to similarly situated dealers**  
 23 ~~agent's contemporaneous experience in other comparable marketing areas, the dealer~~  
 24 has consistently failed to **use commercially reasonable efforts to** meet the agent's  
 25 reasonable market penetration requirements, **and the agent can demonstrate that**  
 26 **the dealer's failure is a result of the dealer's sole efforts or lack of efforts in its**  
 27 **markets and not a result of the agent's efforts or lack of efforts in the market.**

28 **(b) Notwithstanding the provisions of Subparagraph (a) of this**  
 29 **Paragraph, good cause shall not exist if in the dealer's market share penetration**  
 30 **meets or exceeds eighty percent of the agent's North American average in the**

1 twenty-four months immediately preceding the agent's attempt to terminate,  
 2 cancel, fail to renew, or substantially change the competitive circumstances of  
 3 a dealership agreement or contract.

4 C. Except as otherwise provided ~~herein~~ in this Section, an agent shall  
 5 provide a dealer with at least ninety days' written notice of termination, cancellation,  
 6 or nonrenewal of the dealership agreement. The notice shall state all reasons  
 7 constituting good cause for the action and shall provide that the dealer has sixty days  
 8 in which to cure any claimed deficiency, specifying the action that must be taken in  
 9 order to cure the deficiency. If the deficiency is rectified within sixty days, the  
 10 notice is void. ~~The~~ Except as otherwise provided by law, the notice and the right  
 11 to cure provisions under this Subsection are not required if the reason for  
 12 termination, cancellation, or nonrenewal is a violation under the provisions of ~~R.S.~~  
 13 ~~51:482(B)(1) through (8)~~ Paragraphs (B)(1) through (7) of this Section.

14 \* \* \*

15 §483.1. Indemnification of dealers

16 Notwithstanding the terms of any dealer agreement, each agent shall  
 17 indemnify and hold harmless a dealer against any judgment for damages,  
 18 including but not limited to court costs and reasonable attorney fees of the  
 19 dealer, arising out of complaints, claims or lawsuits, including but not limited  
 20 to strict liability, negligence, misrepresentation, express or implied warranty,  
 21 or rescission of sale, if the judgment arises out of an alleged defective or  
 22 negligent manufacture, assembly, design, or modifications or alterations made  
 23 by a dealer who is authorized by an agent to make such modification or  
 24 alterations, parts, attachments, or accessories, or other functions by the agent,  
 25 which are beyond the control of the dealer.

26 \* \* \*

27 §490.1. Limitation on dealer's obligations

28 In no event shall a dealer be liable to an agent pursuant to the terms of  
 29 any dealer agreement between them for the gross negligence or willful  
 30 misconduct of any third party.

1           Section 2. The provisions of this Act shall not apply to any contractual provisions in  
2 effect on the effective date of this Act, but shall apply to subsequent amendments and  
3 modifications of the contract made after such date.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_