

SECOND REGULAR SESSION

HOUSE BILL NO. 2114

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WHORTON, BERKOWITZ, SHOEMYER (9),
MERIDETH AND LEGAN (Co-sponsors).

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TED WEDEL, Chief Clerk

4999L.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 equipment dealers.

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,
2 407.892 and 407.893, RSMo, are repealed and three new sections enacted in lieu thereof, to be
3 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:

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

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

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

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

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

14 (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.

15 (b) Industrial, maintenance and construction power equipment; or
16 (c) Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds
17 maintenance;
18
19 but shall not include retailers of petroleum and motor vehicles and related automotive care and
20 replacement products normally sold by such retailers.

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

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

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

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

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

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

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

- 12 (5) Any repair parts which are not in new, unused, or undamaged condition;
- 13 (6) Any **equipment**, implements, machinery or attachments which were purchased
- 14 twenty-four months or more prior to notice of termination of the contract;
- 15 (7) Any inventory which was ordered by the retailer on or after the date of notification
- 16 of termination of the contract;
- 17 (8) Any inventory which was acquired by the retailer from any source other than the
- 18 wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or
- 19 distributor **unless such inventory was acquired from any source authorized or arranged by**
- 20 **the manufacturer.**

2 [407.750. Whenever any person, firm, or corporation engaged in the business

3 of selling and repairing industrial, maintenance and construction power equipment

4 enters into a written or parol contract whereby such retailer agrees to maintain a stock

5 of parts or machines or equipment or attachments with any wholesaler, manufacturer,

6 or distributor of industrial, maintenance and construction power equipment used for

7 industrial, maintenance or construction applications and either such wholesaler,

8 manufacturer, or distributor desires to cancel or discontinue the contract, such

9 wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer

10 should desire to keep such merchandise, a sum equal to ninety percent of the net cost

11 of all new, unused, undamaged and complete industrial, maintenance and

12 construction power equipment used for industrial, maintenance and construction

13 applications including transportation charges which have been paid by such retailer,

14 and ninety percent of the current net price on new, unused and undamaged repair

15 parts at the price listed in the current price lists or catalogues, which parts had

16 previously been purchased from such wholesaler, manufacturer, or distributor in the

17 previous two years, and held by such retailer on the date of the cancellation of such

18 contract. Any parts in a dealer's inventory for more than two years shall be returned

19 for ninety percent of his original purchase cost. "Net cost" means the price the

20 retailer actually paid for the equipment. "Current net price" means the price listed

21 in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on

22 the date of termination, less any applicable trade or cash discounts. Upon the

23 payment of the sum equal to ninety percent of the net cost of such equipment and

24 ninety percent of the current net price on the repair parts, the title to such machinery

25 and repair parts shall pass to the manufacturer, wholesaler or distributor making such

26 payment, and such manufacturer, wholesaler, or distributor shall be entitled to the

27 possession of such equipment and repair parts. All payments required to be made

28 under the provisions of this section must be made within ninety days after the return

29 of the machinery or repair parts. After ninety days, all payments or allowances shall

30 include interest at the rate stated in section 408.040, RSMo. The provisions of this

31 section shall not require the repurchase from a retailer of:

- 32 (1) Any repair part which has a limited storage life or is otherwise subject to
- 33 deterioration, such as rubber items, gaskets or batteries;
- (2) Any repair part which is in a broken or damaged package;

- 34 (3) Any single repair part which is priced as a set of two or more items;
35 (4) Any repair part which because of its condition is not resalable as a new
36 part without repackaging or reconditioning;
37 (5) Any inventory for which the retailer is unable to furnish evidence,
38 satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of
39 all claims, liens and encumbrances;
40 (6) Any inventory which the retailer desires to keep, provided the retailer has
41 a contractual right to do so;
42 (7) Any implements, machinery, and attachments which are not in new,
43 unused, undamaged, or complete condition;
44 (8) Any repair parts which are not in new, unused, or undamaged condition;
45 (9) Any implements, machinery or attachments which were purchased
46 twenty-four months or more prior to notice of termination of the contract;
47 (10) Any inventory which was ordered by the retailer on or after the date of
48 notification of termination of the contract;
49 (11) Any inventory which was acquired by the retailer from any source other
50 than the wholesaler, manufacturer or distributor or transferee of such wholesaler,
51 manufacturer or distributor;
52 (12) Any part that has been removed from an engine or short block or piece
53 of equipment or any part that has been mounted or installed on an engine or on
54 equipment.]

2 [407.751. The provisions of section 407.750 shall be supplemental to any
3 agreement between the retailer and the manufacturer, wholesaler or distributor
4 covering the return of equipment and repair parts. The retailer may elect to pursue
5 either his contract remedy or the remedy provided herein, and an election by the
6 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.]

2 [407.752. In the event that any manufacturer, wholesaler, or distributor of
3 machinery and repair parts for industrial, maintenance and construction power
4 equipment used for industrial, maintenance and construction applications, upon
5 cancellation of a contract by either a retailer or a manufacturer, wholesaler, or
6 distributor, fails or refuses to make payment to such dealer as required by the
7 provisions of section 407.750, such manufacturer, wholesaler, or distributor shall be
8 liable in a civil action to the retailer for costs of litigation and attorney's fees and for
9 one hundred percent of the net cost of such machinery, plus transportation charges
10 which have been paid by the retailer and one hundred percent of the current net price
of the repair parts.]

2 [407.890. Whenever any person, firm, or corporation engaged in the business
3 of selling and repairing outdoor power equipment used for lawn, garden, golf course,
4 landscaping or grounds maintenance, enters into a written or parol contract whereby
5 such retailer agrees to maintain a stock of parts or machines or equipment or
6 attachments with any wholesaler, manufacturer, or distributor of outdoor power
equipment used for lawn, garden, golf course, landscaping or grounds maintenance,

7 and either such wholesaler, manufacturer, or distributor desires to cancel or
8 discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to
9 such retailer, unless the retailer should desire to keep such merchandise, a sum equal
10 to ninety percent of the net cost of all new, unused, undamaged and complete outdoor
11 power equipment used for lawn, garden, golf course, landscaping or grounds
12 maintenance, including transportation charges which have been paid by such retailer,
13 and ninety percent of the current net price on new, unused and undamaged repair
14 parts at the price listed in the current price lists or catalogues, which parts had
15 previously been purchased from such wholesaler, manufacturer, or distributor in the
16 previous two years, and held by such retailer on the date of the cancellation of such
17 contract. Any parts in dealer's inventory for more than two years shall be returned
18 for ninety percent of his original purchase cost. "Net cost" means the price the
19 retailer actually paid for the equipment. "Current net price" means the price listed
20 in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on
21 the date of termination, less any applicable trade or cash discounts. Upon the
22 payment of the sum equal to ninety percent of the net cost of such equipment and
23 ninety percent of the current net price on the repair parts, the title to such machinery
24 and repair parts shall pass to the manufacturer, wholesaler or distributor making such
25 payment, and such manufacturer, wholesaler, or distributor shall be entitled to the
26 possession of such equipment and repair parts. All payments required to be made
27 under the provisions of this section must be made within ninety days after the return
28 of the machinery or repair parts. After ninety days, all payments or allowances shall
29 include interest at the rate stated in section 408.040, RSMo. The provisions of this
30 section shall not require the repurchase from a retailer of:

- 31 (1) Any repair part which has a limited storage life or is otherwise subject to
32 deterioration, such as rubber items, gaskets or batteries;
- 33 (2) Any repair part which is in a broken or damaged package;
- 34 (3) Any single repair part which is priced as a set of two or more items;
- 35 (4) Any repair part which because of its condition is not resalable as a new
36 part without repackaging or reconditioning;
- 37 (5) Any inventory for which the retailer is unable to furnish evidence,
38 satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of
39 all claims, liens and encumbrances;
- 40 (6) Any inventory which the retailer desires to keep, provided the retailer has
41 a contractual right to do so;
- 42 (7) Any implements, machinery, and attachments which are not in new,
43 unused, undamaged, or complete condition;
- 44 (8) Any repair parts which are not in new, unused, or undamaged condition;
- 45 (9) Any implements, machinery or attachments which were purchased
46 twenty-four months or more prior to notice of termination of the contract;
- 47 (10) Any inventory which was ordered by the retailer on or after the date of
48 notification of termination of the contract;
- 49 (11) Any inventory which was acquired by the retailer from any source other

50 than the wholesaler, manufacturer or distributor or transferee of such wholesaler,
51 manufacturer or distributor;

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

2 [407.892. The provisions of section 407.890 shall be supplemental to any
3 agreement between the retailer and the manufacturer, wholesaler or distributor
4 covering the return of equipment and repair parts. The retailer may elect to pursue
5 either his contract remedy or the remedy provided herein, and an election by the
6 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.]

2 [407.893. In the event that any manufacturer, wholesaler, or distributor of
3 machinery and repair parts for outdoor power equipment used for lawn, garden, golf
4 course, landscaping or ground maintenance, upon cancellation of a contract by either
5 a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make
6 payment to such dealer as required by the provisions of section 407.890, such
7 manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer
8 for costs of litigation and attorneys' fees and for one hundred percent of the net cost
9 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.]