

CHAPTER 125**(HB 295)**

AN ACT relating to farm and construction retail agreement contracts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 365.800 is amended to read as follows:

As used in KRS 365.800 to 365.840, unless the context requires otherwise:

- (1) "Current net price on parts" means the price listed by a supplier in a price list or catalogue in effect at the time a retail agreement contract is terminated, less any applicable trade and cash discounts;
- (2) "Retailer" means any person, firm, or corporation, including heirs, personal representatives, guardians, trustees, assignees, or receivers of the person, firm, or corporation, engaged in the business of selling and retailing inventory, but shall not include retailers of petroleum or motor vehicle and related automotive care and replacement products;
- (3) "Inventory" means farm implements, tractors, farm machinery, consumer products, utility and industrial equipment, construction and excavating equipment, and any attachments, repair parts, or superseded parts for the equipment;
- (4) "Net cost" means the price a retailer paid for the inventory to a supplier, less all discounts allowed;
- (5) "Consumer products" means machines designed for or adapted and used for horticulture, floriculture, landscaping, grounds maintenance, or turf maintenance, including but not limited to lawnmowers, rototillers, trimmers, blowers, and other equipment used in both residential and commercial lawn, gardening, or turf maintenance, installation, or other applications;
- (6) "Superseded parts" means any part that will provide the same function as a currently available part as of the date of termination of a retail agreement contract; ~~and~~
- (7) "Supplier" means any wholesaler, manufacturer, or distributor of inventory, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, or any receiver, assignee, or trustee of the original wholesaler, manufacturer, distributor, or corporation; **and**
- (8) ***"Terminate" or "termination" means cancel, fail to renew, or otherwise terminate a retail agreement contract.***

➔Section 2. KRS 365.831 is amended to read as follows:

- (1) No supplier, directly or through an officer, agent, or employee, shall terminate or substantially change the competitive circumstances of a retail agreement contract without good cause. As used in this subsection, "good cause" means the failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement contract if the requirements are not different from those imposed on other retailers similarly situated in this state. In addition, good cause exists if:
 - (a) There has been a closeout or sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;
 - (b) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;
 - (c) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;
 - (d) The retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;
 - (e) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and supplier; or
 - (f) The retailer transfers an interest in the dealership; or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder,

withdraws from the dealership or dies; or a substantial reduction occurs in the interest of an individual proprietor, partner, or major shareholder in the dealership.

(2) Good cause does not exist if the supplier consents to an action described in ~~in this~~ subsection (1) **of this section. Such consent exists if the retail agreement contract does not provide the supplier with a right to terminate or substantially change the competitive circumstances of the contract as a result of such action, or the supplier otherwise consents to such action.**

~~(3)(2)~~ No supplier, directly or through an officer, agent, or employee, shall terminate or substantially change the competitive circumstances of a retail agreement contract based on high unemployment in the dealership market area, a labor dispute, the results of a natural disaster, including a sustained drought, or other circumstances beyond the retailer's control.

~~(4)(3)~~ Except as provided in paragraphs (a) to (f) of subsection (1) of this section, a supplier shall provide a retailer with at least ninety (90) days written notice of termination of a retail agreement contract. The notice shall also contain a sixty (60) day written notice to cure the deficiency. The notice shall not be required if the termination is enacted for reasons included in paragraphs (a) to (f) of subsection (1) of this section. The notice shall state all reasons constituting good cause for action. In the case where termination is enacted due to market penetration, a reasonable period of time, not less than one (1) year, shall have existed where the supplier has worked with the retailer to gain the desired market share.

→ Section 3. KRS 365.834 is amended to read as follows:

The provisions of KRS 365.800 to 365.840 **shall represent a public policy of this Commonwealth and** shall not be waivable in any retail agreement contract, and any attempted waiver shall be void.

→ Section 4. KRS 365.840 is amended to read as follows:

The provisions of KRS 365.800 to 365.840 shall apply to all retail agreement contracts entered into before **the effective date of this Act**~~April 21, 2004~~, which have no expiration date and are a continuing contract, and all other contracts entered into or renewed on or after **the effective date of this Act**~~April 21, 2004~~. Any contract in force before **the effective date of this Act**~~April 21, 2004~~, which by its own terms will terminate on a date after **the effective date of this Act**~~April 21, 2004~~, shall be governed by the law as it existed prior to **the effective date of this Act**~~April 21, 2004~~.

Signed by Governor April 5, 2013.