

2021 Regular Session

HOUSE BILL NO. 649

BY REPRESENTATIVES MCFARLAND AND THOMPSON

1 AN ACT

2 To amend and reenact R.S. 51:481 and 483(A)(1) and to enact R.S. 51:483(A)(5), relative  
3 to the repurchase of certain mechanical equipment by a wholesaler, manufacturer,  
4 or distributor; to provide for applicability; to include partnerships, limited liability  
5 companies, and other business entities as pertinent parties; to provide for definitions;  
6 to provide for violations; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 51:481 and 483(A)(1) are hereby amended and reenacted and R.S.  
9 51:483(A)(5) is hereby enacted to read as follows:

10 §481. Applicability of Part

11 A. The provisions of this Part shall apply to written contracts or oral  
12 agreements of definite or indefinite duration between any person, firm ~~or~~<sub>2</sub>,  
13 ~~corporation, partnership, limited liability company, or other business entity~~  
14 in the business of selling, distributing<sub>2</sub> or retailing farm, construction, forestry, heavy  
15 industrial material handling, utility and lawn and garden equipment, engines,  
16 implements, machinery, attachments<sub>2</sub> and repair parts for such equipment and any  
17 wholesaler, manufacturer<sub>2</sub> or distributor of such equipment and repair parts, whereby  
18 the retailer agrees with the wholesaler, manufacturer<sub>2</sub> or distributor to maintain a  
19 stock of such parts, or complete equipment or machines, or attachments. Any

1 successor in interest of the manufacturer, wholesaler, or distributor shall include any  
2 purchaser of assets or stock, any surviving corporation or other business entity  
3 resulting from merger or liquidation, any receiver or assignee, or any trustee of the  
4 original equipment manufacturer, wholesaler, or distributor.

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

7 (1) "Agent" ~~shall mean~~ means any manufacturer, wholesaler, or wholesale  
8 distributor, any purchaser of assets or stock of any surviving corporation or other  
9 business entity resulting from a merger or liquidation, any receiver or assignee, or  
10 any trustee of the original equipment manufacturer, wholesaler, or distributor.

11 (2) "Burden of proof", in the context of an incentive agreement, means that,  
12 if a dealer objects to the market statistics provided by the agent in support of a bonus  
13 or penalty proposed by the agent pursuant to the agreement, the agent shall provide  
14 all of the following information:

15 (a) The name of the entity or individual that purchased the contested  
16 equipment upon which the amount of the incentive payment or penalty is based.

17 (b) Sufficient evidence of the first substantial use of the contested equipment  
18 within the dealer's area of responsibility. Sufficient evidence shall consist of either:

19 (i) Geospatial telematic data from the reported equipment's hardware; or

20 (ii) All of the following:

21 (aa) Name of the entity or individual that purchased the equipment.

22 (bb) City and state to which the equipment was delivered, as indicated on the  
23 manufacturer's delivery receipt provided by the dealer to the retail purchaser.

24 (cc) PIN, VIN, or serial number of the equipment.

25 (dd) Product segment (large ag, mid ag, or small ag) of the equipment.

26 (ee) Model class of the equipment.

27 (ff) Size class (horsepower) of the equipment.

1               ~~(2)~~(3) "Dealer" ~~shall mean~~ means any farm dealer, heavy industrial  
2 equipment dealer, construction equipment dealer, forestry equipment dealer, material  
3 handling equipment dealer, utility equipment dealer, engines equipment dealer, lawn  
4 and garden equipment dealer or retail equipment distributor dealer.

5               ~~(3)~~(4) "Dealer agreement" ~~shall mean~~ means a written or oral agreement  
6 between a dealer and an agent that provides for the rights and obligations of the  
7 parties with respect to the sale or purchase of equipment or repair parts.

8               ~~(4)~~(5) "Farm equipment", "construction equipment", "forestry equipment",  
9 "heavy industrial equipment", "material handling equipment", "utility equipment"  
10 and "lawn and garden equipment" ~~shall include~~ includes every vehicle designed or  
11 adapted and used exclusively for agricultural, construction, forestry, industrial  
12 material handling, utility or lawn and garden operations, although incidentally  
13 operated or used upon the highways.

14               (6) "Incentive agreement" means any agreement between the agent and  
15 dealer involving the payment of a bonus or incentive payment by the agent to the  
16 dealer, or the imposition of a penalty by the agent on the dealer, based upon the  
17 dealer's sales within its area of responsibility.

18               ~~(5)~~(7) "Superseded parts" ~~shall include~~ includes any part that will provide  
19 the same function as a previously available part and can be purchased from the  
20 manufacturer, wholesaler, or distributor on the date of cancellation.

21   \*           \*           \*

22       §483. Violations; civil remedies

23               A. It shall be a violation of this Part for an agent to:

24               (1) Coerce any dealers to accept delivery of equipment parts or accessories  
25 which the dealer has not ordered voluntarily, or to seek payment for any such  
26 equipment parts or accessories, or their return.

27   \*           \*           \*

28               (5) In connection with an incentive agreement, impose on the dealer:

1           (a) The burden of proof regarding the terms of the agreement, including the  
2           establishment of the location of a piece of equipment's first substantial use.

3           (b) A penalty for the sale of equipment if the first substantial use is in a  
4           location outside the dealer's area of responsibility for agricultural sales, regardless  
5           of the location of the seller, or of the customer's residence, office, or operating base.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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