

RÉSUMÉ DIGEST

ACT 359 (HB 649)

2021 Regular Session

McFarland

Existing law provides that existing law applies to contracts or oral agreements between any person, firm, or corporation engaged in the business of selling, distributing, or retailing farm, construction, forestry, heavy industrial material handling, and other such equipment and a wholesaler of such equipment, where the retailer agrees with the wholesaler to maintain a stock of such parts.

Existing law includes any purchaser of stocks, any surviving corporation resulting from merger, any receiver or assignee, or any trustee of the original equipment manufacturer, wholesaler, or distributor as a successor of the manufacturer, wholesaler, or distributor.

New law adds partnership, limited liability company, or other business entity to the list of parties to the contract and successors to the manufacturer, wholesaler, or distributor.

Existing law defines "agent" as any manufacturer, wholesaler or wholesale distributor, any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original equipment manufacturer, wholesaler or distributor.

New law adds other business entity as a successor.

New law defines "burden of proof" in the context of an incentive agreement to mean that, if a dealer objects to the market statistics provided by the agent in support of a bonus or penalty proposed by the agent pursuant to the agreement, the agent must provide all of the following information:

- (1) The name of the entity or individual that purchased the contested equipment upon which the amount of the incentive payment or penalty is based.
- (2) Sufficient evidence of the first substantial use of the contested equipment within the dealer's area of responsibility.

New law defines "incentive agreement" as any agreement between the agent and dealer involving the payment of a bonus or incentive payment by the agent to the dealer, or the imposition of a penalty by the agent on the dealer, based upon the dealer's sales within its area of responsibility.

Existing law provides that it is a violation of existing law to coerce a dealer to accept delivery of equipment parts or accessories which the dealer has not voluntarily ordered.

New law adds that it is also a violation to seek payment for any such equipment parts or accessories, or their return.

New law also provides that it is a violation to impose on a dealer:

- (1) The burden of proof regarding the terms of the incentive agreement, including the establishment of the location of a piece of equipment's first substantial use.
- (2) A penalty for the sale of equipment if the first substantial use is in a location outside the dealer's area of responsibility for agricultural sales, regardless of the location of the seller, or of the customer's residence, office, or operating base.

Effective August 1, 2021.

(Amends R.S. 51:481 and 483(A)(1); Adds R.S. 51:483(A)(5))