

**North American Equipment Dealers Association
State Dealer Protection Law Compilation**

ARIZONA

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AN ACT

Amending Title 44, Arizona revised statutes, by adding chapter 20; relating to equipment dealers.

Be It Enacted by the Legislature of the State of Arizona:

Section 1. Title 44, Arizona Revised Statutes, is amended by adding chapter 20, to read:

**Chapter 20.
Equipment Dealers**

Article 1: General Provisions

44-6701. Definitions.

In this chapter, unless the context otherwise requires:

1. "Dealer agreement" means an oral or written contract or agreement of definite or indefinite duration between a supplier and an equipment dealer that prescribes the rights and obligations of each party with respect to the purchase or sale of equipment.

2. "Equipment" means machines designed for or adapted and used for agriculture, livestock, grazing, light industrial and utility purposes. Equipment does not include earthmoving and heavy construction equipment, mining equipment or forestry equipment.

3. "Equipment dealer" or "dealer" means any person, partnership, corporation, association or other form of business enterprise that is primarily engaged in the retail sale of equipment.

4. "Net cost" means the price the equipment dealer pays to the supplier for equipment, including the freight costs from the supplier's location to the equipment dealer's location, minus all applicable discounts allowed by the supplier.

5. "Net price" means the price listed for repair parts in the supplier's price list or catalog minus all applicable discounts allowed by the supplier.

6. "Supplier" means any person, partnership, corporation, association or other business enterprise that is engaged in the manufacturing, assembly or wholesale distribution of equipment or repair parts, or both, and includes any successor in interest, including a purchaser of assets or stock, or a surviving corporation that results from a merger, liquidation or reorganization of the original supplier.

44-6702. Prohibited acts.

A. It is a violation of this chapter for a supplier to do any of the following:

1. Coerce or compel an equipment dealer to enter into a written or oral agreement that is supplementary to an existing dealer agreement with the supplier unless that agreement is imposed on all other similarly situated dealers in this state.

2. Refuse to deliver, within a reasonable time after receipt of an order, equipment covered by the dealer agreement specifically represented by the supplier to be available for immediate delivery if this equipment is available in reasonable quantities unless this failure is due to any of the following:

(a) Restrictions on the extension of credit by the supplier to the equipment dealer.

(b) A breach of or a default under the agreement by the equipment dealer.

(c) An act of God.

(d) Work stoppage or delay due to a strike or labor difficulty.

(e) A bona fide shortage of materials.

(f) Other causes over which the supplier has no control.

3. Terminate, cancel or fail to renew a dealer agreement or to substantially change the competitive circumstances of the dealer agreement without cause.

4. Require as a condition of renewal or extension of a dealership agreement that the dealer complete substantial renovation of the dealer's place of business or to acquire new or additional space to serve as the dealer's place of business unless the supplier provides at least one year's written notice of the conditions that states all of the grounds supporting this condition. The supplier shall provide the dealer with a reasonable time to complete the renovation or acquisition after this period expires.

5. Discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state. This paragraph does not:

(a) Prevent the use of differentials that result from the differing quantities in which equipment is sold or delivered and does not prevent a supplier from offering a lower price in order to meet a competitor's equally low price or the services or facilities furnished by a competitor.

(b) Apply to sales to an equipment dealer for resale to a unit or agency of the United States government, this state or its political subdivisions, a major fleet account or an organization for testing or demonstration purposes.

6. Prevent by any means an equipment dealer from changing the capital structure of the equipment dealership or the means by which the dealership is financed if the dealer at all times meets reasonable capital standards imposed by the supplier or as otherwise agreed to between the dealer and the supplier and this change does not cause a change of the controlling interest in the executive management or the board of directors or of a guarantor of the dealership.

7. Prevent by any means an equipment dealer or any officer, member, partner or stockholder of a dealer from selling or transferring any part of the interest of any of them to any other person. No dealer, officer, partner, member or stockholder may sell, transfer or assign the equipment dealership or power of management or control of the dealership without the written consent of the supplier. If a supplier determines that the designated transferee is not acceptable, the supplier shall provide the dealer with written notice of the supplier's objection and the specific reasons for withholding its consent.

8. Require an equipment dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve a person from complying with this section.

9. If an equipment dealer or the principal owner of the dealership dies, unreasonably withhold consent to the transfer of the dealer's interest in the dealership to a member of the dealer's or the principal owner's family if that family member meets the reasonable financial, business ability, experience and character standards of the supplier. If the supplier determines that a family member does not meet these standards, the supplier shall provide the dealer's representative with written notice of the supplier's specific objections. A supplier has ninety days to consider a request to make a transfer. For the purposes of this paragraph, "family member" means a spouse, parent, sibling, child, stepchild, son-in-law or daughter-in-law and lineal descendants and includes adopted children and their lineal descendants.

B. Notwithstanding subsection A, paragraph 9, if a supplier and dealer have executed an agreement concerning succession rights before the dealer's death and that agreement has not been revoked or otherwise terminated by either party, that agreement controls the terms of succession.

C. Notwithstanding subsection A, paragraph 7 or 8, a supplier may withhold consent to a transfer of interest in a dealership if the dealer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the dealer. The supplier has the burden of demonstrating this fact.

44-6703. Dealer Agreements - cancellation.

A. Unless one or more of subsection B, paragraphs 1 through 10 apply, a supplier shall give an equipment dealer ninety days' written notice of the supplier's intent to terminate, cancel or not renew a dealer agreement or to change the competitive circumstances of that agreement. The notice shall state the reasons for this action and that the dealer has sixty days to cure any claimed deficiency. If the dealer cures the deficiency to the supplier's satisfaction within that time, the supplier may not terminate, cancel, refuse to renew or change the competitive circumstances of the agreement for the reasons specified in the notice. The agreement's terms do not expire and the supplier shall not change the competitive circumstances of the agreement before the end of the ninety day period without the dealer's written consent.

B. A supplier, either directly or through an agent, shall not terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without cause. For the purposes of this subsection, "cause" means that a dealer:

1. Fails to comply with the terms of the agreement if these requirements are not different from those imposed on other similarly situated dealers in this state.
2. Transfers a controlling ownership interest in the dealership without the supplier's consent. The supplier shall not withhold consent without good reason.
3. Makes a material misrepresentation or falsification of a record.
4. Files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against him that has not been discharged within sixty days after it was filed.
5. Is insolvent or in receivership.
6. Pleads guilty to or is convicted of a felony.
7. Fails to operate in the normal course of business for seven consecutive business days or terminates the business.
8. Relocates or establishes a new or additional equipment dealer's place of business without the supplier's consent.
9. Fails to satisfy a payment obligation as it comes due and payable to the supplier.
10. Fails to promptly account to the supplier for any proceeds from the sale of equipment or to hold these proceeds in trust for the supplier's benefit.
11. Consistently engages in business practices that are detrimental to the consumer or the supplier including excessive pricing, misleading advertising or failing to provide service and replacement parts or to perform warranty obligations.
12. Consistently fails to meet the supplier's market penetration requirements based on available record information and after receiving notice from the supplier of the supplier's requirements.

13. Consistently fails to meet building and housekeeping requirements.
14. Consistently fails to provide adequate sales, service or parts personnel commensurate with the dealer agreement.
15. Consistently fails to comply with the applicable licensing laws pertaining to the products and services the dealer represents as being for and on the supplier's behalf.

44-6704. Surplus parts inventory - credits.

A. Unless this section is specifically waived in writing by the dealer, a supplier shall allow a dealer to periodically, or at least once every twelve months, return a portion of the dealer's surplus parts inventory for credit. The supplier shall notify the dealer of a time period when a dealer may submit the dealer's surplus parts list and return this inventory. The designated return period shall be at least ninety days. A supplier may stagger return periods for its dealers.

B. If a supplier has not notified its dealer of a specific time period for returning surplus parts within the preceding twelve months, it shall allow the dealer to return surplus parts within sixty days of receiving the dealer's request to make this return.

C. A supplier shall allow surplus parts return on a dollar value of parts equal to ten percent of the total dollar value of all parts purchased by the dealer from the supplier during either the twelve month period immediately preceding the supplier's notification to the dealer of the supplier's return program or, if subsection B applies, the month the dealer makes a return request. The dealer may elect to return a dollar value of the surplus parts equal to less than ten percent of the total dollar value of the parts the dealer purchased during the preceding twelve months.

D. A dealer may not return obsolete or superseded parts. However, a dealer may return for credit a part found in the supplier's current returnable parts list or a superseded part that is not the subject of either the supplier's parts return program as of the date the supplier notifies the dealer or, if subsection B applies, as of the date the equipment dealer made a return request.

E. A dealer shall return only new and unused parts to the supplier of these parts.

F. The minimum credit allowed for returned parts is ninety-five percent of the net price as listed in the supplier's current returnable parts list as of the date that the supplier provides notice of its return program or, if subsection B applies, the date that the dealer submits a request for return.

G. A supplier shall issue credit within ninety days after receiving a return part.

H. This section does not prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods.

I. A repurchase made pursuant to this section is not subject to the provisions of the bulk sales law pursuant to title 47, chapter 6.

44-6705. Cancellation of contract - repurchase of inventory.

A. If a dealer agreement is cancelled or not renewed, the supplier shall repurchase the dealer's remaining inventory. The supplier shall also repurchase any specific data processing hardware that the supplier required the dealer to purchase, including computer systems equipment the supplier required for communications purposes. The supplier shall repurchase this equipment at its fair market value.

B. The supplier shall repurchase specialized repair tools purchased by the dealer pursuant to the supplier's requirements. The specialized repair tools shall be unique to the supplier product line and shall be complete and in usable condition. The supplier shall repurchase the specialized repair tools at a price equal to seventy-five percent of the total invoice amount charged by the supplier to the dealer.

C. The supplier shall pay the dealer one hundred percent of the net cost of all new, unsold, undamaged and complete equipment that is resalable. The supplier may deduct a reasonable allowance for depreciation due to the dealer's usage and deterioration caused by weather conditions at the dealer's location. The supplier may also deduct all programs and discounts it previously allowed.

D. The supplier shall pay the dealer ninety-five percent of the current net price of all new, unused and undamaged repair parts and accessories that are listed in the supplier's effective price list or catalog. In computing the amount owed to the dealer the supplier may deduct from the current net price all programs and discounts previously allowed by the supplier to the dealer.

E. The supplier shall pay the dealer five percent of the current net price on all new, unused and undamaged repair parts the dealer returns to cover the cost of handling, packing and loading. The supplier may perform the handling, packing and loading itself instead of paying this amount. The dealer shall make available to the supplier all equipment previously purchased by the dealer. The dealer shall make this equipment available at the dealer's place of business or at those places where the equipment is located.

F. This section does not require a supplier to repurchase any of the following:

1. A repair part that has a limited storage life or that is subject to deterioration.
2. A single repair part that is priced as a set of two or more items.
3. A repair part that, because of its condition, is not resalable as a new part without being repaired or reconditioned.
4. Inventory for which the equipment dealer is unable to furnish evidence, to the supplier's satisfaction, of good title that is free and clear of all claims, liens and encumbrances.
5. Inventory that the dealer wishes to keep, including lease or rental equipment, if the dealer has a contractual right to do so.

6. Equipment that is not in new, unused, undamaged and complete condition.
7. Equipment that has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives an allowance for this usage or deterioration. Previously unsold demonstrated equipment that has less than fifty hours of use and that is equipped with an hour meter is new equipment.
8. Repair parts that are not in new, unused and undamaged condition.
9. Inventory that the dealer ordered on or after the date the dealer received the notification of the supplier's termination of the dealer agreement.
10. Inventory that the dealer acquired from any source other than the supplier or the supplier's successor in interest.

G. If a supplier fails or refuses to repurchase inventory as prescribed by this section, the supplier is liable for one hundred ten percent of the current net price of the inventory plus any freight charges paid by the dealer, interest at the highest legal rate from the date of shipment to the supplier and five percent of the inventory's current net price to cover handling, packing and loading.

44-6706. Repurchase - title - security interest.

Upon payment of the repurchase amount to the equipment dealer, the title and right to possession of the repurchased inventory shall transfer or be transferred to the supplier and the equipment dealer shall have a continuing perfected security interest in the inventory until payment by the supplier. The security interest shall be perfected without the filing of a financing statement for a period of six years.

44-6707. Death of equipment dealer.

A. If an equipment dealer dies or becomes incapacitated, the supplier shall repurchase the inventory from the estate pursuant to the inventory repurchase provisions of § 44-6705 as if the supplier had terminated the dealer agreement. The guardian, the executor or, if the dealer died intestate, the heirs have six months from the date of the dealer's incapacity or death to submit inventory for repurchase.

B. This section does not require a supplier to repurchase inventory if the supplier and a dealer's family member have entered into a new dealer agreement.

C. This section does not entitle a guardian, heir or personal representative of an incapacitated or deceased dealer to operate a dealership for more than six months after the dealer's incapacity or death.

D. This section is supplemental to an agreement between the dealer and the supplier that covers the return of equipment, attachments and repair parts.

E. This section does not limit the right of a supplier to charge back to the dealer's account amounts previously paid or credited as a discount pertaining to the equipment dealer's purchase of inventory.

F. For the purposes of this section, "dealer" means an owner, an equal or majority partner or the majority stockholder of a corporation who operates as an equipment dealer.

44-6708. Cause of action - remedies.

A. An equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the provisions of this chapter. The dealer may also recover cost and reasonable attorney fees.

B. An equipment dealer may be granted injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

C. The remedies provided by this section are in addition to any other remedies permitted by law and do not affect laws relating to product liability actions.

44-6709. Current agreements - effect of law - void provisions.

A. This chapter applies to dealer agreements in effect on the effective date of this chapter at the time the -agreements are extended, revised, modified or changed in any manner and applies to all dealer agreements entered into or renewed on or after the effective date of this chapter.

B. A provision in any contract or agreement with respect to a supplier that requires jurisdiction or venue outside of this state or requires the application of the laws of another state or country is void with respect to a claim otherwise enforceable under this chapter.