

CHAPTER 124

[Substitute House Bill No. 2296]

AGRICULTURE EQUIPMENT—BUSINESS RELATIONS BETWEEN
MANUFACTURERS AND DEALERS

AN ACT Relating to business relationships between manufacturers and distributors of agriculture equipment and independent retail dealers; adding new sections to chapter 19.98 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature of this state finds that the retail distribution and sales of agricultural equipment, utilizing independent retail business operating under agreements with the manufacturers and distributors, vitally affects the general economy of the state, public interests, and public welfare and that it is necessary to regulate the business relations between the independent dealers and the equipment manufacturers, wholesalers, and distributors.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout sections 1 through 7 of this act:

(1) "Equipment" means machinery consisting of a framework, various fixed and moving parts, driven by an internal combustion engine, and all other implements associated with this machinery that are designed for or adapted and used for agriculture, horticulture, livestock, or grazing use.

(2) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association, or other form of business enterprise, primarily engaged in retail sale or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services, but does not include dealers covered by chapter 46.70 or 46.94 RCW.

(3) "Supplier" means the manufacturer, wholesaler, or distributor of the equipment to be sold by the equipment dealer.

(4) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute, or service the supplier's equipment where there is a continuing commercial relationship between the supplier and the equipment dealer.

(5) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(6) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided such requirements are

not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

NEW SECTION. Sec. 3. It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any equipment dealer or substantially change the equipment dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the equipment dealer's substantial renovation of the equipment dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the equipment dealer unless: The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and

the equipment dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: PROVIDED, That nothing shall prevent a seller from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed: PROVIDED, That the equipment dealer meets the reasonable capital requirements of the manufacturer;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest in the equipment dealership of any of them to any other person or persons or party or parties. However, no equipment dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the equipment dealership or power of management or control thereunder without the written consent of the supplier. Such consent shall not be unreasonably withheld if the person or persons or party or parties meets the reasonable financial, business experience, and character standards of the supplier;

(9) Require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

(10)(a) Unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's interest in the equipment dealership to a member or members of the family of the equipment dealer, the principal owner of the equipment dealership, or to another qualified individual if the family member or other qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated family member or other qualified individual does not meet those reasonable standards, it shall provide the equipment dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider an equipment dealer's request to make a transfer to a family member or other qualified individual. If the family member or other qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. As used in this section, "family" includes a spouse, parents, siblings, children, stepchildren, sons-in-law, daughters-in-law, and lineal descendants, including those by adoption, of

the equipment dealer or principal owner of the equipment dealership. Nothing in this section shall entitle a family member or other qualified individual of a deceased dealer or principal owner of the equipment dealership to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and equipment dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

NEW SECTION. Sec. 4. (1) Except where a grounds for termination or nonrenewal of a dealer agreement or a substantial change in an equipment dealer's competitive circumstances are contained in subsection (2) (a), (b), (c), (d), (e), or (f) of this section, 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 substantially change the equipment dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2) (a), (b), (c), (d), or (e) of this section, that the equipment dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the equipment dealer's competitive circumstances shall not be substantially changed without the written consent of the equipment dealer prior to the expiration of at least ninety days following such notice.

(2) As used in sections 1 through 7 of this act, a termination by a supplier of a dealer agreement shall be with good cause when the equipment dealer:

(a) Has transferred a controlling ownership interest in the equipment dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the equipment dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated equipment dealerships in the state based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement.

NEW SECTION. Sec. 5. Any equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the equipment dealer as a consequence of the supplier's violation including requiring the supplier to repurchase at fair market value any data processing hardware and specialized repair tools and equipment previously purchased pursuant to requirements of the supplier, compensation for any loss of business, and the actual costs of the action, including reasonable attorneys' fees. The equipment dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. Nothing in this section is intended to prevent any court from awarding to the supplier actual costs of the action, including reasonable attorney's fees if the action is deemed frivolous.

NEW SECTION. Sec. 6. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act are each added to chapter 19.98 RCW.

NEW SECTION. Sec. 9. This act shall take effect July 1, 1990, and shall apply to all dealer agreements then in effect that have no expiration

date and are a continuing agreement and to all other dealer agreements entered into or renewed on or after July 1, 1990.

Passed the House March 5, 1990.

Passed the Senate February 27, 1990.

Approved by the Governor March 21, 1990.

Filed in Office of Secretary of State March 21, 1990.

CHAPTER 125

[Substitute House Bill No. 2858]

LIQUOR MANUFACTURERS, IMPORTERS, AND WHOLESALERS—BUSINESS ENTERTAINMENT PRACTICES

AN ACT Relating to authorized business entertainment practices by liquor manufacturers, importers, or wholesalers; adding new sections to chapter 66.28 RCW; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 66.28 RCW to read as follows:

A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 66.28 RCW to read as follows:

A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, wholesaler, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, or wholesaler may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section.