

2015 Regular Session

SENATE BILL NO. 263

BY SENATORS THOMPSON, BROOME, DORSEY-COLOMB, GUILLORY,  
KOSTELKA, LONG, JOHN SMITH AND WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Provides relative to agriculture, forestry, and industrial equipment and certain dealer agreements. (8/1/15)

1 AN ACT

2 To amend and reenact R.S. 51:481(A) and (B)(1) and (3), and 482; and to enact R.S.

3 51:481(B)(5), 481.1, 483.1, and 490.1, relative to repurchase of farm, industrial, and

4 lawn and garden equipment by wholesaler; to provide for definitions; to provide for

5 agreements between a dealer and an agent; to provide for termination and

6 cancellation of agreements; to provide for remedies; to provide for indemnity; to

7 provide for liability; to provide certain terms, conditions, and procedures; and to

8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 51:481(A) and (B)(1) and (3), and 482 are hereby amended and

11 reenacted and R.S. 51:481(B)(5), 481.1, 483.1, and 490.1 are hereby enacted to read as

12 follows:

13 §481. Applicability of Part

14 A. The provisions of this Part shall apply to written contracts or oral

15 agreements of definite or indefinite duration between any person, firm or corporation

16 engaged in the business of selling, distributing or retailing farm, construction,

17 forestry, heavy industrial material handling, utility and lawn and garden equipment,

1 engines, implements, machinery, attachments and repair parts for such equipment  
 2 and any wholesaler, manufacturer or distributor of such equipment and repair parts,  
 3 whereby the retailer agrees with the wholesaler, manufacturer or distributor to  
 4 maintain a stock of such parts, or complete equipment or machines, or attachments.  
 5 Any successor in interest of the manufacturer, wholesaler, or distributor shall include  
 6 any purchaser of assets or stock, any surviving corporation resulting from merger or  
 7 liquidation, any receiver or assignee, or any trustee of the original equipment  
 8 manufacturer, wholesaler or distributor.

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

11 (1) "Farm equipment", "construction equipment", "**forestry equipment**",  
 12 "heavy industrial equipment", "material handling equipment", "utility equipment"  
 13 and "lawn and garden equipment" shall include every vehicle designed or adapted  
 14 and used ~~exclusively~~ **primarily** for agricultural, construction, **forestry**, industrial  
 15 material handling, utility or lawn and garden operations, although incidentally  
 16 operated or used upon the highways.

17 \* \* \*

18 (3) "Dealer" shall mean any farm dealer, heavy industrial equipment dealer,  
 19 construction equipment dealer, **forestry equipment dealer**, material handling  
 20 equipment dealer, utility equipment dealer, engines equipment dealer, lawn and  
 21 garden equipment dealer or retail equipment distributor dealer.

22 \* \* \*

23 **(5) "Dealer agreement" shall mean a written or oral agreement between**  
 24 **a dealer and an agent that provides for the rights and obligations of the parties**  
 25 **with respect to the sale or purchase of equipment or repair parts.**

26 **§481.1. Choice of remedy**

27 **The remedies provided in this Part are in addition and supplemental to**  
 28 **remedies provided in any dealer agreement. A dealer may elect to pursue its**  
 29 **contract remedy, the remedies provided by law, or both. An election by the**

1 dealer to pursue remedies as provided in the dealer agreement shall not  
2 preclude or prohibit the dealer from exercising his right to any other remedies  
3 provided by law. Any provision included in an agreement between an agent and  
4 a dealer that attempts to limit or otherwise preclude or prohibit a dealer from  
5 exercising any rights or protections provided in this Section shall be null, void,  
6 and unenforceable.

7 §482. Terminations or cancellations

8 A.(1) No agent, directly through an officer or an employee, may terminate,  
9 cancel, fail to renew, or substantially change the competitive circumstances of a  
10 dealership agreement or contract without good cause and unless the agent acted in  
11 good faith.

12 (2) An agent shall bear the burden of proof that he has acted in good  
13 faith and that there was good cause for the termination or cancellation of any  
14 dealership agreement or contract.

15 (3) "Good cause" shall mean failure by a dealer to substantially comply with  
16 essential and reasonable requirements imposed upon the dealer by the dealership  
17 contract or agreement, if such requirements are not different from those imposed on  
18 other dealers similarly situated, either by its terms or the manner of enforcements.

19 B. Good cause exists whenever:

20 (1) An individual proprietor, partner, or major shareholder who owns more  
21 than twenty-five percent of the control of the dealership has withdrawn from the  
22 dealership, and a replacement for the withdrawing individual proprietor,  
23 partner, or major shareholder, who meets the qualifying criteria typically  
24 applied by the agent, has not previously been identified or is not identified  
25 within a reasonable time frame.

26 (2) There has been a substantial reduction in interest of a substantial partner  
27 or major stockholder, and such interest is not being transferred to one or more  
28 replacement partners or major shareholders.

29 (3) The dealer has filed or had filed against it a petition in bankruptcy that has

1 not been discharged within sixty days after the filing, has ~~been~~ sold a substantial part  
2 of the dealer's assets related to the equipment business **outside of the ordinary**  
3 **course of business**, or has commenced dissolution or liquidation.

4 (4) The dealer has changed its principal place of business without prior  
5 approval of the agent, which shall not be unreasonably withheld.

6 ~~(5) The equipment dealer has substantially defaulted under chattel mortgage~~  
7 ~~or other security agreement between the dealer and the agent, or there has been a~~  
8 ~~revocation or discontinuance of a guarantee of a present or future obligation to the~~  
9 ~~agent.~~

10 ~~(6)~~**(5)** **Except as due to force majeure, the** equipment dealer has failed  
11 to operate in the normal course of business for fourteen days.

12 ~~(7)~~**(6)** The dealer has pleaded guilty to or has been convicted of a felony  
13 substantially affecting the relationship between the dealer and the agent.

14 ~~(8)~~**(7)** The dealer has engaged in conduct which is substantially injurious or  
15 detrimental to the dealer's customers or to the public.

16 **(8) The equipment dealer has substantially defaulted under chattel**  
17 **mortgage or other security agreement between the dealer and the agent, or**  
18 **there has been a revocation or discontinuance of a guarantee of a present or**  
19 **future obligation to the agent.**

20 **(9)****(a)** After receiving at least twelve months' notice from the agent of its  
21 specific and achievable requirements for reasonable market penetration based on the  
22 **performance standards that are applied uniformly to similarly situated dealers**  
23 ~~agent's contemporaneous experience in other comparable marketing areas, the dealer~~  
24 has consistently failed to **use commercially reasonable efforts to** meet the agent's  
25 reasonable market penetration requirements **and the agent can demonstrate that**  
26 **the dealer's failure is a result of the dealer's sole efforts or lack of efforts in its**  
27 **markets and not a result of the agent's efforts or lack of efforts in the market.**

28 **(b) Notwithstanding the provisions of Subparagraph (a) of this**  
29 **Paragraph, good cause shall not exist if in the dealer's market share penetration**

1 meets or exceeds eighty percent of the agent's North American average in the  
 2 twenty-four months immediately preceding the agent's attempt to terminate,  
 3 cancel, fail to renew, or substantially change the competitive circumstances of  
 4 a dealership agreement or contract.

5 C. Except as otherwise provided herein, an agent shall provide a dealer with  
 6 at least ninety days' written notice of termination, cancellation, or nonrenewal of the  
 7 dealership agreement. The notice shall state all reasons constituting good cause for  
 8 the action and shall provide that the dealer has sixty days in which to cure any  
 9 claimed deficiency, specifying the action that must be taken in order to cure the  
 10 deficiency. If the deficiency is rectified within sixty days, the notice is void. ~~The~~  
 11 Except as otherwise provided by law, the notice and the right to cure provisions  
 12 under this Subsection are not required if the reason for termination, cancellation, or  
 13 nonrenewal is a violation under the provisions of R.S. 51:482(B)(1) through ~~(8)~~(7).

14 \* \* \*

15 §483.1. Indemnification of dealers

16 Notwithstanding the terms of any dealer agreement, each agent shall  
 17 indemnify and hold harmless a dealer against any judgment for damages,  
 18 including but not limited to court costs and reasonable attorney fees of the  
 19 dealer, arising out of complaints, claims or lawsuits, including but not limited  
 20 to strict liability, negligence, misrepresentation, express or implied warranty,  
 21 or rescission of sale, if the judgment arises out of an alleged defective or  
 22 negligent manufacture, assembly, design, or modifications or alterations made  
 23 by a dealer who is authorized by an agent to make such modification or  
 24 alterations, parts, attachments, or accessories, or other functions by the agent,  
 25 which are beyond the control of the dealer.

26 \* \* \*

27 §490.1. Limitation on dealer's obligations

28 A. In no event shall a dealer be liable for the gross negligence or willful  
 29 misconduct of any third party.

1                    **B. Any provision in a dealer agreement which conflicts with the**  
 2                    **provisions of Subsection A of this Section shall be null, void, and unenforceable.**

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The original instrument was prepared by Michelle Ducharme. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry Johnson.

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	DIGEST	
SB 263 Engrossed	2015 Regular Session	Thompson

Present law provides for the repurchase of farm, industrial, and lawn and garden equipment by a wholesaler.

Present law applies to written contracts or oral agreements of definite or indefinite duration between any person, firm, or corporation engaged in the business of selling, distributing or retailing farm, construction, heavy industrial material handling, utility and lawn and garden equipment, engines, implements, machinery, attachments and repair parts for such equipment and any wholesaler, manufacturer or distributor of such equipment and repair parts, whereby the retailer agrees with the wholesaler, manufacturer or distributor to maintain a stock of such parts, or complete equipment or machines, or attachments. Any successor in interest of the manufacturer, wholesaler, or distributor shall include any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or assignee, or any trustee of the original equipment manufacturer, wholesaler or distributor.

Proposed law provides that the provisions of present law shall apply to forestry contracts or agreements.

Present law defines certain terms and phrases.

Proposed law defines "forestry equipment" and "dealer agreement" and includes forestry equipment dealer in the definition of "dealer".

Proposed law provides that dealers have a choice of remedy. The remedies provided by law are in addition and supplemental to remedies provided in any dealer agreement. A dealer may elect to pursue its contract remedy, the remedies provided by law, or both.

Proposed law provides that an election by the dealer to pursue remedies as provided in the dealer agreement shall not preclude or prohibit the dealer from exercising his rights to any other remedies provided by law.

Proposed law provides that any provision included in an agreement between an agent and a dealer that attempts to limit or otherwise preclude or prohibit a dealer from exercising any rights or protections provided by law shall be null, void, and unenforceable.

Present law provides that no agent may terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement or contract without good cause.

Proposed law retains present law and adds that in addition to good cause an agent must also act in good faith in order to terminate, cancel, fail to renew, or substantially change an agreement or contract.

Proposed law provides that an agent shall bear the burden of proof that it has acted in good faith and that there was good cause for the termination or cancellation of any dealership agreement or contract.

Present law provides that good cause exists whenever:

- (1) An individual proprietor, partner, or major shareholder of the dealership has withdrawn.
- (2) There has been a substantial reduction in interest of a substantial partner or major stockholder.
- (3) The dealer has filed or had filed against it a petition in bankruptcy that has not been discharged within 60 days after the filing, has been sold a substantial part of the dealer's assets related to the equipment business, or has commenced dissolution or liquidation.
- (4) The dealer has changed its principal place of business without prior approval of the agent, which shall not be unreasonably withheld.
- (5) The equipment dealer has substantially defaulted under chattel mortgage or other security agreement between the dealer and the agent, or there has been a revocation or discontinuance of a guarantee of a present or future obligation to the agent.
- (6) The equipment dealer has failed to operate in the normal course of business for 14 days.
- (7) The dealer has pleaded guilty to or has been convicted of a felony substantially affecting the relationship between the dealer and the agent.
- (8) The dealer has engaged in conduct which is substantially injurious or detrimental to the dealer's customers or to the public.
- (9) After receiving at least 12 months' notice from the agent of its specific and achievable requirements for reasonable market penetration based on the agent's contemporaneous experience in other comparable marketing areas, the dealer has consistently failed to meet the agent's reasonable market penetration requirements.

Proposed law provides that good cause exists whenever:

- (1) An individual proprietor, partner, or major shareholder who owns more than 25% of the dealership has withdrawn from the dealership, and a replacement from the withdrawing individual proprietor, partner, or major shareholder, who meets the qualifying criteria typically applied by the agent, has not previously been identified or is not identified within a reasonable time frame.
- (2) There has been a substantial reduction in interest of a substantial partner or major stockholder, and such interest is not being transferred to one or more replacement partners or major shareholders.
- (3) The dealer has filed or had filed against it a petition in bankruptcy that has not been discharged within 60 days after the filing, has sold a substantial part of the dealer's assets related to the equipment business outside of the ordinary course of business, or has commenced dissolution or liquidation.
- (4) The dealer has changed its principal place of business without prior approval of the agent, which shall not be unreasonably withheld.
- (5) Except as due to force majeure, the equipment dealer has failed to operate in the normal course of business for 14 days.
- (6) The dealer has pleaded guilty to or has been convicted of a felony substantially

affecting the relationship between the dealer and the agent.

- (7) The dealer has engaged in conduct which is substantially injurious or detrimental to the dealer's customers or to the public.
- (8) The dealer has substantially defaulted under chattel mortgage or other security agreement between the dealer and the agent, or there has been a revocation or discontinuance of a guarantee of a present or future obligation to the agent.
- (9) After receiving at least 12 months' notice from the agent of its specific and achievable requirements for reasonable market penetration based on the performance standards that are applied uniformly to similarly situated dealers, the dealer has consistently failed to use commercially reasonable efforts to meet the agent's reasonable market penetration requirements and the agent can demonstrate that the dealer's failure is a result of the dealer's sole efforts or lack of efforts in its markets and not a result of the agent's efforts or lack of efforts in the market. However, good cause shall not exist if in the dealer's market share penetration meets or exceeds 80% of the agent's North American average in the 24 months immediately preceding the agent's attempt to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement or contract.

Present law provides the procedure by which an agent may terminate, cancel, or fail to renew a dealership agreement.

Proposed law provides except as otherwise provided by law, an agent shall provide a dealer with at least 90 days' written notice of termination, cancellation, or nonrenewal of the dealership agreement. The notice shall state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency, specifying the action that must be taken in order to cure the deficiency. If the deficiency is rectified within 60 days, the notice is void. Except as otherwise provided by law, the notice and the right to cure provisions are not required if the reason for termination, cancellation, or nonrenewal is a violation of certain provisions of law.

Proposed law provides that notwithstanding the terms of any dealer agreement, each agent shall indemnify and hold harmless its dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims or lawsuits, including but not limited to strict liability, negligence, misrepresentation, express or implied warranty, or rescission of sale, if the judgment arises out of an alleged defective or negligent manufacture, assembly, design, or modifications or alterations made by dealer, who was authorized by an agent to make such modifications or alterations, of farm equipment, construction equipment, forestry equipment, material handling equipment, utility equipment, lawn and garden equipment, parts, attachments, or accessories, or other functions by the agent, which are beyond the control of the dealer.

Proposed law provides that in no event shall a dealer be liable for the gross negligence or willful misconduct of any third party and that any provision or clause in a dealer agreement which conflicts shall be null, void, and unenforceable.

Effective August 1, 2015.

(Amends R.S. 51:481(A) and (B)(1) and (3), and 482; adds R.S. 51:481(B)(5), 481.1, 483.1, and 490.1)



Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Agriculture, Forestry,  
Aquaculture, and Rural Development to the original bill

1. Technical amendments only.