



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5912

Introduced 2/10/2010, by Rep. Brandon W. Phelps

SYNOPSIS AS INTRODUCED:

815 ILCS 715/2	from Ch. 5, par. 1502
815 ILCS 715/4	from Ch. 5, par. 1504
815 ILCS 715/5	from Ch. 5, par. 1505
815 ILCS 715/7	from Ch. 5, par. 1507

Amends the Illinois Equipment Fair Dealership Law. Provides that "outdoor power equipment" includes all-terrain vehicles or off-highway motorcycles for purposes of the definitions of "inventory" and "retailer" and for purposes of provisions concerning repurchase of inventory, supplementation to contract rights, and excluded inventory. Effective immediately.

LRB096 17601 DRJ 32958 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Equipment Fair Dealership Law is
5 amended by changing Sections 2, 4, 5, and 7 as follows:

6 (815 ILCS 715/2) (from Ch. 5, par. 1502)

7 Sec. 2. As used in this Act unless the context clearly
8 requires otherwise:

9 (1) "Current net price" shall mean the price listed in the
10 wholesaler's, manufacturer's, or distributor's price list in
11 effect at the time the contract is canceled or discontinued,
12 less any applicable trade, volume and/or cash discounts;

13 (2) "Inventory" shall mean farm implements, farm
14 machinery, attachments, accessories and repair parts, outdoor
15 power equipment including but not limited to all-terrain
16 vehicles or off-highway motorcycles, construction equipment,
17 industrial equipment, attachments, accessories and repair
18 parts;

19 (3) "Net cost" shall mean the price the retailer actually
20 paid for the merchandise to the wholesaler, manufacturer or
21 distributor, plus freight from the wholesaler's,
22 manufacturer's or distributor's location to the dealer's
23 location;

1 (4) "Retailer" shall mean any person, firm or corporation
2 engaged in the business of selling and retailing outdoor power
3 equipment including but not limited to all-terrain vehicles or
4 off-highway motorcycles, farm implements, farm machinery,
5 attachments accessories or repair parts and retailers of
6 construction or industrial equipment, attachments or
7 accessories or repair parts, but shall not include retailers of
8 petroleum and motor vehicles and related automotive care and
9 replacement products normally sold by such retailers.

10 (Source: P.A. 86-259.)

11 (815 ILCS 715/4) (from Ch. 5, par. 1504)

12 Sec. 4. (1) The wholesaler, manufacturer or distributor
13 shall repurchase that inventory previously purchased from him
14 and held by the retailer at the date of termination of the
15 contract. The wholesaler, manufacturer or distributor shall
16 pay 100% of the net cost of all new, unsold, undamaged and
17 complete outdoor power equipment including but not limited to
18 all-terrain vehicles or off-highway motorcycles, farm
19 implements, farm machinery, attachments and accessories,
20 construction equipment, industrial equipment, attachments and
21 accessories and 95% of the current net price of all new, unused
22 and undamaged repair parts. The retailer shall pay the cost of
23 transportation to the nearest warehouse maintained by the
24 wholesaler, manufacturer or distributor, or to a mutually
25 agreeable site. The wholesaler, manufacturer or distributor

1 shall pay the retailer 5% of the current net price on all new,
2 unused and undamaged repair parts returned to cover the cost of
3 handling, packing and loading. The wholesaler, manufacturer or
4 distributor shall have the option of performing the handling,
5 packaging and loading in lieu of paying the retailer 5% for
6 these services; provided the same can be accomplished within 45
7 days of termination.

8 (2) Upon payment of the repurchase amount to the retailer,
9 the title and right of possession to the repurchased inventory
10 shall transfer to the wholesaler, manufacturer or distributor.

11 (Source: P.A. 86-259.)

12 (815 ILCS 715/5) (from Ch. 5, par. 1505)

13 Sec. 5. The provisions of this Act shall be supplemental to
14 any agreement between the retailer and the manufacturer,
15 wholesaler, or distributor covering the return of outdoor power
16 equipment including but not limited to all-terrain vehicles or
17 off-highway motorcycles, farm implements, farm machinery,
18 attachments, accessories, and repair parts, construction
19 equipment, industrial equipment, attachments, accessories, and
20 repair parts so that the retailer can elect to pursue either
21 his contract remedy or the remedy provided herein, and an
22 election by the retailer to pursue his contract remedy shall
23 not bar his right to the remedy provided herein as to those
24 farm implements, farm machinery, attachments, accessories and
25 repair parts not affected by the contract remedy.

1 (Source: P.A. 86-259; 86-820; 86-1028.)

2 (815 ILCS 715/7) (from Ch. 5, par. 1507)

3 Sec. 7. The provisions of this Act shall not require the
4 repurchase from a retailer of:

5 (1) Any repair part which has a limited storage life and is
6 in a deteriorated condition;

7 (2) Any repair part which is in a broken or damaged
8 package;

9 (3) Any single repair part which is priced as a set of two
10 or more items;

11 (4) Any repair part which because of its condition is not
12 resalable as a new part without repackaging or reconditioning;

13 (5) Any inventory for which the retailer is unable to
14 furnish evidence, satisfactory to the wholesaler, manufacturer
15 or distributor, of title, free and clear of all claims, liens
16 and encumbrances;

17 (6) Any inventory which the retailer desires to keep,
18 provided the retailer has a contractual right to do so;

19 (7) Any outdoor power equipment including but not limited
20 to all-terrain vehicles or off-highway motorcycles, farm
21 implements, farm machinery, attachments and accessories,
22 construction equipment, industrial equipment, attachments and
23 accessories which are not in new, unused, undamaged, or
24 complete condition;

25 (8) Any repair parts which are not in new, unused, or

1 undamaged condition;

2 (9) Any outdoor power equipment including but not limited
3 to all-terrain vehicles or off-highway motorcycles, farm
4 implements, farm machinery, attachments or accessories,
5 construction equipment, industrial equipment, attachments or
6 accessories which were purchased 24 months or more prior to
7 notice of termination of the contract;

8 (10) Any inventory which was ordered by the retailer on or
9 after the date of notification of termination of the contract;

10 (11) Any inventory which was acquired by the retailer from
11 any source other than the wholesaler, manufacturer or
12 distributor.

13 (12) Any repair parts not listed in the manufacturers'
14 current price list in effect at date of notice of termination
15 or classified as obsolete by the manufacturer. However, this
16 exception to the repurchase requirement shall apply only if the
17 wholesaler, manufacturer or distributor provided the retailer
18 with the opportunity to return the parts prior to notice of
19 termination of the dealership.

20 (Source: P.A. 86-259.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.