

2001 BILL 13

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 13

FARM IMPLEMENT DEALERESHIPS ACT

MR. GOUDREAU

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 13

2001

FARM IMPLEMENT DEALERSHIPS ACT

(Assented to , 2001)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "dealer" means a person who operates a retail establishment for the sale of farm implements in the ordinary course of business;
- (c) "dealership agreement" means an agreement between a distributor and a dealer that sets out the legal rights and obligations of the parties to the agreement;
- (d) "distributor" means a person, including a manufacturer, who sells, consigns or delivers farm implements to a dealer for sale in the ordinary course of business;

- (e) “farm implement” means farm implement as defined in the *Farm Implement Act*;
- (f) “person” includes a partnership, corporation, association or other organization;
- (g) “terminate”, with respect to a dealership agreement, means to terminate, cancel, fail to renew or to extend, or substantially change the competitive circumstances of the dealership agreement.

Prohibitions on distributors

2(1) This section applies to dealership agreements despite any provision to the contrary in a dealership agreement.

(2) Subject to section 5, a distributor shall not terminate a dealership agreement

- (a) without cause,
- (b) without an order of the Court, or
- (c) without complying with any terms imposed by the Court pursuant to section 3(2).

(3) A distributor shall not discriminate in the prices charged for a farm implement of similar grade and quality sold by the distributor to different dealers.

(4) A distributor shall not impose substantially different contractual requirements related to dealership agreements on different dealers.

(5) A distributor shall not discriminate against or penalize a dealer for carrying on business with another distributor in the dealer’s facility or in a separate facility.

Application to Court to terminate

3(1) Subject to section 5, a distributor who wishes to terminate a dealership agreement must apply to the Court for a determination as to whether or not the distributor has cause under section 4 to terminate the dealership agreement.

(2) If, on an application under subsection (1), the Court determines that the distributor has cause to terminate the dealership agreement, the Court must issue an order to terminate the dealership agreement and may impose any terms on the termination that the Court considers appropriate, including allowing the dealer the opportunity to remedy any default within any period the Court specifies.

Termination
for cause

4(1) Subject to subsection (2), for the purposes of making a determination pursuant to section 3, any of the following constitutes cause to terminate a dealership agreement:

- (a) the dealer has made an assignment in bankruptcy, or has been petitioned into bankruptcy, and has not been discharged from bankruptcy;
- (b) the dealer's farm implement business is being dissolved or liquidated, or a substantial portion of the dealer's farm implement business is being liquidated and the liquidation materially affects the contractual relationship between the dealer and the distributor;
- (c) the dealer has defaulted under a security agreement between the dealer and the distributor, or there has been a revocation or discontinuance of a guarantee of the dealer's financial obligations to the distributor;
- (d) the dealer has failed to operate in the normal course of business for 14 consecutive days or has otherwise abandoned the business;
- (e) the dealer has pleaded guilty to or has been convicted of an offence affecting the contractual relationship between the dealer and the distributor;
- (f) the dealer has failed to substantially comply with the essential and reasonable contractual requirements imposed on the dealer by the dealership agreement and those requirements are not substantially different from the requirements imposed on other dealers;
- (g) any other circumstances prescribed in the regulations.

(2) None of the following circumstances constitutes cause to terminate a dealership agreement:

- (a) the change of executive management or ownership of the dealership, unless the distributor is able to show that the change is detrimental to the representation or reputation of the distributor's farm implements;
- (b) the refusal by the dealer to purchase or accept delivery of any farm implement or services from a distributor not ordered by the dealer unless the farm implement or services are necessary for the operation of a farm implement commonly sold by the dealer;

- (c) the distributor's desire for further market penetration, while recognizing that the distributor has the right to require the dealer to achieve, relative to other dealers, a reasonable performance level of sales of the distributor's farm implements;
- (d) the dealer's carrying on business with any other distributor in the dealer's facility or in a separate facility;
- (e) any other circumstances prescribed in the regulations.

Termination by mutual agreement **5** Nothing in this Act precludes a distributor and a dealer from terminating a dealership agreement by mutual agreement.

Certain provisions void **6** Subject to section 5, the following provisions in any dealership agreement are void:

- (a) any provision allowing termination of the agreement without cause;
- (b) any provision requiring a dealer to deal exclusively with a distributor, so as to prevent the dealer from, or penalize the dealer for, carrying on business with any other distributor in the dealer's facility or in a separate facility;
- (c) any provision that limits, modifies or abrogates, or in effect limits, modifies or abrogates, any benefit or remedy pursuant to this Act.

Remedies **7(1)** A dealer who considers that the dealer's dealership agreement with a distributor has been terminated in contravention of this Act may apply to the Court for relief.

(2) On an application pursuant to subsection (1), the Court may make any order that the Court considers appropriate in the circumstances, including the following:

- (a) an order awarding damages to the dealer for any loss resulting from the distributor's contravention of this Act;
- (b) an order enjoining the distributor from doing or continuing any act that contravenes this Act;
- (c) an order directing the distributor to reinstate a dealership agreement or restore any rights under a dealership agreement that have been terminated.

(3) This section applies despite any penalty that may be imposed on the distributor pursuant to this Act with respect to the distributor's contravention of this Act.

- Regulations** **8** The Lieutenant Governor in Council may make regulations
- (a) for the purposes of section 4(1), prescribing additional circumstances that constitute cause;
 - (b) for the purposes of section 4(2), prescribing additional circumstances that do not constitute cause.
- Offences** **9(1)** A distributor who contravenes section 2(2), (3), (4) or (5) is guilty of an offence and is liable to a fine of not more than \$50 000.
- (2)** Each day that a contravention continues constitutes a separate offence.
- Applicability of Act** **10** This Act applies to a dealership agreement that exists or is entered into on or after the date this Act comes into force.