

IC 15-12-3

Chapter 3. Repurchase of Farm or Industrial Machinery Inventory

IC 15-12-3-1

Application of chapter

Sec. 1. (a) This chapter applies to the following:

- (1) Contracts that may be terminated or altered at will.
- (2) Contracts formed or renewed after June 30, 1989.

(b) This chapter may not be construed to impair the obligation of a contract in violation of Article 1, Section 24 of the Constitution of the State of Indiana.

(c) This chapter does not affect a security interest that a wholesaler, manufacturer, or distributor may have in a retailer's inventory.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-2

"All terrain vehicle"

Sec. 2. As used in this chapter, "all terrain vehicle" has the meaning set forth in IC 14-8-2-5.7.

As added by P.L.2-2008, SEC.3. Amended by P.L.86-2010, SEC.9.

IC 15-12-3-3

"Current net price"

Sec. 3. As used in this chapter, "current net price" means:

- (1) the price listed by a wholesaler, manufacturer, or distributor of inventory in effect at the time a contract is terminated; minus
- (2) an applicable trade or cash discount.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-4

"Farm or industrial machinery"

Sec. 4. (a) As used in this chapter, "farm or industrial machinery" means any of the following:

- (1) A farm implement.
- (2) A tractor.
- (3) Farm machinery.
- (4) Utility and industrial equipment.
- (5) Construction machinery, including a track and wheel tractor, a motor grader, and an excavator.
- (6) An attachment or repair part for a machine listed in subdivisions (1) through (5).

(b) The term does not include an all terrain vehicle.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-5

"Inventory"

Sec. 5. As used in this chapter, "inventory" means farm or industrial machinery held by a retailer.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-6

"Net cost"

Sec. 6. As used in this chapter, "net cost" means:

- (1) the price a retailer paid to a wholesaler, manufacturer, or distributor for inventory; minus
- (2) any discounts, retainage, and prepaid freight or return freight.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-7

"Person"

Sec. 7. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, a trust, or an unincorporated association.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-8

"Retailer"

Sec. 8. (a) As used in this chapter, "retailer" means a person engaged in the business of selling, at retail, farm or industrial machinery.

(b) The term does not include a retail seller of:

- (1) petroleum products, if the sale of petroleum products is the primary purpose of the retail seller's business;
- (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
- (3) automotive care and replacement products.

(c) The term includes the heirs, personal representative, guardian, or receiver of a retailer.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-9

"Retainage"

Sec. 9. As used in this chapter, "retainage" refers to various purchase, invoice, and other discounts held by the supplier and due the retailer at a later time.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-10

Repurchase of inventory; exceptions

Sec. 10. (a) Upon the termination of a written or an unwritten contract between a retailer and a wholesaler, manufacturer, or distributor of farm or industrial machinery under which the retailer had agreed to maintain an inventory, the wholesaler, manufacturer, or distributor shall repurchase the inventory of the retailer under section 11 of this chapter.

(b) If the retailer has an outstanding debt to the wholesaler, manufacturer, or distributor, the amount to be paid in repurchase of the inventory may be credited to the retailer's account.

(c) The requirement under subsection (a) that a wholesaler, manufacturer, or distributor repurchase inventory does not apply when a contract is terminated based upon:

- (1) the conviction of the retailer (or a principal owner or operator of the retailer) of an offense involving theft, dishonesty, or false statement; or
- (2) a fraudulent misrepresentation by the retailer to the wholesaler, manufacturer, or distributor that is material to the contract.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-11

Farm and industrial machinery repurchased; proof of purchase

Sec. 11. (a) Except as provided in section 14 of this chapter, a wholesaler, manufacturer, or distributor shall repurchase farm or industrial machinery that:

- (1) the retailer previously purchased from the wholesaler, manufacturer, or distributor; and
- (2) the retailer held as inventory on the date of the termination of the contract.

(b) For purposes of subsection (a)(1), proof of purchase from the supplier may include retail invoices from the supplier or a reference to an item in a current or past supplier price book.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-12

Repurchase price; packaging

Sec. 12. (a) The price for a repurchase under this chapter must equal the sum of:

- (1) one hundred percent (100%) of the net cost of all new, unsold, undamaged, and complete farm or industrial machinery (except repair parts); plus
- (2) one hundred percent (100%) of the current net price of all new, unused, and undamaged repair parts.

(b) Except as provided in subsection (c), a wholesaler, manufacturer, or distributor that is required to repurchase farm or industrial machinery from a retailer under this chapter shall pay freight charges incurred in shipping the farm or industrial machinery (except repair parts) back to the wholesaler, manufacturer, or distributor.

(c) A retailer shall pay freight charges incurred in shipping repair parts that are repurchased under this chapter back to the wholesaler, manufacturer, or distributor.

(d) A retailer is responsible for the packaging of all farm or industrial machinery that is repurchased from the retailer under this chapter in preparation for the shipment of the machinery back to the

wholesaler, manufacturer, or distributor.
As added by P.L.2-2008, SEC.3.

IC 15-12-3-13

Title to inventory

Sec. 13. Upon the payment to the retailer of the repurchase price under section 12 of this chapter, the title to the inventory passes to the wholesaler, manufacturer, or distributor.
As added by P.L.2-2008, SEC.3.

IC 15-12-3-14

Repurchase exceptions

Sec. 14. This chapter does not require the repurchase of any of the following:

- (1) A repair part that has a limited storage life or is subject to deterioration, including rubber items, gaskets, batteries, solvents, and lubricants.
- (2) A single repair part that is priced as a set of two (2) or more items.
- (3) Inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer, or distributor, of clear title, free and clear of all claims, liens, and encumbrances.
- (4) Inventory that the retailer desires to keep, provided the retailer has a contractual right to keep the inventory.
- (5) Inventory that is not in a new, unused, and undamaged condition.
- (6) Inventory that was ordered by the retailer on or after the date of notification of termination of the contract.
- (7) Inventory that was acquired by the retailer from a source other than the wholesaler, manufacturer, or distributor.
- (8) Complete farm and industrial machinery, except repair parts, that was purchased at least thirty-six (36) months before the date of termination.
- (9) A repair part that is in a broken or damaged package, if the package is necessary for the resale of the repair part to a customer by a retailer.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-15

Civil liability

Sec. 15. A wholesaler, manufacturer, or distributor that fails or refuses to repurchase inventory as required under this chapter within ninety (90) days after the termination of a contract is liable in a civil action to the retailer for:

- (1) one hundred percent (100%) of the current net price of repair parts;
- (2) one hundred percent (100%) of the net cost of all other inventory;

- (3) the retailer's reasonable attorney's fees;
- (4) court costs; and
- (5) interest on the amounts determined under subdivisions (1) through (2), computed at a simple interest rate that is set by the court at not less than six percent (6%) per year and not more than ten percent (10%) per year, and beginning to accrue on the sixty-first day after the termination of the contract.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-16

Repurchase after death, incapacity, or insolvency

Sec. 16. (a) If a retailer:

- (1) is an individual who dies or is incapacitated; or
- (2) is a corporation that becomes insolvent;

the retailer's heirs, personal representative, guardian, or receiver may compel a wholesaler, manufacturer, or distributor to repurchase the retailer's inventory under this chapter as if the retailer's contract had terminated.

(b) The retailer's heirs, personal representative, guardian, or receiver must exercise the right provided by this section not later than one hundred eighty (180) days after the retailer's death, incapacitation, or insolvency. However, this section does not require the repurchase of inventory if the heirs, personal representative, guardian, or receiver enters into a new contract with the wholesaler, manufacturer, or distributor.

As added by P.L.2-2008, SEC.3.

IC 15-12-3-17

Inspection of inventory

Sec. 17. A retailer, wholesaler, manufacturer, or distributor may, in person or through a representative, inspect all inventory and certify its acceptability when it is packed for shipment to the wholesaler, manufacturer, or distributor for repurchase under this chapter.

As added by P.L.2-2008, SEC.3.