

## **CHAPTER 51-20.1 HEAVY CONSTRUCTION EQUIPMENT FRANCHISE TERMINATION**

### **51-20.1-01. Definitions.**

As used in this chapter, unless the context requires otherwise:

1. "Distributor" means any person involved in manufacturing, wholesaling, or distributing heavy construction equipment or repair parts for heavy construction equipment, or both equipment and parts, who is authorized to, and does, enter into a written contract with a retail dealer.
2. "Heavy construction equipment" means self-propelled or pull-type construction machinery, and accessories therefor, primarily used in projects requiring paving, earthmoving, or bridge, road, highway, and commercial building construction.
3. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, or other business entity.
4. "Retail dealer" means every person engaged in the business of selling heavy construction equipment at retail.

### **51-20.1-02. Retail dealers may recover cost of equipment and parts upon discontinuance of contract with distributor.**

If a retail dealer has entered into a written contract with a distributor in which the retail dealer agrees to maintain a stock of heavy construction equipment, repair parts, or both heavy construction equipment and repair parts, and either the distributor or the retail dealer desires to cancel or discontinue the contract, the distributor shall pay to the retail dealer, unless the retail dealer desires to keep the equipment or repair parts, the following amounts:

1. A sum equal to one hundred percent of the net cost of all unused, complete heavy construction equipment.
2. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor, and were in the retail dealer's inventory on the date of cancellation or discontinuance of the contract, or were thereafter received by the retail dealer from the distributor.
3. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts.
4. Any freight charges on the equipment or repair parts paid by the retail dealer.

When a distributor has made payment in accordance with this section, title to the heavy construction equipment and repair parts shall pass to the distributor, and the distributor is entitled to possession of the heavy construction equipment and repair parts. This section is supplemental to any provisions contained in any contract between the retail dealer and the distributor relating to the return of heavy construction equipment and repair parts. Thus, the retail dealer can elect to pursue the retail dealer's remedy under this section, or under the contract relating to return of heavy construction equipment and repair parts. An election by a retail dealer to pursue a contractual remedy does not bar the retail dealer's right to the remedy provided by this section with respect to those pieces of heavy construction equipment and repair parts not affected by the contract remedy.

The provisions of this section apply to every contract now in effect which has no stated expiration date, and to all other contracts entered into after June 30, 1981. Contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981, shall be governed by the law existing prior to July 1, 1981.

### **51-20.1-03. Termination of contractual arrangements to be done with good cause - Good cause defined.**

1. Any distributor of heavy construction equipment, repair parts, or both, who enters into a written contract with any retail dealer in heavy construction equipment, repair parts, or both, in which the retail dealer agrees to maintain a stock of heavy construction

- equipment, repair parts, or both, may not terminate, cancel, or fail to renew the contract without good cause.
2. As used in this section, "good cause" means that the retail dealer has failed to comply with the requirements imposed upon the retail dealer by the terms of the written contract between the retail dealer and the distributor. The determination by the distributor that the distributor has good cause for termination, cancellation, or nonrenewal must be made in good faith.
  3. In any civil action against a distributor for violating this section, the distributor must establish that the contract termination, cancellation, or nonrenewal was made in good faith for good cause. If the distributor fails to establish good cause for its termination, cancellation, or nonrenewal action, the distributor is liable for all special and general damages sustained by the retail dealer, including, but not limited to, the costs of the litigation and reasonable attorney's fees for prosecuting the civil action. In addition, the retail dealer, where appropriate, is entitled to injunctive relief. The provisions of this section apply to contracts in effect on July 1, 1981, which have no expiration date and are continuing contracts, and to all other contracts entered into, amended, or renewed after June 30, 1981. This section does not apply to contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981. Those contracts are governed by the law as it existed prior to July 1, 1981.

**51-20.1-04. Determination of retail dealer's reimbursement.**

The extent of reimbursement of the retail dealer for heavy construction equipment and repair parts pursuant to section 51-20.1-02 must be determined by taking one hundred percent of the net cost on unused, complete heavy construction equipment, and eighty-five percent of the current net price of repair parts, as shown in the distributor's price lists or catalogs in effect at the time the contract was canceled, terminated, or not renewed.

**51-20.1-05. Failure to make reimbursement on cancellation of contract - Liability.**

If any heavy construction equipment distributor fails or refuses, upon cancellation, termination, or nonrenewal of a contract by either a retail dealer or the distributor, to make payment to the retail dealer as required by section 51-20.1-02, the distributor is liable in a civil action brought by the retail dealer for one hundred percent of the net cost of the unused, complete heavy construction equipment, plus transportation charges paid by the retail dealer, and eighty-five percent of the current net price of repair parts, plus five percent of that current net price for handling and loading plus freight charges on the repair parts which have been paid by the retail dealer. A distributor is liable for equivalent amounts in a civil action if the distributor refuses to supply heavy construction equipment, repair parts, or both, to a retail dealer who has a contract dated after June 30, 1981, or a contract with no expiration date which is continuing in force on July 1, 1981.