

1 SENATE BILL 313

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO TRADE PRACTICES; ADDING A DEFINITION TO THE
12 FRANCHISE TERMINATION ACT; REQUIRING NOTICE OF TERMINATION OF
13 FRANCHISES; CLARIFYING APPLICABILITY OF THE FRANCHISE
14 TERMINATION ACT.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 57-23-1 NMSA 1978 (being Laws 1985,
18 Chapter 229, Section 1) is amended to read:

19 "57-23-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article 23
20 NMSA 1978 may be cited as the "Franchise Termination Act"."

21 SECTION 2. Section 57-23-2 NMSA 1978 (being Laws 1985,
22 Chapter 229, Section 2) is amended to read:

23 "57-23-2. DEFINITIONS.--As used in the Franchise
24 Termination Act:

25 A. "current price" means an amount equal to the

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1 price listed in the supplier's printed price list in effect
2 when the franchise is terminated, less applicable trade and
3 cash discounts;

4 B. "dealer cost" means an amount equal to the sum
5 of the original invoice price that the dealer paid for
6 inventory and the cost to the dealer of its delivery from the
7 supplier to the dealer, less applicable discounts;

8 C. "dealer" means a person in the business of the
9 retail sale of farm tractors, farm implements or the
10 attachments to or repair parts for farm tractors or farm
11 implements;

12 D. "franchise" means a written or oral contract or
13 agreement between a supplier and a dealer, that may be called a
14 "dealership" or by any other name, by which the dealer is
15 authorized to engage in the business of the retail sale of
16 inventory according to the methods and procedures prescribed by
17 the supplier;

18 E. "good cause" means the failure by a dealer to
19 substantially comply with essential and reasonable requirements
20 imposed upon the dealer by the franchise; provided that such
21 requirements are not different from those requirements imposed
22 on other similarly situated dealers, either by their terms or
23 in the manner of their enforcement. "Good cause" exists when:

24 (1) the dealer has transferred a controlling
25 ownership interest in the dealer's business without the

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1 supplier's written consent;

2 (2) it is found that:

3 (a) the dealer has filed a voluntary
4 petition in bankruptcy or has had an involuntary petition in
5 bankruptcy filed against the dealer that has not been
6 discharged within thirty days after the filing;

7 (b) there has been a closeout or sale of
8 a substantial part of the dealer's assets related to the
9 business; or

10 (c) there has been a commencement of
11 dissolution or liquidation of the dealer;

12 (3) there has been a deletion, addition or
13 change in dealer locations without the prior written approval
14 of the supplier;

15 (4) the dealer has defaulted under any chattel
16 mortgage or other security agreement between the dealer and the
17 supplier, or there has been a revocation of any guarantee of
18 the dealer's present or future obligations to the supplier;
19 provided, however, that "good cause" shall not exist if a
20 person revokes any guarantee in connection with or following
21 the transfer of such person's entire ownership interest in the
22 dealer unless the supplier requires the person to execute a new
23 guarantee of the dealer's present or future obligations in
24 connection with the transfer of ownership interest;

25 (5) the dealer has failed to operate in the

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1 normal course of business for seven consecutive days or has
2 otherwise abandoned the dealer's business;

3 (6) the dealer has pleaded guilty to or has
4 been convicted of a felony affecting the relationship between
5 the dealer and supplier;

6 (7) the dealer has engaged in conduct that is
7 injurious or detrimental to the dealer's customers or to the
8 public welfare or the representation or reputation of the
9 supplier's product; or

10 (8) the dealer has consistently failed to meet
11 and maintain the supplier's requirements for reasonable
12 standards and performance objectives, so long as the supplier
13 has given the dealer reasonable standards and performance
14 objectives that are based on the manufacturer's experience in
15 other comparable market areas;

16 ~~[E.]~~ F. "inventory" means new or unused farm
17 tractors, farm implements, utility tractors, industrial
18 tractors, attachments and repair parts that are provided by a
19 supplier to a dealer under a franchise ~~[agreement]~~ and that
20 were purchased within thirty-six months of the termination of
21 the franchise or were listed in the supplier's current sales
22 manual at the time of termination; and

23 ~~[F.]~~ G. "supplier" means a manufacturer, wholesaler
24 or distributor of farm tractors, farm implements, utility
25 tractors or industrial tractors or the attachments to or repair

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1 parts for that equipment."

2 SECTION 3. A new section of the Franchise Termination Act
3 is enacted to read:

4 "[NEW MATERIAL] CONTENTS OF SUPPLIER NOTICE OF
5 TERMINATION--SUPPLIER FAILURE TO APPROVE OR DENY REQUEST--DEATH
6 OF DEALER--TERMINATION OF FRANCHISE.--

7 A. Except as otherwise provided in this section, a
8 supplier shall provide a dealer at least one hundred eighty
9 days' prior written notice of termination of a franchise. The
10 notice shall state all reasons constituting good cause for the
11 termination and shall state that the dealer has sixty days in
12 which to cure any claimed deficiency. If all claimed
13 deficiencies are rectified within sixty days, the notice shall
14 be void. A supplier shall not terminate a franchise for the
15 reason set forth in Paragraph (8) of Subsection E of Section
16 57-23-2 NMSA 1978 unless the supplier gives the dealer notice
17 of such action at least two years before the effective date of
18 the action. If the dealer satisfies the supplier's
19 requirements for reasonable standards or performance objectives
20 before the expiration of the two-year notice period, the notice
21 shall be void and the franchise will continue in full force and
22 effect. The notice and right-to-cure provisions under this
23 section shall not apply if the reason for termination is for
24 any reason set forth in Paragraphs (1) through (7) of
25 Subsection E of Section 57-23-2 NMSA 1978.

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1 B. If a supplier has contractual authority to
2 approve or deny a request for a sale or transfer of a dealer's
3 business or an equity ownership interest in the dealer's
4 business, the supplier shall approve or deny such a request
5 within sixty days after receiving a written request from the
6 dealer. If the supplier has neither approved nor denied the
7 request within the sixty-day period, the request shall be
8 deemed approved. The dealer's request shall include reasonable
9 financial, personal background, character reference and work
10 history information for the acquiring persons. If a supplier
11 denies a request made pursuant to this subsection, the supplier
12 shall provide the dealer with a written notice of the denial
13 that states the reasons for the denial. A supplier may only
14 deny a request based on the failure of the proposed transferees
15 to meet the reasonable requirements consistently imposed by the
16 supplier in determining approval of the transfer or approvals
17 of new dealers.

18 C. If a dealer dies and the supplier has
19 contractual authority to approve or deny a request for a sale
20 or transfer of the dealer's business or equity ownership
21 interest in the dealer's business, the dealer's estate or such
22 other person with authority to transfer assets of the dealer
23 shall have one hundred eighty days to submit to the supplier a
24 written request for a sale or transfer of the business or
25 equity ownership interest. If the request is timely submitted,

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1 the supplier shall approve or deny the request in accordance
2 with Subsection B of this section. Notwithstanding anything to
3 the contrary contained in the Franchise Termination Act, any
4 attempt by the supplier to terminate the franchise as a result
5 of the death of a dealer will be delayed until there has been
6 compliance with the terms of this section or the one-hundred-
7 eighty-day period has expired, as applicable."

8 SECTION 4. Section 57-23-3 NMSA 1978 (being Laws 1985,
9 Chapter 229, Section 3) is amended to read:

10 "57-23-3. TERMINATION OF FRANCHISE--RETURN OF
11 INVENTORY.--

12 A. A dealer shall give the supplier at least thirty
13 days' prior written notice of termination of a franchise. A
14 supplier shall not terminate a franchise without good cause.

15 [~~A.~~] B. If on termination of a franchise, the
16 dealer delivers to the supplier the inventory that was
17 purchased from the supplier and that is held by the dealer on
18 the date of termination, the supplier shall pay to the dealer:

19 (1) the dealer cost of the new, unsold,
20 undamaged and complete farm tractors, farm implements, utility
21 tractors, industrial tractors and attachments returned by the
22 dealer;

23 (2) an amount equal to ninety percent of the
24 current price of new, undamaged repair parts returned by the
25 dealer; and

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1 (3) an amount equal to an additional five
2 percent of the current price of new, undamaged repair parts
3 returned by the dealer, unless the supplier performs the
4 handling, packing and loading of the parts, in which case no
5 additional amount is required under this paragraph.

6 [~~B.~~] C. The supplier may subtract from the sum due
7 under Subsection [~~A.~~] B. of this section the amount of debts owed
8 by the dealer to the supplier. The supplier and dealer are
9 each responsible for one-half of the cost of delivering the
10 inventory to the supplier.

11 [~~C.~~] D. The supplier shall pay the amount due under
12 this section before the sixty-first day after the day that the
13 supplier receives inventory from the dealer and after the
14 dealer has furnished proof that the inventory was purchased
15 from the supplier.

16 [~~D.~~] E. On payment of the amount due under this
17 section, title to the inventory is transferred to the
18 supplier."

19 SECTION 5. A new section of the Franchise Termination Act
20 is enacted to read:

21 "[NEW MATERIAL] CHOICE OF LAW--ATTORNEY FEES--VALIDITY.--
22 An attempted waiver of a provision of the Franchise Termination
23 Act or application of the Franchise Termination Act shall be
24 void. Any provision in a franchise that purports to elect the
25 application of the law of a state other than this state shall

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1 be void. Any provision in a franchise that requires a dealer
2 to pay attorney fees incurred by a supplier shall be void."

3 SECTION 6. A new section of the Franchise Termination Act
4 is enacted to read:

5 "[NEW MATERIAL] SUPPLEMENTAL PROVISIONS.--The provisions
6 of the Franchise Termination Act shall be supplemental to any
7 franchise between the dealer and the supplier that provides the
8 dealer with greater protection. The dealer may elect to pursue
9 the dealer's contract remedy or the remedy provided by state
10 law or both, and an election by the dealer to pursue such
11 remedies shall not bar the dealer's right to exercise any other
12 remedies that may be granted at law or in equity."

13 SECTION 7. A new section of the Franchise Termination Act
14 is enacted to read:

15 "[NEW MATERIAL] CIVIL ACTIONS--ATTORNEY FEES.--A person
16 who is injured in the person's business or property by a
17 violation of the Franchise Termination Act or because the
18 person refuses to accede to a proposal for an arrangement that,
19 if consummated, would be in violation of the Franchise
20 Termination Act may bring a civil action in a court of
21 competent jurisdiction in this state to enjoin further
22 violations and to recover the damages sustained by the person
23 together with the costs of the suit, including a reasonable
24 attorney fee."

25 SECTION 8. APPLICABILITY.--The provisions of this act

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1 apply to:

2 A. all franchises now in effect that have no
3 expiration date and are continuing contracts; and

4 B. all other franchises entered into or renewed
5 after enactment of this act.

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