

Montana Code Annotated 2011

BUY BACK LAWS

30-11-701. Definitions. As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

(c) new motor vehicles, trucks, trailers, semitrailers, pole trailers, travel trailers, and repair parts sold by a dealer as defined in [61-1-101](#);

(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in [61-1-101](#), and repair parts;

(e) snowmobiles, as defined in [23-2-601](#), and repair parts;

(f) off-highway vehicles, as defined in [23-2-801](#), and repair parts; and

(g) vessels, as defined in [23-2-502](#), detachable motors or engines used to propel vessels, and repair parts.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers.

History: En. Sec. 1, Ch. 338, L. 1983; amd. Sec. 1, Ch. 297, L. 1985; amd. Sec. 1, Ch. 51, L. 1989; amd. Sec. 37, Ch. 542, L. 2005; amd. Sec. 1, Ch. 168, L. 2009.

30-11-702. Repurchase of inventory items upon cancellation of dealership or distribution contract. (1) If a retailer enters into a written dealership contract and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

(2) If a wholesaler enters into a written distribution contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler, or credit to the wholesaler's account if the wholesaler has outstanding any sums owing to the manufacturer or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

(3) Payment or allowance of credit to the retailer's or wholesaler's account of the sum required in subsection (1) or (2) must be made within 60 days of the return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

History: En. Sec. 2, Ch. 338, L. 1983; amd. Sec. 2, Ch. 297, L. 1985; amd. Sec. 8, Ch. 522, L. 1991.

30-11-703. Excepted inventory. The following inventory is not subject to the repurchase requirements of [30-11-702](#):

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

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

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

History: En. Sec. 3, Ch. 338, L. 1983; amd. Sec. 940, Ch. 56, L. 2009.

30-11-704. Repurchase of inventory of deceased retailer or wholesaler. If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler entitled to payment under this part dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in [30-11-702](#).

History: En. Sec. 4, Ch. 338, L. 1983; amd. Sec. 3, Ch. 297, L. 1985.

30-11-705. Reimbursement for or repurchase of signs, special equipment, and special tools. Upon the termination, cancellation, nonrenewal, or refusal to continue a dealership contract by a wholesaler, manufacturer, or distributor, the wholesaler, manufacturer, or distributor shall pay the retailer:

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, if the acquisition of the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or

(b) if the special equipment has a service agreement or the special tools are leased by the retailer, the amounts that are required to terminate the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of transporting, handling, packing, and loading the signs, special equipment, and special tools.

History: En. Sec. 1, Ch. 177, L. 2001.

30-11-706 through 30-11-710 reserved.

30-11-711. Rights not affected. (1) This part does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's or wholesaler's account any amount previously credited or paid as a discount incident to the retailer's or wholesaler's purchase of the goods.

(2) This part does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer or wholesaler.

History: En. Sec. 5, Ch. 338, L. 1983; amd. Sec. 4, Ch. 297, L. 1985.

30-11-712. Civil liability. If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by [30-11-702](#), the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, the retailer's or wholesaler's attorney fees, and court costs.

History: En. Sec. 6, Ch. 338, L. 1983; amd. Sec. 5, Ch. 297, L. 1985.

30-11-713. Remedy as supplemental. (1) The provisions of this part are supplemental to any agreement between:

(a) the retailer and wholesaler, manufacturer, or distributor governing the inventory; or

(b) the wholesaler and manufacturer or distributor governing the inventory.

(2) The retailer or wholesaler may elect to pursue either contract remedies or the remedy

provided in [30-11-702](#). An election to pursue contract remedies does not bar the retailer's or wholesaler's right to the remedy provided in 30-11-702 with regard to any inventory not covered by contract.

History: En. Sec. 7, Ch. 338, L. 1983; amd. Sec. 6, Ch. 297, L. 1985; amd. Sec. 941, Ch. 56, L. 2009.

30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in [61-4-201](#), by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of labor and industry established in [2-15-1701](#).

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed the retiring dealer in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in [30-11-801](#) through [30-11-803](#) and [30-11-811](#), means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [30-11-804](#) through [30-11-809](#), means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

History: En. Sec. 1, Ch. 45, L. 1985; amd. Sec. 1, Ch. 522, L. 1991; amd. Sec. 63, Ch. 483, L. 2001.

30-11-802. Cancellation and alteration of dealerships. No grantor may, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 45, L. 1985.

30-11-803. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy such default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 45, L. 1985.

30-11-804. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated member or members of the family of the dealer, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

History: En. Sec. 2, Ch. 522, L. 1991.

30-11-805. Refusal to honor succession to ownership -- notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [30-11-806](#), the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: En. Sec. 3, Ch. 522, L. 1991.

30-11-806. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor the family member's or successor's succession to the ownership and operation of the dealership may, within the 60-day period provided for in [30-11-805](#), file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to

receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: En. Sec. 4, Ch. 522, L. 1991; amd. Sec. 942, Ch. 56, L. 2009.

30-11-807. Written designation of succession unaffected. Sections [30-11-804](#) through [30-11-809](#) do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

History: En. Sec. 5, Ch. 522, L. 1991; amd. Sec. 943, Ch. 56, L. 2009.

30-11-808. Illegal cancellation of dealership based on natural disaster. A grantor may not attempt or threaten to terminate, cancel, fail to renew, or substantially change the circumstances of a dealership if the attempt or threat is based on the results of a natural disaster, including a sustained drought, in the dealership market area.

History: En. Sec. 6, Ch. 522, L. 1991.

30-11-809. Civil damages. A dealer suffering pecuniary loss due to a violation of [30-11-804](#) through [30-11-809](#) who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

History: En. Sec. 7, Ch. 522, L. 1991.

30-11-810 reserved.

30-11-811. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against such grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 4, Ch. 45, L. 1985.

30-11-901. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Construction equipment" means any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work.

(3) "Dealer" means a person who is a grantee of a construction equipment dealership situated in this state.

(4) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in [61-4-201](#), by which a person is granted the right to sell or distribute construction equipment, in which there is a community of interest in the business of offering, selling, or distributing construction equipment.

(5) "Department" means the department of labor and industry established in [2-15-1701](#).

(6) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(7) "Designated successor" means a person designated in writing by the retiring dealer to succeed in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal

representative and the testamentary trustee of a deceased dealer.

(8) (a) "Good cause", when used in [30-11-902](#), [30-11-903](#), and [30-11-909](#), means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or
(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in [30-11-904](#) through [30-11-908](#), means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

History: En. Sec. 1, Ch. 180, L. 2001; amd. Sec. 221(1), Ch. 483, L. 2001.

30-11-902. Cancellation and alteration of dealerships. A grantor may not, directly or indirectly, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.

History: En. Sec. 2, Ch. 180, L. 2001.

30-11-903. Notice of termination or change in dealership. (1) Except as provided in subsections (2) and (3), a grantor shall provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void.

(2) If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms.

(3) The notice provisions of this section do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

History: En. Sec. 3, Ch. 180, L. 2001.

30-11-904. Transfer. A grantor may not unreasonably withhold consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership to a designated family member, to the principal owner of the dealership, or to a person whom the dealer wishes to designate as a designated successor. The grantor may require that the designated successor or designated family member meet the reasonable requirements of the grantor. The requirements must be specified and made available to any dealer upon request but may not extend beyond business, financial, character, and experience qualifications. If a grantor determines that a proposed transferee does not meet the requirements, the grantor shall give the dealer written notice stating the specific reasons for withholding consent.

History: En. Sec. 4, Ch. 180, L. 2001.

30-11-905. Refusal to honor succession to ownership -- notice required. (1) If a grantor believes that good cause exists for refusing to honor the succession to the ownership and

operation of a dealership by a designated family member or by a designated successor under the existing franchise agreement, the grantor may, within 30 days of receipt of notice of the designated family member's or designated successor's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member or designated successor and the department notice of the grantor's refusal to honor the succession and of the grantor's intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and the intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date the notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the designated family member or designated successor and the department or if the department rules in favor of the complainant in a hearing held pursuant to [30-11-906](#), the franchise agreement must continue in effect subject to termination only as otherwise permitted by law.

History: En. Sec. 5, Ch. 180, L. 2001.

30-11-906. Procedure to determine right to succeed. (1) A designated family member or designated successor who receives notice of the grantor's refusal to honor succession to the ownership and operation of the dealership may, within the 60-day period provided for in [30-11-905](#), file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The grantor shall establish good cause for refusal to honor the succession to ownership.

(3) The franchise agreement must continue in effect until the final determination of the issues raised in the complaint.

(4) If the grantor prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 180, L. 2001.

30-11-907. Written designation of succession unaffected. Sections [30-11-904](#) through [30-11-908](#) do not preclude a dealer from designating any person as the dealer's successor by written instrument filed with the grantor.

History: En. Sec. 7, Ch. 180, L. 2001.

30-11-908. Civil damages. A dealer suffering pecuniary loss due to a violation of [30-11-904](#) through [30-11-908](#) who prevails in a civil action for the loss is entitled to damages equal to the pecuniary loss, together with court costs and reasonable attorney fees.

History: En. Sec. 8, Ch. 180, L. 2001.

30-11-909. Action for damages and injunctive relief. If any grantor violates this part, a dealer may bring an action against the grantor in any court of competent jurisdiction for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action, including reasonable attorney fees, and the dealer also may be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances.

History: En. Sec. 9, Ch. 180, L. 2001.