

1 HOUSE BILL 398

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

3 INTRODUCED BY

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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.
15

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 new or unused farm tractors, farm implements,
10 utility tractors, industrial tractors, construction equipment,
11 outdoor power equipment or the attachments to or repair parts
12 for new or unused farm tractors, ~~[or]~~ farm implements, utility
13 tractors, industrial tractors, construction equipment or
14 outdoor power equipment;

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

21 E. "good cause" means the failure by a dealer to
22 substantially comply with essential and reasonable requirements
23 imposed upon the dealer by the franchise; provided that such
24 requirements are not different from those requirements imposed
25 on other similarly situated dealers, either by their terms or

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1 in the manner of their enforcement. "Good cause" exists when:

2 (1) the dealer has transferred a controlling
3 ownership interest in the dealer's business without the
4 supplier's written consent;

5 (2) it is found that:

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

10 (b) there has been a closeout or sale of
11 a substantial part of the dealer's assets related to the
12 business; or

13 (c) there has been a commencement of
14 dissolution or liquidation of the dealer;

15 (3) there has been a deletion, addition or
16 change in dealer locations without the prior written approval
17 of the supplier;

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

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1 to execute a new guarantee of the dealer's present or future
2 obligations in connection with the transfer of ownership
3 interest;

4 (5) the dealer has failed to operate in the
5 normal course of business for seven consecutive days or has
6 otherwise abandoned the dealer's business;

7 (6) the dealer has pleaded guilty to or has
8 been convicted of a felony affecting the relationship between
9 the dealer and supplier;

10 (7) the dealer has engaged in conduct that is
11 injurious or detrimental to the dealer's customers or to the
12 public welfare or the representation or reputation of the
13 supplier's product; or

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

20 ~~[E.]~~ F. "inventory" means new or unused farm
21 tractors, farm implements, utility tractors, industrial
22 tractors, construction equipment, outdoor power equipment,
23 attachments and repair parts that are provided by a supplier to
24 a dealer under a franchise ~~[agreement]~~ and that were purchased
25 within thirty-six months of the termination of the franchise or

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1 were listed in the supplier's current sales manual at the time
2 of termination; and

3 ~~[F-]~~ G. "supplier" means a manufacturer, wholesaler
4 or distributor of new or unused farm tractors, farm implements,
5 utility tractors, ~~[or]~~ industrial tractors, construction
6 equipment or outdoor power equipment or the attachments to or
7 repair parts for that equipment."

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

10 "[NEW MATERIAL] CONTENTS OF SUPPLIER NOTICE OF
11 TERMINATION--SUPPLIER FAILURE TO APPROVE OR DENY REQUEST--DEATH
12 OF DEALER--TERMINATION OF FRANCHISE.--

13 A. A dealer shall give a supplier at least thirty
14 days' prior written notice of termination of a franchise. A
15 supplier shall not terminate a franchise without good cause.
16 The supplier shall have the burden of proof to establish that
17 good cause exists.

18 B. Except as otherwise provided in this section, a
19 supplier shall provide a dealer at least one hundred eighty
20 days' prior written notice of termination of a franchise. The
21 notice shall state all reasons constituting good cause for the
22 termination and shall state that the dealer has sixty days in
23 which to cure any claimed deficiency. If all claimed
24 deficiencies are rectified within sixty days, the notice shall
25 be void. A supplier shall not terminate a franchise for the

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1 reason set forth in Paragraph (8) of Subsection E of Section
2 57-23-2 NMSA 1978 unless the supplier gives the dealer notice
3 of such action at least two years before the effective date of
4 the action. If the dealer satisfies the supplier's
5 requirements for reasonable standards or performance objectives
6 before the expiration of the two-year notice period, the notice
7 shall be void and the franchise will continue in full force and
8 effect. The notice and right-to-cure provisions under this
9 section shall not apply if the reason for termination is for
10 any reason set forth in Paragraphs (1) through (7) of
11 Subsection E of Section 57-23-2 NMSA 1978.

12 C. If a supplier has contractual authority to
13 approve or deny a request for a sale or transfer of a dealer's
14 business or an equity ownership interest in the dealer's
15 business, the supplier shall approve or deny such a request
16 within sixty days after receiving a written request from the
17 dealer. If the supplier has neither approved nor denied the
18 request within the sixty-day period, the request shall be
19 deemed approved. The dealer's request shall include reasonable
20 financial, personal background, character reference and work
21 history information for the acquiring persons. If a supplier
22 denies a request made pursuant to this subsection, the supplier
23 shall provide the dealer with a written notice of the denial
24 that states the reasons for the denial. A supplier may only
25 deny a request based on the failure of the proposed transferees

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1 to meet the reasonable requirements consistently imposed by the
2 supplier in determining approval of the transfer or approvals
3 of new dealers.

4 D. If a dealer dies and the supplier has
5 contractual authority to approve or deny a request for a sale
6 or transfer of the dealer's business or equity ownership
7 interest in the dealer's business, the dealer's estate or such
8 other person with authority to transfer assets of the dealer
9 shall have one hundred eighty days to submit to the supplier a
10 written request for a sale or transfer of the business or
11 equity ownership interest. If the request is timely submitted,
12 the supplier shall approve or deny the request in accordance
13 with Subsection C of this section. Notwithstanding anything to
14 the contrary contained in the Franchise Termination Act, any
15 attempt by the supplier to terminate the franchise as a result
16 of the death of a dealer will be delayed until there has been
17 compliance with the terms of this section or the one-hundred-
18 eighty-day period has expired, as applicable."

19 SECTION 4. 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 5. 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 6. A new section of the Franchise Termination Act
14 is enacted to read:

15 "[NEW MATERIAL] CIVIL ACTIONS--ATTORNEY FEES.--If a
16 supplier violates any provision of the Franchise Termination
17 Act, a dealer may bring an action against such supplier in a
18 court of competent jurisdiction for damages sustained by the
19 dealer as a consequence of the supplier's violation, including
20 damages for lost profits, together with the actual costs of the
21 action, including the dealer's attorney and paralegal fees and
22 costs of arbitrators. The dealer also may be granted
23 injunctive relief against unlawful termination. The remedies
24 set forth in this section shall not be deemed exclusive and
25 shall be in addition to any other remedies permitted by law."

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SECTION 7. APPLICABILITY.--The provisions of this act apply to:

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

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