PLEASE NOTE

This document, prepared by the Legislative Counsel Office, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

This document is not the official version of the Act. The Act and the amendments as printed under the authority of the Queen’s Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the Table of Public Acts.

If you find any errors or omissions in this consolidation, please contact:

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1. In this Act

(a) “Court” means the Supreme Court;

(b) “dealer” means a person, corporation, or partnership carrying on a retail business in which the person, corporation, or partnership
(i) leases, with or without the right to purchase, or sells new farm machinery having a retail value of $20,000 or more to farmers,
(ii) sells repair parts for the farm machinery, and
(iii) operates a maintenance and repair service shop for farm machinery;

(c) “dealership agreement” means a written or oral agreement between a dealer and a vendor;

(d) “farm machinery” means any equipment, implement, or machinery that is used or intended for use in farming operations, including any combine, tractor, implement, or attachment, but not including a motor vehicle within the meaning of the Highway Traffic Act R.S.P.E.I. 1988, Cap. H-5;

(e) “Minister” means the Minister of the Crown designated by the Lieutenant Governor in Council to administer this Act;

(f) “terminate”, in relation to a dealership agreement, means to terminate, cancel, fail to renew, fail to extend or substantially change the competitive circumstances of a dealership agreement;

(g) “vendor” means
   (i) a manufacturer of farm machinery or repair parts who
      (A) sells, consigns, or delivers farm machinery or repair parts to a dealer for resale by the dealer, or to a distributor or supplier for resale by a dealer, or
      (B) leases or delivers farm machinery to a dealer for the purposes of being relet by the dealer, or
   (ii) a distributor or supplier of farm machinery or repair parts who
      (A) sells, consigns, or delivers farm machinery or repair parts to a dealer for resale by the dealer, or
      (B) leases or delivers farm machinery to a dealer for the purpose of being relet by the dealer. 2000,c.3,s.1; 2008,c.20,s.72(32).
2. This Act applies to every dealership agreement
   (a) whether entered into before or after this Act comes into force; and
   (b) despite any provision to the contrary in the agreement.
   2000,c.3,s.2.

3. No vendor shall terminate a dealership agreement
   (a) without cause;
   (b) without an order of the Court made pursuant to section 5; and
   (c) without complying with all conditions of an order made
       pursuant to section 5. 2000,c.3,s.3.

4. (1) No vendor shall
   (a) directly or indirectly discriminate in the prices charged for farm
       machinery of like grade and quality to similarly situated dealers;
   (b) impose substantially different contractual requirements on
       similarly situated dealers; or
   (c) discriminate against or penalize a dealer for carrying on business
       as a dealer or agent for another vendor, or selling or servicing the
       product of another vendor.

   (2) Every vendor who contravenes subsection (1) is guilty of an
       offence and is liable on summary conviction
       (a) to a fine of not more than $150,000; and
       (b) in the case of a continuing offence, to a further fine of not more
           than $10,000 for each day or part of a day during which the offence
           continues.

   (3) In addition to any penalty imposed with respect to a contravention
       mentioned in subsection (2), the convicting court may order the vendor
       convicted of the offence to comply with any terms of a dealership
       agreement that the vendor has contravened. 2000,c.3,s.4.

5. (1) A vendor who wishes to terminate a dealership agreement shall
   apply to the Court for a determination of whether the vendor has cause to
   terminate the agreement.

   (2) At the request of either the dealer or vendor at any time after the
       application is made pursuant to subsection (1) the Court may make an
       interim order imposing any conditions on either the vendor or dealer, or
       both, that the Court considers necessary to protect their respective
       business interests until a determination is made pursuant to subsection
       (3).

   (3) If the Court determines that the vendor has cause to terminate the
       agreement, the Court
(a) shall make an order to that effect; and
(b) may impose conditions on the termination, including allowing
the dealer an opportunity to correct the default. 2000,c.3,s.5.

6. For the purposes of a determination pursuant to section 5, any of the
following circumstances constitute cause to terminate a dealership
agreement:

(a) the dealer has made an assignment in bankruptcy or has been
petitioned into bankruptcy, and has not been discharged from
bankruptcy;
(b) the dealer’s farm machinery, or a substantial part of it, is being
liquidated, and the liquidation materially affects the contractual
relationship between the dealer and vendor;
(c) the dealer has defaulted under a security agreement between the
dealer and vendor, or a guarantee of the dealer’s financial
obligations to the vendor has been revoked or discontinued;
(d) the dealer has failed to operate in the normal course of business
for 14 consecutive days, or otherwise abandoned the dealership;
(e) the dealer has pleaded or been found guilty of an offence
affecting the contractual relationship between the dealer and vendor;
or
(f) the dealer has failed to substantially comply with the essential
and reasonable requirements of the dealership agreement, if the
requirements are not different from the requirements imposed on
other similarly situated dealers. 2000,c.3,s.6.

7. For the purposes of a determination pursuant to section 5, none of the
following circumstances constitute cause to terminate a dealership
agreement:

(a) the executive management or ownership of the dealer has
changed, unless the change is detrimental to the representation or
reputation of the vendor’s products;
(b) the dealer has refused to purchase or accept delivery of farm
machinery or a service from the vendor unless the farm machinery
or service would normally be purchased by similarly situated dealers
as an essential part of the operation of the dealer or for the repair of
farm machinery commonly sold by the dealer;
(c) the vendor desires further market penetration, while recognizing
that the vendor may require the dealer to achieve, in comparison
with other similarly situated dealers, a reasonable sales performance
level of the vendor’s product; or
(d) the dealer is carrying on business as a dealer or agent for another
vendor, or selling or servicing the product of another vendor. 2000,c.3,s.7.
8. (1) At the request of a dealer or vendor, the Court shall, by order, appoint a mediator who shall endeavour to facilitate the settlement of a dispute.

(2) The Court
   (a) shall fix the length of a mediation period; and
   (b) may shorten or lengthen the mediation period at the request of the dealer or vendor.

(3) The dealer and vendor may agree, with the Court’s approval, to shorten or lengthen the mediation period.

(4) No further proceedings may be taken in an application made pursuant to subsection 5(1) during the mediation period without leave of the Court.

(5) Where the dealer and vendor agree on the person to be appointed as mediator, the Court shall appoint that person.

(6) Where the dealer and vendor do not agree on the person to be appointed as mediator, the Court shall appoint a mediator from the list of persons maintained pursuant to subsection (7).

(7) The Minister
   (a) shall establish and maintain; and
   (b) may share with dealers and vendors,
   a list of persons who have indicated to the Minister their willingness to act as mediators and have, in the opinion of the Minister, qualities and experience that make them suitable persons to act as mediators.

(8) The mediator shall meet and confer with the dealer and vendor as often as the mediator considers necessary.

(9) The dealer and vendor shall participate in the mediation in good faith.

(10) On or before the last day of the mediation, the mediator
    (a) shall file a report with the Court that either
        (i) sets out the agreement reached by the dealer and vendor, or
        (ii) states only that the dealer and vendor did not reach an agreement; and
    (b) shall give copies of the report to the dealer and vendor promptly after filing the report.

(11) No evidence of anything said or communication made in the course of the mediation is admissible in any proceeding.
(12) The Court shall
(a) require the parties to pay the fees and expenses of the mediator;
and
(b) specify the proportions or amounts of the fees and expenses that
each party shall pay.

(13) No mediator is liable for any loss or damage suffered by any
person by reason of any action or omission of the mediator in
the discharge of the mediator’s duties pursuant to this Act. 2000,c.3,s.8.

9. The following provisions in a dealership agreement are void:
(a) a provision allowing for termination of the agreement without
cause;
(b) a provision requiring the dealer to carry on exclusive dealings
with the vendor, so as to prevent the dealer from, or penalize
the dealer for, carrying on business as a dealer or agent of another
vendor, or selling or servicing the product of another vendor;
(c) a provision that limits, modifies or makes inapplicable a benefit
or remedy available to a dealer pursuant to this Act. 2000,c.3,s.9.

10. (1) A dealer who considers that the dealer’s dealership agreement
with a vendor has been terminated in contravention of section 3 may
apply to the Court for relief.

(2) On an application pursuant to subsection (1), the Court may make
any order that it considers appropriate, including one or more of the
following:
(a) an order directing the vendor to reinstate a dealership agreement
or restore any rights under a dealership agreement that have been
terminated
(b) an order enjoining the vendor from doing or continuing to do
anything that contravenes this Act;
(c) an order awarding damages to the dealer for any loss resulting
from the vendor’s contravention of this Act; or
(d) an interim order of the kind referred to in clause (a) or (b).

(3) Subsections (1) and (2) apply despite any other penalty that may
be imposed on the vendor pursuant to this Act with respect to the
vendor’s contravention of section 3. 2000,c.3,s.10.

11. Nothing in this Act precludes a vendor and a dealer from terminating
a dealership agreement by mutual agreement. 2000,c.3,s.11.

12. No person is entitled to any compensation from the Government of
Prince Edward Island as the result of the application, enforcement, or
operation of this Act and the regulations. 2000,c.3,s.12.
13. The Lieutenant Governor in Council may make regulations
(a) prescribing circumstances in addition to those listed in section 6
that constitute cause for termination of a dealership agreement;
(b) prescribing circumstances in addition to those listed in section 7
that do not constitute cause for termination of a dealership
agreement;
(c) establishing a list of mediators pursuant to subsection 8(7);
(c) as necessary for carrying out the purposes of this Act.
2000,c.3,s.13.