

By: Hegar

S.B. No. 1148

A BILL TO BE ENTITLED

AN ACT

relating to dealer agreements regarding the purchase and sale of certain all-terrain vehicles or equipment or machinery used for agricultural, off-road construction, utility, industrial, mining, forestry, and landscaping purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 52 to read as follows:

CHAPTER 52. AGRICULTURAL, OFF-ROAD CONSTRUCTION, UTILITY, INDUSTRIAL, MINING, FORESTRY, LANDSCAPING, AND OUTDOOR POWER

EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. SHORT TITLE. This chapter may be cited as the Fair Practices of Equipment Manufacturers, Wholesale Distributors, and Dealers Act.

Sec. 52.002. DEFINITIONS. In this chapter:

(1) "Current net parts cost" means an amount equal to the current price of a repair part, less any trade or cash discount usually granted to a dealer in the normal, ordinary course of ordering a repair part.

(2) "Current price" means:

(A) with respect to a repair part in current stock, an amount equal to the price for the repair part listed in the supplier's price list or catalog in effect:

1 (i) when a dealer agreement is canceled or
2 not renewed; or

3 (ii) for purposes of Subchapter E, when the
4 repair part is ordered; and

5 (B) with respect to a repair part that has been
6 discontinued, an amount equal to the price for a repair part in
7 current stock that:

8 (i) performs the same function and is for
9 the same purpose as the discontinued part; and

10 (ii) is listed under a different part
11 number than the discontinued part in the supplier's price list or
12 catalog in effect when a dealer agreement is canceled or not
13 renewed.

14 (3) "Dealer" means a person who is primarily engaged
15 in the business of:

16 (A) selling or leasing equipment or repair parts
17 to a consumer; and

18 (B) repairing or servicing equipment.

19 (4) "Dealer agreement" means an oral or written
20 agreement or arrangement, of definite or indefinite duration,
21 between a dealer and a supplier that provides for the rights and
22 obligations of the parties with respect to the purchase or sale of
23 equipment or repair parts.

24 (5) "Dealership" means the retail sale business
25 engaged in by a dealer under a dealer agreement.

26 (6) "Demonstrator equipment" means equipment in a
27 dealer's inventory that:

1 (A) has never been sold at retail; and

2 (B) is or has been made available to a potential
3 customer, as authorized by the supplier, without charge or under a
4 short-term rental agreement for purposes of demonstrating its
5 functions and operations and with the intent of encouraging the
6 customer to purchase the equipment.

7 (7) "Equipment":

8 (A) means:

9 (i) all-terrain vehicles, regardless of how
10 the vehicles are used; or

11 (ii) other machinery, equipment,
12 implements, or attachments used for, or in connection with, any of
13 the following purposes:

14 (a) lawn, garden, golf course,
15 landscaping, or grounds maintenance;

16 (b) planting, cultivating,
17 irrigating, harvesting, or producing agricultural or forestry
18 products;

19 (c) raising, feeding, tending to, or
20 harvesting products from livestock, or any other activity in
21 connection with those activities; or

22 (d) industrial, construction,
23 maintenance, mining, or utility activities or applications; and

24 (B) does not include self-propelled vehicles
25 designed primarily for the transportation of persons or property on
26 a street or highway.

27 (8) "Family member" means a child or other lineal

1 descendant, a son-in-law, a daughter-in-law, or the spouse of an
2 individual.

3 (9) "Index" means the purchase price index for
4 construction machinery series identification number
5 pcu333120333120 published by the Bureau of Labor Statistics of the
6 United States Department of Labor or a successor index measuring
7 substantially similar information.

8 (10) "Inventory" means equipment, repair parts, data
9 processing hardware or software, or specialized service or repair
10 tools.

11 (11) "Net equipment cost" means an amount equal to the
12 sum of the price the dealer paid to the supplier for equipment, and:

13 (A) any freight paid by the dealer from the
14 supplier's location to the dealer's location, payable at the
15 truckload rate in effect when a dealer agreement is terminated; and

16 (B) the cost of labor incurred in preparing the
17 equipment for retail sale or lease, payable at the dealer's
18 standard labor rate charged to its customers for non-warranty
19 repair work, unless a supplier has established a reasonable setup
20 time to prepare the equipment for retail sale or lease, in which
21 case the labor will be reimbursable at an amount equal to the
22 reasonable setup time in effect as of the date of delivery
23 multiplied by the dealer's standard labor rate.

24 (12) "New equipment," for purposes of determining
25 whether a dealer is a single-line dealer, means equipment that can
26 be returned to the supplier following cancellation or nonrenewal of
27 a dealer agreement under Subchapter G.

1 (13) "Person" means:

2 (A) an individual, corporation, partnership,
3 limited liability company, company, trust, or any other form of
4 business entity, including any other entity in which a person has a
5 majority interest or of which a person has control; or

6 (B) an officer, director, or other individual who
7 actively controls the activities of an entity described by
8 Paragraph (A).

9 (14) "Repair parts" means all of the parts related to
10 the repair of a piece of equipment, including a repair part that has
11 been discontinued.

12 (15) "Single-line dealer" means a dealer that:

13 (A) has purchased new construction, industrial,
14 forestry, or mining equipment from a single supplier constituting
15 75 percent or more of the dealer's total new equipment, computed on
16 the basis of net cost; and

17 (B) has a total annual average sales volume in
18 excess of \$20 million for the preceding three calendar years with
19 that single supplier, provided that the \$20 million threshold must
20 be increased each year after September 1, 2007, or the year the
21 dealer qualifies for designation as a single-line dealer, whichever
22 is later, to adjust for any percentage increase in the index from
23 January of the year immediately preceding the year of the
24 determination through January of the year on which the
25 determination is made.

26 (16) "Single-line supplier" means the supplier that
27 sells equipment described by Subdivision (15)(A) to a single-line

1 dealer.

2 (17) "Supplier" means:

3 (A) a person engaged in the business of the
4 manufacture, assembly, or wholesale distribution of equipment or
5 repair parts; or

6 (B) the person's successor in interest,
7 including:

8 (i) a purchaser of all or substantially all
9 of the assets of the person or any division or product line of the
10 person;

11 (ii) a receiver, trustee, liquidator, or
12 assignee of the person; or

13 (iii) a surviving corporation resulting
14 from a merger, liquidation, or reorganization of the person or the
15 person's intermediate successor in interest.

16 (18) "Terminate," with respect to a dealer agreement,
17 means to terminate, cancel, or fail to renew the agreement.

18 Sec. 52.003. LIBERAL CONSTRUCTION. This chapter shall be
19 liberally interpreted.

20 Sec. 52.004. WAIVER OF CHAPTER VOID. An attempted waiver of
21 a provision of this chapter or of the application of this chapter is
22 void.

23 Sec. 52.005. LIABILITY OF SUPPLIER'S SUCCESSOR IN INTEREST.
24 A supplier's successor in interest is liable for an obligation of
25 the supplier imposed under this chapter.

26 [Sections 52.006-52.050 reserved for expansion]

1 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

2 Sec. 52.051. CERTAIN PROVISIONS VOID. The following
3 provisions contained in a dealer agreement are void:

4 (1) any provision that purports to elect the
5 application of a law of another state instead of the law of this
6 state; and

7 (2) any provision that requires a dealer to pay
8 attorney's fees incurred by the supplier.

9 Sec. 52.052. CHANGE IN COMPETITIVE CIRCUMSTANCES. A
10 substantial change in the competitive circumstances of a dealer
11 agreement is considered a termination of the agreement for purposes
12 of this chapter.

13 Sec. 52.053. CHAPTER PROVISIONS SUPPLEMENTAL TO AGREEMENT
14 PROVISIONS. A provision of this chapter is supplemental to a
15 similar provision contained in a dealer agreement between a dealer
16 and supplier that may afford the dealer greater protection.

17 Sec. 52.054. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A
18 supplier may not prevent, by contract or otherwise, a dealer from
19 changing its capital structure, its ownership, or the means by or
20 through which the dealer finances its operations, if:

21 (1) the dealer gives prior notice of the change to the
22 supplier;

23 (2) the dealer at all times meets any reasonable
24 capital standards agreed to between the dealer and the supplier and
25 imposed on all other similarly situated dealers in this state; and

26 (3) the change does not affect the person with actual
27 or effective control of a majority of the voting interests of the

1 dealer.

2 Sec. 52.055. RELEASE OF LIABILITY PROHIBITED. A supplier
3 may not require a dealer to assent to a release, assignment,
4 novation, waiver, or estoppel that would release any person from
5 liability imposed by this chapter.

6 Sec. 52.056. SUCCESSION RIGHTS OF SINGLE-LINE DEALERS. An
7 agreement between a single-line supplier and a single-line dealer
8 concerning succession rights to the single-line dealer's ownership
9 interest in the dealership that was executed before the dealer's
10 death must be honored while the agreement remains in effect,
11 regardless of whether a person other than the surviving spouse or an
12 heir of the decedent is designated as the successor under the
13 agreement.

14 Sec. 52.057. TRANSFER OF INTEREST IN DEALERSHIP BY
15 SUCCESSION. (a) This section applies only to a dealer agreement
16 between a single-line dealer and single-line supplier.

17 (b) If a single-line dealer dies during the term of the
18 agreement, a family member of the dealer to whom an ownership
19 interest in the dealership passes by will or intestate succession
20 may request that the supplier enter into a new dealer agreement with
21 the family member to operate the dealership. The supplier must
22 consider and make a decision regarding the family member's request
23 before the 91st day after the date the request is received.

24 (c) If the supplier decides not to accept the family
25 member's request, the supplier shall send a written response to the
26 family member before the deadline prescribed in Subsection (b)
27 stating the supplier's decision and the specific reasons for the

1 nonacceptance.

2 (d) This section does not entitle an heir, personal
3 representative, or family member of a dealer to operate a
4 dealership without the specific written consent of the supplier.

5 Sec. 52.058. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
6 DEALER'S REQUEST. (a) This section applies only to a dealer
7 agreement, other than an agreement between a single-line dealer and
8 single-line supplier, under which the supplier has contractual
9 authority to consent to the sale or transfer of a dealer's business
10 or an equity ownership interest in the dealer's business.

11 (b) A dealer may request that the supplier consent to the
12 transfer of a dealer's business or an equity ownership interest in
13 the dealer's business to a proposed transferee. The dealer's
14 request must be in writing and must include character references
15 and reasonable financial, personal background, and work history
16 information with respect to the proposed transferee.

17 (c) Not later than the 60th day after receipt of a request
18 under Subsection (b), the supplier shall either consent to the sale
19 or transfer or send a written response to the dealer stating the
20 supplier's refusal to consent and the specific reasons for the
21 refusal. The request is considered approved if the supplier does
22 not approve or refuse to consent by the deadline.

23 (d) A supplier may refuse to consent to a request made under
24 this section only if the proposed transferee fails to meet
25 reasonable standards established and consistently imposed by the
26 supplier for purposes of determining whether to approve a new
27 dealer or a request for consent of a sale or transfer made under

1 this section.

2 Sec. 52.059. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
3 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only
4 to a dealer agreement, other than an agreement between a
5 single-line dealer and single-line supplier, under which the
6 supplier has contractual authority to consent to the sale or
7 transfer of a dealer's business or an equity ownership interest in
8 the dealer's business.

9 (b) If a dealer dies, the personal representative of the
10 dealer's estate, or any other person with authority to transfer the
11 dealer's assets, must submit a written request for the sale or
12 transfer of the business or ownership interest not later than the
13 180th day after the date of the dealer's death.

14 (c) Not later than the 60th day after receipt of a request
15 under Subsection (b), the supplier shall either consent to the sale
16 or transfer or send a written response to the personal
17 representative or other authorized person stating the supplier's
18 refusal to consent and the specific reasons for the refusal. The
19 request is considered approved if the supplier does not approve or
20 refuse to consent by the deadline.

21 (d) A supplier may refuse to consent to a request made under
22 this section only if the proposed transferee fails to meet
23 reasonable standards established and consistently imposed by the
24 supplier for purposes of determining whether to approve a new
25 dealer or a request for consent of a sale or transfer made under
26 this section.

27 (e) Notwithstanding any other provision of this chapter to

1 the contrary, any attempt by the supplier to terminate the dealer
2 agreement as a result of the death of a dealer shall be delayed
3 until there has been compliance with the terms of this section or
4 the 180-day period has expired, as applicable.

5 [Sections 52.060-52.100 reserved for expansion]

6 SUBCHAPTER C. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE
7 AGREEMENTS

8 Sec. 52.101. APPLICABILITY OF SUBCHAPTER. This subchapter
9 does not apply to a dealer agreement between a single-line dealer
10 and a single-line supplier.

11 Sec. 52.102. TERMINATION BY DEALER; WRITTEN NOTICE. A
12 dealer may terminate a dealer agreement without cause by providing
13 the supplier at least 30 days prior written notice of the
14 termination.

15 Sec. 52.103. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.
16 A supplier may not terminate a dealer agreement without good cause.

17 Sec. 52.104. GOOD CAUSE DETERMINATION. (a) Except as
18 specifically provided otherwise by this subchapter, good cause for
19 termination of a dealer agreement exists for purposes of this
20 subchapter if:

21 (1) the dealer fails to substantially comply with an
22 essential and reasonable requirement imposed on the dealer under
23 the terms of the dealer agreement, provided that such a requirement
24 is not different from a requirement imposed on all other similarly
25 situated dealers in this state either by its own terms or by the
26 manner in which it is enforced;

27 (2) the dealer or dealership has transferred a

1 controlling ownership interest in the dealership without the
2 supplier's consent;

3 (3) the dealer has filed a voluntary petition in
4 bankruptcy or an involuntary petition in bankruptcy has been filed
5 against the dealer and has not been discharged earlier than the 30th
6 day after the date the petition was filed;

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

9 (5) there has been commencement of an action or
10 proceeding for the dissolution or liquidation of the dealership;

11 (6) there has been a change in dealer or dealership
12 locations without the prior written approval of the supplier;

13 (7) the dealer has defaulted under the terms of any
14 chattel mortgage or other security agreement between the dealer and
15 the supplier;

16 (8) there has been a revocation of any guarantee of the
17 dealer's present or future obligations to the supplier, except as
18 provided by Subsection (b);

19 (9) the dealer has failed to operate in the normal
20 course of business for seven consecutive days or has otherwise
21 abandoned the dealer's business;

22 (10) the dealer has been convicted of or pleaded nolo
23 contendere to a felony involving fraudulent conduct, such as
24 embezzlement, theft, or misrepresentation affecting the
25 relationship between the dealer and supplier;

26 (11) the dealer has engaged in conduct that is
27 injurious or otherwise detrimental to:

1 (A) the dealer's customers;

2 (B) the public welfare; or

3 (C) the representation or reputation of the
4 supplier's product; or

5 (12) the dealer has consistently failed to meet and
6 maintain the supplier's requirements for reasonable standards and
7 performance objectives, so long as the supplier has provided the
8 dealer with reasonable standards and performance objectives based
9 on the supplier's experience in other comparable market areas.

10 (b) Good cause is not considered to exist for purposes of
11 Subsection (a)(8) if:

12 (1) a person revokes any guarantee of the dealer's
13 obligations to the supplier in connection with or following the
14 transfer of the person's entire ownership interest in the
15 dealership; and

16 (2) the supplier does not require the person to
17 execute a new guarantee of the dealer's present or future
18 obligations to the supplier in connection with the transfer of the
19 person's ownership interest in the dealership.

20 Sec. 52.105. NOTICE OF TERMINATION; CORRECTION OF
21 DEFICIENCY. (a) A supplier must provide a dealer with written
22 notice of the supplier's intention to terminate the dealer
23 agreement at least 180 days before the termination date of the
24 agreement unless:

25 (1) the grounds for termination of the agreement is
26 one of the reasons listed in Sections 52.104(a)(1)-(11), in which
27 case no notice is required; or

1 exists if the single-line dealer fails to comply with a requirement
2 of the agreement that is not different from a requirement imposed on
3 another similarly situated single-line dealer.

4 (b) In addition to the reason stated in Subsection (a), good
5 cause for termination of a dealer agreement exists:

6 (1) when there has been a sale or other closeout of a
7 substantial part of the single-line dealer's assets related to the
8 business;

9 (2) when there has been commencement of an action or
10 proceeding for the dissolution or liquidation of the dealership;

11 (3) when the single-line dealer has changed the
12 dealer's principal place of business or has added additional
13 locations without the supplier's prior approval, which may not be
14 unreasonably withheld;

15 (4) when the single-line dealer has substantially
16 defaulted under the terms of any chattel mortgage or other security
17 agreement between the single-line dealer and the single-line
18 supplier;

19 (5) when there has been a revocation or discontinuance
20 of any guarantee of a present or future obligation of the
21 single-line dealer to the single-line supplier;

22 (6) when the single-line dealer has failed to operate
23 in the normal course of business for seven consecutive days or has
24 otherwise abandoned the single-line dealer's business;

25 (7) when the single-line dealer has been convicted of
26 or pleaded guilty to a felony affecting the relationship between
27 the single-line dealer and single-line supplier;

1 (8) when the single-line dealer transfers an interest
2 in the dealership without the single-line supplier's consent;

3 (9) when a person with a substantial interest in the
4 ownership or control of the dealership, including an individual
5 proprietor, partner, or major shareholder, dies or withdraws from
6 the dealership without the single-line supplier's consent; or

7 (10) when a substantial reduction occurs in the
8 interest of a partner or major shareholder in the dealership
9 without the single-line supplier's consent.

10 (c) Notwithstanding Subsection (b), if the reason given for
11 termination is the dealer failed to meet or maintain the supplier's
12 requirements for market penetration, a reasonable period of time is
13 considered to have existed if the supplier has worked with the
14 dealer to gain the desired market share.

15 Sec. 52.154. NOTICE OF TERMINATION; CORRECTION OF
16 DEFICIENCY. (a) Except as provided by Section 52.155, a
17 single-line supplier shall provide a single-line dealer with at
18 least 90 days written notice of termination stating:

19 (1) each of the reasons constituting good cause for
20 the termination; and

21 (2) that the dealer has 60 days in which to correct the
22 claimed deficiency.

23 (b) If the deficiency specified in the notice is corrected
24 not later than the 60th day after receipt of the notice, the
25 termination notice is void and the dealer agreement remains in
26 effect.

27 Sec. 52.155. NOTICE OF TERMINATION NOT REQUIRED UNDER

1 CERTAIN CIRCUMSTANCES. A single-line supplier is not required to
2 give the single-line dealer notice of termination or an opportunity
3 to correct a claimed deficiency if the reason for termination is
4 contained in Sections 52.153(b)(1)-(10).

5 [Sections 52.156-52.200 reserved for expansion]

6 SUBCHAPTER E. WARRANTY CLAIMS

7 Sec. 52.201. APPLICABILITY OF SUBCHAPTER. Sections 52.202,
8 52.203, and 52.204 apply to a warranty claim submitted by a dealer
9 who has complied with the supplier's reasonable policies and
10 procedures for reimbursement of the warranty claim. A supplier's
11 warranty reimbursement policies and procedures are considered
12 unreasonable to the extent of any conflict with this subchapter.

13 Sec. 52.202. WARRANTY CLAIM. (a) This section applies to a
14 warranty claim submitted by a dealer:

15 (1) while the dealer agreement is in effect; or

16 (2) not later the 60th day after the termination or
17 expiration date of the dealer agreement, if the claim is for work
18 performed before the effective date of the termination or
19 expiration.

20 (b) Not later than the 30th day after the date a supplier
21 receives a warranty claim from a dealer, the supplier shall accept
22 or reject the claim by providing written notice to the dealer. A
23 claim not rejected before that deadline is considered accepted.

24 (c) Not later than the 30th day after the date the claim is
25 accepted or rejected, the supplier shall:

26 (1) pay all amounts owed to the dealer with respect to
27 the accepted claim; or

1 (2) send the dealer written or electronic notice of
2 the grounds for rejection of a rejected claim.

3 (d) If no grounds for rejection of a rejected claim are
4 given to the dealer or if the grounds for rejection are not
5 consistent with the supplier's grounds for rejection of a warranty
6 claim submitted by other dealers, both in the terms and manner of
7 the claim's enforcement, the claim is considered accepted.

8 Sec. 52.203. RESUBMISSION OF WARRANTY CLAIM. If a warranty
9 claim was rejected on the ground that the dealer failed to properly
10 follow the procedural or technical requirements for submission of a
11 warranty claim under this subchapter, the dealer may resubmit the
12 claim in proper form not later than the 30th day after the date the
13 dealer receives notice of the claim's rejection.

14 Sec. 52.204. PAYMENT OF WARRANTY CLAIM. (a) A supplier
15 shall reimburse warranty work performed by the dealer in accordance
16 with the reasonable and customary amount of time required to
17 complete the work, expressed in hours and fractions of hours,
18 multiplied by the dealer's established customer hourly retail labor
19 rate, which shall have previously been made known to the supplier.

20 (b) A repair part used in warranty repair work must be
21 reimbursed at the current price plus 15 percent.

22 Sec. 52.205. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR
23 INSTALLATION OF REPLACEMENT PARTS. (a) Any repair work or
24 installation of replacement parts performed with respect to
25 inventory equipment of a dealer or with respect to equipment of a
26 dealer's customers, at the request of a supplier, constitutes a
27 warranty claim for purposes of this subchapter.

1 (b) The warranty claim created under this section applies to
2 any work performed under a product improvement program.

3 Sec. 52.206. AUDIT OF WARRANTY CLAIMS. (a) Except as
4 provided by Subsection (c), a supplier may audit a warranty claim
5 paid under this subchapter until the first anniversary of the date
6 the claim was paid.

7 (b) After payment of a claim, a supplier may charge back the
8 amount of any claim that is shown by audit to have been
9 misrepresented.

10 (c) If an audit conducted under this section shows that a
11 warranty claim has been misrepresented, the supplier may audit any
12 other warranty claims submitted by the affected dealer within the
13 three-year period immediately preceding the date on which the
14 misrepresentation of the claim is found.

15 Sec. 52.207. ALTERNATE REIMBURSEMENT TERMS. (a) Instead
16 of making a claim for reimbursement under Sections 52.202, 52.203,
17 and 52.204, a dealer may choose to accept alternate reimbursement
18 terms under the terms of a written dealer agreement that requires
19 the supplier to compensate the dealer for warranty labor costs
20 either as:

21 (1) a discount in the price of the equipment to the
22 dealer; or

23 (2) a lump sum that is made to the dealer not later
24 than the 90th day after the date the supplier's new equipment is
25 sold.

26 (b) The discount or lump-sum payment under Subsection (a)
27 must be or result in an amount that is not less than five percent of

1 the suggested retail price of the equipment.

2 (c) This section does not affect the supplier's obligation
3 to reimburse the dealer for parts in accordance with Section
4 52.204.

5 [Sections 52.208-52.250 reserved for expansion]

6 SUBCHAPTER F. DELIVERY, SALE, AND RETURN OF EQUIPMENT

7 Sec. 52.251. COERCED ORDERS, DELIVERIES, OR REFUSALS TO
8 PURCHASE. (a) A supplier may not coerce, compel, or require a
9 dealer to accept delivery of equipment or a repair part that has not
10 been voluntarily ordered by the dealer, unless:

11 (1) the additional feature is a safety feature
12 required by the supplier or applicable law; or

13 (2) the dealer is otherwise required by applicable law
14 to accept the delivery.

15 (b) A supplier may not coerce a dealer to refuse purchase of
16 equipment manufactured by another equipment manufacturer.

17 (c) A supplier may, without it being considered a violation
18 of this subchapter, require a dealer to have or provide separate
19 facilities, financial statements, or sales staff for major
20 competing product lines if the supplier gives the dealer at least
21 three years notice of such a requirement.

22 Sec. 52.252. CONDITIONAL PURCHASES OF GOODS AND SERVICES.

23 (a) A supplier may not condition the sale of equipment, repair
24 parts, or goods or services to a dealer on the purchase of other
25 goods or services.

26 (b) This section does not prohibit a supplier from requiring
27 a dealer to purchase all repair parts, special tools, or training

1 reasonably necessary to maintain the safe operation or quality of
2 operation in the field of any equipment offered for retail sale or
3 lease by the dealer.

4 Sec. 52.253. EQUIPMENT REPRESENTED AS AVAILABLE FOR
5 IMMEDIATE DELIVERY. (a) This section applies to a dealer agreement
6 for the retail sale of new equipment sold or distributed by the
7 supplier.

8 (b) A seller may not refuse to deliver, in reasonable
9 quantities and within a reasonable time after receipt of a dealer's
10 order, equipment covered by the dealer agreement and specifically
11 advertised or represented by the supplier as available for
12 immediate delivery, unless the refusal is due to:

13 (1) the supplier's prudent and reasonable restrictions
14 on extensions of credit to the dealer;

15 (2) a business decision by the supplier to limit the
16 production volume of the equipment; or

17 (3) an act of God, work stoppage or delay due to a
18 strike or labor difficulty, a bona fide shortage of materials,
19 freight embargo, or other cause over which the supplier has no
20 control.

21 Sec. 52.254. DISCRIMINATION IN ORDERS OR PRICES OF NEW
22 EQUIPMENT. (a) A supplier may not discriminate, directly or
23 indirectly, among dealers of the same product line in the
24 supplier's filling of an order placed by a dealer for retail sale or
25 lease of new equipment covered by a dealer agreement.

26 (b) Except as provided by Subsection (c), a supplier may not
27 discriminate, directly or indirectly, in the price among dealers

1 with respect to a purchase of equipment or a repair part of like
2 grade and quality and identical brand, if the effect of the
3 discrimination is to:

4 (1) lead to substantially lessened competition;

5 (2) tend to create a monopoly in any line of commerce;

6 or

7 (3) injure, destroy, or prevent competition with any
8 other dealer who either authorizes or knowingly receives the
9 benefit of the discrimination.

10 (c) A supplier may charge a different price among dealers
11 for purchases described by Subsection (b) if:

12 (1) the price difference is due to differences in the
13 cost of manufacture, sale, or delivery of the equipment or repair
14 part;

15 (2) the supplier can show that the lower price was
16 charged in good faith to match an equally low price of a competitor;

17 or

18 (3) the price difference is related to the volume of
19 equipment purchased by dealers.

20 [Sections 52.255-52.300 reserved for expansion]

21 SUBCHAPTER G. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING

22 CANCELLATION OR NONRENEWAL OF AGREEMENT

23 Sec. 52.301. APPLICABILITY OF SUBCHAPTER. If a dealer has
24 more than one of its business locations covered by the same dealer
25 agreement, this subchapter applies to the repurchase of the
26 dealer's inventory at the particular business location being
27 closed.

1 Sec. 52.302. PAYMENTS OR CREDITS. (a) Except as provided
2 by Subsection (b), when a supplier or dealer wants to cancel, not
3 renew, or otherwise discontinue the dealer agreement entered into
4 between the two parties, the supplier shall pay to the dealer, or
5 credit to the dealer's account, if the dealer has outstanding any
6 sums owing the supplier:

7 (1) an amount equal to 100 percent of the net equipment
8 cost of all new, unsold, and undamaged equipment;

9 (2) an amount equal to 100 percent of the net equipment
10 cost of all undamaged equipment demonstrators, less a downward
11 adjustment to reflect a reasonable allowance for depreciation due
12 to the use of the demonstrators, subject to Subsection (f);

13 (3) an amount equal to 90 percent of the current net
14 parts cost of new, unsold, and undamaged repair parts previously
15 purchased from the supplier and held by the dealer on the date that
16 the dealer agreement is terminated or expires;

17 (4) an amount equal to five percent of the current net
18 parts cost of all repair parts returned to the dealer to compensate
19 for the handling, packing, and loading of those repair parts for
20 return to the supplier, unless the supplier elects to perform the
21 handling, packing, and loading of the repair parts itself;

22 (5) an amount equal to the fair market value of any
23 specific data processing hardware or software that the supplier
24 required the dealer to acquire or purchase to satisfy the
25 requirements of the supplier, including computer equipment
26 required and approved by the supplier to communicate with the
27 supplier; and

1 (6) an amount equal to 75 percent of the net cost,
2 including shipping, handling, and setup fees, of all specialized
3 service or repair tools that:

4 (A) were previously purchased under the
5 requirements of the supplier within 15 years before the date of the
6 applicable notification of termination of the dealer agreement; and

7 (B) are unique to the supplier's product line and
8 are complete and in good operating condition.

9 (b) A supplier is not required to repurchase any equipment
10 or repair parts that the dealer wants to keep following the
11 cancellation, nonrenewal, or discontinuance of the dealer
12 agreement.

13 (c) Fair market value of property subject to repurchase
14 under Subsection (a)(5) is considered to be the acquisition cost of
15 the property, including any shipping, handling, and setup fees,
16 less straight line depreciation of the acquisition cost over a
17 three-year period. If the dealer purchased data processing
18 hardware or software that exceeded the supplier's minimum
19 requirements, the acquisition cost of the data processing hardware
20 or software for purposes of this section is considered to be the
21 cost to acquire hardware or software of similar quality that did not
22 exceed the minimum requirements of the supplier.

23 (d) Notwithstanding any other provision of this chapter,
24 with respect to machines with hour meters, demonstrator equipment
25 with less than 50 hours of use is considered new, unsold, undamaged
26 equipment subject to repurchase under this section.

27 (e) On payment of the amount due under this section or on

1 credit to the dealer's account of the amount required by this
2 section, title to all inventory repurchased under this subchapter
3 is transferred to the supplier, and the supplier has the right to
4 its possession.

5 (f) The adjustment referred to in Subsection (a)(2) must be
6 based on published rental rates, to the extent those rates are
7 available.

8 Sec. 52.303. LATE PAYMENT OR CREDIT. (a) If a supplier
9 does not make the payments or apply the credits required by this
10 subchapter before the 91st day after the date the supplier received
11 the final shipment of the property required to be repurchased under
12 this section, the supplier is liable to the dealer for interest on
13 amounts due or subject to credit.

14 (b) Interest under Subsection (a) is payable at the maximum
15 rate allowed by law, for the period beginning on the 91st day after
16 the date the supplier received the property.

17 (c) The supplier may withhold a payment due under this
18 section any time the dealer fails to comply with any contractual
19 obligation to remove signage indicating that the dealer is an
20 authorized dealer of the supplier.

21 Sec. 52.304. LIABILITY. (a) A supplier who refuses to
22 repurchase any inventory covered under this chapter after
23 cancellation, nonrenewal, or discontinuation of the dealer
24 agreement is liable to the dealer for:

25 (1) 110 percent of the amount that would have been due
26 for the inventory had the supplier timely complied with the
27 requirements of this chapter;

1 (2) any freight charges paid by the dealer;
2 (3) any accrued interest; and
3 (4) the actual costs of any court or arbitration
4 proceeding incurred by the dealer, including attorney's fees or
5 arbitrator fees.

6 (b) The supplier and dealer shall each pay 50 percent of the
7 amount it costs to ship by freight any equipment or repair parts
8 returned to the supplier under this chapter. The freight costs must
9 be paid at the truckload rate.

10 (c) Notwithstanding any provision to the contrary in the
11 Uniform Commercial Code, the dealer retains a first and prior lien
12 against all inventory returned by the dealer to the supplier under
13 this chapter until the dealer is paid all amounts owed by the
14 supplier under this subchapter for the repurchase of the inventory.

15 Sec. 52.305. CONSTRUCTION; APPLICATION OF OTHER LAW. This
16 subchapter may not be construed to affect any security interest the
17 supplier may have in the inventory of the dealer, and any repurchase
18 of the dealer's inventory may not be subject to the claims of any
19 secured or unsecured creditor of the supplier or any assignee of the
20 supplier until the dealer has received full payment or credit, as
21 applicable, under this subchapter.

22 Sec. 52.306. EXCEPTIONS. (a) Except as provided by
23 Subsection (b), a supplier is not required to repurchase from a
24 dealer:

25 (1) a repair part that:
26 (A) is in a broken or damaged package; or
27 (B) cannot be resold without being repackaged or

1 reconditioned;

2 (2) inventory:

3 (A) for which the dealer cannot furnish evidence
4 of clear title that is satisfactory to the supplier; or

5 (B) that the dealer has a contractual right to
6 and wants to keep;

7 (3) equipment delivered to the dealer before the
8 beginning of the 36-month period immediately preceding the date of
9 notification of termination; and

10 (4) equipment or a repair part that:

11 (A) is ordered by the dealer on or after the date
12 of notification of termination;

13 (B) is acquired by the dealer from a source other
14 than the supplier, unless the equipment or repair part was ordered
15 from, or invoiced to the dealer by, the supplier;

16 (C) is not in new, unsold, undamaged, or complete
17 condition, subject to the provisions of this chapter relating to
18 demonstrator equipment; and

19 (D) equipment or a repair part that is not
20 returned to the supplier before the 90th day after the later of:

21 (i) the effective date of termination of a
22 dealer agreement; or

23 (ii) the date the dealer receives from the
24 supplier all information, including documents or supporting
25 materials, required by the supplier to comply with the supplier's
26 return policy.

27 (b) If the aggregate current price for the entire package of

1 repair parts in a broken or damaged package is \$75 or more, the
2 supplier is required to repurchase a repair part in the package for
3 a repurchase price that is equal to 85 percent of the current price
4 for that repair part.

5 (c) Subsection (a)(9) does not apply to a dealer who did not
6 receive notice of the 90-day deadline from the supplier when the
7 applicable notice of termination was sent to the dealer.

8 [Sections 52.307-52.350 reserved for expansion]

9 SUBCHAPTER H. ACTIONS AND REMEDIES

10 Sec. 52.351. CIVIL ACTION; INJUNCTIVE RELIEF. (a) A dealer
11 may bring an action for damages against a supplier who violates this
12 chapter. In addition to actual damages, the dealer is entitled to
13 recover lost profits and the costs of the proceedings, including
14 reasonable attorney's fees.

15 (b) A dealer may bring an action for injunctive relief
16 against a supplier for unlawful termination.

17 (c) A remedy provided by this section is not exclusive and
18 is in addition to any other remedy permitted by law.

19 Sec. 52.352. CHOICE OF REMEDIES. A dealer may pursue any
20 remedy available under the dealer agreement, this chapter, or other
21 state law. An election by the dealer to pursue a remedy under this
22 section does not impair the dealer's right to pursue any other
23 remedy available at law or in equity.

24 SECTION 2. Chapter 19, Business & Commerce Code, is
25 repealed.

26 SECTION 3. (a) The changes in law made by this Act apply to:

27 (1) a dealer agreement entered into or renewed on or

1 after the effective date of this Act; and

2 (2) a dealer agreement that was entered into before
3 the effective date of this Act, has no expiration date, and is a
4 continuing contract.

5 (b) A dealer agreement entered into before the effective
6 date of this Act, other than a dealer agreement described by
7 Subsection (a)(2) of this section, is governed by the law as it
8 existed on the date the agreement was entered into, and the former
9 law is continued in effect for that purpose.

10 SECTION 4. This Act takes effect September 1, 2007.