

By: Darby

H.B. No. 3079

A BILL TO BE ENTITLED

AN ACT

1
2 relating to dealer agreements regarding the purchase and sale of
3 certain equipment or machinery used for agricultural,
4 construction, industrial, mining, outdoor power, forestry, and
5 landscaping purposes.

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

7 SECTION 1. The legislature finds that the retail
8 distribution, sales, and rental of agricultural, construction,
9 industrial, mining, outdoor power, forestry, and lawn and garden
10 equipment through the use of independent dealers operating under
11 contract with the equipment suppliers vitally affect the general
12 economy of this state, the public interest, and the public welfare.
13 Therefore, the legislature determines that state regulation of the
14 business relationship between the independent dealers and
15 equipment suppliers as contemplated in the Fair Practices of
16 Equipment Manufacturers, Distributors, Wholesalers, and Dealers
17 Act is necessary and that any action taken in violation of this Act
18 would violate the public policy of this state.

19 SECTION 2. Title 4, Business & Commerce Code, is amended by
20 adding Chapter 57 to read as follows:

1 CHAPTER 57. AGRICULTURAL, CONSTRUCTION, INDUSTRIAL, MINING,
2 FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER
3 AGREEMENTS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 57.001. SHORT TITLE. This chapter may be cited as the
6 Fair Practices of Equipment Manufacturers, Distributors,
7 Wholesalers, and Dealers Act.

8 Sec. 57.002. DEFINITIONS. In this chapter:

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

13 (2) "Current net parts price" means:

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

17 (i) when a dealer agreement is terminated
18 or discontinued; or

19 (ii) for purposes of Subchapter F, when the
20 repair part is ordered; and

21 (B) with respect to a repair part that has been
22 superseded, the price for a repair part listed in the supplier's
23 price list or catalog in effect when a dealer agreement is
24 terminated or discontinued that:

25 (i) performs the same function and is for
26 the same purpose as the superseded part; and

27 (ii) is listed under a different part

1 number than the superseded part.

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

4 (A) selling or leasing equipment or repair parts
5 for equipment to end users of the equipment; and

6 (B) repairing or servicing equipment.

7 (4) "Dealer agreement" means an oral or written
8 agreement or arrangement, of definite or indefinite duration,
9 between a dealer and a supplier that provides for the rights and
10 obligations of the parties with respect to the purchase or sale of
11 equipment or repair parts.

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

14 (6) "Demonstrator" means equipment in a dealer's
15 inventory that:

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

17 (B) is or has been made available to a potential
18 customer, as authorized by the supplier, without charge or under a
19 short-term rental agreement for purposes of demonstrating its use
20 and with the intent of encouraging the customer to purchase the
21 equipment.

22 (7) "Equipment":

23 (A) means machinery, equipment, or implements or
24 attachments to the machinery, equipment, or implements used for, or
25 in connection with, any of the following purposes:

26 (i) lawn, garden, golf course, landscaping,
27 or grounds maintenance;

1 (ii) planting, cultivating, irrigating,
2 harvesting, or producing agricultural or forestry products;

3 (iii) raising, feeding, or tending to
4 livestock or harvesting products from livestock or any other
5 activity in connection with those activities; or

6 (iv) industrial, construction,
7 maintenance, mining, or utility activities or applications; and

8 (B) does not mean:

9 (i) trailers or self-propelled vehicles
10 designed primarily for the transportation of persons or property on
11 a street or highway; or

12 (ii) all-terrain vehicles, utility task
13 vehicles, or recreational off-highway vehicles.

14 (8) "Family member" means a child or other lineal
15 descendant, a son-in-law, a daughter-in-law, or the spouse of an
16 individual.

17 (9) "Index" means the producer price index for
18 construction machinery series identification number
19 pcu333120333120 published by the Bureau of Labor Statistics of the
20 United States Department of Labor or a successor index measuring
21 substantially similar information.

22 (10) "Inventory" means equipment, repair parts, data
23 processing hardware or software, or specialized service or repair
24 tools.

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

1 (A) any freight paid by the dealer from the
2 supplier's location to the dealer's location, payable at the cost
3 stated on the invoice, or, if there is no invoice, at the truckload
4 rate in effect when a dealer agreement is terminated; and

5 (B) the set-up cost of labor incurred in
6 preparing the equipment for retail sale or lease, reimbursable at
7 the dealer's standard labor rate charged by the dealer to its
8 customers for non-warranty repair work, unless a supplier has
9 established a reasonable set-up time to prepare the equipment for
10 retail sale or lease, in which case the labor will be reimbursable
11 at an amount equal to the reasonable set-up time in effect as of the
12 date of delivery multiplied by the dealer's standard labor rate.

13 (12) "New equipment" means, for purposes of
14 determining whether a dealer is a single-line dealer, equipment
15 that can be returned to the supplier following termination of a
16 dealer agreement under Subchapter H.

17 (13) "Person" means:

18 (A) an individual, corporation, partnership,
19 limited liability company, company, trust, or any other form of
20 business entity, including any other entity in which a person has a
21 majority interest or of which a person has control; or

22 (B) an officer, director, or other individual who
23 actively controls the activities of an entity described by
24 Paragraph (A).

25 (14) "Repair parts" means all parts related to the
26 repair of equipment, including superseded parts.

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

1 (A) has purchased construction, industrial,
2 forestry, or mining equipment from a single supplier constituting
3 75 percent or more of the dealer's total new equipment that is
4 construction, industrial, forestry, or mining equipment, computed
5 on the basis of net equipment cost; and

6 (B) has a total annual average sales volume of
7 equipment acquired from the single-line supplier in excess of \$25
8 million for the five calendar years immediately preceding the
9 applicable determination date, provided, however, that the \$25
10 million threshold will be increased as of September 1 of each year
11 by an amount equal to the threshold on the date the determination is
12 made multiplied by the percentage increase in the index from
13 January of the immediately preceding year to January of the year the
14 determination is made.

15 (16) "Single-line dealer agreement" means a dealer
16 agreement between a single-line dealer and a single-line supplier
17 that only provides for the rights and obligations of the parties
18 with respect to the purchase and sale of construction, forestry,
19 industrial, or mining equipment.

20 (17) "Single-line supplier" means the supplier that is
21 selling to a single-line dealer construction, industrial,
22 forestry, or mining equipment constituting 75 percent of the
23 single-line dealer's new equipment that consists of construction,
24 industrial, forestry, and mining equipment.

25 (18) "Specialty agricultural equipment" means
26 equipment that is designed for and used in:

27 (A) planting, cultivating, irrigating,

1 harvesting, and producing agricultural products; or

2 (B) raising, feeding, or tending to livestock or
3 harvesting products from livestock.

4 (19) "Specialty agricultural equipment supplier"
5 means a supplier of specialty agricultural equipment whose:

6 (A) gross sales revenue to the dealer is less
7 than the threshold amount;

8 (B) product line does not include farm tractors
9 or combines;

10 (C) sales of outdoor power equipment to the
11 dealer do not exceed 10 percent of the supplier's total sales to the
12 dealer during the one-year period ending on the last day of the
13 calendar month immediately preceding the effective date of the
14 termination of the dealer agreement; and

15 (D) qualification for that status is determined
16 on a case-by-case basis depending on the sales of the applicable
17 dealer and the sales to the applicable dealer by the specialty
18 agricultural equipment supplier.

19 (20) "Supplier" means a person engaged in the business
20 of the manufacture, assembly, or wholesale distribution of
21 equipment or repair parts. The term includes any successor in
22 interest of a supplier, including:

23 (A) a receiver, trustee, liquidator, assignee,
24 purchaser of assets or stock, or surviving corporation resulting
25 from a merger, liquidation, or reorganization of an original
26 supplier; and

27 (B) a purchaser of all or substantially all of a

1 supplier's assets, such as a purchaser of all or substantially all
2 of the inventory of the supplier or any division or product line of
3 the supplier.

4 (21) "Terminate" or "termination" means to terminate,
5 cancel, fail to renew, or substantially change the competitive
6 circumstances of a dealer agreement.

7 (22) "Threshold amount" means the lesser of 10 percent
8 of the dealer's gross sales revenue or \$350,000, in each case based
9 on net sales of the dealership during the one-year period ending on
10 the last day of the calendar month immediately preceding the
11 effective date of the termination of the dealer agreement,
12 provided, however, that the \$350,000 amount must be increased each
13 year by an amount equal to the amount on the year in which the
14 determination is made multiplied by the percentage increase in the
15 index from January of the immediately preceding year to January of
16 the year in which the determination is made.

17 Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of
18 a provision of this chapter or of the application of this chapter is
19 void.

20 [Sections 57.004-57.050 reserved for expansion]

21 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

22 Sec. 57.051. CERTAIN PROVISIONS VOID. The following
23 provisions contained in a dealer agreement are void:

24 (1) any provision that purports to elect the
25 application of a law of another state instead of the law of this
26 state; and

27 (2) any provision that requires a dealer to pay

1 attorney's fees incurred by the supplier.

2 Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A
3 supplier may not prevent, by contract or otherwise, a dealer from
4 changing its capital structure or the means by or through which the
5 dealer finances its operations, if:

6 (1) the dealer gives prior notice of the change to the
7 supplier; and

8 (2) the dealer at all times meets any reasonable
9 capital standards required by the supplier pursuant to a right
10 granted in the dealer agreement and imposed on similarly situated
11 dealers.

12 Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier
13 may not require a dealer to assent to a release, assignment,
14 novation, waiver, or estoppel that would release any person from
15 liability imposed by this chapter.

16 [Sections 57.054-57.100 reserved for expansion]

17 SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

18 Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY
19 SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) This section
20 applies only to single-line dealer agreements.

21 (b) If a dealer dies, a supplier has 90 days in which to
22 consider and make a determination on a request by a family member to
23 enter into a new dealer agreement to operate the dealership. If the
24 supplier determines that the requesting family member is not
25 acceptable, the supplier shall provide the family member with a
26 written notice of its determination with the stated reasons for
27 nonacceptance. This section does not entitle an heir, personal

1 representative, or family member of the dealer to operate a
2 dealership without the specific written consent of the supplier.

3 (c) Notwithstanding Subsection (b), if a supplier and
4 dealer have previously executed an agreement concerning succession
5 rights before the dealer's death, and if that agreement is still in
6 effect, the agreement shall be observed even if it designates
7 someone other than the surviving spouse or an heir of the decedent
8 as the successor.

9 Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
10 DEALER'S REQUEST. (a) This section applies only to a dealer
11 agreement that is not a single-line dealer agreement.

12 (b) If a supplier has contractual authority to approve or
13 deny a request for the sale or transfer of a dealer's business or an
14 equity ownership interest in the dealer's business, a dealer may
15 request that the supplier approve or deny a request for the sale or
16 transfer of a dealer's business or an equity ownership interest in
17 the dealer's business to a proposed buyer or transferee. The
18 dealer's request must be in writing and must include character
19 references and reasonable financial, personal background, and work
20 history information with respect to the proposed buyer or
21 transferee.

22 (c) Not later than the 60th day after receipt of a request
23 under Subsection (b), the supplier shall either approve the sale or
24 transfer or send a written response to the dealer stating the
25 supplier's denial of the request and the specific reasons for the
26 denial. The request is considered approved if the supplier does not
27 approve or deny the request by the deadline.

1 (d) A supplier may deny a request made under this section
2 only if the proposed buyer or transferee fails to meet the
3 reasonable requirements consistently imposed by the supplier for
4 purposes of determining whether to approve a new dealer or a request
5 for approval of a sale or transfer of a dealer's business or equity
6 ownership in the dealer's business.

7 Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT
8 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only
9 to a dealer agreement that is not a single-line dealer agreement.

10 (b) If a dealer dies and the supplier has contractual
11 authority to approve or deny a request for the sale or transfer of a
12 dealer's business or an equity ownership interest in the dealer's
13 business, the personal representative of the dealer's estate, or
14 any other person with authority to transfer the dealer's assets,
15 must submit to the supplier a written request for approval of the
16 sale or transfer of the business or ownership interest not later
17 than the 180th day after the date of the dealer's death.

18 (c) If a timely request for approval of a sale or transfer is
19 made as provided by Subsection (b), the supplier must approve or
20 deny the request in accordance with the procedures prescribed by
21 Sections 57.102(c) and (d) for a supplier's approval or denial of a
22 request for a sale or transfer made under Section 57.102.

23 (d) Notwithstanding any other provision of this chapter to
24 the contrary, any attempt by the supplier to terminate the dealer
25 agreement as a result of the death of a dealer will be delayed until
26 there has been compliance with the terms of this section or the
27 180-day period has expired, as applicable.

1 [Sections 57.104-57.150 reserved for expansion]

2 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE
3 DEALER AGREEMENTS

4 Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter
5 applies only to a dealer agreement that is not a single-line dealer
6 agreement.

7 Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A
8 dealer must give the supplier at least 30 days' prior written notice
9 of termination.

10 Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.
11 A supplier may not terminate a dealer agreement without good cause.

12 Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Except as
13 specifically provided otherwise by this chapter, good cause for
14 termination of a dealer agreement exists for purposes of this
15 subchapter if:

16 (1) the dealer fails to substantially comply with
17 essential and reasonable requirements imposed on the dealer under
18 the terms of the dealer agreement, provided that such requirements
19 are not different from requirements imposed on other similarly
20 situated dealers either by their terms or by the manner in which
21 they are enforced;

22 (2) the dealer or dealership has transferred a
23 controlling ownership interest in its business without the
24 supplier's consent;

25 (3) the dealer has filed a voluntary petition in
26 bankruptcy or an involuntary petition in bankruptcy has been filed
27 against the dealer and has not been discharged earlier than the 31st

1 day after the date the petition was filed;

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

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

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

8 (7) the dealer has defaulted under the terms of any
9 chattel mortgage or other security agreement between the dealer and
10 the supplier;

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

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

17 (10) the dealer has been convicted of or pleaded nolo
18 contendere to a felony affecting the relationship between the
19 dealer and supplier;

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

22 (A) the dealer's customers;

23 (B) the public welfare; or

24 (C) the representation or reputation of the
25 supplier's product; or

26 (12) the dealer has consistently failed to meet and
27 maintain the supplier's requirements for reasonable standards and

1 performance objectives, so long as the supplier has provided the
2 dealer with reasonable standards and performance objectives based
3 on the supplier's experience in other comparable market areas.

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

6 (1) a person revokes any guarantee of the dealer's
7 obligations to the supplier in connection with or following the
8 transfer of the person's entire ownership interest in the
9 dealership; and

10 (2) the supplier does not require the person to
11 execute a new guarantee of the dealer's present or future
12 obligations to the supplier in connection with the transfer of the
13 person's ownership interest in the dealership.

14 Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF
15 DEFICIENCY. (a) Except as otherwise provided by this section, a
16 supplier must provide a dealer written notice of termination of a
17 dealer agreement at least 180 days before the effective date of
18 termination. The notice must state all reasons constituting good
19 cause for the termination and that the dealer has 60 days in which
20 to cure any claimed deficiency. If the deficiency is cured within
21 60 days, the notice will be void.

22 (b) A supplier, other than a specialty agricultural
23 equipment supplier, may not terminate a dealer agreement for the
24 reason stated in Section 57.154(a)(12) unless the supplier gives
25 the dealer notice of the action at least two years before the
26 effective date of the termination. If the dealer achieves the
27 supplier's requirements for reasonable standards or performance

1 objectives before the expiration of the two-year notice period, the
2 notice will be void and the dealer agreement will continue in
3 effect.

4 (c) The notice and right to cure provisions in this section
5 do not apply if the reason for termination is for any reason stated
6 in Sections 57.154(a)(1)-(11).

7 [Sections 57.156-57.200 reserved for expansion]

8 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

9 Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter
10 applies only to a single-line dealer agreement.

11 Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.
12 No supplier may terminate a dealer agreement without good cause.

13 Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes of
14 this subchapter, "good cause" means failure by a dealer to comply
15 with requirements imposed on the dealer by the dealer agreement if
16 the requirements are not different from those requirements imposed
17 on other similarly situated dealers.

18 (b) In addition to the good cause reason for termination
19 stated in Subsection (a), good cause for termination of a dealer
20 agreement exists when:

21 (1) there has been a closeout or sale of a substantial
22 part of the dealer's assets related to the equipment business;

23 (2) there has been commencement of a dissolution or
24 liquidation of the dealer;

25 (3) the dealer has changed its principal place of
26 business or has added additional locations without the supplier's
27 prior approval, which shall not be unreasonably withheld;

1 (4) the dealer has substantially defaulted under a
2 chattel mortgage or other security agreement between the dealer and
3 the supplier or there has been a revocation or discontinuance of a
4 guarantee of a present or future obligation of the dealer to the
5 supplier;

6 (5) the dealer has failed to operate in the normal
7 course of business for seven consecutive days or has otherwise
8 abandoned its business;

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

12 (7) the dealer transfers an interest in the dealership
13 or a person with a substantial interest in the ownership or control
14 of the dealership, including an individual proprietor, partner, or
15 major shareholder, withdraws from the dealership or dies, or a
16 substantial reduction occurs in the interest of a partner or major
17 shareholder in the dealership, provided, however, good cause does
18 not exist if the supplier consents to an action described by this
19 subdivision.

20 Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF
21 DEFICIENCY. (a) Except as provided by Subsection (b) and Section
22 57.205, a supplier shall provide a dealer with at least 90 days'
23 written notice of termination. The notice must state all reasons
24 constituting good cause for the termination and state that the
25 dealer has 60 days in which to cure any claimed deficiency. If the
26 deficiency is cured within 60 days, the notice will be void.

27 (b) Notwithstanding Subsection (a), if the good cause

1 reason for termination is due to the dealer's failure to meet or
2 maintain the supplier's requirements for market penetration, a
3 reasonable period of time has existed where the supplier has worked
4 with the dealer to gain the desired market share.

5 Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER
6 CERTAIN CIRCUMSTANCES. The notice and right to cure provisions
7 under Section 57.204 do not apply if the reason for termination is
8 contained in Sections 57.203(b)(1)-(7).

9 [Sections 57.206-57.250 reserved for expansion]

10 SUBCHAPTER F. WARRANTY CLAIMS

11 Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. For
12 purposes of this subchapter, "terminate" and "termination" do not
13 include the phrase substantially change the competitive
14 circumstances of a dealer agreement.

15 Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH
16 SUBCHAPTER. (a) Sections 57.253, 57.254, and 57.255 apply to a
17 warranty claim submitted by a dealer who has complied with the
18 supplier's reasonable policies and procedures for reimbursement of
19 the warranty claim and the claim is a warranted claim under the
20 supplier's warranty policy.

21 (b) A supplier's warranty reimbursement policies and
22 procedures are considered unreasonable to the extent of any
23 conflict with this subchapter.

24 Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a
25 warranty claim submitted by a dealer to the supplier:

- 26 (1) while the dealer agreement is in effect; or
27 (2) not later than the 60th day after the termination

1 or expiration date of the dealer agreement, if the claim is for work
2 performed before the effective date of the termination or
3 expiration.

4 (b) Not later than the 45th day after the date a supplier
5 receives a warranty claim from a dealer, the supplier shall accept
6 or reject the claim by providing written notice to the dealer. A
7 claim not rejected before that deadline is considered accepted.

8 (c) If the warranty claim is accepted, the supplier shall
9 pay or credit to the dealer's account all amounts owed to the dealer
10 with respect to the accepted claim not later than the 30th day after
11 the date the claim is accepted.

12 (d) If the supplier rejects the warranty claim, the supplier
13 shall give the dealer written or electronic notice of the grounds
14 for rejection of a rejected claim, which must be consistent with the
15 supplier's grounds for rejection of warranty claims of other
16 dealers, both in the terms and manner of enforcement.

17 (e) If no grounds for rejection of a rejected claim are
18 given to the dealer, the claim is considered accepted.

19 Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. If a warranty
20 claim was rejected on the ground that the dealer failed to properly
21 follow the procedural or technical requirements for submission of a
22 warranty claim, the dealer may resubmit the claim in proper form not
23 later than the 30th day after the date the dealer receives notice of
24 the claim's rejection.

25 Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work
26 performed by the dealer shall be compensated in accordance with the
27 reasonable and customary amount of time required to complete the

1 work, expressed in hours and fractions of hours, multiplied by the
2 dealer's established customer hourly retail labor rate for
3 non-warranty repair work, which must have previously been made
4 known to the supplier. Parts used in warranty repair work shall be
5 reimbursed at the current net parts cost plus 15 percent.

6 Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR
7 INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation
8 of replacement parts performed with respect to inventory equipment
9 of a dealer or with respect to equipment of a dealer's customers, at
10 the request of a supplier, including work performed under a product
11 improvement program, constitutes a warranty claim for which the
12 dealer must be paid under this subchapter.

13 Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Except as
14 provided by Subsection (b), a supplier may audit a warranty claim
15 submitted by a dealer until the first anniversary of the date the
16 claim was paid and may charge back the amount of any claim that is
17 shown by audit to have been misrepresented.

18 (b) If an audit conducted under this section shows that a
19 warranty claim has been misrepresented, the supplier may audit any
20 other warranty claims submitted by the affected dealer within the
21 three-year period ending on a date a claim is shown by audit to be
22 misrepresented.

23 Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE.

24 (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms
25 of a written dealer agreement between the parties require the
26 supplier to compensate the dealer for warranty labor costs either
27 as:

1 (1) a discount in the price of the equipment to the
2 dealer, subject to Subsection (b); or

3 (2) a lump-sum payment made to the dealer not later
4 than the 90th day after the date the supplier's new equipment is
5 sold to the dealer, subject to Subsection (b).

6 (b) The discount or lump-sum payment under Subsection (a)
7 must be or result in an amount that is not less than five percent of
8 the suggested retail price of the equipment.

9 (c) The alternate reimbursement terms of a dealer agreement
10 that comply with Subsections (a) and (b) are enforceable.

11 (d) This section does not affect the supplier's obligation
12 to reimburse the dealer for parts in accordance with Section
13 57.255.

14 [Sections 57.259-57.300 reserved for expansion]

15 SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

16 Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO
17 PURCHASE. (a) A supplier may not coerce, compel, or require a
18 dealer to accept delivery of equipment or a repair part that has not
19 been voluntarily ordered by the dealer, unless:

20 (1) the equipment or repair part is a safety feature
21 required by the supplier or applicable law; or

22 (2) the dealer is otherwise required by applicable law
23 to accept the delivery.

24 (b) A supplier may not coerce a dealer to refuse purchase of
25 equipment manufactured by another supplier.

26 (c) It shall not be considered a violation of this section
27 if the supplier requires a dealer to have or provide separate

1 facilities, financial statements, or sales staff for major
2 competing product lines if the supplier gives the dealer at least
3 three years' notice of such a requirement.

4 Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES.

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

8 (b) This section does not prohibit a supplier from requiring
9 a dealer to purchase all repair parts, special tools, or training
10 reasonably necessary to maintain the safe operation or quality of
11 operation in the field of any equipment offered for sale by the
12 dealer.

13 Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR
14 IMMEDIATE DELIVERY. A supplier may not refuse to deliver, in
15 reasonable quantities and within a reasonable time after receipt of
16 a dealer's order, to any dealer having a dealer agreement for the
17 retail sale of new equipment sold or distributed by the supplier,
18 equipment covered by the dealer agreement and specifically
19 advertised or represented by the supplier as available for
20 immediate delivery, unless the refusal is due to:

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

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

25 (3) an act of nature, work stoppage or delay due to a
26 strike or labor difficulty, a bona fide shortage of materials,
27 freight embargo, or other cause over which the supplier has no

1 control.

2 Sec. 57.304. DISCRIMINATION IN ORDERS. A supplier may not
3 discriminate, directly or indirectly, in filling an order placed by
4 a dealer for retail sale or lease of new equipment under a dealer
5 agreement as between dealers of the same product line.

6 Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT.

7 (a) Except as provided by Subsection (b), a supplier may not
8 discriminate, directly or indirectly, in the price among different
9 dealers with respect to a purchase of equipment or a repair part of
10 like grade and quality and identical brand, where the effect of such
11 discrimination may be to:

12 (1) substantially lessen competition;

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

14 or

15 (3) injure, destroy, or prevent competition with any
16 dealer who either grants or knowingly receives the benefit of such
17 discrimination.

18 (b) A supplier may charge a different price among dealers
19 for purchases described by Subsection (a) if:

20 (1) the price difference is due to differences in the
21 cost of manufacture, sale, or delivery of the equipment or repair
22 part;

23 (2) the supplier can show that the lower price was made
24 in good faith to meet an equally low price of a competitor; or

25 (3) the price difference is related to the volume of
26 equipment purchased by dealers or market share obtained by dealers.

27 [Sections 57.306-57.350 reserved for expansion]

1 SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING

2 CANCELLATION OR NONRENEWAL OF AGREEMENT

3 Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For
4 purposes of this subchapter, "terminate" and "termination" do not
5 include the phrase substantially change the competitive
6 circumstances of a dealer agreement.

7 Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL
8 BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more
9 than one of its business locations covered by the same dealer
10 agreement, this subchapter applies to the repurchase of the
11 dealer's inventory at the particular business location being closed
12 unless the closing occurs without the permission of the supplier.

13 Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier or
14 dealer terminates or otherwise discontinues the dealer agreement
15 entered into between the two parties, the supplier shall pay to the
16 dealer, or credit to the dealer's account, if the dealer has
17 outstanding any sums owing the supplier:

18 (1) an amount equal to 100 percent of the net equipment
19 cost of all new, unsold, and undamaged equipment, less a downward
20 adjustment for new, unsold, and undamaged equipment between 24 and
21 36 months old to reflect a reasonable allowance for refurbishment
22 and the price another dealer will pay for the equipment;

23 (2) an amount equal to 100 percent of the net equipment
24 cost of all unsold, undamaged demonstrators, less a downward
25 adjustment to reflect a reasonable allowance for refurbishment and
26 the price another dealer will pay for the equipment;

27 (3) an amount equal to 90 percent of the current net

1 parts cost of new, unsold, and undamaged repair parts previously
2 purchased from the supplier and held by the dealer on the date that
3 the dealer agreement is terminated or expires;

4 (4) an amount equal to five percent of the current net
5 parts price of all repair parts returned to the supplier to
6 compensate the dealer for the handling, packing, and loading of
7 those repair parts for return to the supplier, unless the supplier
8 elects to perform the handling, packing, and loading of the repair
9 parts itself;

10 (5) an amount equal to the fair market value of any
11 specific data processing hardware or software that the supplier
12 required the dealer to acquire or purchase to satisfy the
13 requirements of the supplier, including computer equipment
14 required and approved by the supplier to communicate with the
15 supplier; and

16 (6) an amount equal to 75 percent of the net cost,
17 including shipping, handling, and set-up fees, of all specialized
18 service or repair tools that:

19 (A) were previously purchased pursuant to the
20 requirements of the supplier within 15 years before the date of the
21 applicable notification of termination of the dealer agreement; and

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

24 (b) Fair market value of property subject to repurchase
25 under Subsection (a)(5) is considered to be the acquisition cost of
26 the property, including any shipping, handling, and set-up fees,
27 less straight line depreciation of the acquisition cost over a

1 three-year period. If the dealer purchased data processing
2 hardware or software that exceeded the supplier's minimum
3 requirements, the acquisition cost of the data processing hardware
4 or software for purposes of this section is considered to be the
5 acquisition cost of hardware or software of similar quality that
6 did not exceed the minimum requirements of the supplier.

7 (c) Notwithstanding any other provision of this chapter,
8 with respect to machines with hour meters, demonstrators with less
9 than 50 hours of use will be considered new, unsold, undamaged
10 equipment subject to repurchase under this section.

11 (d) On payment of the amount due under this section or on
12 credit to the dealer's account of the amount required by this
13 section, title to all inventory repurchased under this subchapter
14 is transferred to the supplier, and the supplier is entitled to
15 possession of the inventory.

16 Sec. 57.354. LATE PAYMENT OR CREDIT. (a) All payments or
17 allowances of credit due to a dealer shall be paid or credited
18 within 90 days after receipt by the supplier of property required to
19 be repurchased under this subchapter.

20 (b) Any payment or allowance of credit due a dealer that is
21 not paid within the 90-day period will accrue interest at the
22 maximum rate allowed by law.

23 (c) The supplier may withhold payments due under this
24 subchapter during the period in which the dealer fails to comply
25 with its contractual obligation to remove any signage indicating
26 that the dealer is an authorized dealer of the supplier.

27 Sec. 57.355. LIABILITY. (a) A supplier who refuses to

1 repurchase any inventory covered under this chapter after
2 termination or discontinuation of the dealer agreement is liable to
3 the dealer for:

4 (1) 110 percent of the amount that would have been due
5 for the inventory had the supplier timely complied with the
6 requirements of this chapter;

7 (2) any freight charges paid by the dealer;

8 (3) any accrued interest; and

9 (4) the actual costs of any court or arbitration
10 proceeding incurred by the dealer, including attorney's fees or
11 arbitrator fees.

12 (b) The supplier and dealer will each pay 50 percent of the
13 costs of freight, at truckload rates, to ship any equipment or
14 repair parts returned to the supplier pursuant to this chapter.

15 (c) Notwithstanding any provision to the contrary in the
16 Uniform Commercial Code, the dealer retains title to and has a first
17 and prior lien against all inventory returned by the dealer to the
18 supplier under this chapter until the dealer is paid all amounts
19 owed by the supplier under this subchapter for the repurchase of the
20 inventory required under this chapter, and the supplier must hold
21 the proceeds of the inventory in trust for the dealer's benefit.

22 Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S
23 CLAIMS. This subchapter may not be construed to affect any security
24 interest the supplier may have in the inventory of the dealer, and
25 any repurchase of the dealer's inventory under this subchapter may
26 not be subject to the claims of any secured or unsecured creditor of
27 the supplier or any assignee of the supplier until the dealer has

1 received full payment or credit, as applicable, under this
2 subchapter.

3 Sec. 57.357. AGREEMENT TERMINATED BY DEALER;
4 INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a)
5 This subchapter does not apply to a specialty agricultural
6 equipment supplier if the dealer terminates the dealer agreement
7 without good reason. A dealer has good reason to terminate the
8 dealer agreement for any of the following reasons:

9 (1) the death or disability of a majority owner of the
10 dealership;

11 (2) the dealership terminates the dealer agreement
12 and:

13 (A) substantially all of the dealership assets or
14 all shares of stock of the dealership are sold to a new owner; and

15 (B) no owner of the terminated dealership
16 continues to own an interest in the continuing dealership;

17 (3) the filing of bankruptcy by or against the
18 dealership that has not been discharged within 30 days after the
19 date of the filing, the appointment of a receiver, or an assignment
20 for the benefit of creditors; or

21 (4) the specialty agricultural equipment supplier:

22 (A) abandons the market or withdraws from the
23 market by no longer selling to the dealer a type of equipment
24 previously sold to the dealer that constituted a material part of
25 the specialty agricultural equipment sold by the supplier;

26 (B) consistently sells products to the dealer
27 that are defective or breach the implied warranty of

1 merchantability;

2 (C) consistently fails to:

3 (i) provide adequate product support for
4 the type and use of the product, including technical assistance,
5 operator and repair manuals, and part lists and diagrams;

6 (ii) provide adequate training required by
7 the supplier for maintenance, repair, or use of the supplier's
8 products; or

9 (iii) provide marketing and marketing
10 support for the supplier's product if marketing is a requirement of
11 the dealer agreement;

12 (D) consistently fails to meet the supplier's
13 warranty obligations to the dealer as required by contract or law,
14 including obligations under this chapter;

15 (E) has engaged in conduct that is injurious or
16 detrimental to the dealer's customers, the public welfare, or the
17 dealer's reputation;

18 (F) has made material misrepresentations to the
19 dealer or has falsified a record;

20 (G) has breached the dealer agreement; or

21 (H) has violated this chapter.

22 (b) This subchapter may not be construed to limit a
23 specialty agricultural equipment supplier's obligation to
24 repurchase a dealer's inventory as provided by this section if the
25 supplier terminates or otherwise discontinues the dealer
26 agreement.

27 Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to

1 repurchase from a dealer:

2 (1) a repair part that, except as provided by
3 Subsection (b), is in a broken or damaged package;

4 (2) a repair part that because of its condition cannot
5 be resold as a new part without repackaging or reconditioning;

6 (3) any inventory for which the dealer is unable to
7 furnish evidence, satisfactory to the supplier, of clear title,
8 free and clear of all claims, liens, and encumbrances unless the
9 inventory will be free and clear of all claims, liens, and
10 encumbrances immediately on payment by the supplier of amounts due
11 in this subchapter to the lienholders;

12 (4) any inventory that the dealer wants to keep,
13 provided the dealer has a contractual right to keep the inventory;

14 (5) equipment delivered to the dealer before the
15 beginning of the 36-month period preceding the date of notification
16 of termination; and

17 (6) equipment or a repair part that:

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

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

23 (C) is not in new, unsold, undamaged, or complete
24 condition, subject to the provisions of this chapter relating to
25 demonstrators; and

26 (D) is not returned to the supplier before the
27 90th day after the later of:

1 (i) the effective date of termination of a
2 dealer agreement; or

3 (ii) the date the dealer receives from the
4 supplier all information, including documents or supporting
5 materials, required by the supplier to comply with the supplier's
6 return policy.

7 (b) The supplier will be required to repurchase a repair
8 part in a broken or damaged package for a repurchase price that is
9 equal to 85 percent of the current net parts cost for the repair
10 part if the aggregate current net parts cost for the entire package
11 of repair parts is \$75 or more.

12 (c) Subsection (a)(6)(D) does not apply to a dealer if the
13 supplier did not give the dealer notice of the 90-day deadline at
14 the time the applicable notice of termination was sent to the
15 dealer.

16 [Sections 57.359-57.400 reserved for expansion]

17 SUBCHAPTER I. ACTIONS AND REMEDIES

18 Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a
19 supplier violates any provision of this chapter, a dealer may bring
20 an action against the supplier in a court of competent jurisdiction
21 for damages sustained by the dealer as a consequence of the
22 supplier's violation, including damages for lost profits, together
23 with the actual costs of the action, including the dealer's
24 attorney's fees and paralegal fees and the costs of arbitrators.
25 The dealer may also be granted injunctive relief for unlawful
26 termination.

27 (b) A remedy provided by this section is not exclusive and

1 is in addition to any other remedy permitted by law.

2 Sec. 57.402. CHOICE OF REMEDIES. The provisions of this
3 chapter are supplemental to any dealer agreement between the dealer
4 and the supplier that provides the dealer with greater protection.
5 A dealer may elect to pursue its contract remedy or the remedy
6 provided by state law, or both. An election by the dealer to pursue
7 those remedies does not bar the dealer's right to exercise any other
8 remedies that may be granted at law or in equity.

9 SECTION 3. Chapter 55, Business & Commerce Code, is
10 repealed.

11 SECTION 4. (a) Chapter 57, Business & Commerce Code, as
12 added by this Act, applies to:

13 (1) a dealer agreement entered into or renewed on or
14 after the effective date of this Act; and

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

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

23 SECTION 5. This Act takes effect September 1, 2011.