

By: Darby

H.B. No. 3079

Substitute the following for H.B. No. 3079:

By: Kuempel

C.S.H.B. No. 3079

A BILL TO BE ENTITLED

1 AN ACT

2 relating to dealer agreements regarding the purchase and sale of  
3 certain all-terrain vehicles or equipment or machinery used for  
4 agricultural, construction, utility, industrial, mining, outdoor  
5 power, forestry, and 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 utility, industrial, mining, outdoor power, forestry, and lawn and  
10 garden equipment through the use of independent dealers operating  
11 under contract with the equipment suppliers vitally affect the  
12 general economy of this state, the public interest, and the public  
13 welfare. Therefore, the legislature determines that state  
14 regulation of the business relationship between the independent  
15 dealers and equipment suppliers as contemplated in the Fair  
16 Practices of Equipment Manufacturers, Distributors, Wholesalers,  
17 and Dealers Act is necessary and that any action taken in violation  
18 of this Act 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, UTILITY, INDUSTRIAL,  
2 MINING, 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22 superseded, the price for a repair part listed in the supplier's  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:

24 (i) all-terrain vehicles, utility task  
25 vehicles, or recreational off-highway vehicles, regardless of how  
26 the vehicles are used in each case; or

27 (ii) other machinery, equipment, or

1 implements or attachments to the machinery, equipment, or  
2 implements used for, or in connection with, any of the following  
3 purposes:

4 (a) lawn, garden, golf course,  
5 landscaping, or grounds maintenance;

6 (b) planting, cultivating,  
7 irrigating, harvesting, or producing agricultural or forestry  
8 products;

9 (c) raising, feeding, or tending to  
10 livestock or harvesting products from livestock or any other  
11 activity in connection with those activities; or

12 (d) industrial, construction,  
13 maintenance, mining, or utility activities or applications; and

14 (B) does not mean trailers or self-propelled  
15 vehicles designed primarily for the transportation of persons or  
16 property on a street or highway.

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

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

25 (10) "Inventory" means equipment, repair parts, data  
26 processing hardware or software, or specialized service or repair  
27 tools.

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

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

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

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

20           (13) "Person" means:

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

25           (B) an officer, director, or other individual who  
26 actively controls the activities of an entity described by  
27 Paragraph (A).

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

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

4                   (A) has purchased construction, industrial,  
5 forestry, or mining equipment from a single supplier constituting  
6 75 percent or more of the dealer's total new equipment that is  
7 construction, industrial, forestry, or mining equipment, computed  
8 on the basis of net equipment cost; and

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

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

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

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

3                   (A) planting, cultivating, irrigating,  
4 harvesting, and producing agricultural products; or

5                   (B) raising, feeding, or tending to livestock or  
6 harvesting products from livestock.

7           (19) "Specialty agricultural equipment supplier"  
8 means a supplier of specialty agricultural equipment whose:

9                   (A) gross sales revenue to the dealer is less  
10 than the threshold amount;

11                   (B) product line does not include farm tractors  
12 or combines;

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

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

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

26                   (A) a receiver, trustee, liquidator, assignee,  
27 purchaser of assets or stock, or surviving corporation resulting

1 from a merger, liquidation, or reorganization of an original  
2 supplier; and

3 (B) a purchaser of all or substantially all of a  
4 supplier's assets, such as a purchaser of all or substantially all  
5 of the inventory of the supplier or any division or product line of  
6 the supplier.

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

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

20 Sec. 57.003. 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 [Sections 57.004-57.050 reserved for expansion]

24 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

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

27 (1) any provision that purports to elect the



1 application of a law of another state instead of the law of this  
2 state; and

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

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

9 (1) the dealer gives prior notice of the change to the  
10 supplier; and

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

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

19 [Sections 57.054-57.100 reserved for expansion]

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

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

24 (b) If a dealer dies, a supplier has 90 days in which to  
25 consider and make a determination on a request by a family member to  
26 enter into a new dealer agreement to operate the dealership. If the  
27 supplier determines that the requesting family member is not

1 acceptable, the supplier shall provide the family member with a  
2 written notice of its determination with the stated reasons for  
3 nonacceptance. This section does not entitle an heir, personal  
4 representative, or family member of the dealer to operate a  
5 dealership without the specific written consent of the supplier.

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

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

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

25 (c) Not later than the 60th day after receipt of a request  
26 under Subsection (b), the supplier shall either approve the sale or  
27 transfer or send a written response to the dealer stating the

1 supplier's denial of the request and the specific reasons for the  
2 denial. The request is considered approved if the supplier does not  
3 approve or deny the request by the deadline.

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

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

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

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

26 (d) Notwithstanding any other provision of this chapter to  
27 the contrary, any attempt by the supplier to terminate the dealer

1 agreement as a result of the death of a dealer will be delayed until  
2 there has been compliance with the terms of this section or the  
3 180-day period has expired, as applicable.

4 [Sections 57.104-57.150 reserved for expansion]

5 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE  
6 DEALER AGREEMENTS

7 Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter  
8 applies only to a dealer agreement that is not a single-line dealer  
9 agreement.

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

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

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

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

25 (2) the dealer or dealership has transferred a  
26 controlling ownership interest in its business without the  
27 supplier's consent;

1           (3) the dealer has filed a voluntary petition in  
2 bankruptcy or an involuntary petition in bankruptcy has been filed  
3 against the dealer and has not been discharged earlier than the 31st  
4 day after the date the petition was filed;

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

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

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

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

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

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

20           (10) the dealer has been convicted of or pleaded nolo  
21 contendere to a felony affecting the relationship between the  
22 dealer and supplier;

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

25                   (A) the dealer's customers;

26                   (B) the public welfare; or

27                   (C) the representation or reputation of the

1 supplier's product; or

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

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

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

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

17 Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF  
18 DEFICIENCY. (a) Except as otherwise provided by this section, a  
19 supplier must provide a dealer written notice of termination of a  
20 dealer agreement at least 180 days before the effective date of  
21 termination. The notice must state all reasons constituting good  
22 cause for the termination and that the dealer has 60 days in which  
23 to cure any claimed deficiency. If the deficiency is cured within  
24 60 days, the notice will be void.

25 (b) A supplier, other than a specialty agricultural  
26 equipment supplier, may not terminate a dealer agreement for the  
27 reason stated in Section 57.154(a)(12) unless the supplier gives

1 the dealer notice of the action at least two years before the  
2 effective date of the termination. If the dealer achieves the  
3 supplier's requirements for reasonable standards or performance  
4 objectives before the expiration of the two-year notice period, the  
5 notice will be void and the dealer agreement will continue in  
6 effect.

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

10 [Sections 57.156-57.200 reserved for expansion]

11 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

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

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

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

21 (b) In addition to the good cause reason for termination  
22 stated in Subsection (a), good cause for termination of a dealer  
23 agreement exists when:

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

26 (2) there has been commencement of a dissolution or  
27 liquidation of the dealer;

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

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

9           (5) the dealer has failed to operate in the normal  
10 course of business for seven consecutive days or has otherwise  
11 abandoned its business;

12           (6) the dealer has been convicted of or pleaded guilty  
13 to a felony affecting the relationship between the dealer and  
14 supplier; or

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

23           Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF  
24 DEFICIENCY. (a) Except as provided by Subsection (b) and Section  
25 57.205, a supplier shall provide a dealer with at least 90 days'  
26 written notice of termination. The notice must state all reasons  
27 constituting good cause for the termination and state that the



1 dealer has 60 days in which to cure any claimed deficiency. If the  
2 deficiency is cured within 60 days, the notice will be void.

3 (b) Notwithstanding Subsection (a), if the good cause  
4 reason for termination is due to the dealer's failure to meet or  
5 maintain the supplier's requirements for market penetration, a  
6 reasonable period of time has existed where the supplier has worked  
7 with the dealer to gain the desired market share.

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

12 [Sections 57.206-57.250 reserved for expansion]

13 SUBCHAPTER F. WARRANTY CLAIMS

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

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

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

27 Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a

1 warranty claim submitted by a dealer to the supplier:

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

3 (2) not later than the 60th day after the termination  
4 or expiration date of the dealer agreement, if the claim is for work  
5 performed before the effective date of the termination or  
6 expiration.

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

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

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

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

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

1       Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work  
2 performed by the dealer shall be compensated in accordance with the  
3 reasonable and customary amount of time required to complete the  
4 work, expressed in hours and fractions of hours, multiplied by the  
5 dealer's established customer hourly retail labor rate for  
6 non-warranty repair work, which must have previously been made  
7 known to the supplier. Parts used in warranty repair work shall be  
8 reimbursed at the current net parts cost plus 15 percent.

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

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

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

26       Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE.

27 (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms

1 of a written dealer agreement between the parties require the  
2 supplier to compensate the dealer for warranty labor costs either  
3 as:

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

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

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

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

14 (d) This section does not affect the supplier's obligation  
15 to reimburse the dealer for parts in accordance with Section  
16 57.255.

17 [Sections 57.259-57.300 reserved for expansion]

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

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

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

25 (2) the dealer is otherwise required by applicable law  
26 to accept the delivery.

27 (b) A supplier may not coerce a dealer to refuse purchase of

1 equipment manufactured by another supplier.

2 (c) It shall not be considered a violation of this section  
3 if the supplier requires a dealer to have or provide separate  
4 facilities, financial statements, or sales staff for major  
5 competing product lines if the supplier gives the dealer at least  
6 three years' notice of such a requirement.

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

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

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

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

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

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

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

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

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

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

15                   (1) substantially lessen competition;

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

17 or

18                   (3) injure, destroy, or prevent competition with any  
19 dealer who either grants or knowingly receives the benefit of such  
20 discrimination.

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

23                   (1) the price difference is due to differences in the  
24 cost of manufacture, sale, or delivery of the equipment or repair  
25 part;

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

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

3           [Sections 57.306-57.350 reserved for expansion]

4           SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING

5                   CANCELLATION OR NONRENEWAL OF AGREEMENT

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

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

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

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

26                   (2) an amount equal to 100 percent of the net equipment  
27 cost of all unsold, undamaged demonstrators, less a downward

1 adjustment to reflect a reasonable allowance for refurbishment and  
2 the price another dealer will pay for the equipment;

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

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

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

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

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

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

27 (b) Fair market value of property subject to repurchase



1 under Subsection (a)(5) is considered to be the acquisition cost of  
2 the property, including any shipping, handling, and set-up fees,  
3 less straight line depreciation of the acquisition cost over a  
4 three-year period. If the dealer purchased data processing  
5 hardware or software that exceeded the supplier's minimum  
6 requirements, the acquisition cost of the data processing hardware  
7 or software for purposes of this section is considered to be the  
8 acquisition cost of hardware or software of similar quality that  
9 did not exceed the minimum requirements of the supplier.

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

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

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

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

26 (c) The supplier may withhold payments due under this  
27 subchapter during the period in which the dealer fails to comply

1 with its contractual obligation to remove any signage indicating  
2 that the dealer is an authorized dealer of the supplier.

3 Sec. 57.355. LIABILITY. (a) A supplier who refuses to  
4 repurchase any inventory covered under this chapter after  
5 termination or discontinuation of the dealer agreement is liable to  
6 the dealer for:

7 (1) 110 percent of the amount that would have been due  
8 for the inventory had the supplier timely complied with the  
9 requirements of this chapter;

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

11 (3) any accrued interest; and

12 (4) the actual costs of any court or arbitration  
13 proceeding incurred by the dealer, including attorney's fees or  
14 arbitrator fees.

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

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

25 Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S  
26 CLAIMS. This subchapter may not be construed to affect any security  
27 interest the supplier may have in the inventory of the dealer, and

1 any repurchase of the dealer's inventory under this subchapter may  
2 not be subject to the claims of any secured or unsecured creditor of  
3 the supplier or any assignee of the supplier until the dealer has  
4 received full payment or credit, as applicable, under this  
5 subchapter.

6 Sec. 57.357. AGREEMENT TERMINATED BY DEALER;  
7 INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a)

8 This subchapter does not apply to a specialty agricultural  
9 equipment supplier if the dealer terminates the dealer agreement  
10 without good reason. A dealer has good reason to terminate the  
11 dealer agreement for any of the following reasons:

12 (1) the death or disability of a majority owner of the  
13 dealership;

14 (2) the dealership terminates the dealer agreement  
15 and:

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

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

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

24 (4) the specialty agricultural equipment supplier:

25 (A) abandons the market or withdraws from the  
26 market by no longer selling to the dealer a type of equipment  
27 previously sold to the dealer that constituted a material part of

1 the specialty agricultural equipment sold by the supplier;

2 (B) consistently sells products to the dealer  
3 that are defective or breach the implied warranty of  
4 merchantability;

5 (C) consistently fails to:

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

9 (ii) provide adequate training required by  
10 the supplier for maintenance, repair, or use of the supplier's  
11 products; or

12 (iii) provide marketing and marketing  
13 support for the supplier's product if marketing is a requirement of  
14 the dealer agreement;

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

18 (E) has engaged in conduct that is injurious or  
19 detrimental to the dealer's customers, the public welfare, or the  
20 dealer's reputation;

21 (F) has made material misrepresentations to the  
22 dealer or has falsified a record;

23 (G) has breached the dealer agreement; or

24 (H) has violated this chapter.

25 (b) This subchapter may not be construed to limit a  
26 specialty agricultural equipment supplier's obligation to  
27 repurchase a dealer's inventory as provided by this section if the

1 supplier terminates or otherwise discontinues the dealer  
2 agreement.

3 Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to  
4 repurchase from a dealer:

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

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

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

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

17 (5) equipment delivered to the dealer before the  
18 beginning of the 36-month period preceding the date of notification  
19 of termination; and

20 (6) equipment or a repair part that:

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

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

26 (C) is not in new, unsold, undamaged, or complete  
27 condition, subject to the provisions of this chapter relating to

1 demonstrators; and

2 (D) is not returned to the supplier before the  
3 90th day after the later of:

4 (i) the effective date of termination of a  
5 dealer agreement; or

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

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

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

19 [Sections 57.359-57.400 reserved for expansion]

20 SUBCHAPTER I. ACTIONS AND REMEDIES

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

1 The dealer may also be granted injunctive relief for unlawful  
2 termination.

3 (b) A remedy provided by this section is not exclusive and  
4 is in addition to any other remedy permitted by law.

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

12 SECTION 3. Chapter 55, Business & Commerce Code, is  
13 repealed.

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

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

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

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

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