

1-1 By: Darby (Senate Sponsor - Deuell) H.B. No. 3079  
1-2 (In the Senate - Received from the House May 12, 2011;  
1-3 May 12, 2011, read first time and referred to Committee on  
1-4 Transportation and Homeland Security; May 21, 2011, reported  
1-5 favorably by the following vote: Yeas 9, Nays 0; May 21, 2011, sent  
1-6 to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to dealer agreements regarding the purchase and sale of  
1-10 certain equipment or machinery used for agricultural,  
1-11 construction, industrial, mining, outdoor power, forestry, and  
1-12 landscaping purposes.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The legislature finds that the retail  
1-15 distribution, sales, and rental of agricultural, construction,  
1-16 industrial, mining, outdoor power, forestry, and lawn and garden  
1-17 equipment through the use of independent dealers operating under  
1-18 contract with the equipment suppliers vitally affect the general  
1-19 economy of this state, the public interest, and the public welfare.  
1-20 Therefore, the legislature determines that state regulation of the  
1-21 business relationship between the independent dealers and  
1-22 equipment suppliers as contemplated in the Fair Practices of  
1-23 Equipment Manufacturers, Distributors, Wholesalers, and Dealers  
1-24 Act is necessary and that any action taken in violation of this Act  
1-25 would violate the public policy of this state.

1-26 SECTION 2. Title 4, Business & Commerce Code, is amended by  
1-27 adding Chapter 57 to read as follows:

1-28 CHAPTER 57. AGRICULTURAL, CONSTRUCTION, INDUSTRIAL, MINING,  
1-29 FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER  
1-30 AGREEMENTS

1-31 SUBCHAPTER A. GENERAL PROVISIONS

1-32 Sec. 57.001. SHORT TITLE. This chapter may be cited as the  
1-33 Fair Practices of Equipment Manufacturers, Distributors,  
1-34 Wholesalers, and Dealers Act.

1-35 Sec. 57.002. DEFINITIONS. In this chapter:

1-36 (1) "Current net parts cost" means an amount equal to  
1-37 the current net parts price of a repair part, less any trade or cash  
1-38 discount typically given to a dealer in the normal, ordinary course  
1-39 of ordering a repair part.

1-40 (2) "Current net parts price" means:

1-41 (A) with respect to a repair part in current  
1-42 stock, the price for the repair part listed in the supplier's price  
1-43 list or catalog in effect:

1-44 (i) when a dealer agreement is terminated  
1-45 or discontinued; or

1-46 (ii) for purposes of Subchapter F, when the  
1-47 repair part is ordered; and

1-48 (B) with respect to a repair part that has been  
1-49 superseded, the price for a repair part listed in the supplier's  
1-50 price list or catalog in effect when a dealer agreement is  
1-51 terminated or discontinued that:

1-52 (i) performs the same function and is for  
1-53 the same purpose as the superseded part; and

1-54 (ii) is listed under a different part  
1-55 number than the superseded part.

1-56 (3) "Dealer" means a person who is primarily engaged  
1-57 in the business of:

1-58 (A) selling or leasing equipment or repair parts  
1-59 for equipment to end users of the equipment; and

1-60 (B) repairing or servicing equipment.

1-61 (4) "Dealer agreement" means an oral or written  
1-62 agreement or arrangement, of definite or indefinite duration,  
1-63 between a dealer and a supplier that provides for the rights and  
1-64 obligations of the parties with respect to the purchase or sale of

- 2-1 equipment or repair parts.
- 2-2 (5) "Dealership" means the retail sale business  
 2-3 engaged in by a dealer under a dealer agreement.
- 2-4 (6) "Demonstrator" means equipment in a dealer's  
 2-5 inventory that:
- 2-6 (A) has never been sold at retail; and  
 2-7 (B) is or has been made available to a potential  
 2-8 customer, as authorized by the supplier, without charge or under a  
 2-9 short-term rental agreement for purposes of demonstrating its use  
 2-10 and with the intent of encouraging the customer to purchase the  
 2-11 equipment.
- 2-12 (7) "Equipment":
- 2-13 (A) means machinery, equipment, or implements or  
 2-14 attachments to the machinery, equipment, or implements used for, or  
 2-15 in connection with, any of the following purposes:
- 2-16 (i) lawn, garden, golf course, landscaping,  
 2-17 or grounds maintenance;
- 2-18 (ii) planting, cultivating, irrigating,  
 2-19 harvesting, or producing agricultural or forestry products;
- 2-20 (iii) raising, feeding, or tending to  
 2-21 livestock or harvesting products from livestock or any other  
 2-22 activity in connection with those activities; or
- 2-23 (iv) industrial, construction,  
 2-24 maintenance, mining, or utility activities or applications; and
- 2-25 (B) does not mean:
- 2-26 (i) trailers or self-propelled vehicles  
 2-27 designed primarily for the transportation of persons or property on  
 2-28 a street or highway; or
- 2-29 (ii) all-terrain vehicles, utility task  
 2-30 vehicles, or recreational off-highway vehicles.
- 2-31 (8) "Family member" means a child or other lineal  
 2-32 descendant, a son-in-law, a daughter-in-law, or the spouse of an  
 2-33 individual.
- 2-34 (9) "Index" means the producer price index for  
 2-35 construction machinery series identification number  
 2-36 pcu333120333120 published by the Bureau of Labor Statistics of the  
 2-37 United States Department of Labor or a successor index measuring  
 2-38 substantially similar information.
- 2-39 (10) "Inventory" means equipment, repair parts, data  
 2-40 processing hardware or software, or specialized service or repair  
 2-41 tools.
- 2-42 (11) "Net equipment cost" means an amount equal to the  
 2-43 sum of the price the dealer actually paid to the supplier for  
 2-44 equipment, and:
- 2-45 (A) any freight paid by the dealer from the  
 2-46 supplier's location to the dealer's location, payable at the cost  
 2-47 stated on the invoice, or, if there is no invoice, at the truckload  
 2-48 rate in effect when a dealer agreement is terminated; and
- 2-49 (B) the set-up cost of labor incurred in  
 2-50 preparing the equipment for retail sale or lease, reimbursable at  
 2-51 the dealer's standard labor rate charged by the dealer to its  
 2-52 customers for non-warranty repair work, unless a supplier has  
 2-53 established a reasonable set-up time to prepare the equipment for  
 2-54 retail sale or lease, in which case the labor will be reimbursable  
 2-55 at an amount equal to the reasonable set-up time in effect as of the  
 2-56 date of delivery multiplied by the dealer's standard labor rate.
- 2-57 (12) "New equipment" means, for purposes of  
 2-58 determining whether a dealer is a single-line dealer, equipment  
 2-59 that can be returned to the supplier following termination of a  
 2-60 dealer agreement under Subchapter H.
- 2-61 (13) "Person" means:
- 2-62 (A) an individual, corporation, partnership,  
 2-63 limited liability company, company, trust, or any other form of  
 2-64 business entity, including any other entity in which a person has a  
 2-65 majority interest or of which a person has control; or
- 2-66 (B) an officer, director, or other individual who  
 2-67 actively controls the activities of an entity described by  
 2-68 Paragraph (A).
- 2-69 (14) "Repair parts" means all parts related to the

- 3-1 repair of equipment, including superseded parts.
- 3-2 (15) "Single-line dealer" means a dealer that:
- 3-3 (A) has purchased construction, industrial,
- 3-4 forestry, or mining equipment from a single supplier constituting
- 3-5 75 percent or more of the dealer's total new equipment that is
- 3-6 construction, industrial, forestry, or mining equipment, computed
- 3-7 on the basis of net equipment cost; and
- 3-8 (B) has a total annual average sales volume of
- 3-9 equipment acquired from the single-line supplier in excess of \$25
- 3-10 million for the five calendar years immediately preceding the
- 3-11 applicable determination date, provided, however, that the \$25
- 3-12 million threshold will be increased as of September 1 of each year
- 3-13 by an amount equal to the threshold on the date the determination is
- 3-14 made multiplied by the percentage increase in the index from
- 3-15 January of the immediately preceding year to January of the year the
- 3-16 determination is made.
- 3-17 (16) "Single-line dealer agreement" means a dealer
- 3-18 agreement between a single-line dealer and a single-line supplier
- 3-19 that only provides for the rights and obligations of the parties
- 3-20 with respect to the purchase and sale of construction, forestry,
- 3-21 industrial, or mining equipment.
- 3-22 (17) "Single-line supplier" means the supplier that is
- 3-23 selling to a single-line dealer construction, industrial,
- 3-24 forestry, or mining equipment constituting 75 percent of the
- 3-25 single-line dealer's new equipment that consists of construction,
- 3-26 industrial, forestry, and mining equipment.
- 3-27 (18) "Specialty agricultural equipment" means
- 3-28 equipment that is designed for and used in:
- 3-29 (A) planting, cultivating, irrigating,
- 3-30 harvesting, and producing agricultural products; or
- 3-31 (B) raising, feeding, or tending to livestock or
- 3-32 harvesting products from livestock.
- 3-33 (19) "Specialty agricultural equipment supplier"
- 3-34 means a supplier of specialty agricultural equipment whose:
- 3-35 (A) gross sales revenue to the dealer is less
- 3-36 than the threshold amount;
- 3-37 (B) product line does not include farm tractors
- 3-38 or combines;
- 3-39 (C) sales of outdoor power equipment to the
- 3-40 dealer do not exceed 10 percent of the supplier's total sales to the
- 3-41 dealer during the one-year period ending on the last day of the
- 3-42 calendar month immediately preceding the effective date of the
- 3-43 termination of the dealer agreement; and
- 3-44 (D) qualification for that status is determined
- 3-45 on a case-by-case basis depending on the sales of the applicable
- 3-46 dealer and the sales to the applicable dealer by the specialty
- 3-47 agricultural equipment supplier.
- 3-48 (20) "Supplier" means a person engaged in the business
- 3-49 of the manufacture, assembly, or wholesale distribution of
- 3-50 equipment or repair parts. The term includes any successor in
- 3-51 interest of a supplier, including:
- 3-52 (A) a receiver, trustee, liquidator, assignee,
- 3-53 purchaser of assets or stock, or surviving corporation resulting
- 3-54 from a merger, liquidation, or reorganization of an original
- 3-55 supplier; and
- 3-56 (B) a purchaser of all or substantially all of a
- 3-57 supplier's assets, such as a purchaser of all or substantially all
- 3-58 of the inventory of the supplier or any division or product line of
- 3-59 the supplier.
- 3-60 (21) "Terminate" or "termination" means to terminate,
- 3-61 cancel, fail to renew, or substantially change the competitive
- 3-62 circumstances of a dealer agreement.
- 3-63 (22) "Threshold amount" means the lesser of 10 percent
- 3-64 of the dealer's gross sales revenue or \$350,000, in each case based
- 3-65 on net sales of the dealership during the one-year period ending on
- 3-66 the last day of the calendar month immediately preceding the
- 3-67 effective date of the termination of the dealer agreement,
- 3-68 provided, however, that the \$350,000 amount must be increased each
- 3-69 year by an amount equal to the amount on the year in which the

4-1 determination is made multiplied by the percentage increase in the  
 4-2 index from January of the immediately preceding year to January of  
 4-3 the year in which the determination is made.

4-4 Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of  
 4-5 a provision of this chapter or of the application of this chapter is  
 4-6 void.

4-7 [Sections 57.004-57.050 reserved for expansion]

4-8 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

4-9 Sec. 57.051. CERTAIN PROVISIONS VOID. The following  
 4-10 provisions contained in a dealer agreement are void:

4-11 (1) any provision that purports to elect the  
 4-12 application of a law of another state instead of the law of this  
 4-13 state; and

4-14 (2) any provision that requires a dealer to pay  
 4-15 attorney's fees incurred by the supplier.

4-16 Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A  
 4-17 supplier may not prevent, by contract or otherwise, a dealer from  
 4-18 changing its capital structure or the means by or through which the  
 4-19 dealer finances its operations, if:

4-20 (1) the dealer gives prior notice of the change to the  
 4-21 supplier; and

4-22 (2) the dealer at all times meets any reasonable  
 4-23 capital standards required by the supplier pursuant to a right  
 4-24 granted in the dealer agreement and imposed on similarly situated  
 4-25 dealers.

4-26 Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier  
 4-27 may not require a dealer to assent to a release, assignment,  
 4-28 novation, waiver, or estoppel that would release any person from  
 4-29 liability imposed by this chapter.

4-30 [Sections 57.054-57.100 reserved for expansion]

4-31 SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

4-32 Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY  
 4-33 SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) This section  
 4-34 applies only to single-line dealer agreements.

4-35 (b) If a dealer dies, a supplier has 90 days in which to  
 4-36 consider and make a determination on a request by a family member to  
 4-37 enter into a new dealer agreement to operate the dealership. If the  
 4-38 supplier determines that the requesting family member is not  
 4-39 acceptable, the supplier shall provide the family member with a  
 4-40 written notice of its determination with the stated reasons for  
 4-41 nonacceptance. This section does not entitle an heir, personal  
 4-42 representative, or family member of the dealer to operate a  
 4-43 dealership without the specific written consent of the supplier.

4-44 (c) Notwithstanding Subsection (b), if a supplier and  
 4-45 dealer have previously executed an agreement concerning succession  
 4-46 rights before the dealer's death, and if that agreement is still in  
 4-47 effect, the agreement shall be observed even if it designates  
 4-48 someone other than the surviving spouse or an heir of the decedent  
 4-49 as the successor.

4-50 Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT  
 4-51 DEALER'S REQUEST. (a) This section applies only to a dealer  
 4-52 agreement that is not a single-line dealer agreement.

4-53 (b) If a supplier has contractual authority to approve or  
 4-54 deny a request for the sale or transfer of a dealer's business or an  
 4-55 equity ownership interest in the dealer's business, a dealer may  
 4-56 request that the supplier approve or deny a request for the sale or  
 4-57 transfer of a dealer's business or an equity ownership interest in  
 4-58 the dealer's business to a proposed buyer or transferee. The  
 4-59 dealer's request must be in writing and must include character  
 4-60 references and reasonable financial, personal background, and work  
 4-61 history information with respect to the proposed buyer or  
 4-62 transferee.

4-63 (c) Not later than the 60th day after receipt of a request  
 4-64 under Subsection (b), the supplier shall either approve the sale or  
 4-65 transfer or send a written response to the dealer stating the  
 4-66 supplier's denial of the request and the specific reasons for the  
 4-67 denial. The request is considered approved if the supplier does not  
 4-68 approve or deny the request by the deadline.

4-69 (d) A supplier may deny a request made under this section

5-1 only if the proposed buyer or transferee fails to meet the  
 5-2 reasonable requirements consistently imposed by the supplier for  
 5-3 purposes of determining whether to approve a new dealer or a request  
 5-4 for approval of a sale or transfer of a dealer's business or equity  
 5-5 ownership in the dealer's business.

5-6 Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT  
 5-7 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only  
 5-8 to a dealer agreement that is not a single-line dealer agreement.

5-9 (b) If a dealer dies and the supplier has contractual  
 5-10 authority to approve or deny a request for the sale or transfer of a  
 5-11 dealer's business or an equity ownership interest in the dealer's  
 5-12 business, the personal representative of the dealer's estate, or  
 5-13 any other person with authority to transfer the dealer's assets,  
 5-14 must submit to the supplier a written request for approval of the  
 5-15 sale or transfer of the business or ownership interest not later  
 5-16 than the 180th day after the date of the dealer's death.

5-17 (c) If a timely request for approval of a sale or transfer is  
 5-18 made as provided by Subsection (b), the supplier must approve or  
 5-19 deny the request in accordance with the procedures prescribed by  
 5-20 Sections 57.102(c) and (d) for a supplier's approval or denial of a  
 5-21 request for a sale or transfer made under Section 57.102.

5-22 (d) Notwithstanding any other provision of this chapter to  
 5-23 the contrary, any attempt by the supplier to terminate the dealer  
 5-24 agreement as a result of the death of a dealer will be delayed until  
 5-25 there has been compliance with the terms of this section or the  
 5-26 180-day period has expired, as applicable.

5-27 [Sections 57.104-57.150 reserved for expansion]

5-28 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE  
 5-29 DEALER AGREEMENTS

5-30 Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter  
 5-31 applies only to a dealer agreement that is not a single-line dealer  
 5-32 agreement.

5-33 Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A  
 5-34 dealer must give the supplier at least 30 days' prior written notice  
 5-35 of termination.

5-36 Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.  
 5-37 A supplier may not terminate a dealer agreement without good cause.

5-38 Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Except as  
 5-39 specifically provided otherwise by this chapter, good cause for  
 5-40 termination of a dealer agreement exists for purposes of this  
 5-41 subchapter if:

5-42 (1) the dealer fails to substantially comply with  
 5-43 essential and reasonable requirements imposed on the dealer under  
 5-44 the terms of the dealer agreement, provided that such requirements  
 5-45 are not different from requirements imposed on other similarly  
 5-46 situated dealers either by their terms or by the manner in which  
 5-47 they are enforced;

5-48 (2) the dealer or dealership has transferred a  
 5-49 controlling ownership interest in its business without the  
 5-50 supplier's consent;

5-51 (3) the dealer has filed a voluntary petition in  
 5-52 bankruptcy or an involuntary petition in bankruptcy has been filed  
 5-53 against the dealer and has not been discharged earlier than the 31st  
 5-54 day after the date the petition was filed;

5-55 (4) there has been a sale or other closeout of a  
 5-56 substantial part of the dealer's assets related to the business;

5-57 (5) there has been commencement of an action or  
 5-58 proceeding for the dissolution or liquidation of the dealership;

5-59 (6) there has been a change in dealer or dealership  
 5-60 locations without the prior written approval of the supplier;

5-61 (7) the dealer has defaulted under the terms of any  
 5-62 chattel mortgage or other security agreement between the dealer and  
 5-63 the supplier;

5-64 (8) there has been a revocation of any guarantee of the  
 5-65 dealer's present or future obligations to the supplier, except as  
 5-66 provided by Subsection (b);

5-67 (9) the dealer has failed to operate in the normal  
 5-68 course of business for seven consecutive days or has otherwise  
 5-69 abandoned the dealer's business;

6-1 (10) the dealer has been convicted of or pleaded nolo  
 6-2 contendere to a felony affecting the relationship between the  
 6-3 dealer and supplier;

6-4 (11) the dealer has engaged in conduct that is  
 6-5 injurious or otherwise detrimental to:

6-6 (A) the dealer's customers;

6-7 (B) the public welfare; or

6-8 (C) the representation or reputation of the  
 6-9 supplier's product; or

6-10 (12) the dealer has consistently failed to meet and  
 6-11 maintain the supplier's requirements for reasonable standards and  
 6-12 performance objectives, so long as the supplier has provided the  
 6-13 dealer with reasonable standards and performance objectives based  
 6-14 on the supplier's experience in other comparable market areas.

6-15 (b) Good cause is not considered to exist for purposes of  
 6-16 Subsection (a)(8) if:

6-17 (1) a person revokes any guarantee of the dealer's  
 6-18 obligations to the supplier in connection with or following the  
 6-19 transfer of the person's entire ownership interest in the  
 6-20 dealership; and

6-21 (2) the supplier does not require the person to  
 6-22 execute a new guarantee of the dealer's present or future  
 6-23 obligations to the supplier in connection with the transfer of the  
 6-24 person's ownership interest in the dealership.

6-25 Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF  
 6-26 DEFICIENCY. (a) Except as otherwise provided by this section, a  
 6-27 supplier must provide a dealer written notice of termination of a  
 6-28 dealer agreement at least 180 days before the effective date of  
 6-29 termination. The notice must state all reasons constituting good  
 6-30 cause for the termination and that the dealer has 60 days in which  
 6-31 to cure any claimed deficiency. If the deficiency is cured within  
 6-32 60 days, the notice will be void.

6-33 (b) A supplier, other than a specialty agricultural  
 6-34 equipment supplier, may not terminate a dealer agreement for the  
 6-35 reason stated in Section 57.154(a)(12) unless the supplier gives  
 6-36 the dealer notice of the action at least two years before the  
 6-37 effective date of the termination. If the dealer achieves the  
 6-38 supplier's requirements for reasonable standards or performance  
 6-39 objectives before the expiration of the two-year notice period, the  
 6-40 notice will be void and the dealer agreement will continue in  
 6-41 effect.

6-42 (c) The notice and right to cure provisions in this section  
 6-43 do not apply if the reason for termination is for any reason stated  
 6-44 in Sections 57.154(a)(1)-(11).

6-45 [Sections 57.156-57.200 reserved for expansion]

6-46 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

6-47 Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter  
 6-48 applies only to a single-line dealer agreement.

6-49 Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED.  
 6-50 No supplier may terminate a dealer agreement without good cause.

6-51 Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes of  
 6-52 this subchapter, "good cause" means failure by a dealer to comply  
 6-53 with requirements imposed on the dealer by the dealer agreement if  
 6-54 the requirements are not different from those requirements imposed  
 6-55 on other similarly situated dealers.

6-56 (b) In addition to the good cause reason for termination  
 6-57 stated in Subsection (a), good cause for termination of a dealer  
 6-58 agreement exists when:

6-59 (1) there has been a closeout or sale of a substantial  
 6-60 part of the dealer's assets related to the equipment business;

6-61 (2) there has been commencement of a dissolution or  
 6-62 liquidation of the dealer;

6-63 (3) the dealer has changed its principal place of  
 6-64 business or has added additional locations without the supplier's  
 6-65 prior approval, which shall not be unreasonably withheld;

6-66 (4) the dealer has substantially defaulted under a  
 6-67 chattel mortgage or other security agreement between the dealer and  
 6-68 the supplier or there has been a revocation or discontinuance of a  
 6-69 guarantee of a present or future obligation of the dealer to the

7-1 supplier;

7-2 (5) the dealer has failed to operate in the normal  
7-3 course of business for seven consecutive days or has otherwise  
7-4 abandoned its business;

7-5 (6) the dealer has been convicted of or pleaded guilty  
7-6 to a felony affecting the relationship between the dealer and  
7-7 supplier; or

7-8 (7) the dealer transfers an interest in the dealership  
7-9 or a person with a substantial interest in the ownership or control  
7-10 of the dealership, including an individual proprietor, partner, or  
7-11 major shareholder, withdraws from the dealership or dies, or a  
7-12 substantial reduction occurs in the interest of a partner or major  
7-13 shareholder in the dealership, provided, however, good cause does  
7-14 not exist if the supplier consents to an action described by this  
7-15 subdivision.

7-16 Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF  
7-17 DEFICIENCY. (a) Except as provided by Subsection (b) and Section  
7-18 57.205, a supplier shall provide a dealer with at least 90 days'  
7-19 written notice of termination. The notice must state all reasons  
7-20 constituting good cause for the termination and state that the  
7-21 dealer has 60 days in which to cure any claimed deficiency. If the  
7-22 deficiency is cured within 60 days, the notice will be void.

7-23 (b) Notwithstanding Subsection (a), if the good cause  
7-24 reason for termination is due to the dealer's failure to meet or  
7-25 maintain the supplier's requirements for market penetration, a  
7-26 reasonable period of time has existed where the supplier has worked  
7-27 with the dealer to gain the desired market share.

7-28 Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER  
7-29 CERTAIN CIRCUMSTANCES. The notice and right to cure provisions  
7-30 under Section 57.204 do not apply if the reason for termination is  
7-31 contained in Sections 57.203(b)(1)-(7).

7-32 [Sections 57.206-57.250 reserved for expansion]

7-33 SUBCHAPTER F. WARRANTY CLAIMS

7-34 Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. For  
7-35 purposes of this subchapter, "terminate" and "termination" do not  
7-36 include the phrase substantially change the competitive  
7-37 circumstances of a dealer agreement.

7-38 Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH  
7-39 SUBCHAPTER. (a) Sections 57.253, 57.254, and 57.255 apply to a  
7-40 warranty claim submitted by a dealer who has complied with the  
7-41 supplier's reasonable policies and procedures for reimbursement of  
7-42 the warranty claim and the claim is a warranted claim under the  
7-43 supplier's warranty policy.

7-44 (b) A supplier's warranty reimbursement policies and  
7-45 procedures are considered unreasonable to the extent of any  
7-46 conflict with this subchapter.

7-47 Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a  
7-48 warranty claim submitted by a dealer to the supplier:

7-49 (1) while the dealer agreement is in effect; or

7-50 (2) not later than the 60th day after the termination  
7-51 or expiration date of the dealer agreement, if the claim is for work  
7-52 performed before the effective date of the termination or  
7-53 expiration.

7-54 (b) Not later than the 45th day after the date a supplier  
7-55 receives a warranty claim from a dealer, the supplier shall accept  
7-56 or reject the claim by providing written notice to the dealer. A  
7-57 claim not rejected before that deadline is considered accepted.

7-58 (c) If the warranty claim is accepted, the supplier shall  
7-59 pay or credit to the dealer's account all amounts owed to the dealer  
7-60 with respect to the accepted claim not later than the 30th day after  
7-61 the date the claim is accepted.

7-62 (d) If the supplier rejects the warranty claim, the supplier  
7-63 shall give the dealer written or electronic notice of the grounds  
7-64 for rejection of a rejected claim, which must be consistent with the  
7-65 supplier's grounds for rejection of warranty claims of other  
7-66 dealers, both in the terms and manner of enforcement.

7-67 (e) If no grounds for rejection of a rejected claim are  
7-68 given to the dealer, the claim is considered accepted.

7-69 Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. If a warranty

8-1 claim was rejected on the ground that the dealer failed to properly  
 8-2 follow the procedural or technical requirements for submission of a  
 8-3 warranty claim, the dealer may resubmit the claim in proper form not  
 8-4 later than the 30th day after the date the dealer receives notice of  
 8-5 the claim's rejection.

8-6 Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work  
 8-7 performed by the dealer shall be compensated in accordance with the  
 8-8 reasonable and customary amount of time required to complete the  
 8-9 work, expressed in hours and fractions of hours, multiplied by the  
 8-10 dealer's established customer hourly retail labor rate for  
 8-11 non-warranty repair work, which must have previously been made  
 8-12 known to the supplier. Parts used in warranty repair work shall be  
 8-13 reimbursed at the current net parts cost plus 15 percent.

8-14 Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR  
 8-15 INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation  
 8-16 of replacement parts performed with respect to inventory equipment  
 8-17 of a dealer or with respect to equipment of a dealer's customers, at  
 8-18 the request of a supplier, including work performed under a product  
 8-19 improvement program, constitutes a warranty claim for which the  
 8-20 dealer must be paid under this subchapter.

8-21 Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Except as  
 8-22 provided by Subsection (b), a supplier may audit a warranty claim  
 8-23 submitted by a dealer until the first anniversary of the date the  
 8-24 claim was paid and may charge back the amount of any claim that is  
 8-25 shown by audit to have been misrepresented.

8-26 (b) If an audit conducted under this section shows that a  
 8-27 warranty claim has been misrepresented, the supplier may audit any  
 8-28 other warranty claims submitted by the affected dealer within the  
 8-29 three-year period ending on a date a claim is shown by audit to be  
 8-30 misrepresented.

8-31 Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE.  
 8-32 (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms  
 8-33 of a written dealer agreement between the parties require the  
 8-34 supplier to compensate the dealer for warranty labor costs either  
 8-35 as:

8-36 (1) a discount in the price of the equipment to the  
 8-37 dealer, subject to Subsection (b); or

8-38 (2) a lump-sum payment made to the dealer not later  
 8-39 than the 90th day after the date the supplier's new equipment is  
 8-40 sold to the dealer, subject to Subsection (b).

8-41 (b) The discount or lump-sum payment under Subsection (a)  
 8-42 must be or result in an amount that is not less than five percent of  
 8-43 the suggested retail price of the equipment.

8-44 (c) The alternate reimbursement terms of a dealer agreement  
 8-45 that comply with Subsections (a) and (b) are enforceable.

8-46 (d) This section does not affect the supplier's obligation  
 8-47 to reimburse the dealer for parts in accordance with Section  
 8-48 57.255.

8-49 [Sections 57.259-57.300 reserved for expansion]

8-50 SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

8-51 Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO  
 8-52 PURCHASE. (a) A supplier may not coerce, compel, or require a  
 8-53 dealer to accept delivery of equipment or a repair part that has not  
 8-54 been voluntarily ordered by the dealer, unless:

8-55 (1) the equipment or repair part is a safety feature  
 8-56 required by the supplier or applicable law; or

8-57 (2) the dealer is otherwise required by applicable law  
 8-58 to accept the delivery.

8-59 (b) A supplier may not coerce a dealer to refuse purchase of  
 8-60 equipment manufactured by another supplier.

8-61 (c) It shall not be considered a violation of this section  
 8-62 if the supplier requires a dealer to have or provide separate  
 8-63 facilities, financial statements, or sales staff for major  
 8-64 competing product lines if the supplier gives the dealer at least  
 8-65 three years' notice of such a requirement.

8-66 Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES.

8-67 (a) A supplier may not condition the sale of equipment, repair  
 8-68 parts, or goods or services to a dealer on the purchase of other  
 8-69 goods or services.



9-1 (b) This section does not prohibit a supplier from requiring  
 9-2 a dealer to purchase all repair parts, special tools, or training  
 9-3 reasonably necessary to maintain the safe operation or quality of  
 9-4 operation in the field of any equipment offered for sale by the  
 9-5 dealer.

9-6 Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR  
 9-7 IMMEDIATE DELIVERY. A supplier may not refuse to deliver, in  
 9-8 reasonable quantities and within a reasonable time after receipt of  
 9-9 a dealer's order, to any dealer having a dealer agreement for the  
 9-10 retail sale of new equipment sold or distributed by the supplier,  
 9-11 equipment covered by the dealer agreement and specifically  
 9-12 advertised or represented by the supplier as available for  
 9-13 immediate delivery, unless the refusal is due to:

9-14 (1) the supplier's prudent and reasonable restrictions  
 9-15 on extensions of credit to the dealer;

9-16 (2) a business decision by the supplier to limit the  
 9-17 production volume of the equipment; or

9-18 (3) an act of nature, work stoppage or delay due to a  
 9-19 strike or labor difficulty, a bona fide shortage of materials,  
 9-20 freight embargo, or other cause over which the supplier has no  
 9-21 control.

9-22 Sec. 57.304. DISCRIMINATION IN ORDERS. A supplier may not  
 9-23 discriminate, directly or indirectly, in filling an order placed by  
 9-24 a dealer for retail sale or lease of new equipment under a dealer  
 9-25 agreement as between dealers of the same product line.

9-26 Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT.  
 9-27 (a) Except as provided by Subsection (b), a supplier may not  
 9-28 discriminate, directly or indirectly, in the price among different  
 9-29 dealers with respect to a purchase of equipment or a repair part of  
 9-30 like grade and quality and identical brand, where the effect of such  
 9-31 discrimination may be to:

9-32 (1) substantially lessen competition;

9-33 (2) tend to create a monopoly in any line of commerce;

9-34 or

9-35 (3) injure, destroy, or prevent competition with any  
 9-36 dealer who either grants or knowingly receives the benefit of such  
 9-37 discrimination.

9-38 (b) A supplier may charge a different price among dealers  
 9-39 for purchases described by Subsection (a) if:

9-40 (1) the price difference is due to differences in the  
 9-41 cost of manufacture, sale, or delivery of the equipment or repair  
 9-42 part;

9-43 (2) the supplier can show that the lower price was made  
 9-44 in good faith to meet an equally low price of a competitor; or

9-45 (3) the price difference is related to the volume of  
 9-46 equipment purchased by dealers or market share obtained by dealers.

9-47 [Sections 57.306-57.350 reserved for expansion]

9-48 SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING  
 9-49 CANCELLATION OR NONRENEWAL OF AGREEMENT

9-50 Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For  
 9-51 purposes of this subchapter, "terminate" and "termination" do not  
 9-52 include the phrase substantially change the competitive  
 9-53 circumstances of a dealer agreement.

9-54 Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL  
 9-55 BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more  
 9-56 than one of its business locations covered by the same dealer  
 9-57 agreement, this subchapter applies to the repurchase of the  
 9-58 dealer's inventory at the particular business location being closed  
 9-59 unless the closing occurs without the permission of the supplier.

9-60 Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier or  
 9-61 dealer terminates or otherwise discontinues the dealer agreement  
 9-62 entered into between the two parties, the supplier shall pay to the  
 9-63 dealer, or credit to the dealer's account, if the dealer has  
 9-64 outstanding any sums owing the supplier:

9-65 (1) an amount equal to 100 percent of the net equipment  
 9-66 cost of all new, unsold, and undamaged equipment, less a downward  
 9-67 adjustment for new, unsold, and undamaged equipment between 24 and  
 9-68 36 months old to reflect a reasonable allowance for refurbishment  
 9-69 and the price another dealer will pay for the equipment;

10-1           (2) an amount equal to 100 percent of the net equipment  
 10-2 cost of all unsold, undamaged demonstrators, less a downward  
 10-3 adjustment to reflect a reasonable allowance for refurbishment and  
 10-4 the price another dealer will pay for the equipment;

10-5           (3) an amount equal to 90 percent of the current net  
 10-6 parts cost of new, unsold, and undamaged repair parts previously  
 10-7 purchased from the supplier and held by the dealer on the date that  
 10-8 the dealer agreement is terminated or expires;

10-9           (4) an amount equal to five percent of the current net  
 10-10 parts price of all repair parts returned to the supplier to  
 10-11 compensate the dealer for the handling, packing, and loading of  
 10-12 those repair parts for return to the supplier, unless the supplier  
 10-13 elects to perform the handling, packing, and loading of the repair  
 10-14 parts itself;

10-15           (5) an amount equal to the fair market value of any  
 10-16 specific data processing hardware or software that the supplier  
 10-17 required the dealer to acquire or purchase to satisfy the  
 10-18 requirements of the supplier, including computer equipment  
 10-19 required and approved by the supplier to communicate with the  
 10-20 supplier; and

10-21           (6) an amount equal to 75 percent of the net cost,  
 10-22 including shipping, handling, and set-up fees, of all specialized  
 10-23 service or repair tools that:

10-24           (A) were previously purchased pursuant to the  
 10-25 requirements of the supplier within 15 years before the date of the  
 10-26 applicable notification of termination of the dealer agreement; and

10-27           (B) are unique to the supplier's product line and  
 10-28 are complete and in good operating condition.

10-29           (b) Fair market value of property subject to repurchase  
 10-30 under Subsection (a)(5) is considered to be the acquisition cost of  
 10-31 the property, including any shipping, handling, and set-up fees,  
 10-32 less straight line depreciation of the acquisition cost over a  
 10-33 three-year period. If the dealer purchased data processing  
 10-34 hardware or software that exceeded the supplier's minimum  
 10-35 requirements, the acquisition cost of the data processing hardware  
 10-36 or software for purposes of this section is considered to be the  
 10-37 acquisition cost of hardware or software of similar quality that  
 10-38 did not exceed the minimum requirements of the supplier.

10-39           (c) Notwithstanding any other provision of this chapter,  
 10-40 with respect to machines with hour meters, demonstrators with less  
 10-41 than 50 hours of use will be considered new, unsold, undamaged  
 10-42 equipment subject to repurchase under this section.

10-43           (d) On payment of the amount due under this section or on  
 10-44 credit to the dealer's account of the amount required by this  
 10-45 section, title to all inventory repurchased under this subchapter  
 10-46 is transferred to the supplier, and the supplier is entitled to  
 10-47 possession of the inventory.

10-48           Sec. 57.354. LATE PAYMENT OR CREDIT. (a) All payments or  
 10-49 allowances of credit due to a dealer shall be paid or credited  
 10-50 within 90 days after receipt by the supplier of property required to  
 10-51 be repurchased under this subchapter.

10-52           (b) Any payment or allowance of credit due a dealer that is  
 10-53 not paid within the 90-day period will accrue interest at the  
 10-54 maximum rate allowed by law.

10-55           (c) The supplier may withhold payments due under this  
 10-56 subchapter during the period in which the dealer fails to comply  
 10-57 with its contractual obligation to remove any signage indicating  
 10-58 that the dealer is an authorized dealer of the supplier.

10-59           Sec. 57.355. LIABILITY. (a) A supplier who refuses to  
 10-60 repurchase any inventory covered under this chapter after  
 10-61 termination or discontinuation of the dealer agreement is liable to  
 10-62 the dealer for:

10-63           (1) 110 percent of the amount that would have been due  
 10-64 for the inventory had the supplier timely complied with the  
 10-65 requirements of this chapter;

10-66           (2) any freight charges paid by the dealer;

10-67           (3) any accrued interest; and

10-68           (4) the actual costs of any court or arbitration  
 10-69 proceeding incurred by the dealer, including attorney's fees or

11-1 arbitrator fees.

11-2 (b) The supplier and dealer will each pay 50 percent of the  
 11-3 costs of freight, at truckload rates, to ship any equipment or  
 11-4 repair parts returned to the supplier pursuant to this chapter.

11-5 (c) Notwithstanding any provision to the contrary in the  
 11-6 Uniform Commercial Code, the dealer retains title to and has a first  
 11-7 and prior lien against all inventory returned by the dealer to the  
 11-8 supplier under this chapter until the dealer is paid all amounts  
 11-9 owed by the supplier under this subchapter for the repurchase of the  
 11-10 inventory required under this chapter, and the supplier must hold  
 11-11 the proceeds of the inventory in trust for the dealer's benefit.

11-12 Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S  
 11-13 CLAIMS. This subchapter may not be construed to affect any security  
 11-14 interest the supplier may have in the inventory of the dealer, and  
 11-15 any repurchase of the dealer's inventory under this subchapter may  
 11-16 not be subject to the claims of any secured or unsecured creditor of  
 11-17 the supplier or any assignee of the supplier until the dealer has  
 11-18 received full payment or credit, as applicable, under this  
 11-19 subchapter.

11-20 Sec. 57.357. AGREEMENT TERMINATED BY DEALER;  
 11-21 INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a)  
 11-22 This subchapter does not apply to a specialty agricultural  
 11-23 equipment supplier if the dealer terminates the dealer agreement  
 11-24 without good reason. A dealer has good reason to terminate the  
 11-25 dealer agreement for any of the following reasons:

11-26 (1) the death or disability of a majority owner of the  
 11-27 dealership;

11-28 (2) the dealership terminates the dealer agreement  
 11-29 and:

11-30 (A) substantially all of the dealership assets or  
 11-31 all shares of stock of the dealership are sold to a new owner; and

11-32 (B) no owner of the terminated dealership  
 11-33 continues to own an interest in the continuing dealership;

11-34 (3) the filing of bankruptcy by or against the  
 11-35 dealership that has not been discharged within 30 days after the  
 11-36 date of the filing, the appointment of a receiver, or an assignment  
 11-37 for the benefit of creditors; or

11-38 (4) the specialty agricultural equipment supplier:

11-39 (A) abandons the market or withdraws from the  
 11-40 market by no longer selling to the dealer a type of equipment  
 11-41 previously sold to the dealer that constituted a material part of  
 11-42 the specialty agricultural equipment sold by the supplier;

11-43 (B) consistently sells products to the dealer  
 11-44 that are defective or breach the implied warranty of  
 11-45 merchantability;

11-46 (C) consistently fails to:

11-47 (i) provide adequate product support for  
 11-48 the type and use of the product, including technical assistance,  
 11-49 operator and repair manuals, and part lists and diagrams;

11-50 (ii) provide adequate training required by  
 11-51 the supplier for maintenance, repair, or use of the supplier's  
 11-52 products; or

11-53 (iii) provide marketing and marketing  
 11-54 support for the supplier's product if marketing is a requirement of  
 11-55 the dealer agreement;

11-56 (D) consistently fails to meet the supplier's  
 11-57 warranty obligations to the dealer as required by contract or law,  
 11-58 including obligations under this chapter;

11-59 (E) has engaged in conduct that is injurious or  
 11-60 detrimental to the dealer's customers, the public welfare, or the  
 11-61 dealer's reputation;

11-62 (F) has made material misrepresentations to the  
 11-63 dealer or has falsified a record;

11-64 (G) has breached the dealer agreement; or

11-65 (H) has violated this chapter.

11-66 (b) This subchapter may not be construed to limit a  
 11-67 specialty agricultural equipment supplier's obligation to  
 11-68 repurchase a dealer's inventory as provided by this section if the  
 11-69 supplier terminates or otherwise discontinues the dealer

12-1 agreement.

12-2 Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to  
 12-3 repurchase from a dealer:

12-4 (1) a repair part that, except as provided by  
 12-5 Subsection (b), is in a broken or damaged package;

12-6 (2) a repair part that because of its condition cannot  
 12-7 be resold as a new part without repackaging or reconditioning;

12-8 (3) any inventory for which the dealer is unable to  
 12-9 furnish evidence, satisfactory to the supplier, of clear title,  
 12-10 free and clear of all claims, liens, and encumbrances unless the  
 12-11 inventory will be free and clear of all claims, liens, and  
 12-12 encumbrances immediately on payment by the supplier of amounts due  
 12-13 in this subchapter to the lienholders;

12-14 (4) any inventory that the dealer wants to keep,  
 12-15 provided the dealer has a contractual right to keep the inventory;

12-16 (5) equipment delivered to the dealer before the  
 12-17 beginning of the 36-month period preceding the date of notification  
 12-18 of termination; and

12-19 (6) equipment or a repair part that:

12-20 (A) is ordered by the dealer on or after the date  
 12-21 of notification of termination;

12-22 (B) is acquired by the dealer from a source other  
 12-23 than the supplier, unless the equipment or repair part was ordered  
 12-24 from, or invoiced to the dealer by, the supplier;

12-25 (C) is not in new, unsold, undamaged, or complete  
 12-26 condition, subject to the provisions of this chapter relating to  
 12-27 demonstrators; and

12-28 (D) is not returned to the supplier before the  
 12-29 90th day after the later of:

12-30 (i) the effective date of termination of a  
 12-31 dealer agreement; or

12-32 (ii) the date the dealer receives from the  
 12-33 supplier all information, including documents or supporting  
 12-34 materials, required by the supplier to comply with the supplier's  
 12-35 return policy.

12-36 (b) The supplier will be required to repurchase a repair  
 12-37 part in a broken or damaged package for a repurchase price that is  
 12-38 equal to 85 percent of the current net parts cost for the repair  
 12-39 part if the aggregate current net parts cost for the entire package  
 12-40 of repair parts is \$75 or more.

12-41 (c) Subsection (a)(6)(D) does not apply to a dealer if the  
 12-42 supplier did not give the dealer notice of the 90-day deadline at  
 12-43 the time the applicable notice of termination was sent to the  
 12-44 dealer.

12-45 [Sections 57.359-57.400 reserved for expansion]

12-46 SUBCHAPTER I. ACTIONS AND REMEDIES

12-47 Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a  
 12-48 supplier violates any provision of this chapter, a dealer may bring  
 12-49 an action against the supplier in a court of competent jurisdiction  
 12-50 for damages sustained by the dealer as a consequence of the  
 12-51 supplier's violation, including damages for lost profits, together  
 12-52 with the actual costs of the action, including the dealer's  
 12-53 attorney's fees and paralegal fees and the costs of arbitrators.  
 12-54 The dealer may also be granted injunctive relief for unlawful  
 12-55 termination.

12-56 (b) A remedy provided by this section is not exclusive and  
 12-57 is in addition to any other remedy permitted by law.

12-58 Sec. 57.402. CHOICE OF REMEDIES. The provisions of this  
 12-59 chapter are supplemental to any dealer agreement between the dealer  
 12-60 and the supplier that provides the dealer with greater protection.  
 12-61 A dealer may elect to pursue its contract remedy or the remedy  
 12-62 provided by state law, or both. An election by the dealer to pursue  
 12-63 those remedies does not bar the dealer's right to exercise any other  
 12-64 remedies that may be granted at law or in equity.

12-65 SECTION 3. Chapter 55, Business & Commerce Code, is  
 12-66 repealed.

12-67 SECTION 4. (a) Chapter 57, Business & Commerce Code, as  
 12-68 added by this Act, applies to:

12-69 (1) a dealer agreement entered into or renewed on or

13-1 after the effective date of this Act; and  
13-2 (2) a dealer agreement that was entered into before  
13-3 the effective date of this Act, has no expiration date, and is a  
13-4 continuing contract.

13-5 (b) A dealer agreement entered into before the effective  
13-6 date of this Act, other than a dealer agreement described by  
13-7 Subsection (a)(2) of this section, is governed by the law as it  
13-8 existed on the date the agreement was entered into, and the former  
13-9 law is continued in effect for that purpose.

13-10 SECTION 5. This Act takes effect September 1, 2011.

13-11

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