

By: Leach

H.B. No. 4810

A BILL TO BE ENTITLED

AN ACT

relating to transactions involving dealer agreements under the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act

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

SECTION 1. Title 4, Chapter 57, Subchapter A, Business and Commerce Code is amended to read as follows:

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

Sec. 57.002. DEFINITIONS. In this chapter:

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

(2) "Current net parts price" means:

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

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

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

(B) with respect to a repair part that has been

1 superseded, the price for a repair part listed in the supplier's
2 price list or catalog in effect when a dealer agreement is
3 terminated or discontinued that:

4 (i) performs the same function and is for
5 the same purpose as the superseded part; and

6 (ii) is listed under a different part
7 number than the superseded part.

8 (3) "Dealer": means ~~a person who is primarily engaged~~
9 ~~in the business of.~~

10 (A) a person in Texas that is not a Sophisticated
11 Party and who is primarily engaged in the business of selling or
12 leasing equipment, or repair parts for equipment, to end users ~~of~~
13 ~~the~~ located in Texas; and

14 (B) ~~repairing or servicing equipment is~~
15 authorized by a supplier to sell or lease such equipment and or
16 repair parts to end users located in Texas pursuant to the terms of
17 a dealer agreement.

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

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

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

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

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

(7) "Equipment":

(A) means machinery; or equipment, or implements or attachments to ~~the machinery; or~~ equipment, ~~or implements that~~ are used for, ~~or in connection with,~~ any of the following purposes:

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

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

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

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

(B) does not mean or include:

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

(ii) off-highway vehicles; or

(iii) parts, products, piping, tubing, structures, and anything else that is intended to be affixed to, or that is customarily affixed to, real property or structures located on real property.

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

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

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

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

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

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

27 (12) "New equipment" means, for purposes of

determining whether a dealer is a single-line dealer, equipment that can be returned to the supplier following termination of a dealer agreement under Subchapter H.

(13) "Person" means:

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

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

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

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

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

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

1 determination is made.

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

7 (17) "Single-line supplier" means the supplier that is
8 selling to a single-line dealer construction, industrial,
9 forestry, or mining equipment constituting 75 percent of the
10 single-line dealer's new equipment that consists of construction,
11 industrial, forestry, and mining equipment.

12 (18) "Sophisticated Party" means a dealer that has
13 either:

14 (A) assets with a value greater than \$5,000,000;
15 or

16 (B) annual gross revenues greater than
17 \$5,000,000 in any of the three prior years.

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

20 (A) planting, cultivating, irrigating,
21 harvesting, and producing agricultural products; or

22 (B) raising, feeding, or tending to livestock or
23 harvesting products from livestock.

24 (19) "Specialty agricultural equipment supplier"
25 means a supplier of specialty agricultural equipment whose:

26 (A) gross sales revenue to the dealer is less
27 than the threshold amount;

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

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

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

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

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

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

(21) "Terminate" or "termination" means to terminate, cancel, ~~fail to renew, or substantially~~ or materially and adversely change the competitive circumstances of a dealer agreement.

(22) "Threshold amount" means the lesser of 10 percent

1 of the dealer's gross sales revenue or \$350,000, in each case based
2 on net sales of the dealership during the one-year period ending on
3 the last day of the calendar month immediately preceding the
4 effective date of the termination of the dealer agreement,
5 provided, however, that the \$350,000 amount must be increased each
6 year by an amount equal to the amount on the year in which the
7 determination is made multiplied by the percentage increase in the
8 index from January of the immediately preceding year to January of
9 the year in which the determination is made.

10 Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of
11 a provision of this chapter or of the application of this chapter is
12 void.

13 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

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

16 (1) any provision that purports to elect the
17 application of a law of another state instead of the law of this
18 state; and

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

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

25 (1) the dealer gives prior notice of the change to the
26 supplier; and

27 (2) the dealer at all times meets any reasonable

1 capital standards required by the supplier pursuant to a right
2 granted in the dealer agreement and imposed on similarly situated
3 dealers.

4 Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier
5 may not require a dealer to assent to a release, assignment,
6 novation, waiver, or estoppel that would release any person from
7 liability imposed by this chapter unless the dealer is represented
8 by legal counsel in connection with such release of liability
9 and/or modification or exclusion of the provisions of this chapter.

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

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

14 (b) If a dealer dies, a supplier has 90 days in which to
15 consider and make a determination on a request by a family member to
16 enter into a new dealer agreement to operate the dealership. If the
17 supplier determines that the requesting family member is not
18 acceptable, the supplier shall provide the family member with a
19 written notice of its determination with the stated reasons for
20 nonacceptance. This section does not entitle an heir, personal
21 representative, or family member of the dealer to operate a
22 dealership without the specific written consent of the supplier.

23 (c) Notwithstanding Subsection (b), if a supplier and
24 dealer have previously executed an agreement concerning succession
25 rights before the dealer's death, and if that agreement is still in
26 effect, the agreement shall be observed even if it designates
27 someone other than the surviving spouse or an heir of the decedent

1 as the successor.

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

5 (b) If a supplier has contractual authority to approve or
6 deny a request for the sale or transfer of a dealer's business or an
7 equity ownership interest in the dealer's business, a dealer may
8 request that the supplier approve or deny a request for the sale or
9 transfer of a dealer's business or an equity ownership interest in
10 the dealer's business to a proposed buyer or transferee. The
11 dealer's request must be in writing and must include character
12 references and reasonable financial, personal background, and work
13 history information with respect to the proposed buyer or
14 transferee.

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

21 (d) A supplier may deny a request made under this section
22 only if the proposed buyer or transferee fails to meet the
23 reasonable requirements consistently imposed by the supplier for
24 purposes of determining whether to approve a new dealer or a request
25 for approval of a sale or transfer of a dealer's business or equity
26 ownership in the dealer's business.

27 Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT

1 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only
2 to a dealer agreement that is not a single-line dealer agreement.

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

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

16 (d) Notwithstanding any other provision of this chapter to
17 the contrary, any attempt by the supplier to terminate the dealer
18 agreement as a result of the death of a dealer will be delayed until
19 there has been compliance with the terms of this section or the
20 180-day period has expired, as applicable.

21 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE

22 DEALER AGREEMENTS

23 Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter
24 applies only to a dealer agreement that is not a single-line dealer
25 agreement.

26 Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A
27 dealer must give the supplier at least 30 days' prior written notice

1 of termination.

2 Sec. 57.153. TERMINATION BY SUPPLIER: ~~GOOD CAUSE REQUIRED.~~

3 ~~A supplier may not terminate a dealer agreement without good cause~~

4 (a) A supplier may terminate a dealer agreement at any time
5 for good cause.

6 (b) A supplier may terminate a dealer agreement after 180
7 days' written notice to the dealer in the absence of good cause
8 (without any cause).

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

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

19 (2) the dealer or dealership has transferred a
20 controlling ownership interest in its business without the
21 supplier's consent;

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

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

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

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

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

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

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

14 (10) the dealer has been convicted of or pleaded nolo
15 contendere to a felony affecting the relationship between the
16 dealer and supplier;

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

19 (A) the dealer's customers;

20 (B) the public welfare; or

21 (C) the representation or reputation of the
22 supplier's product; or

23 (12) the dealer has consistently failed to meet and
24 maintain the supplier's requirements for reasonable standards and
25 performance objectives, so long as the supplier has provided the
26 dealer with reasonable standards and performance objectives based
27 on the supplier's experience in other comparable market areas.

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

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

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

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

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

1 ~~(c) The notice and right to cure provisions in this section~~
2 ~~do not apply if the reason for termination is for any reason stated~~
3 ~~in Sections 57.154(a)(2)(11).~~

4 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

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

7 Sec. 57.202. TERMINATION BY SUPPLIER; ~~GOOD CAUSE REQUIRED.~~
8 ~~No~~

9 (a) A supplier may terminate a dealer agreement without at
10 any time for good cause.

11 (b) A supplier may terminate a dealer agreement after 360
12 days' written notice to the dealer in the absence of good cause
13 (without any cause).

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

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

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

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

26 (3) the dealer has changed its principal place of
27 business or has added additional locations without the supplier's

1 prior approval, which shall not be unreasonably withheld;

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

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

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

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

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

~~the notice will be void.~~

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

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

SUBCHAPTER F. WARRANTY CLAIMS

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work
27 performed by the dealer shall be compensated in accordance with the

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

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

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

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

24 Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE.

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

1 as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 control.

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

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

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

12 (1) substantially lessen competition;

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

14 or

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

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

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

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

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

27 SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING

CANCELLATION OR NONRENEWAL OF AGREEMENT

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

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

Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier ~~or dealer~~ terminates ~~or otherwise discontinues~~ the a dealer agreement, ~~entered into between the two parties~~ upon written request the supplier ~~shall pay to the dealer~~ must repurchase from a dealer that is not a Sophisticated Party all equipment, repair parts or other products purchased from such supplier within one year of the termination, or credit to the dealer's account, ~~if the dealer has outstanding~~ owes any sums owing amount to the supplier, as follows:

(1) an amount equal to ~~100 percent of the net equipment cost of all new, unsold, and undamaged equipment, less a downward adjustment for new, unsold, and undamaged equipment between 24 and 36 months old to reflect a reasonable allowance for refurbishment~~ and amount paid by the price another dealer will pay for if the equipment or other products are not used and are in substantially the same condition as when purchased from the supplier;

(2) an amount equal to ~~100 percent~~ the fair market

1 value of the net any equipment cost of all unsold, undamaged
2 demonstrators, less a downward adjustment to reflect a reasonable
3 allowance for refurbishment or other products that have been used
4 and that are in substantially the price another dealer will pay for
5 same condition as when purchased from the equipment supplier;

6 (3) an amount equal to 90 percent of the ~~current net~~
7 ~~parts cost of new, unsold, and undamaged~~ amount paid by the dealer
8 of any repair parts that are in substantially the same condition as
9 when purchased from the supplier;

10 (4) an amount equal to 5 percent of the amount paid by
11 the dealer of all equipment, repair parts ~~previously purchased from~~
12 ~~the supplier and held by the dealer on the date that the dealer~~
13 ~~agreement is terminated or expires~~ or other products returned to
14 the supplier to compensate the dealer for the handling, packing,
15 and loading of those repair parts for return to the supplier, unless
16 the supplier elects to perform the handling, packing, and loading
17 ~~of the repair parts~~ itself;

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

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

27 (A) were previously purchased pursuant to the

1 requirements of the supplier within 15 years before the date of the
2 applicable notification of termination of the dealer agreement; and

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

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

15 ~~(c) Notwithstanding any other provision of this chapter,~~
16 ~~with respect to machines with hour meters, demonstrators with less~~
17 ~~than 50 hours of use will be considered new, unsold, undamaged~~
18 ~~equipment subject to repurchase under this section.~~

19 (d) On payment of the amount due under this section or on
20 credit to the dealer's account of the amount required by this
21 section, title to all inventory or other items repurchased under
22 this subchapter is transferred to the supplier, and the supplier is
23 entitled to possession of the ~~inventory~~ same.

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

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

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

8 Sec. 57.355. LIABILITY. (a) A supplier who refuses to
9 repurchase any inventory covered under this chapter after
10 termination ~~or discontinuation~~ of the dealer agreement is liable to
11 the dealer for:

12 (1) ~~110 percent of~~ the amount that would have been due
13 for the inventory had the supplier timely complied with the
14 requirements of this chapter;

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

16 (3) any accrued interest; and

17 (4) the actual costs of any court or arbitration
18 proceeding incurred by the dealer, including attorney's fees ~~or~~,
19 arbitrator fees, expenses, and interest pre and post judgment
20 and/or award.

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

24 (c) Notwithstanding any provision to the contrary in the
25 Uniform Commercial Code, the dealer retains title to and has a first
26 and prior lien against all inventory returned by the dealer to the
27 supplier under this chapter until the dealer is paid all amounts

owed by the supplier under this subchapter for the repurchase of the inventory required under this chapter, and the supplier must hold the proceeds of the inventory in trust for the dealer's benefit.

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

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

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

(2) the dealership terminates the dealer agreement and:

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

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

(3) the filing of bankruptcy by or against the dealership that has not been discharged within 30 days after the

1 date of the filing, the appointment of a receiver, or an assignment
2 for the benefit of creditors; or

3 (4) the specialty agricultural equipment supplier:

4 (A) abandons the market or withdraws from the
5 market by no longer selling to the dealer a type of equipment
6 previously sold to the dealer that constituted a material part of
7 the specialty agricultural equipment sold by the supplier;

8 (B) consistently sells products to the dealer
9 that are defective or breach the implied warranty of
10 merchantability;

11 (C) consistently fails to:

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

15 (ii) provide adequate training required by
16 the supplier for maintenance, repair, or use of the supplier's
17 products; or

18 (iii) provide marketing and marketing
19 support for the supplier's product if marketing is a requirement of
20 the dealer agreement;

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

24 (E) has engaged in conduct that is injurious or
25 detrimental to the dealer's customers, the public welfare, or the
26 dealer's reputation;

27 (F) has made material misrepresentations to the

1 dealer or has falsified a record;

2 (G) has breached the dealer agreement; or

3 (H) has violated this chapter.

4 (b) This subchapter may not be construed to limit a
5 specialty agricultural equipment supplier's obligation to
6 repurchase a dealer's inventory as provided by this section if the
7 supplier terminates or otherwise discontinues the dealer
8 agreement.

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

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

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

15 (3) any inventory for which the dealer is unable to
16 furnish evidence, satisfactory to the supplier, of clear title,
17 free and clear of all claims, liens, and encumbrances unless the
18 inventory will be free and clear of all claims, liens, and
19 encumbrances immediately on payment by the supplier of amounts due
20 in this subchapter to the lienholders;

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

23 (5) equipment delivered to the dealer before the
24 beginning of the 36-month period preceding the date of notification
25 of termination; and

26 (6) equipment or a repair part that:

27 (A) is ordered by the dealer on or after the date

1 of notification of termination;

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

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

8 (D) is not returned to the supplier before the
9 90th day after the later of:

10 (i) the effective date of termination of a
11 dealer agreement; or

12 (ii) the date the dealer receives from the
13 supplier all information, including documents or supporting
14 materials, required by the supplier to comply with the supplier's
15 return policy.

16 (b) The supplier will be required to repurchase a repair
17 part in a broken or damaged package for a repurchase price that is
18 equal to 85 percent of the current net parts cost for the repair
19 part if the aggregate current net parts cost for the entire package
20 of repair parts is \$75 or more.

21 (c) Subsection (a)(6)(D) does not apply to a dealer if the
22 supplier did not give the dealer notice of the 90-day deadline at
23 the time the applicable notice of termination was sent to the
24 dealer.

25 SUBCHAPTER I. ACTIONS AND REMEDIES

26 Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a
27 supplier violates any provision of this chapter, a dealer may bring

1 an action against the supplier in a court of competent jurisdiction
2 for ~~damages sustained~~ out-of-pocket expenses incurred by the dealer
3 as a consequence of the supplier's violation ~~including damages and~~
4 for lost profits proximately caused by a violation of this Act for a
5 period, together with not to exceed one year from the actual date of
6 termination, and may also recover reasonable costs of the action,
7 ~~including the dealer's, expenses, attorney's fees and, paralegal~~
8 fees and ~~the costs of arbitrators~~ arbitrator fees. The dealer may
9 also be granted injunctive relief for unlawful termination.

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

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

19 SECTION 2. This Act takes effect September 1, 2023.