

By: Leach

H.B. No. 4810

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to transactions involving dealer agreements under the  
3 Fair Practices of Equipment Manufacturers, Distributors,  
4 Wholesalers, and Dealers Act

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

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

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

11 Sec. 57.002. DEFINITIONS. In this chapter:

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

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

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

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

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

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25 superseded, the price for a repair part listed in the supplier's  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

28 (i) performs the same function and is for  
29 the same purpose as the superseded part; and

30 (ii) is listed under a different part number  
31 than the superseded part.

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

34 (A) a person in Texas that is not a Sophisticated

1 Party and who is primarily engaged in the business of selling  
2 or leasing equipment, or repair parts for equipment, to end  
3 users ~~of the~~ located in Texas; and

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

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

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

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

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

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

23 (7) "Equipment":

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

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

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

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

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

37 (B) does not mean or include:

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

41 (ii) off-highway vehicles; or

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

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

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

13           (10) "Inventory" means equipment, repair parts, data  
14 processing hardware or software, or specialized service or repair  
15 tools.

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

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

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

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

35           (13) "Person" means:

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

40                    (B) an officer, director, or other individual who  
41 actively controls the activities of an entity described by

1 Paragraph (A).

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

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

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

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

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

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

29 (18) "Sophisticated Party" means a dealer that has  
30 either:

31 (A) assets with a value greater than \$5,000,000;

32 or

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

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

37 (A) planting, cultivating, irrigating,  
38 harvesting, and producing agricultural products; or

39 (B) raising, feeding, or tending to livestock or  
40 harvesting products from livestock.

41 (19) "Specialty agricultural equipment supplier" means

1 a supplier of specialty agricultural equipment whose:

2 (A) gross sales revenue to the dealer is less  
3 than the threshold amount;

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

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

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

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

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

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

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

30 (22) "Threshold amount" means the lesser of 10 percent  
31 of the dealer's gross sales revenue or \$350,000, in each case based  
32 on net sales of the dealership during the one-year period ending  
33 on the last day of the calendar month immediately preceding the  
34 effective date of the termination of the dealer agreement,  
35 provided, however, that the \$350,000 amount must be increased each  
36 year by an amount equal to the amount on the year in which the  
37 determination is made multiplied by the percentage increase in the  
38 index from January of the immediately preceding year to January of  
39 the year in which the determination is made.

40  
41 Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver

1 of a provision of this chapter or of the application of this  
2 chapter is void.

3  
4 SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR  
5 DEALERSHIP  
6

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

9 (1) any provision that purports to elect the  
10 application of a law of another state instead of the law of this  
11 state; and

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

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

19 (1) the dealer gives prior notice of the change to the  
20 supplier; and

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

26 Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier  
27 may not require a dealer to assent to a release, assignment,  
28 novation, waiver, or estoppel that would release any person from  
29 liability imposed by this chapter unless the dealer is represented  
30 by legal counsel in connection with such release of liability  
31 and/or modification or exclusion of the provisions of this chapter.  
32

33 SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP  
34

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

38 (b) If a dealer dies, a supplier has 90 days in which to  
39 consider and make a determination on a request by a family member  
40 to enter into a new dealer agreement to operate the dealership.  
41 If the supplier determines that the requesting family member is  
42 not acceptable, the supplier shall provide the family member with

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

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

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

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

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

31 (d) A supplier may deny a request made under this section  
32 only if the proposed buyer or transferee fails to meet the  
33 reasonable requirements consistently imposed by the supplier for  
34 purposes of determining whether to approve a new dealer or a  
35 request for approval of a sale or transfer of a dealer's business  
36 or equity ownership in the dealer's business.

37  
38 Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT  
39 REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies  
40 only to a dealer agreement that is not a single-line dealer  
41 agreement.

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

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

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

19  
20 SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN  
21 SINGLE-LINE DEALER AGREEMENTS  
22

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

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

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

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

35 (b) A supplier may terminate a dealer agreement after  
36 180 days' written notice to the dealer in the absence of good  
37 cause (without any cause).

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

42 (1) the dealer fails to substantially comply with



1 essential and reasonable requirements imposed on the dealer under  
2 the terms of the dealer agreement, provided that such requirements  
3 are not different from requirements imposed on other similarly  
4 situated dealers either by their terms or by the manner in which  
5 they are enforced;

6 (2) the dealer or dealership has transferred a  
7 controlling ownership interest in its business without the  
8 supplier's consent;

9 (3) the dealer has filed a voluntary petition in  
10 bankruptcy or an involuntary petition in bankruptcy has been filed  
11 against the dealer and has not been discharged earlier than the  
12 31st day after the date the petition was filed;

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

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

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

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

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

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

28 (10) the dealer has been convicted of or pleaded nolo  
29 contendere to a felony affecting the relationship between the  
30 dealer and supplier;

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

33 (A) the dealer's customers;

34 (B) the public welfare; or

35 (C) the representation or reputation of the  
36 supplier's product; or

37 (12) the dealer has consistently failed to meet and  
38 maintain the supplier's requirements for reasonable standards and  
39 performance objectives, so long as the supplier has provided the  
40 dealer with reasonable standards and performance objectives based  
41 on the supplier's experience in other comparable market areas.

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

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

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

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

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

28 (c) ~~The notice and right to cure provisions in this section~~  
29 ~~do not apply if the reason for termination is for any reason stated~~  
30 ~~in Sections 57.154(a) (2) (11).~~  
31

32 SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER  
33 AGREEMENTS  
34

35 Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter  
36 applies only to a single-line dealer agreement.  
37

38 Sec. 57.202. TERMINATION BY SUPPLIER; ~~GOOD CAUSE REQUIRED.~~  
39 ~~No~~

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

42 (b) A supplier may terminate a dealer agreement after 360

1 days' written notice to the dealer in the absence of good cause  
2 (without any cause).

3  
4 Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes  
5 of this subchapter, "good cause" means failure by a dealer to  
6 comply with requirements imposed on the dealer by the dealer  
7 agreement if the requirements are not different from those  
8 requirements imposed on other similarly situated dealers.

9 (b) In addition to the good cause reason for termination  
10 stated in Subsection (a), good cause for termination of a dealer  
11 agreement exists when:

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

14 (2) there has been commencement of a dissolution or  
15 liquidation of the dealer;

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

19 (4) the dealer has substantially defaulted under a  
20 chattel mortgage or other security agreement between the dealer  
21 and the supplier or there has been a revocation or discontinuance  
22 of a guarantee of a present or future obligation of the dealer to  
23 the supplier;

24 (5) the dealer has failed to operate in the normal  
25 course of business for seven consecutive days or has otherwise  
26 abandoned its business;

27 (6) the dealer has been convicted of or pleaded guilty  
28 to a felony affecting the relationship between the dealer and  
29 supplier; or

30 (7) the dealer transfers an interest in the dealership  
31 or a person with a substantial interest in the ownership or control  
32 of the dealership, including an individual proprietor, partner, or  
33 major shareholder, withdraws from the dealership or dies, or a  
34 substantial reduction occurs in the interest of a partner or major  
35 shareholder in the dealership, provided, however, good cause does  
36 not exist if the supplier consents to an action described by this  
37 subdivision.

38  
39 Sec. 57.204. NOTICE OF TERMINATION; ~~CORRECTION FO~~  
40 ~~DEFICIENCY. (a) Except as provided by Subsection (b) and Section~~  
41 ~~57.205, a supplier shall provide a dealer with at least 90 days'~~

1 ~~written~~ FOR GOOD CAUSE. A notice of termination. ~~The notice for~~  
2 good cause must state all reasons constituting good cause ~~for the~~  
3 ~~termination and state that the dealer has 60 days in which to cure~~  
4 ~~any claimed deficiency. If the deficiency is cured within 60 days,~~  
5 ~~the notice will be void.~~

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

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

#### 16 SUBCHAPTER F. WARRANTY CLAIMS

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

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

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

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

35 (1) while the dealer agreement is in effect; or  
36 (2) not later than the 60th day after the termination  
37 or expiration date of the dealer agreement, if the claim is for  
38 work performed before the effective date of the termination or  
39 expiration.

40 (b) Not later than the 45th day after the date a supplier  
41 receives a warranty claim from a dealer, the supplier shall accept  
42 or reject the claim by providing written notice to the dealer. A

1 claim not rejected before that deadline is considered accepted.

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

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

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

13

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

20

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

29

30 Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR  
31 INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation  
32 of replacement parts performed with respect to inventory equipment  
33 of a dealer or with respect to equipment of a dealer's customers,  
34 at the request of a supplier, including work performed under a  
35 product improvement program, constitutes a warranty claim for  
36 which the dealer must be paid under this subchapter.

37

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

1 (b) If an audit conducted under this section shows that a  
2 warranty claim has been misrepresented, the supplier may audit any  
3 other warranty claims submitted by the affected dealer within the  
4 three-year period ending on a date a claim is shown by audit to be  
5 misrepresented.  
6

7 Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE. (a)  
8 Sections [57.253](#), [57.254](#), and [57.255](#) do not apply if the terms of  
9 a written dealer agreement between the parties require the supplier  
10 to compensate the dealer for warranty labor costs either as:

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

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

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

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

21 (d) This section does not affect the supplier's obligation  
22 to reimburse the dealer for parts in accordance with Section  
23 [57.255](#).  
24

#### 25 SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT 26

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

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

33 (2) the dealer is otherwise required by applicable law  
34 to accept the delivery.

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

37 ~~(c) It shall not be considered a violation of this section  
38 if the supplier requires a dealer to have or provide separate  
39 facilities, financial statements, or sales staff for major  
40 competing product lines if the supplier gives the dealer at least  
41 three years' notice of such a requirement.~~  
42

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

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

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

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

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

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

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

27  
28           Sec. 57.304.   DISCRIMINATION IN ORDERS.   A supplier may not  
29 discriminate, directly or indirectly, in filling an order placed  
30 by a dealer for retail sale or lease of new equipment under a  
31 dealer agreement as between dealers of the same product line.

32  
33           Sec. 57.305.   DISCRIMINATION IN PRICES OF NEW EQUIPMENT.   (a)  
34 Except as provided by Subsection (b), a supplier may not  
35 discriminate, directly or indirectly, in the price among different  
36 dealers with respect to a purchase of equipment or a repair part  
37 of like grade and quality and identical brand, where the effect of  
38 such discrimination may be to:

39           (1) substantially lessen competition;

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

41 or

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

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

6 (1) the price difference is due to differences in the  
7 cost of manufacture, sale, or delivery of the equipment or repair  
8 part;

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

12 (3) the price difference is related to the volume of  
13 equipment purchased by dealers or market share obtained by dealers.  
14  
15

16 SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING  
17 CANCELLATION OR NONRENEWAL OF AGREEMENT  
18

19 Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For  
20 purposes of this subchapter, "terminate" and "termination" do not  
21 include the phrase substantially change the competitive  
22 circumstances of a dealer agreement.  
23

24 Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL BUSINESS  
25 LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more than  
26 one of its business locations covered by the same dealer agreement,  
27 this subchapter applies to the repurchase of the dealer's inventory  
28 at the particular business location being closed unless the closing  
29 occurs without the permission of the supplier.  
30

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

40 (1) an amount equal to ~~100 percent of~~ the net equipment  
41 ~~cost of all new, unsold, and undamaged equipment, less a downward~~  
42 ~~adjustment for new, unsold, and undamaged equipment between 24 and~~



1 ~~36 months old to reflect a reasonable allowance for refurbishment~~  
2 ~~and amount paid by the price another dealer will pay for if the~~  
3 ~~equipment or other products are not used and are in substantially~~  
4 ~~the same condition as when purchased from the supplier;~~

5 (2) ~~an amount equal to 100 percent the fair market~~  
6 ~~value of the net any equipment cost of all unsold, undamaged~~  
7 ~~demonstrators, less a downward adjustment to reflect a reasonable~~  
8 ~~allowance for refurbishment or other products that have been used~~  
9 ~~and that are in substantially the price another dealer will pay~~  
10 ~~for same condition as when purchased from the equipment supplier;~~

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

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

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

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

32 (A) ~~were previously purchased pursuant to the~~  
33 ~~requirements of the supplier within 15 years before the date of~~  
34 ~~the applicable notification of termination of the dealer~~  
35 ~~agreement; and~~

36 (B) ~~are unique to the supplier's product line and~~  
37 ~~are complete and in good operating condition.~~

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

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

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

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

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

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

24 (c) The supplier may withhold payments due under this  
25 subchapter during the period in which the dealer fails to comply  
26 with its contractual obligation to remove any signage indicating  
27 that the dealer is an authorized dealer of the supplier.  
28

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

33 (1) ~~110 percent of~~ the amount that would have been due  
34 for the inventory had the supplier timely complied with the  
35 requirements of this chapter;

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

37 (3) any accrued interest; and

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

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

4 (c) Notwithstanding any provision to the contrary in the  
5 Uniform Commercial Code, the dealer retains title to and has a  
6 first and prior lien against all inventory returned by the dealer  
7 to the supplier under this chapter until the dealer is paid all  
8 amounts owed by the supplier under this subchapter for the  
9 repurchase of the inventory required under this chapter, and the  
10 supplier must hold the proceeds of the inventory in trust for the  
11 dealer's benefit.  
12

13 Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S CLAIMS.  
14 This subchapter may not be construed to affect any security  
15 interest the supplier may have in the inventory of the dealer, and  
16 any repurchase of the dealer's inventory under this subchapter may  
17 not be subject to the claims of any secured or unsecured creditor  
18 of the supplier or any assignee of the supplier until the dealer  
19 has received full payment or credit, as applicable, under this  
20 subchapter.  
21  
22

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

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

31 (2) the dealership terminates the dealer agreement  
32 and:

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

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

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

41 (4) the specialty agricultural equipment supplier:

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

5 (B) consistently sells products to the dealer  
6 that are defective or breach the implied warranty of  
7 merchantability;

8 (C) consistently fails to:

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

12 (ii) provide adequate training required by  
13 the supplier for maintenance, repair, or use of the supplier's  
14 products; or

15 (iii) provide marketing and marketing  
16 support for the supplier's product if marketing is a requirement  
17 of the dealer agreement;

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

21 (E) has engaged in conduct that is injurious or  
22 detrimental to the dealer's customers, the public welfare, or the  
23 dealer's reputation;

24 (F) has made material misrepresentations to the  
25 dealer or has falsified a record;

26 (G) has breached the dealer agreement; or

27 (H) has violated this chapter.

28 (b) This subchapter may not be construed to limit a  
29 specialty agricultural equipment supplier's obligation to  
30 repurchase a dealer's inventory as provided by this section if the  
31 supplier terminates or otherwise discontinues the dealer  
32 agreement.  
33

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

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

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

40 (3) any inventory for which the dealer is unable to  
41 furnish evidence, satisfactory to the supplier, of clear title,

1 free and clear of all claims, liens, and encumbrances unless the  
2 inventory will be free and clear of all claims, liens, and  
3 encumbrances immediately on payment by the supplier of amounts due  
4 in this subchapter to the lienholders;

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

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

10 (6) equipment or a repair part that:

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

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

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

19 (D) is not returned to the supplier before the  
20 90th day after the later of:

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

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

27 (b) The supplier will be required to repurchase a repair  
28 part in a broken or damaged package for a repurchase price that is  
29 equal to 85 percent of the current net parts cost for the repair  
30 part if the aggregate current net parts cost for the entire package  
31 of repair parts is \$75 or more.

32 (c) Subsection (a) (6) (D) does not apply to a dealer if the  
33 supplier did not give the dealer notice of the 90-day deadline at  
34 the time the applicable notice of termination was sent to the  
35 dealer.

36

### 37 SUBCHAPTER I. ACTIONS AND REMEDIES

38

39 Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a  
40 supplier violates any provision of this chapter, a dealer may bring  
41 an action against the supplier in a court of competent jurisdiction

1 for ~~damages sustained~~ out-of-pocket expenses incurred by the  
2 dealer as a consequence of the supplier's violation ~~including~~  
3 ~~damages and~~ for lost profits proximately caused by a violation of  
4 this Act for a period, together with not to exceed one year from  
5 the actual date of termination, and may also recover reasonable  
6 ~~costs of the action, including the dealer's, expenses,~~ attorney's  
7 fees ~~and,~~ paralegal fees and ~~the costs of arbitrators~~ arbitrator  
8 fees. The dealer may also be granted injunctive relief for  
9 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  
17 pursue those remedies does not bar the dealer's right to exercise  
18 any other remedies that may be granted at law or in equity.

19

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