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By: **Delegates Stull and Elliott**

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Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Equipment Dealer Contract Act**

3 FOR the purpose of providing that the Equipment Dealer Contract Act does not  
4 require the repurchasing of certain items from a dealer; requiring a dealer and  
5 supplier to furnish representatives to inspect parts and certify their  
6 acceptability when packed for shipment; providing that failure of a supplier to  
7 provide a representative within a certain time shall result in automatic  
8 acceptance by the supplier of all returned items; requiring a supplier to  
9 repurchase a dealer's inventory under certain circumstances; authorizing a  
10 repurchase amount to be set off or credited to a retailer's account if a dealer has  
11 outstanding debts to a supplier; authorizing a certain person to require the  
12 supplier to repurchase inventory under certain circumstances; providing that an  
13 heir, personal representative, guardian, or succeeding stockholder has a certain  
14 amount of time to exercise a certain option; requiring a supplier to pay a dealer  
15 certain amounts to repurchase certain inventory; requiring a supplier to pay  
16 certain costs or perform the handling, packing, and loading of repair parts;  
17 requiring a repurchase amount to be credited to the dealer's account if the  
18 dealer has any outstanding debts to the supplier; requiring the title and right of  
19 possession to the repurchased inventory to be transferred to the supplier upon  
20 payment of the repurchase amount to the dealer; prohibiting a supplier or  
21 lender from debiting a dealer's reserve account unless a certain condition is met;  
22 requiring that a former dealer or the heirs of a dealer be given quarterly status  
23 reports on any remaining outstanding recourse contracts; providing for the  
24 return of reserve account funds to a dealer or the heirs of the dealer; requiring a  
25 supplier to repurchase inventory from an heir of a dealer or majority  
26 stockholder under certain circumstances; requiring an heir to exercise a certain  
27 option within a certain amount of time; providing that nothing in this Act shall  
28 require the repurchase of inventory if the heir and the supplier enter into a new  
29 contract to operate the retail dealership; requiring a supplier to consider and  
30 make a determination on a request by a family member to enter into a new  
31 contract to operate a dealership within a certain amount of time; requiring a  
32 supplier to provide a family member with a certain written notice; providing  
33 that an heir, personal representative, or family member of a dealer is not  
34 entitled to operate a dealership without the specific written consent of the  
35 supplier; requiring an agreement between a supplier and dealer to be enforced

1 notwithstanding certain circumstances; repealing certain provisions relating to  
2 the termination of a contract; repealing a certain notice requirement relating to  
3 the termination of a contract; requiring a supplier to provide notice and a right  
4 to cure to a dealer under certain circumstances; authorizing a supplier to  
5 terminate a contract under certain circumstances; altering the amount of time  
6 prior to the termination of a contract within which a dealer is required to  
7 provide certain notice; repealing certain provisions relating to a warranty claim  
8 submitted by a dealer; requiring a supplier to pay a certain warranty claim  
9 made by a dealer within a certain amount of time; requiring a supplier to  
10 approve or disapprove a warranty claim within a certain amount of time;  
11 providing for certain notice relating to a warranty claim; requiring a supplier to  
12 indemnify a dealer under certain circumstances; requiring a manufacturer,  
13 wholesaler, or distributor to accept or reject a certain claim for warranty work  
14 within a certain amount of time; requiring that interest accrue at a certain rate;  
15 providing for certain compensation for warranty work; repealing certain  
16 provisions relating to the transfer of a dealership; prohibiting a supplier from  
17 coercing a dealer in certain ways; providing for civil liability of a supplier that  
18 fails or refuses to purchase inventory within certain time periods; repealing  
19 certain provisions relating to the civil liability of a supplier; repealing a certain  
20 provision stating that the provisions of this Act are in addition to other remedies  
21 and an agreement between a supplier and dealer; altering certain definitions;  
22 adding certain definitions; making technical changes; making the provisions of  
23 this Act severable; and generally relating to the Equipment Dealer Contract Act.

24 BY repealing

25 Article - Commercial Law  
26 Section 19-102; 19-301 through 19-306 and the subtitle "Subtitle 3.  
27 Termination, Cancellation, and Nonrenewal of Contracts and Notice  
28 Required"; 19-401 and the subtitle "Subtitle 4. Warranty Claims";  
29 19-4A-01 and 19-4A-02 and the subtitle "Subtitle 4A. Transfer of the  
30 Business of a Dealer"; and 19-501 through 19-505 and the subtitle  
31 "Subtitle 5. Enforcement and Penalties"  
32 Annotated Code of Maryland  
33 (2000 Replacement Volume and 2004 Supplement)

34 BY repealing and reenacting, with amendments,

35 Article - Commercial Law  
36 Section 19-101, 19-201, and 19-202  
37 Annotated Code of Maryland  
38 (2000 Replacement Volume and 2004 Supplement)

39 BY adding to

40 Article - Commercial Law  
41 Section 19-102, 19-103, and 19-203 through 19-205; and 19-301 through  
42 19-305 to be under the new subtitle "Subtitle 3. Violations by Suppliers;  
43 Remedies"

1 Annotated Code of Maryland  
2 (2000 Replacement Volume and 2004 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That Section(s) 19-102; 19-301 through 19-306 and the subtitle  
5 "Subtitle 3. Termination, Cancellation, and Nonrenewal of Contracts and Notice  
6 Required"; 19-401 and the subtitle "Subtitle 4. Warranty Claims"; 19-4A-01 and  
7 19-4A-02 and the subtitle "Subtitle 4A. Transfer of the Business of a Dealer"; and  
8 19-501 through 19-505 and the subtitle "Subtitle 5. Enforcement and Penalties" be  
9 repealed.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
11 read as follows:

12 **Article - Commercial Law**

13 19-101.

14 (a) In this title, unless the context requires otherwise, the following words  
15 have the meanings indicated.

16 (b) ["Construction", "farm", "industrial", and "outdoor power", when used to  
17 refer to tractors, implements, attachments, or repair parts, have the meanings  
18 commonly used and understood among dealers and suppliers of those trades.

19 (c) "Contract" means a written or oral contract or agreement between a dealer  
20 and a [supplier] WHOLESALER, MANUFACTURER, OR DISTRIBUTOR by which:

21 (1) The dealer is granted the right to sell OR DISTRIBUTE [the supplier's  
22 equipment] GOODS OR SERVICES; [and] OR

23 (2) The dealer [is required to order and maintain an inventory in excess  
24 of \$25,000 at current net price from the supplier] IS GRANTED THE RIGHT TO USE A  
25 TRADE NAME, TRADEMARK, SERVICE MARK, LOGO TYPE, OR ADVERTISING OR OTHER  
26 COMMERCIAL SYMBOL.

27 (C) "CURRENT MODEL" MEANS A MODEL LISTED IN A WHOLESALER'S,  
28 MANUFACTURER'S, OR DISTRIBUTOR'S CURRENT SALES MANUAL OR A SUPPLEMENT  
29 TO THE CURRENT SALES MANUAL.

30 (d) "Current net price" means the price listed in the supplier's price list OR  
31 CATALOG in effect at the time the contract agreement is terminated, less any  
32 applicable discount allowed.

33 (e) "Dealer" means a [person:

34 (1) Engaged] PERSON ENGAGED in the business of [selling, at retail,]  
35 SELLING AT RETAIL construction, farm, [industrial, or outdoor power] UTILITY, OR  
36 INDUSTRIAL [equipment;

1 (2) Maintaining a total inventory, valued at over \$50,000, of new  
2 equipment and repair parts; and

3 (3) Providing repair service for the equipment sold] EQUIPMENT,  
4 IMPLEMENTS, MACHINERY, ATTACHMENTS, OUTDOOR POWER EQUIPMENT, OR  
5 REPAIR PARTS.

6 (F) "FAMILY MEMBER" MEANS A SPOUSE, SIBLING, PARENT, GRANDPARENT,  
7 CHILD, GRANDCHILD, MOTHER-IN-LAW, FATHER-IN-LAW, DAUGHTER-IN-LAW,  
8 SON-IN-LAW, STEPPARENT, OR STEPCHILD, OR A LINEAL DESCENDANT OF THE  
9 DEALER OR PRINCIPAL OWNER OF THE DEALERSHIP.

10 (G) "GOOD CAUSE" MEANS FAILURE BY A DEALER TO COMPLY WITH  
11 REQUIREMENTS IMPOSED ON THE DEALER BY A CONTRACT IF THE REQUIREMENTS  
12 ARE NOT DIFFERENT FROM REQUIREMENTS IMPOSED ON OTHER DEALERS  
13 SIMILARLY SITUATED IN THE STATE.

14 [(f)] (H) "Inventory" means [the tractors, implements, attachments,] FARM  
15 IMPLEMENTS OR MACHINERY, CONSTRUCTION, UTILITY, AND INDUSTRIAL  
16 equipment, CONSUMER PRODUCTS, OUTDOOR POWER EQUIPMENT, ATTACHMENTS,  
17 or repair parts [that a dealer purchased from a supplier].

18 [(g)] (I) "Net cost" means the price the dealer paid the supplier for the  
19 inventory, less all applicable discounts allowed, plus the amount the dealer paid for  
20 freight costs from the supplier's location to the dealer's location, plus the reasonable  
21 cost of assembly OR DISASSEMBLY performed by the dealer.

22 (J) "SUPERSEDED PART" MEANS A PART THAT WILL PROVIDE THE SAME  
23 FUNCTION AS A CURRENTLY AVAILABLE PART AS OF THE DATE OF CANCELLATION  
24 OF A CONTRACT.

25 [(h)] (K) "Supplier" means:

26 (1) [a] A wholesaler, manufacturer, or distributor who enters into a  
27 contract [agreement] with a dealer; OR

28 (2) A PURCHASER OF ASSETS OR STOCK OF A SURVIVING CORPORATION  
29 RESULTING FROM A MERGER OR LIQUIDATION, A RECEIVER OR ASSIGNEE, OR A  
30 TRUSTEE OF THE ORIGINAL MANUFACTURER, WHOLESALER, OR DISTRIBUTOR WHO  
31 ENTERS INTO A CONTRACT WITH A DEALER.

32 [(i)] (L) "Termination" means the termination, cancellation, nonrenewal, or  
33 noncontinuation of a contract.

34 (M) "UTILITY" AND "INDUSTRIAL", WHEN USED TO REFER TO EQUIPMENT,  
35 IMPLEMENTS, MACHINERY, ATTACHMENTS, OR REPAIR PARTS, HAVE THE MEANINGS  
36 COMMONLY USED AND UNDERSTOOD AMONG DEALERS AND SUPPLIERS OF FARM  
37 EQUIPMENT AS A USAGE OF TRADE.

1 19-102.

2 GOOD CAUSE EXISTS IN ANY OF THE FOLLOWING CIRCUMSTANCES:

3 (1) THE FILING OF A PETITION AGAINST THE DEALER TO COMMENCE:

4 (I) A RECEIVERSHIP PROCEEDING; OR

5 (II) A BANKRUPTCY PROCEEDING;

6 (2) THE DEALER HAS MADE AN INTENTIONAL MISREPRESENTATION  
7 WITH THE INTENT TO DEFRAUD THE SUPPLIER;

8 (3) THE DEALER DEFAULTS UNDER A CHATTEL MORTGAGE OR OTHER  
9 SECURITY AGREEMENT BETWEEN THE DEALER AND THE SUPPLIER OR THE DEALER  
10 REVOKES OR DISCONTINUES A GUARANTEE OF A PRESENT OR FUTURE OBLIGATION  
11 OF THE RETAILER TO THE SUPPLIER;

12 (4) THE CLOSEOUT OR SALE OF A SUBSTANTIAL PART OF THE BUSINESS  
13 OF A DEALER RELATED TO THE HANDLING OF THE PRODUCTS OF THE SUPPLIER;

14 (5) THE COMMENCEMENT OF PROCEDURES TO DISSOLVE OR LIQUIDATE  
15 THE DEALER IF THE DEALER IS A PARTNERSHIP OR CORPORATION;

16 (6) A CHANGE, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE  
17 SUPPLIER, THAT SHALL NOT BE UNREASONABLY WITHHELD, IN THE LOCATION OF  
18 THE PRINCIPAL PLACE OF BUSINESS OF THE DEALER OR ADDITIONAL LOCATIONS  
19 SET FORTH IN THE AGREEMENT;

20 (7) THE WITHDRAWAL OF AN INDIVIDUAL PROPRIETOR, PARTNER,  
21 MAJOR SHAREHOLDER, OR MANAGER OF THE DEALERSHIP, OR A SUBSTANTIAL  
22 REDUCTION IN INTEREST OF A PARTNER OR MAJOR SHAREHOLDER, WITHOUT THE  
23 PRIOR WRITTEN CONSENT OF THE SUPPLIER;

24 (8) THE REVOCATION OR DISCONTINUANCE OF ANY GUARANTEE OF  
25 THE PRESENT OR FUTURE OBLIGATIONS OF THE DEALER TO THE SUPPLIER;

26 (9) THE DEALER FAILS TO OPERATE IN THE NORMAL COURSE OF  
27 BUSINESS FOR 7 CONSECUTIVE BUSINESS DAYS OR OTHERWISE ABANDONS THE  
28 BUSINESS;

29 (10) THE GUILTY PLEA OR CONVICTION OF A FELONY OF A DEALER  
30 AFFECTING THE RELATIONSHIP BETWEEN THE DEALER AND SUPPLIER; OR

31 (11) THE DEALER TRANSFERS AN INTEREST IN THE DEALERSHIP OR A  
32 PERSON WITH A SUBSTANTIAL INTEREST IN THE OWNERSHIP OR CONTROL OF THE  
33 DEALERSHIP, INCLUDING AN INDIVIDUAL PROPRIETOR, PARTNER, OR MAJOR  
34 SHAREHOLDER, WITHDRAWS FROM THE DEALERSHIP OR DIES, OR A SUBSTANTIAL  
35 REDUCTION OCCURS IN THE INTEREST OF A PARTNER OR MAJOR SHAREHOLDER IN  
36 THE DEALER.

1 19-103.

2 (A) A SUPPLIER MAY NOT DIRECTLY OR THROUGH AN OFFICER, AGENT, OR  
3 EMPLOYEE TERMINATE, CANCEL, FAIL TO RENEW, OR SUBSTANTIALLY CHANGE THE  
4 COMPETITIVE CIRCUMSTANCES OF A CONTRACT WITHOUT GOOD CAUSE.

5 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A  
6 SUPPLIER WHO TERMINATES, CANCELS, FAILS TO RENEW, OR SUBSTANTIALLY  
7 CHANGES THE COMPETITIVE CIRCUMSTANCES OF A CONTRACT WITH GOOD CAUSE  
8 IS NOT REQUIRED TO PROVIDE ANY NOTICE OR THE RIGHT TO CURE A DEFICIENCY  
9 TO A DEALER.

10 (2) IF A SUPPLIER TERMINATES, CANCELS, FAILS TO RENEW, OR  
11 SUBSTANTIALLY CHANGES THE COMPETITIVE CIRCUMSTANCES OF A CONTRACT  
12 BASED UPON THE DEALER'S FAILURE TO CAPTURE THE SHARE OF THE MARKET  
13 REQUIRED IN THE CONTRACT AND THE SUPPLIER HAS WORKED WITH THE DEALER  
14 FOR A MINIMUM OF 12 MONTHS TO GAIN THE DESIRED MARKET SHARE, THE  
15 SUPPLIER SHALL PROVIDE A DEALER WITH AT LEAST 90 DAYS' WRITTEN NOTICE OF  
16 THE TERMINATION OF THE AGREEMENT AND A 60 DAY RIGHT TO CURE.

17 (C) NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, A DEALER WHO  
18 TERMINATES A CONTRACT WITH A SUPPLIER SHALL NOTIFY THE SUPPLIER OF THE  
19 TERMINATION WITHIN 90 DAYS PRIOR TO THE EFFECTIVE DATE OF THE  
20 TERMINATION.

21 (D) EACH NOTIFICATION REQUIRED UNDER THIS SECTION SHALL:

22 (1) BE IN WRITING;

23 (2) CONTAIN:

24 (I) A STATEMENT OF INTENTION TO TERMINATE THE CONTRACT;

25 (II) A STATEMENT OF THE REASONS FOR THE TERMINATION; AND

26 (III) THE DATE ON WHICH THE TERMINATION TAKES EFFECT; AND

27 (3) BE DELIVERED TO THE SUPPLIER OR DEALER BY:

28 (I) CERTIFIED MAIL; OR

29 (II) PERSONAL DELIVERY.

30 19-201.

31 (a) (1) Subject to [§ 19-102] § 19-203 of this title, whenever a DEALER  
32 ENTERS INTO A contract [between a dealer and a supplier] IN WHICH THE DEALER  
33 AGREES TO MAINTAIN INVENTORY AND THE CONTRACT is terminated by either party,  
34 the supplier shall repurchase the dealer's inventory on the terms specified in §  
35 19-202 of this [title] SUBTITLE UNLESS THE DEALER CHOOSES TO KEEP THE  
36 INVENTORY.

1 (2) IF THE DEALER HAS ANY OUTSTANDING DEBTS TO THE SUPPLIER,  
2 THE REPURCHASE AMOUNT MAY BE SET OFF OR CREDITED TO THE RETAILER'S  
3 ACCOUNT.

4 (b) (1) [In the event that a dealer, who is an individual and a party to a  
5 contract,] IF A DEALER ENTERS INTO A CONTRACT IN WHICH THE DEALER AGREES  
6 TO MAINTAIN INVENTORY AND THE DEALER OR THE MAJORITY STOCKHOLDER OF  
7 THE DEALER, IF THE DEALER IS A CORPORATION, dies or is adjudicated incompetent,  
8 the SUPPLIER SHALL, AT THE OPTION OF THE HEIR [decendent's heirs or legatees, or  
9 the individual's guardian or other fiduciary], PERSONAL REPRESENTATIVE, OR  
10 GUARDIAN OF THE DEALER, OR THE PERSON THAT SUCCEEDS TO THE STOCK OF THE  
11 MAJORITY STOCKHOLDER IF THE DEALER IS A CORPORATION, [may require the  
12 supplier to] repurchase the inventory as if the contract had been terminated.

13 (2) An [heir or legatee or a] HEIR, PERSONAL REPRESENTATIVE,  
14 [guardian] GUARDIAN, or [other fiduciary] SUCCEEDING STOCKHOLDER has 1 year  
15 from the date of the death or adjudication of incompetency OF THE DEALER OR  
16 MAJORITY SHAREHOLDER to exercise the option provided under this subsection.

17 19-202.

18 (a) Within 90 days after termination of the contract the supplier shall  
19 repurchase from the dealer all inventory, previously purchased from the supplier,  
20 that remains unsold on the date the contract terminates.

21 (b) (1) The supplier shall pay the dealer:

22 (i) 100 percent of the CURRENT net [cost] PRICE of all new,  
23 unused, UNSOLD, undamaged, and complete [inventory except repair parts, less a  
24 reasonable allowance for deterioration attributable to weather conditions at the  
25 dealer's location] FARM, CONSTRUCTION, UTILITY, AND INDUSTRIAL EQUIPMENT,  
26 IMPLEMENTS, MACHINERY, OUTDOOR POWER EQUIPMENT, AND ATTACHMENTS;  
27 [and]

28 (ii) [85] 90 percent of the current net price of all new, unused, and  
29 undamaged repair parts [currently listed in the supplier's price book] AND  
30 SUPERSEDED PARTS;

31 (III) 75 PERCENT OF THE NET COST OF ALL SPECIALIZED REPAIR  
32 TOOLS PURCHASED IN THE PREVIOUS 3 YEARS AND 50 PERCENT OF THE NET COST  
33 OF ALL SPECIALIZED REPAIR TOOLS PURCHASED IN THE PREVIOUS 4 THROUGH 6  
34 YEARS IN ACCORDANCE WITH THE REQUIREMENTS OF THE SUPPLIER AND HELD BY  
35 THE DEALER ON THE DATE OF TERMINATION, IF THE SPECIALIZED REPAIR TOOLS  
36 ARE UNIQUE TO THE SUPPLIER'S PRODUCT LINE AND ARE IN COMPLETE AND  
37 RESALABLE CONDITION;

38 (IV) THE AGREED DEPRECIATED VALUE OF FARM IMPLEMENTS,  
39 MACHINERY, UTILITY AND INDUSTRIAL EQUIPMENT, AND OUTDOOR POWER  
40 EQUIPMENT USED IN DEMONSTRATIONS, INCLUDING EQUIPMENT LEASED  
41 PRIMARILY FOR DEMONSTRATION OR LEASE; AND

1 (V) AT ITS AMORTIZED VALUE, THE PRICE OF ANY SPECIFIC DATA  
2 PROCESSING HARDWARE AND SOFTWARE AND TELECOMMUNICATIONS EQUIPMENT  
3 THAT THE SUPPLIER REQUIRED THE DEALER TO PURCHASE WITHIN THE PAST 5  
4 YEARS.

5 (2) (I) THE SUPPLIER SHALL PAY:

6 1. THE COST OF SHIPPING THE INVENTORY FROM THE  
7 DEALER'S LOCATION; AND

8 2. THE DEALER 10 PERCENT OF THE CURRENT NET PRICE OF  
9 ALL NEW, UNUSED, AND UNDAMAGED REPAIR PARTS RETURNED TO COVER THE  
10 COST OF HANDLING, PACKING, AND LOADING.

11 (II) The supplier may perform the handling, packing, and loading of  
12 repair parts [returned and withhold, as a charge for these services, 5 percent of the  
13 current net price of the returned repair parts] INSTEAD OF PAYING THE 10 PERCENT  
14 FOR THE SERVICES.

15 [(c) (1) The inventory shall be returned FOB the dealer.

16 (2)] (III) The dealer and the supplier may each furnish a representative  
17 to inspect all [inventory] PARTS and certify the acceptability of any [item before it is  
18 repurchased] PART WHEN PACKED FOR SHIPMENT.

19 [(d) (C) (1) The supplier shall pay the full repurchase amount to the dealer  
20 not later than [60] 30 days after receipt of the inventory.

21 (2) IF THE DEALER HAS ANY OUTSTANDING DEBTS TO THE SUPPLIER,  
22 THE REPURCHASE AMOUNT SHALL BE CREDITED TO THE DEALER'S ACCOUNT.

23 (D) (1) ON PAYMENT OF THE REPURCHASE AMOUNT TO THE DEALER, THE  
24 TITLE AND RIGHT OF POSSESSION TO THE REPURCHASED INVENTORY SHALL  
25 TRANSFER TO THE SUPPLIER.

26 (2) AT THE END OF EACH CALENDAR YEAR OR AFTER TERMINATION OR  
27 CANCELLATION OF THE CONTRACT, A SUPPLIER OR LENDER MAY NOT DEBIT THE  
28 DEALER'S RESERVE ACCOUNT FOR RECOURSE, RETAIL SALE, OR LEASE CONTRACTS  
29 FOR ANY DEFICIENCY UNLESS THE DEALER OR THE HEIRS OF THE DEALER HAVE  
30 BEEN GIVEN AT LEAST 7 BUSINESS DAYS' NOTICE BY CERTIFIED OR REGISTERED  
31 UNITED STATES MAIL, RETURN RECEIPT REQUESTED, OF ANY PROPOSED SALE OF  
32 THE FINANCED EQUIPMENT AND AN OPPORTUNITY TO PURCHASE THE EQUIPMENT.

33 (3) THE FORMER DEALER OR THE HEIRS OF THE DEALER SHALL BE  
34 GIVEN QUARTERLY STATUS REPORTS ON ANY REMAINING OUTSTANDING RECOURSE  
35 CONTRACTS.

36 (4) AS THE RECOURSE CONTRACTS ARE REDUCED, ANY RESERVE  
37 ACCOUNT FUNDS SHALL BE RETURNED TO THE DEALER OR THE HEIRS OF THE  
38 DEALER IN DIRECT PROPORTION TO THE OUTSTANDING LIABILITIES.



1 (E) (1) IN THE EVENT OF THE DEATH OF THE DEALER OR THE MAJORITY  
2 STOCKHOLDER OF A CORPORATION OPERATING AS A DEALER, THE SUPPLIER SHALL,  
3 AT THE OPTION OF THE HEIR OF THE DEALER OR MAJORITY STOCKHOLDER,  
4 REPURCHASE THE INVENTORY FROM THE HEIR OF THE DEALER OR MAJORITY  
5 STOCKHOLDER AS IF THE SUPPLIER HAD TERMINATED THE CONTRACT.

6 (2) WITHIN 1 YEAR AFTER THE DATE OF THE DEATH OF THE DEALER OR  
7 MAJORITY STOCKHOLDER, THE HEIR SHALL EXERCISE THE HEIR'S OPTIONS UNDER  
8 THIS SECTION.

9 (3) NOTHING IN THIS SECTION SHALL REQUIRE THE REPURCHASE OF  
10 ANY INVENTORY IF THE HEIR AND THE SUPPLIER ENTER INTO A NEW CONTRACT TO  
11 OPERATE THE RETAIL DEALERSHIP.

12 (F) (1) WITHIN 90 DAYS A SUPPLIER SHALL CONSIDER AND MAKE A  
13 DETERMINATION ON A REQUEST BY A FAMILY MEMBER TO ENTER INTO A NEW  
14 CONTRACT TO OPERATE THE DEALERSHIP.

15 (2) IF THE SUPPLIER DETERMINES THAT THE REQUESTING FAMILY  
16 MEMBER IS NOT ACCEPTABLE, THE SUPPLIER SHALL PROVIDE THE FAMILY MEMBER  
17 WITH A WRITTEN NOTICE OF ITS DETERMINATION WITH THE STATED REASONS FOR  
18 NONACCEPTANCE.

19 (3) THIS SECTION DOES NOT ENTITLE AN HEIR, PERSONAL  
20 REPRESENTATIVE, OR FAMILY MEMBER TO OPERATE A DEALERSHIP WITHOUT THE  
21 SPECIFIC WRITTEN CONSENT OF THE SUPPLIER.

22 (G) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, IF A SUPPLIER  
23 AND A DEALER HAVE EXECUTED AN AGREEMENT CONCERNING SUCCESSION RIGHTS  
24 PRIOR TO THE DEALER'S DEATH, AND IF THE AGREEMENT HAS NOT BEEN REVOKED,  
25 THE AGREEMENT SHALL BE ENFORCED EVEN IF IT DESIGNATES SOMEONE OTHER  
26 THAN THE SURVIVING SPOUSE OR HEIR OF THE DECEDENT AS THE SUCCESSOR.

27 19-203.

28 (A) THIS TITLE DOES NOT REQUIRE THE REPURCHASING FROM A DEALER OF:

29 (1) A REPAIR PART WITH A LIMITED STORAGE LIFE OR OTHERWISE  
30 SUBJECT TO DETERIORATION, SUCH AS A GASKET OR BATTERY, EXCEPT FOR  
31 INDUSTRIAL "PRESS ON" INDUSTRIAL PNEUMATIC TIRES;

32 (2) A SINGLE REPAIR PART THAT IS PRICED AS A SET OF TWO OR MORE  
33 ITEMS;

34 (3) A REPAIR PART THAT, BECAUSE OF ITS CONDITION, IS NOT  
35 RESALABLE AS A NEW PART WITHOUT REPACKAGING OR RECONDITIONING;

36 (4) A REPAIR PART THAT IS NOT IN NEW, UNUSED, AND UNDAMAGED  
37 CONDITION;

1 (5) AN ITEM OF INVENTORY FOR WHICH A DEALER DOES NOT HAVE  
2 TITLE FREE OF ALL CLAIMS, LIENS, AND ENCUMBRANCES OTHER THAN THOSE OF  
3 THE SUPPLIER;

4 (6) ANY INVENTORY THAT THE DEALER CHOOSES TO RETAIN;

5 (7) ANY INVENTORY THAT WAS ORDERED BY THE DEALER AFTER  
6 EITHER PARTY'S RECEIPT OF NOTICE OF TERMINATION OF A FRANCHISE  
7 AGREEMENT;

8 (8) ANY FARM IMPLEMENTS OR MACHINERY, CONSTRUCTION, UTILITY,  
9 OR INDUSTRIAL EQUIPMENT, OUTDOOR POWER EQUIPMENT, OR ATTACHMENTS  
10 THAT ARE NOT CURRENT MODELS OR THAT ARE NOT IN NEW, UNUSED, UNDAMAGED,  
11 COMPLETE CONDITION, PROVIDED THAT EQUIPMENT THAT IS USED IN  
12 DEMONSTRATIONS OR LEASED UNDER § 19-202 OF THIS TITLE SHALL BE  
13 CONSIDERED NEW AND UNUSED;

14 (9) ANY FARM IMPLEMENTS OR MACHINERY, CONSTRUCTION, UTILITY,  
15 OR INDUSTRIAL EQUIPMENT, OUTDOOR POWER EQUIPMENT, OR ATTACHMENTS  
16 THAT WERE PURCHASED MORE THAN 36 MONTHS BEFORE NOTICE OF TERMINATION  
17 OF THE CONTRACT; OR

18 (10) ANY INVENTORY THAT WAS ACQUIRED BY THE DEALER FROM A  
19 SOURCE OTHER THAN THE SUPPLIER.

20 19-204.

21 (A) THIS TITLE DOES NOT AFFECT A SECURITY INTEREST OF THE SUPPLIER IN  
22 THE INVENTORY OF THE DEALER.

23 (B) REPURCHASE OF INVENTORY UNDER THIS TITLE IS NOT SUBJECT TO THE  
24 BULK TRANSFERS PROVISIONS OF TITLE 6 OF THIS ARTICLE.

25 (C) (1) THE DEALER AND SUPPLIER SHALL FURNISH REPRESENTATIVES TO  
26 INSPECT ALL PARTS AND CERTIFY THEIR ACCEPTABILITY WHEN PACKED FOR  
27 SHIPMENT.

28 (2) FAILURE OF THE SUPPLIER TO PROVIDE A REPRESENTATIVE WITHIN  
29 60 DAYS SHALL RESULT IN AUTOMATIC ACCEPTANCE BY THE SUPPLIER OF ALL  
30 RETURNED ITEMS.

31 19-205.

32 (A) (1) WHEN A SUPPLIER AND A DEALER ENTER INTO A CONTRACT, THE  
33 SUPPLIER SHALL PAY A WARRANTY CLAIM MADE BY THE DEALER FOR WARRANTY  
34 PARTS OR SERVICE WITHIN 30 DAYS AFTER ITS APPROVAL.

35 (2) THE SUPPLIER SHALL APPROVE OR DISAPPROVE A WARRANTY  
36 CLAIM WITHIN 30 DAYS AFTER ITS RECEIPT.

1 (3) IF A CLAIM IS DISAPPROVED, THE MANUFACTURER, WHOLESALER,  
2 OR DISTRIBUTOR SHALL NOTIFY THE DEALER WITHIN 30 DAYS STATING THE  
3 SPECIFIC GROUNDS ON WHICH THE DISAPPROVAL IS BASED.

4 (4) IF A CLAIM IS NOT SPECIFICALLY DISAPPROVED IN WRITING WITHIN  
5 30 DAYS AFTER ITS RECEIPT, THE CLAIM SHALL BE CONSIDERED APPROVED AND  
6 PAYMENT MUST FOLLOW WITHIN 30 DAYS.

7 (B) WHEN A SUPPLIER AND A DEALER ENTER INTO A CONTRACT, THE  
8 SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS THE DEALER AGAINST ANY  
9 JUDGMENT FOR DAMAGES OR A SETTLEMENT AGREED TO BY THE SUPPLIER,  
10 INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING OUT OF A  
11 COMPLAINT, CLAIM, OR LAWSUIT INCLUDING NEGLIGENCE, STRICT LIABILITY,  
12 MISREPRESENTATION, BREACH OF WARRANTY, OR RESCISSION OF THE SALE, TO THE  
13 EXTENT THE JUDGMENT OR SETTLEMENT RELATES TO THE MANUFACTURE,  
14 ASSEMBLY, OR DESIGN OF INVENTORY, OR OTHER CONDUCT OF THE SUPPLIER  
15 BEYOND THE DEALER'S CONTROL.

16 (C) IF, AFTER TERMINATION OF A CONTRACT, THE DEALER SUBMITS A CLAIM  
17 TO THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR FOR WARRANTY WORK  
18 PERFORMED PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION OF THE  
19 CONTRACT, THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR SHALL ACCEPT  
20 OR REJECT THE CLAIM WITHIN 30 DAYS OF RECEIPT OF THE CLAIM.

21 (D) IF A CLAIM IS NOT PAID WITHIN THE TIME ALLOWED UNDER THIS  
22 SECTION, INTEREST SHALL ACCRUE AT THE MAXIMUM LAWFUL INTEREST RATE.

23 (E) (1) WARRANTY WORK PERFORMED BY THE DEALER SHALL BE  
24 COMPENSATED IN ACCORDANCE WITH THE REASONABLE AND CUSTOMARY AMOUNT  
25 OF TIME REQUIRED TO COMPLETE THE WORK, EXPRESSED IN HOURS AND  
26 FRACTIONS.

27 (2) THE COST OF THE WORK SHALL BE COMPUTED BY MULTIPLYING  
28 THE TIME REQUIRED TO COMPLETE THE WORK BY THE DEALER'S ESTABLISHED  
29 CUSTOMER HOURLY RETAIL LABOR RATE.

30 (3) THE DEALER SHALL INFORM THE MANUFACTURER, WHOLESALER,  
31 OR DISTRIBUTOR FOR WHOM THE DEALER IS PERFORMING WARRANTY WORK OF THE  
32 DEALER'S ESTABLISHED CUSTOMER HOURLY RETAIL LABOR RATE BEFORE THE  
33 DEALER PERFORMS ANY WORK.

34 (F) EXPENSES EXPRESSLY EXCLUDED UNDER THE WARRANTY OF THE  
35 MANUFACTURER, WHOLESALER, OR DISTRIBUTOR TO THE CUSTOMER MAY NOT BE  
36 INCLUDED OR REQUIRED TO BE PAID FOR WARRANTY WORK PERFORMED, EVEN IF  
37 THE DEALER REQUESTS COMPENSATION FOR THE WORK PERFORMED.

38 (G) (1) THE DEALER SHALL BE PAID FOR ALL PARTS USED BY THE DEALER  
39 IN PERFORMING WARRANTY WORK.

1 (2) PAYMENT SHALL BE IN AN AMOUNT EQUAL TO THE DEALER'S NET  
2 PRICE FOR THE PARTS, PLUS A MINIMUM OF 15 PERCENT.

3 (H) THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR MAY ADJUST  
4 COMPENSATION FOR ERRORS DISCOVERED DURING AN AUDIT AND MAY ADJUST  
5 CLAIMS PAID IN ERROR.

6 (I) THE DEALER SHALL HAVE THE RIGHT TO ACCEPT THE REIMBURSEMENT  
7 TERMS AND CONDITIONS OF THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR  
8 IN LIEU OF THE TERMS AND CONDITIONS OF THIS SECTION.

9 SUBTITLE 3. VIOLATIONS BY SUPPLIERS; REMEDIES.

10 19-301.

11 A SUPPLIER MAY NOT:

12 (1) COERCE A DEALER TO ACCEPT DELIVERY OF EQUIPMENT, PARTS, OR  
13 ACCESSORIES THAT THE DEALER HAS NOT ORDERED VOLUNTARILY UNLESS THE  
14 PARTS OR ACCESSORIES ARE SAFETY PARTS OR ACCESSORIES REQUIRED BY THE  
15 SUPPLIER;

16 (2) CONDITION THE SALE OF ADDITIONAL EQUIPMENT TO A DEALER ON  
17 A REQUIREMENT THAT THE DEALER ALSO PURCHASE OTHER GOODS OR SERVICES,  
18 EXCEPT THAT A SUPPLIER MAY REQUIRE THE DEALER TO PURCHASE PARTS THAT  
19 ARE REASONABLY NECESSARY TO MAINTAIN THE QUALITY OF OPERATION IN THE  
20 FIELD OF THE EQUIPMENT USED IN THE TRADE AREA;

21 (3) COERCE A DEALER INTO REFUSING TO PURCHASE EQUIPMENT  
22 MANUFACTURED BY ANOTHER SUPPLIER; OR

23 (4) TERMINATE, CANCEL, OR FAIL TO RENEW OR SUBSTANTIALLY  
24 CHANGE THE COMPETITIVE CIRCUMSTANCES OF THE RETAIL AGREEMENT BASED  
25 ON THE RESULTS OF ANY CIRCUMSTANCE BEYOND THE DEALER'S CONTROL,  
26 INCLUDING A NATURAL DISASTER SUCH AS A SUSTAINED DROUGHT, HIGH  
27 UNEMPLOYMENT IN THE DEALER MARKET AREA, OR A LABOR DISPUTE.

28 19-302.

29 IF A SUPPLIER FAILS OR REFUSES TO REPURCHASE, IN ACCORDANCE WITH §  
30 19-202 OF THIS TITLE, ANY INVENTORY COVERED UNDER THE PROVISIONS OF THIS  
31 TITLE WITHIN THE TIME PERIODS ESTABLISHED, THE SUPPLIER IS CIVILLY LIABLE  
32 FOR:

33 (1) 100 PERCENT OF THE CURRENT NET PRICE OF THE INVENTORY;

34 (2) THE AMOUNT THE DEALER PAID FOR FREIGHT COSTS FROM THE  
35 SUPPLIER'S LOCATION TO THE DEALER'S LOCATION;

1 (3) THE DEALER'S REASONABLE ATTORNEY'S FEES AND COURT COSTS;  
2 AND

3 (4) INTEREST ON THE CURRENT NET PRICE OF THE INVENTORY  
4 COMPUTED FROM THE 91ST DAY AFTER TERMINATION OF THE CONTRACT AT THE  
5 LEGAL RATE OF INTEREST.

6 19-303.

7 NOTWITHSTANDING AN AGREEMENT TO THE CONTRARY, AND IN ADDITION TO  
8 ANY OTHER AVAILABLE LEGAL REMEDIES, A PERSON WHO SUFFERS MONETARY  
9 LOSS DUE TO A VIOLATION OF THIS TITLE OR WHO REFUSES TO ACCEDE TO A  
10 PROPOSAL FOR AN ARRANGEMENT THAT, IF CONSUMMATED, WOULD BE IN  
11 VIOLATION OF THIS TITLE MAY BRING A CIVIL ACTION TO ENJOIN FURTHER  
12 VIOLATIONS AND TO RECOVER DAMAGES AND THE COSTS OF THE ACTION,  
13 INCLUDING REASONABLE ATTORNEY'S FEES.

14 19-304.

15 A CIVIL ACTION COMMENCED UNDER THE PROVISIONS OF THIS TITLE SHALL  
16 BE BROUGHT WITHIN 4 YEARS AFTER THE VIOLATION COMPLAINED OF IS OR  
17 REASONABLY SHOULD HAVE BEEN DISCOVERED, WHICHEVER OCCURS FIRST.

18 19-305.

19 IF ANY PROVISION OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR  
20 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER  
21 PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE GIVEN EFFECT  
22 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE  
23 PROVISIONS OF THIS TITLE ARE SEVERABLE.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 July 1, 2005.