
By: ~~Delegates Stull and Elliott~~, Elliott, Doory, Haddaway, Impallaria,
Jameson, Krebs, Minnick, Parrott, Walkup, and Wood

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2005

CHAPTER _____

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

1 require the repurchase of inventory if the heir and the supplier enter into a new
2 contract to operate the retail dealership; requiring a supplier to consider and
3 make a determination on a request by a family member to enter into a new
4 contract to operate a dealership within a certain amount of time; requiring a
5 supplier to provide a family member with a certain written notice; providing
6 that an heir, personal representative, or family member of a dealer is not
7 entitled to operate a dealership without the specific written consent of the
8 supplier; requiring an agreement between a supplier and dealer to be enforced
9 notwithstanding certain circumstances; repealing certain provisions relating to
10 the termination of a contract; repealing a certain notice requirement relating to
11 the termination of a contract; requiring a supplier to provide notice and a right
12 to cure to a dealer under certain circumstances; authorizing a supplier to
13 terminate a contract under certain circumstances; altering the amount of time
14 prior to the termination of a contract within which a dealer is required to
15 provide certain notice; repealing certain provisions relating to a warranty claim
16 submitted by a dealer; requiring a supplier to pay a certain warranty claim
17 made by a dealer within a certain amount of time; requiring a supplier to
18 approve or disapprove a warranty claim within a certain amount of time;
19 providing for certain notice relating to a warranty claim; requiring a supplier to
20 indemnify a dealer under certain circumstances; requiring a manufacturer,
21 wholesaler, or distributor to accept or reject a certain claim for warranty work
22 within a certain amount of time; requiring that interest accrue at a certain rate;
23 providing for certain compensation for warranty work; repealing certain
24 provisions relating to the transfer of a dealership; prohibiting a supplier from
25 coercing a dealer in certain ways; providing for civil liability of a supplier that
26 fails or refuses to purchase inventory within certain time periods; repealing
27 certain provisions relating to the civil liability of a supplier; repealing a certain
28 provision stating that the provisions of this Act are in addition to other remedies
29 and an agreement between a supplier and dealer; altering certain definitions;
30 adding certain definitions; making technical changes; making the provisions of
31 this Act severable; and generally relating to the Equipment Dealer Contract Act.

32 BY repealing

33 Article - Commercial Law

34 Section 19-102; 19-301 through 19-306 and the subtitle "Subtitle 3.

35 Termination, Cancellation, and Nonrenewal of Contracts and Notice
36 Required"; 19-401 and the subtitle "Subtitle 4. Warranty Claims";

37 19-4A-01 and 19-4A-02 and the subtitle "Subtitle 4A. Transfer of the
38 Business of a Dealer"; and 19-501 through 19-505 and the subtitle

39 "Subtitle 5. Enforcement and Penalties"

40 Annotated Code of Maryland

41 (2000 Replacement Volume and 2004 Supplement)

42 BY repealing and reenacting, with amendments,

43 Article - Commercial Law

44 Section 19-101, 19-201, and 19-202

45 Annotated Code of Maryland

1 (2000 Replacement Volume and 2004 Supplement)

2 BY adding to

3 Article - Commercial Law

4 Section 19-102, 19-103, and 19-203 through 19-205; and 19-301 through

5 19-305 to be under the new subtitle "Subtitle 3. Violations by Suppliers;

6 Remedies"

7 Annotated Code of Maryland

8 (2000 Replacement Volume and 2004 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

10 MARYLAND, That Section(s) 19-102; 19-301 through 19-306 and the subtitle

11 "Subtitle 3. Termination, Cancellation, and Nonrenewal of Contracts and Notice

12 Required"; 19-401 and the subtitle "Subtitle 4. Warranty Claims"; 19-4A-01 and

13 19-4A-02 and the subtitle "Subtitle 4A. Transfer of the Business of a Dealer"; and

14 19-501 through 19-505 and the subtitle "Subtitle 5. Enforcement and Penalties" be

15 repealed.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland

17 read as follows:

18

Article - Commercial Law

19 19-101.

20 (a) In this title, unless the context requires otherwise, the following words

21 have the meanings indicated.

22 (b) ["Construction", "farm", "industrial", and "outdoor power", when used to

23 refer to tractors, implements, attachments, or repair parts, have the meanings

24 commonly used and understood among dealers and suppliers of those trades.

25 (c) "Contract" means a written or oral contract or agreement between a dealer

26 and a [supplier] WHOLESALER, MANUFACTURER, OR DISTRIBUTOR by which:

27 (1) The dealer is granted the right to sell OR DISTRIBUTE [the supplier's

28 equipment] GOODS OR SERVICES; [and] OR

29 (2) The dealer [is required to order and maintain an inventory in excess

30 of \$25,000 at current net price from the supplier] IS GRANTED THE RIGHT TO USE A

31 TRADE NAME, TRADEMARK, SERVICE MARK, LOGO TYPE, OR ADVERTISING OR OTHER

32 COMMERCIAL SYMBOL.

33 (C) "CURRENT MODEL" MEANS A MODEL LISTED IN A WHOLESALER'S,

34 MANUFACTURER'S, OR DISTRIBUTOR'S CURRENT SALES MANUAL OR A SUPPLEMENT

35 TO THE CURRENT SALES MANUAL.

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

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

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

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

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

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

17 (G) "GOOD CAUSE" MEANS FAILURE BY A DEALER TO COMPLY WITH
18 REQUIREMENTS IMPOSED ON THE DEALER BY A CONTRACT IF THE REQUIREMENTS
19 ARE NOT DIFFERENT FROM REQUIREMENTS IMPOSED ON OTHER DEALERS
20 SIMILARLY SITUATED IN THE STATE.

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

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

29 (J) "SUPERSEDED PART" MEANS A PART THAT WILL PROVIDE THE SAME
30 FUNCTION AS A CURRENTLY AVAILABLE PART AS OF THE DATE OF CANCELLATION
31 OF A CONTRACT.

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

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

35 (2) A PURCHASER OF ASSETS OR STOCK OF A SURVIVING CORPORATION
36 RESULTING FROM A MERGER OR LIQUIDATION, A RECEIVER OR ASSIGNEE, OR A
37 TRUSTEE OF THE ORIGINAL MANUFACTURER, WHOLESALER, OR DISTRIBUTOR WHO
38 ENTERS INTO A CONTRACT WITH A DEALER.

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

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

7 19-102.

8 GOOD CAUSE EXISTS IN ANY OF THE FOLLOWING CIRCUMSTANCES:

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

10 (I) A RECEIVERSHIP PROCEEDING; OR

11 (II) A BANKRUPTCY PROCEEDING;

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

14 (3) THE DEALER DEFAULTS UNDER A CHATTEL MORTGAGE OR OTHER
15 SECURITY AGREEMENT BETWEEN THE DEALER AND THE SUPPLIER OR THE DEALER
16 REVOKES OR DISCONTINUES A GUARANTEE OF A PRESENT OR FUTURE OBLIGATION
17 OF THE RETAILER TO THE SUPPLIER;

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

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

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

26 (7) THE WITHDRAWAL OF AN INDIVIDUAL PROPRIETOR, PARTNER,
27 MAJOR SHAREHOLDER, OR MANAGER OF THE DEALERSHIP, OR A SUBSTANTIAL
28 REDUCTION IN INTEREST OF A PARTNER OR MAJOR SHAREHOLDER, WITHOUT THE
29 PRIOR WRITTEN CONSENT OF THE SUPPLIER;

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

32 (9) THE DEALER FAILS TO OPERATE IN THE NORMAL COURSE OF
33 BUSINESS FOR 7 CONSECUTIVE BUSINESS DAYS OR OTHERWISE ABANDONS THE
34 BUSINESS;

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

1 (11) THE DEALER TRANSFERS AN INTEREST IN THE DEALERSHIP OR A
2 PERSON WITH A SUBSTANTIAL INTEREST IN THE OWNERSHIP OR CONTROL OF THE
3 DEALERSHIP, INCLUDING AN INDIVIDUAL PROPRIETOR, PARTNER, OR MAJOR
4 SHAREHOLDER, WITHDRAWS FROM THE DEALERSHIP OR DIES, OR A SUBSTANTIAL
5 REDUCTION OCCURS IN THE INTEREST OF A PARTNER OR MAJOR SHAREHOLDER IN
6 THE ~~DEALER~~ DEALERSHIP.

7 19-103.

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

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

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

23 (C) NOTWITHSTANDING ANY AGREEMENT TO THE CONTRARY, A DEALER WHO
24 TERMINATES A CONTRACT WITH A SUPPLIER SHALL NOTIFY THE SUPPLIER OF THE
25 TERMINATION WITHIN 90 DAYS PRIOR TO THE EFFECTIVE DATE OF THE
26 TERMINATION.

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

28 (1) BE IN WRITING;

29 (2) CONTAIN:

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

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

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

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

34 (I) CERTIFIED MAIL; OR

35 (II) PERSONAL DELIVERY.

1 19-201.

2 (a) (1) Subject to [§ 19-102] § 19-203 of this title, whenever a DEALER
3 ENTERS INTO A contract [between a dealer and a supplier] IN WHICH THE DEALER
4 AGREES TO MAINTAIN INVENTORY AND THE CONTRACT is terminated by either party,
5 the supplier shall repurchase the dealer's inventory on the terms specified in §
6 19-202 of this [title] SUBTITLE UNLESS THE DEALER CHOOSES TO KEEP THE
7 INVENTORY.

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

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

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

24 19-202.

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

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

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

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

38 (III) 75 PERCENT OF THE NET COST OF ALL SPECIALIZED REPAIR
39 TOOLS PURCHASED IN THE PREVIOUS 3 YEARS AND 50 PERCENT OF THE NET COST
40 OF ALL SPECIALIZED REPAIR TOOLS PURCHASED IN THE PREVIOUS 4 THROUGH 6

1 YEARS IN ACCORDANCE WITH THE REQUIREMENTS OF THE SUPPLIER AND HELD BY
2 THE DEALER ON THE DATE OF TERMINATION, IF THE SPECIALIZED REPAIR TOOLS
3 ARE UNIQUE TO THE SUPPLIER'S PRODUCT LINE AND ARE IN COMPLETE AND
4 RESALABLE CONDITION;

5 (IV) THE AGREED DEPRECIATED VALUE OF FARM IMPLEMENTS,
6 MACHINERY, UTILITY AND INDUSTRIAL EQUIPMENT, AND OUTDOOR POWER
7 EQUIPMENT USED IN DEMONSTRATIONS, INCLUDING EQUIPMENT LEASED
8 PRIMARILY FOR DEMONSTRATION OR LEASE; AND

9 (V) AT ITS AMORTIZED VALUE, THE PRICE OF ANY SPECIFIC DATA
10 PROCESSING HARDWARE AND SOFTWARE AND TELECOMMUNICATIONS EQUIPMENT
11 THAT THE SUPPLIER REQUIRED THE DEALER TO PURCHASE WITHIN THE PAST 5
12 YEARS.

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

14 1. THE COST OF SHIPPING THE INVENTORY FROM THE
15 DEALER'S LOCATION; AND

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

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

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

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

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

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

31 (D) (1) ON PAYMENT OF THE REPURCHASE AMOUNT TO THE DEALER, THE
32 TITLE AND RIGHT OF POSSESSION TO THE REPURCHASED INVENTORY SHALL
33 TRANSFER TO THE SUPPLIER.

34 (2) AT THE END OF EACH CALENDAR YEAR OR AFTER TERMINATION OR
35 CANCELLATION OF THE CONTRACT, A SUPPLIER OR LENDER MAY NOT DEBIT THE
36 DEALER'S RESERVE ACCOUNT FOR RECOURSE, RETAIL SALE, OR LEASE CONTRACTS
37 FOR ANY DEFICIENCY UNLESS THE DEALER OR THE HEIRS OF THE DEALER HAVE
38 BEEN GIVEN AT LEAST 7 BUSINESS DAYS' NOTICE BY CERTIFIED OR REGISTERED

1 UNITED STATES MAIL, RETURN RECEIPT REQUESTED, OF ANY PROPOSED SALE OF
2 THE FINANCED EQUIPMENT AND AN OPPORTUNITY TO PURCHASE THE EQUIPMENT.

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

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

9 (E) (1) IN THE EVENT OF THE DEATH OF THE DEALER OR THE MAJORITY
10 STOCKHOLDER OF A CORPORATION OPERATING AS A DEALER, THE SUPPLIER SHALL,
11 AT THE OPTION OF THE HEIR OF THE DEALER OR MAJORITY STOCKHOLDER,
12 REPURCHASE THE INVENTORY FROM THE HEIR OF THE DEALER OR MAJORITY
13 STOCKHOLDER AS IF THE SUPPLIER HAD TERMINATED THE CONTRACT.

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

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

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

23 (2) IF THE SUPPLIER DETERMINES THAT THE REQUESTING FAMILY
24 MEMBER IS NOT ACCEPTABLE, THE SUPPLIER SHALL PROVIDE THE FAMILY MEMBER
25 WITH A WRITTEN NOTICE OF ITS DETERMINATION WITH THE STATED REASONS FOR
26 NONACCEPTANCE.

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

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

35 19-203.

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

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

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

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

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

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

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

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

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

23 (9) ANY FARM IMPLEMENTS OR MACHINERY, CONSTRUCTION, UTILITY,
24 OR INDUSTRIAL EQUIPMENT, OUTDOOR POWER EQUIPMENT, OR ATTACHMENTS
25 THAT WERE PURCHASED MORE THAN 36 MONTHS BEFORE NOTICE OF TERMINATION
26 OF THE CONTRACT; OR

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

29 19-204.

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

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

34 (C) (1) THE DEALER AND SUPPLIER SHALL FURNISH REPRESENTATIVES TO
35 INSPECT ALL PARTS AND CERTIFY THEIR ACCEPTABILITY WHEN PACKED FOR
36 SHIPMENT.

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

4 19-205.

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

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

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

13 (4) IF A CLAIM IS NOT SPECIFICALLY DISAPPROVED IN WRITING WITHIN
14 30 DAYS AFTER ITS RECEIPT, THE CLAIM SHALL BE CONSIDERED APPROVED AND
15 PAYMENT MUST FOLLOW WITHIN 30 DAYS.

16 (B) WHEN A SUPPLIER AND A DEALER ENTER INTO A CONTRACT, THE
17 SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS THE DEALER AGAINST ANY
18 JUDGMENT FOR DAMAGES OR A SETTLEMENT AGREED TO BY THE SUPPLIER,
19 INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES, ARISING OUT OF A
20 COMPLAINT, CLAIM, OR LAWSUIT INCLUDING NEGLIGENCE, STRICT LIABILITY,
21 MISREPRESENTATION, BREACH OF WARRANTY, OR RESCISSION OF THE SALE, TO THE
22 EXTENT THE JUDGMENT OR SETTLEMENT RELATES TO THE MANUFACTURE,
23 ASSEMBLY, OR DESIGN OF INVENTORY, OR OTHER CONDUCT OF THE SUPPLIER
24 BEYOND THE DEALER'S CONTROL.

25 (C) IF, AFTER TERMINATION OF A CONTRACT, THE DEALER SUBMITS A CLAIM
26 TO THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR FOR WARRANTY WORK
27 PERFORMED PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION OF THE
28 CONTRACT, THE MANUFACTURER, WHOLESALER, OR DISTRIBUTOR SHALL ACCEPT
29 OR REJECT THE CLAIM WITHIN 30 DAYS OF RECEIPT OF THE CLAIM.

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

32 (E) (1) WARRANTY WORK PERFORMED BY THE DEALER SHALL BE
33 COMPENSATED IN ACCORDANCE WITH THE REASONABLE AND CUSTOMARY AMOUNT
34 OF TIME REQUIRED TO COMPLETE THE WORK, EXPRESSED IN HOURS AND
35 FRACTIONS.

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

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

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

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

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

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

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

19 SUBTITLE 3. VIOLATIONS BY SUPPLIERS; REMEDIES.

20 19-301.

21 A SUPPLIER MAY NOT:

22 (1) COERCE A DEALER TO ACCEPT DELIVERY OF EQUIPMENT, PARTS, OR
23 ACCESSORIES THAT THE DEALER HAS NOT ORDERED VOLUNTARILY UNLESS THE
24 PARTS OR ACCESSORIES ARE SAFETY PARTS OR ACCESSORIES REQUIRED BY THE
25 SUPPLIER;

26 (2) CONDITION THE SALE OF ADDITIONAL EQUIPMENT TO A DEALER ON
27 A REQUIREMENT THAT THE DEALER ALSO PURCHASE OTHER GOODS OR SERVICES,
28 EXCEPT THAT A SUPPLIER MAY REQUIRE THE DEALER TO PURCHASE PARTS THAT
29 ARE REASONABLY NECESSARY TO MAINTAIN THE QUALITY OF OPERATION IN THE
30 FIELD OF THE EQUIPMENT USED IN THE TRADE AREA;

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

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

1 19-302.

2 IF A SUPPLIER FAILS OR REFUSES TO REPURCHASE, IN ACCORDANCE WITH §
3 19-202 OF THIS TITLE, ANY INVENTORY COVERED UNDER THE PROVISIONS OF THIS
4 TITLE WITHIN THE TIME PERIODS ESTABLISHED, THE SUPPLIER IS CIVILLY LIABLE
5 FOR:

6 (1) 100 PERCENT OF THE CURRENT NET PRICE OF THE INVENTORY;

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

9 (3) THE DEALER'S REASONABLE ATTORNEY'S FEES AND COURT COSTS;
10 AND

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

14 19-303.

15 NOTWITHSTANDING AN AGREEMENT TO THE CONTRARY, AND IN ADDITION TO
16 ANY OTHER AVAILABLE LEGAL REMEDIES, A PERSON WHO SUFFERS MONETARY
17 LOSS DUE TO A VIOLATION OF THIS TITLE OR WHO REFUSES TO ACCEDE TO A
18 PROPOSAL FOR AN ARRANGEMENT THAT, IF CONSUMMATED, WOULD BE IN
19 VIOLATION OF THIS TITLE MAY BRING A CIVIL ACTION TO ENJOIN FURTHER
20 VIOLATIONS AND TO RECOVER DAMAGES AND THE COSTS OF THE ACTION,
21 INCLUDING REASONABLE ATTORNEY'S FEES.

22 19-304.

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

26 19-305.

27 IF ANY PROVISION OF THIS TITLE OR ITS APPLICATION TO ANY PERSON OR
28 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER
29 PROVISIONS OR APPLICATIONS OF THIS TITLE WHICH CAN BE GIVEN EFFECT
30 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
31 PROVISIONS OF THIS TITLE ARE SEVERABLE.

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

