

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1454

6 By: Johnson (Rob)

7 COMMITTEE SUBSTITUTE

8 An Act relating to motor vehicles; creating the Fair
9 Practices of Equipment Manufacturers, Distributors,
10 Wholesalers and Dealers Act; stating legislative
11 purpose; defining terms; specifying acts that
12 constitute violations of the act; providing for
13 termination of dealer agreements; providing
14 circumstances for existence of good cause; providing
15 procedures for notice of termination of dealer
16 agreement; providing procedures for requesting the
17 sale or transfer of business; providing for
18 termination of single-line dealer agreements;
19 providing circumstances for existence of good cause;
20 providing notice requirements; providing for
21 consideration of request for new dealer agreement
22 upon death of dealer; prohibiting entitlement to
23 operate dealership without certain consent; providing
24 for observation of previously executed agreement;
providing procedures for acceptance or rejection of
warranty claim; providing for resubmission of
warranty claim; providing for compensation of
warranty work; providing for audit of warranty
claims; providing for alternate reimbursement terms
and conditions; providing repurchase obligations of
supplier upon cancellation or discontinuance of
dealer agreement; providing procedures for payment or
allowance of credit to certain account; providing for
civil liability under certain circumstances;
requiring retainment of lien against inventory;
stating circumstances in which repurchase from a
dealer is not required; authorizing filing of action
for certain damages; making certain action void;
stating applicability of the act; providing for
choice of remedies; providing for severability;
providing for codification; and providing an
effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1701 of Title 47, unless there
4 is created a duplication in numbering, reads as follows:

5 Sections 1 through 16 of this act shall be known and may be
6 cited as the "Fair Practices of Equipment Manufacturers,
7 Distributors, Wholesalers and Dealers Act".

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1702 of Title 47, unless there
10 is created a duplication in numbering, reads as follows:

11 The Legislature finds and declares that the retail distribution,
12 sales and rental of agricultural, construction, utility, industrial,
13 mining, outdoor power, forestry and lawn and garden equipment,
14 utilizing independent dealers operating under contract with the
15 supplier vitally affects the general economy of the state, the
16 public interest and the public welfare. Therefore, the Legislature
17 has determined that it is necessary to regulate the business
18 relations between the independent dealers and the equipment
19 suppliers as contemplated in this act and that any action taken in
20 violation of this act will result in a violation of an important
21 public policy of this state.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1703 of Title 47, unless there
24 is created a duplication in numbering, reads as follows:

1 As used in this act:

2 1. "Act" means the Fair Practices of Equipment Manufacturers,
3 Distributors, Wholesalers and Dealers Act;

4 2. "Current net parts price" means, with respect to current
5 parts, the price for repair parts listed in the price list or
6 catalog of the supplier in effect at the time the dealer agreement
7 is cancelled or discontinued, or for purposes of Section 9 of this
8 act, the price list or catalog in effect at the time the repair
9 parts were ordered. "Current net parts price" means, with respect
10 to superseded repair parts, the price listed in the price list or
11 catalog of the supplier in effect at the time the dealer agreement
12 is cancelled or discontinued for the part that performs the same
13 function and purpose as the superseded part, but is simply listed
14 under a different part number;

15 3. "Current net parts cost" means the current net parts price
16 less any trade or cash discounts typically given to the dealer with
17 respect to the normal, ordinary course of orders of repair parts by
18 the dealer;

19 4. "Dealer" means any person, not including mass retailers who
20 sell through large stores, engaged in the business of:

- 21 a. selling or leasing equipment or repair parts to the
22 consumer, and
- 23 b. repairing or servicing equipment;

1 5. "Dealer agreement" means either an oral or written agreement
2 or arrangement for a definite or indefinite period between a dealer
3 and a supplier that provides for the rights and obligations of the
4 parties with respect to the purchase or sale of equipment or repair
5 parts. Notwithstanding the foregoing, if a dealer has more than one
6 business location covered by the same dealer agreement, the
7 requirements of this act shall be applied to the repurchase of the
8 inventory of a dealer at a particular location upon the closing of
9 such location;

10 6. "Dealership" means the retail sale business engaged in by a
11 dealer under a dealer agreement;

12 7. "Demonstrator" means equipment in the inventory of a dealer
13 that has never been sold at retail, but has had its usage
14 demonstrated to potential customers, either without charge or
15 pursuant to a short-term rental agreement, with the intent of
16 encouraging the person to purchase such equipment, and which has
17 been authorized for such use by the supplier;

18 8. "Equipment" means:

19 a. all-terrain vehicles, regardless of how used, and

20 b. other machinery, equipment, implements or attachments
21 used for or in connection with the following purposes:

22 (1) lawn, garden, golf course, landscaping or grounds
23 maintenance,
24

1 (2) planting, cultivating, irrigating, harvesting,
2 and producing of agricultural or forestry
3 products,

4 (3) raising, feeding, tending to or harvesting
5 products from livestock or any other activity in
6 connection therewith, or

7 (4) industrial, construction, maintenance, mining or
8 utility activities or applications;

9 provided, however, self-propelled vehicles designed primarily for
10 the transportation of persons or property on a street or highway are
11 specifically excluded from the definition of equipment;

12 9. "Family member" means a spouse, child, son-in-law, daughter-
13 in-law or lineal descendant;

14 10. "Good cause" has the meaning set forth in Section 5 or 7 of
15 this act, as applicable;

16 11. "Index" means the United States Bureau of Labor Statistics
17 purchase price index for construction machinery, series
18 identification number, or any successor index measuring
19 substantially similar information;

20 12. "Inventory" means new equipment, repair parts, data process
21 hardware or software, and specialized service or repair tools;

22 13. "Net equipment cost" means the price the dealer actually
23 paid to the supplier for equipment, including:
24

1 a. freight, at truckload rates in effect as of the
2 effective date of the termination of a dealer
3 agreement, if freight was paid by the dealer from the
4 location of the supplier to the location of the
5 dealer, and

6 b. reimbursement for labor incurred in preparing the
7 equipment for retail sale or rental, which labor will
8 be reimbursed at the standard labor rate charged by
9 the dealer to its customers for nonwarranty repair
10 work; provided, however, if a supplier has established
11 a reasonable set-up time, such labor will be
12 reimbursed at an amount equal to the reasonable set-up
13 time in effect as of the date of delivery multiplied
14 by the standard labor rate of the dealer;

15 14. "New equipment" means, for purposes of determining whether
16 a dealer is a single-line dealer, any equipment that could be
17 returned to the supplier upon a termination of a dealer agreement
18 pursuant to Sections 10 and 11 of this act;

19 15. "Person" means a natural person, corporation, partnership,
20 limited liability company, company, trust, or any and all other
21 forms of business enterprise, including any other entity in which it
22 has a majority interest or of which it has control, as well as the
23 individual officers, directors, and other persons in active control
24 of the activities of each entity;

1 16. "Repair parts" means all parts related to the repair of
2 equipment, including superseded parts;

3 17. "Single-line dealer" means a dealer that has:

- 4 a. purchased construction, industrial, forestry and
5 mining equipment from a single supplier constituting
6 seventy-five percent (75%) of the new equipment of the
7 dealer, calculated on the basis of net cost, and
8 b. a total annual average sales volume in excess of
9 Twenty Million Dollars (\$20,000,000.00) for the three
10 (3) calendar years immediately preceding the
11 applicable determination date; provided, however, the
12 twenty-million-dollar threshold will be increased each
13 year by an amount equal to the then current threshold
14 multiplied by the percentage increase in the Index
15 from January of the immediately preceding year to
16 January of the current year;

17 18. "Single-line supplier" means the supplier that is selling
18 the single-line dealer construction, industrial, forestry and mining
19 equipment constituting seventy-five percent (75%) of the new
20 equipment of the dealer;

21 19. "Supplier" means any person engaged in the business of
22 manufacturing, assembly or wholesale distribution of equipment or
23 repair parts. The term "supplier" and the provisions of this act
24 shall be interpreted liberally and will not be limited to

1 traditional doctrines of corporate successor liability or take into
2 account whether:

3 a. a successor expressly assumed the liabilities of the
4 supplier, or

5 b. there has been one or more intermediate successors to
6 the initial supplier.

7 The obligations of a supplier hereunder shall consequently apply to
8 any actual or effective successor in interest to a supplier
9 including, but not limited to, a purchaser of all or substantially
10 all of the assets of a supplier or all or substantially all of the
11 assets of any division or product line of a supplier, any receiver,
12 trustee, liquidator or assignee of the supplier, or any surviving
13 corporation resulting from a merger, liquidation or reorganization
14 of the original or any intermediate successor supplier. Purchasers
15 of all or substantially all of the inventory of a supplier or a
16 division or product line of a supplier will constitute a purchaser
17 of all or substantially all of the assets of the supplier; and

18 20. "Terminate" means to terminate, cancel, fail to renew, or
19 substantially change the competitive circumstances of a dealer
20 agreement.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1704 of Title 47, unless there
23 is created a duplication in numbering, reads as follows:

24

1 It shall be a violation of this act for a supplier to take any
2 one or more of the following actions:

3 1. To coerce, compel or require any dealer to accept delivery
4 of any equipment or repair parts which the dealer has not
5 voluntarily ordered, except as required by any applicable law or
6 unless such equipment or repair parts are safety features required
7 by a supplier;

8 2. To require any dealer to purchase goods or services as a
9 condition to the sale by the supplier to the dealer of any
10 equipment, repair parts or other goods or services; except that
11 nothing herein shall prohibit a supplier from requiring the dealer
12 to purchase all repair parts, special tools and training reasonably
13 necessary to maintain the safe operation or quality of operation in
14 the field of any equipment offered for sale by the dealer;

15 3. To coerce any dealer into a refusal to purchase equipment
16 manufactured by another supplier. However, it shall not be a
17 violation of this section to require separate facilities, financial
18 statements, or sales staff for major competing lines so long as the
19 dealer is given at least three (3) years notice of such requirement;

20 4. To refuse to deliver in reasonable quantities and within a
21 reasonable time, after receipt of the order of the dealer, to any
22 dealer having a dealer agreement for the retail sale of new
23 equipment sold or distributed by such supplier, equipment covered by
24 such dealer agreement specifically advertised or represented by such

1 supplier to be available for immediate delivery. The failure to
2 deliver any such equipment will not be considered a violation of
3 this act if such failure is due to prudent and reasonable
4 restrictions on extensions of credit by the supplier to the dealer,
5 an act of God, work stoppage or delay due to a strike or labor
6 difficulty, a bona fide shortage of materials, freight embargo, or
7 other cause over which the supplier has no control or a business
8 decision by the supplier to limit the production volume of the
9 equipment;

10 5. To discriminate, directly or indirectly, in filling an order
11 placed by a dealer for retail sale or lease of new equipment under a
12 dealer agreement as between dealers of the same product line;

13 6. To discriminate, directly or indirectly, in price between
14 different dealers with respect to purchases of equipment or repair
15 parts of like grade and quality and identical brand, where the
16 effect of such discrimination may be to substantially lessen
17 competition, tend to create a monopoly in any line of commerce or
18 injure, destroy, or prevent competition with any dealer who either
19 grants or knowingly receives the benefit of such discrimination;
20 provided, however, different prices may be charged if:

21 a. such differences are due to differences in the cost of
22 manufacture, sale or delivery of the equipment or
23 repair parts,

24

1 b. the supplier can show that its lower price was made in
2 good faith to meet an equally low price of a
3 competitor, or

4 c. such differences are related to the volume of
5 equipment purchased by dealers;

6 7. To prevent by contract or otherwise, any dealer, from
7 changing its capital structure, ownership or the means by or through
8 which the dealer finances its operations, so long as the dealer
9 gives prior notice to the supplier and provided the dealer at all
10 times meets any reasonable capital standards agreed to between the
11 dealer and the supplier and imposed on similarly situated dealers
12 and provided such change by the dealer does not result in a change
13 in the person with actual or effective control of a majority of the
14 voting interests of the dealer; and

15 8. To require a dealer to assent to a release, assignment,
16 novation, waiver, or estoppel which would relieve any person from
17 liability imposed by this act.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1705 of Title 47, unless there
20 is created a duplication in numbering, reads as follows:

21 A dealer may terminate a dealer agreement without cause. The
22 dealer must give the supplier at least thirty (30) days prior
23 written notice of termination. No supplier may terminate a dealer
24 agreement without good cause. Except as otherwise specifically

1 provided in this act, good cause means the failure by a dealer to
2 substantially comply with essential and reasonable requirements
3 imposed upon the dealer by the dealer agreement, provided such
4 requirements are not different from those requirements imposed on
5 other similarly situated dealers either by their terms or in the
6 manner of their enforcement. In addition, good cause shall exist
7 whenever:

8 1. The dealer or dealership has transferred a controlling
9 ownership interest in its business without the consent of the
10 supplier;

11 2. The dealer has filed a voluntary petition in bankruptcy or
12 has had an involuntary petition in bankruptcy filed against it
13 which has not been discharged within thirty (30) days after the
14 filing, or there has been a closeout or sale of a substantial part
15 of the assets of the dealer related to the business, or there has
16 been a commencement of dissolution or liquidation of the dealer;

17 3. There has been a deletion, addition or change in dealer or
18 dealership locations without the prior written approval of the
19 supplier;

20 4. The dealer has defaulted under any chattel mortgage or
21 other security agreement between the dealer and the supplier, or
22 there has been a revocation of any guarantee of the present or
23 future obligations of the dealer to the supplier; provided,
24 however, good cause will not exist if a person revokes any

1 guarantee in connection with or following the transfer of the
2 entire ownership interest of the person in the dealer unless the
3 supplier requires such person to execute a new guarantee of the
4 present or future obligations of the dealer in connection with such
5 transfer of ownership interest;

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

9 6. The dealer has pleaded guilty to, or has been convicted of,
10 a felony affecting the relationship between the dealer and
11 supplier;

12 7. The dealer has engaged in conduct which is injurious or
13 detrimental to the customers of the dealer or to the public welfare
14 or the representation or reputation of the product of the supplier;
15 or

16 8. The dealer has consistently failed to meet and maintain the
17 requirements of the supplier for reasonable standards and
18 performance objectives, so long as the supplier has given the
19 dealer reasonable standards and performance objectives that are
20 based on the experience of the manufacturer in other comparable
21 market areas.

22 The provisions of this section shall not apply to the dealer
23 agreements between a single-line dealer and its single-line
24 supplier.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1706 of Title 47, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as otherwise provided in this section, a supplier
5 must provide a dealer at least one hundred eighty (180) days prior
6 written notice of termination of a dealer agreement. The notice
7 must state all reasons constituting good cause for such termination
8 and must state that the dealer has sixty (60) days in which to cure
9 any claimed deficiency. If the deficiency is rectified within sixty
10 (60) days, the notice will be void. A supplier may not terminate a
11 dealer agreement for the reason set forth in paragraph 8 of Section
12 5 of this act unless the supplier gives the dealer notice of such
13 action at least two (2) years before the effective date of such
14 action. If the dealer achieves the requirements of the supplier for
15 reasonable standards or performance objectives before the expiration
16 of the two-year notice period, the notice will be void and the
17 dealer agreement will continue in full force and effect. The notice
18 and right to cure provisions under this section shall not apply if
19 the reason for termination is for any reason set forth in paragraphs
20 1 through 7 of Section 5 of this act.

21 B. If a supplier has contractual authority to approve or deny a
22 request for a sale or transfer of the business of a dealer or an
23 equity ownership interest therein, the supplier shall approve or
24 deny such a request within sixty (60) days after receiving a written

1 request from the dealer. If the supplier has neither approved nor
2 denied the request within the sixty-day period, the request will be
3 deemed approved. The request of the dealer shall include reasonable
4 financial, personal background, character references and work
5 history information for the acquiring persons. If a supplier denies
6 a request made pursuant to this paragraph, the supplier must provide
7 the dealer with a written notice of such denial that states the
8 reasons for such denial. A supplier may only deny a request based
9 on the failure of the proposed transferees to meet the reasonable
10 requirements consistently imposed by the supplier in determining
11 approval of such transfer or approvals of new dealers.

12 C. If a dealer dies and the supplier has contractual authority
13 to approve or deny a request for a sale or transfer of the business
14 of the dealer or any equity ownership interest therein, the estate
15 of the dealer or other person with authority to transfer assets of
16 the dealer will have one hundred eighty (180) days to submit to the
17 supplier a written request for a sale or transfer of such business
18 or equity ownership interest. If such a request is timely
19 submitted, the supplier shall approve or deny such request in
20 accordance with subsection B of this section. Notwithstanding
21 anything to the contrary contained in this act, any attempt by the
22 supplier to terminate the dealer or the dealership as a result of
23 the death of a dealer will be delayed until there has been

24

1 compliance with the terms of this section or the one-hundred-eighty-
2 day period has expired, as applicable.

3 D. The provisions of this section shall not apply to the dealer
4 agreements between a single-line dealer and its single-line
5 supplier.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1707 of Title 47, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The provisions of this section shall only apply to the
10 dealer agreements between a single-line dealer and its single-line
11 supplier.

12 B. No supplier may terminate a dealer agreement without good
13 cause. For purposes of this section and Section 8 of this act
14 only, good cause means failure by a dealer to comply with
15 requirements imposed upon the dealer by the dealer agreement if
16 such requirements are not different from those imposed on other
17 similarly situated dealers. In addition, good cause exists
18 whenever:

19 1. There has been a closeout or sale of a substantial part of
20 the assets of the dealer related to the equipment business, or
21 there has been a commencement of a dissolution or liquidation of
22 the dealer;

23

24

1 2. The dealer has changed its principal place of business or
2 added additional locations without prior approval of the supplier,
3 which shall not be unreasonably withheld;

4 3. The dealer has substantially defaulted under a chattel
5 mortgage or other security agreement between the dealer and the
6 supplier, or there has been a revocation or discontinuance of a
7 guarantee of a present or future obligation of the dealer to the
8 supplier;

9 4. The dealer has failed to operate in the normal course of
10 business for seven (7) consecutive days or has otherwise abandoned
11 its business;

12 5. The dealer has pleaded guilty to, or has been convicted of,
13 a felony affecting the relationship between the dealer and the
14 supplier; or

15 6. The dealer transfers an interest in the dealership, or a
16 person with a substantial interest in the ownership or control of
17 the dealership, including an individual proprietor, partner or
18 major shareholder, withdraws from the dealership or dies, or a
19 substantial reduction occurs in the interest of a partner or major
20 shareholder in the dealership; provided, however, good cause does
21 not exist if the supplier consents to an action described in this
22 paragraph.

23 C. Except as otherwise provided in this paragraph, a supplier
24 shall provide a dealer with at least ninety (90) days written

1 notice of termination. The notice must state all reasons
2 constituting good cause for such termination and must state that
3 the dealer has sixty (60) days in which to cure any claimed
4 deficiency. If the deficiency is rectified within sixty (60) days,
5 the notice will be void. Notwithstanding the foregoing, if the
6 good cause for termination is due to the failure of the dealer to
7 meet or maintain the requirements of the supplier for market
8 penetration, a reasonable period of time shall have existed where
9 the supplier has worked with the dealer to gain the desired market
10 share. The notice and right to cure provisions under this
11 paragraph shall not apply if the reason for termination is for any
12 reason set forth in paragraphs 1 through 6 of subsection B of this
13 section.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1708 of Title 47, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The provisions of this section shall only apply to the
18 dealer agreements between a single-line dealer and its single-line
19 supplier.

20 B. If a dealer dies, a supplier shall have ninety (90) days in
21 which to consider and make a determination on a request by a family
22 member to enter into a new dealer agreement to operate the
23 dealership. If the supplier determines that the requesting family
24 member is not acceptable, the supplier shall provide the family

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

5 C. Notwithstanding the foregoing, if a supplier and dealer have
6 previously executed an agreement concerning succession rights prior
7 to the death of the dealer, and if such agreement is still in
8 effect, such agreement shall be observed even if it designates
9 someone other than the surviving spouse or heirs of the decedent as
10 the successor.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1709 of Title 47, unless there
13 is created a duplication in numbering, reads as follows:

14 A. If a dealer submits a warranty claim to a supplier while the
15 dealer agreement is in effect or within sixty (60) days after the
16 termination of the dealer agreement, if the claim is for work
17 performed before the termination or expiration of the dealer
18 agreement, the supplier must accept or reject such warranty claim by
19 written notice to the dealer within thirty (30) days after the
20 receipt by the supplier thereof. If the supplier does not reject
21 the warranty claim in the time period specified above, the claim
22 will be deemed to be accepted. If the supplier accepts the warranty
23 claim, the supplier must pay or credit to the account of the dealer
24 all amounts owed with respect to the claim to the dealer within

1 thirty (30) days after it is accepted. If the supplier rejects a
2 warranty claim, the supplier must give the dealer written or
3 electronic notice of the grounds for rejection, which reasons must
4 be consistent with the reasons of the supplier for rejecting
5 warranty claims of other dealers, both in their terms and manner of
6 enforcement. If no grounds for rejection are given, the claim will
7 be deemed to be accepted.

8 B. Any claim which is disapproved by the supplier based upon
9 the failure of the dealer to properly follow the procedural or
10 technical requirements for submission of warranty claims may be
11 resubmitted in proper form by the dealer within thirty (30) days of
12 receipt by the dealer of the notification from the supplier of such
13 disapproval.

14 C. Warranty work performed by the dealer shall be compensated
15 in accordance with the reasonable and customary amount of time
16 required to complete such work, expressed in hours and fractions
17 thereof multiplied by the established customer hourly retail labor
18 rate of the dealer, which shall have previously been made known to
19 the supplier. Parts used in warranty repair work shall be
20 reimbursed at the current net price plus fifteen percent (15%).

21 D. For purposes of this act, any repair work or installation of
22 replacement parts performed with respect to the equipment of the
23 dealer in inventory or equipment of the customers of the dealer at
24 the request of the supplier, including work performed pursuant to a

1 product improvement program, will be deemed to create a warranty
2 claim for which the dealer shall be paid pursuant to the provisions
3 of this section.

4 E. A supplier may audit warranty claims submitted by its
5 dealers for a period of up to one (1) year following payment of the
6 claims, and may charge back to its dealers any amounts paid based
7 upon claims shown by audit to be misrepresented. If a warranty
8 claim is misrepresented, then warranty claims submitted within the
9 three-year period ending with the date a claim is shown by audit to
10 be misrepresented may be audited.

11 F. The requirements of subsections A through C of this section
12 apply to all warranty claims submitted by a dealer to a supplier in
13 which the dealer has complied with the reasonable policies and
14 procedures of the supplier for warranty reimbursement. The warranty
15 reimbursement policies and procedures of the supplier will be deemed
16 unreasonable to the extent they conflict with any of the provisions
17 of this section.

18 G. A dealer may choose to accept alternate reimbursement terms
19 and conditions in lieu of the requirements of subsection A through C
20 of this section if there is a written dealer agreement between the
21 supplier and the dealer that requires the supplier to compensate the
22 dealer for warranty labor costs either as:

23 1. A discount in the pricing of the equipment to the dealer; or
24

1 2. A lump-sum payment to the dealer that is made to the dealer
2 within ninety (90) days of the sale of the new equipment of the
3 supplier. The discount or lump sum must be no less than five
4 percent (5%) of the suggested retail price of the equipment. If the
5 requirements of this subsection are met and alternate terms and
6 conditions are in place, the provisions of subsection A through C of
7 this section shall not apply and the alternate terms and conditions
8 are enforceable. Nothing contained in this paragraph shall be
9 deemed to effect the obligation of the supplier to reimburse the
10 dealer for parts in accordance with subsection C of this section.

11 SECTION 10. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1710 of Title 47, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Whenever any dealer enters into a dealer agreement with a
15 supplier and either such supplier or the dealer desires to cancel,
16 not renew or otherwise discontinue the dealer agreement, such
17 supplier shall pay to such dealer or credit to such account of the
18 dealer, if the dealer has outstanding any sums owing the supplier,
19 unless the dealer should desire to keep such equipment or repair
20 parts:

21 1. A sum equal to one hundred percent (100%) of the net
22 equipment cost of all new, unsold, undamaged equipment, one hundred
23 percent (100%) of the net equipment cost of all unsold, undamaged
24 demonstrators, less a downward adjustment to reflect a reasonable

1 allowance for depreciation due to usage of such demonstrators,
2 which adjustment will be based on published industry rental rates
3 to the extent such rates are available, and ninety percent (90%) of
4 the current net parts prices on new, unsold, undamaged repair
5 parts, that had previously been purchased from such supplier and
6 held by such dealer on the date that the dealer agreement
7 terminates or expires. Notwithstanding anything to the contrary
8 contained herein, demonstrators with less than fifty (50) hours,
9 for machines with hour meters, of use will be considered new,
10 unsold, undamaged equipment subject to repurchase under this
11 paragraph;

12 2. A sum equal to five percent (5%) of the current net parts
13 price of all repair parts returned to compensate the dealer for the
14 handling, packing and loading of such repair parts for return to
15 the supplier; provided, however, such five percent (5%) will not be
16 paid or credited to the dealer if the supplier elects to perform
17 the handling, packing and loading of the repair parts itself;

18 3. The fair market value of any specific data processing
19 hardware or software that the supplier required the dealer to
20 acquire or purchase to satisfy the requirements of the supplier,
21 including computer equipment required and approved by the supplier
22 to communicate with the supplier. Fair market value of property
23 subject to repurchase pursuant to this paragraph will be deemed to
24 be the acquisition cost thereof, including any shipping, handling

1 and set-up fees, less straight line depreciation of such
2 acquisition cost over three (3) years. If the dealer purchased
3 data processing hardware or software that exceeded the minimum
4 requirements of the supplier, the acquisition cost of such data
5 processing hardware or software will be deemed to be the
6 acquisition cost of hardware or software of similar quality that
7 did not exceed the minimum requirements of the supplier; or

8 4. A sum equal to seventy-five percent (75%) of the net cost
9 including shipping, handling and set-up fees of all specialized
10 service or repair tools previously purchased pursuant to
11 requirements of the supplier within fifteen (15) years prior to the
12 date of the applicable notification of termination of the dealer
13 agreement. Such specialized service or repair tools must be unique
14 to the product line of the supplier and must be complete and in
15 good operating condition.

16 B. Upon the payment or allowance of credit to the account of
17 the dealer of the sums required by this section, the title to all
18 inventory purchased hereunder shall pass to the supplier making
19 such payment, and such supplier shall be entitled to the possession
20 of such inventory. All payments or allowances of credit due
21 dealers shall be paid or credited within ninety (90) days after
22 receipt by the supplier of property required to be repurchased
23 hereunder. Any payments or allowances of credit due dealers that
24 are not paid within such ninety-day period will accrue interest at

1 the maximum rate allowed by law. The supplier may withhold
2 payments due under this paragraph during the period of time in
3 which the dealer fails to comply with its contractual obligations
4 to remove any signage indicating that the dealer is an authorized
5 dealer of the supplier.

6 C. If any supplier refuses to repurchase any inventory covered
7 under the provisions of this act after cancellation, nonrenewal or
8 discontinuance of the dealer agreement, the supplier will be
9 civilly liable to the dealer for one hundred ten percent (110%) of
10 the amount that would have been due for such inventory if the
11 supplier had timely complied with this act, any freight charges
12 paid by the dealer, interest accrued, and the actual costs of the
13 dealer of any court or arbitration proceeding, including costs for
14 attorney fees and costs for arbitrators.

15 D. The supplier and dealer will each pay fifty percent (50%)
16 of the costs of freight, at truckload rates, to ship any equipment
17 or repair parts returned to the supplier pursuant to this act.

18 E. Notwithstanding any provision to the contrary in the
19 uniform commercial code adopted by this state, the dealer will
20 retain a first and prior lien against all inventory returned by the
21 dealer to the supplier under the provisions of this act until the
22 dealer is paid all amounts owed by the supplier for the repurchase
23 of such inventory required under the provisions of this act.

24

1 F. The provisions of this section shall not be construed to
2 affect in any way any security interest which the supplier may have
3 in the inventory of the dealer, and any repurchase hereunder shall
4 not be subject to the provisions of the bulk sales law or to the
5 claims of any secured or unsecured creditors of the supplier or any
6 assignee of the supplier until such time as the dealer has received
7 full payment or credit, as applicable, due hereunder.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1711 of Title 47, unless there
10 is created a duplication in numbering, reads as follows:

11 The provisions of this act shall not require the repurchase
12 from a dealer of:

13 1. Any repair part which is in a broken or damaged package;
14 provided, however, the supplier will be required to repurchase a
15 repair part in a broken or damaged package, for a repurchase price
16 that is equal to eighty-five percent (85%) of the current net price
17 for such repair part, if the aggregate current net price for the
18 entire package of repair parts is Seventy-five Dollars (\$75.00) or
19 higher;

20 2. Any repair part which because of its condition is not
21 resalable as a new part without repackaging or reconditioning;

22 3. Any inventory for which the dealer is unable to furnish
23 evidence, satisfactory to the supplier, of clear title, free and
24 clear of all claims, liens and encumbrances;

- 1 4. Any inventory which the dealer desires to keep, provided
2 the dealer has a contractual right to do so;
- 3 5. Any equipment or repair parts which are not in new, unsold,
4 undamaged, complete condition; subject, however, to the provisions
5 of this act relating to the demonstrators;
- 6 6. Any equipment delivered to the dealer prior to the
7 beginning of the thirty-six-month period immediately preceding the
8 date of notification of termination;
- 9 7. Any equipment or repair parts which were ordered by the
10 dealer on or after the date of notification of termination;
- 11 8. Any equipment or repair parts which were acquired by the
12 dealer from any source other than the supplier, unless such
13 equipment or repair parts were ordered from, or invoiced to, the
14 dealer by the supplier; or
- 15 9. Any equipment or repair parts which are not returned to the
16 supplier within ninety (90) days after the later of:
- 17 a. the effective date of termination of a dealer
18 agreement, and
- 19 b. the date the dealer receives from the supplier all
20 information, documents or supporting materials
21 required by the supplier to comply with the return
22 policy of the supplier; provided, however, this
23 paragraph shall not be applicable to a dealer if the
24 supplier did not give the dealer notice of the

1 ninety-day deadline at the time the applicable notice
2 of termination was sent to the dealer.

3 SECTION 12. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1712 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 If any supplier violates any provision of this act, a dealer
7 may bring an action against such supplier in a court of competent
8 jurisdiction for damages sustained by the dealer as a consequence
9 of the violation of the supplier including, but not limited to,
10 damages for lost profits, together with the actual costs of the
11 action, including attorney and paralegal fees and costs of
12 arbitrators, and the dealer may also be granted injunctive relief
13 against unlawful termination. The remedies set forth in this
14 section shall not be deemed exclusive and shall be in addition to
15 any other remedies permitted by law.

16 SECTION 13. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1713 of Title 47, unless there
18 is created a duplication in numbering, reads as follows:

19 An attempted waiver of a provision of this act or application of
20 this act shall be void. Any provision in a dealer agreement that
21 purports to elect the application of the law of a state other than
22 this state shall be void. Any provision in a dealer agreement that
23 requires a dealer to pay attorney fees incurred by a supplier shall
24 be void.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1714 of Title 47, unless there
3 is created a duplication in numbering, reads as follows:

4 The provisions of this act shall apply to all dealer agreements
5 now in effect which have no expiration date and are a continuing
6 contract, and all other dealer agreements entered into or renewed
7 after November 1, 2007. All other dealer agreements shall be
8 governed by the law as it existed prior to this act.

9 SECTION 15. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1715 of Title 47, unless there
11 is created a duplication in numbering, reads as follows:

12 The provisions of this act shall be supplemental to any dealer
13 agreement between the dealer and the supplier which provides the
14 dealer with greater protection. The dealer can elect to pursue its
15 contract remedy or the remedy provided by state law, or both, and
16 an election by the dealer to pursue such remedies shall not bar its
17 right to exercise any other remedies that may be granted at law or
18 in equity.

19 SECTION 16. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1716 of Title 47, unless there
21 is created a duplication in numbering, reads as follows:

22 This act shall not apply to suppliers unless the supplier as
23 part of its dealer agreement with a dealer requires purchase of
24 equipment not requested by the dealer.

1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1717 of Title 47, unless there
3 is created a duplication in numbering, reads as follows:

4 The provisions of this act are hereby declared severable and if
5 any provision of this act or the application of such provision to
6 any person or circumstance is declared invalid or unconstitutional
7 for any reason, such declaration of invalidity shall not affect the
8 validity of the remaining portions of this act.

9 SECTION 18. This act shall become effective November 1, 2007.

10

11 51-1-7380 LRB 02/26/07

12

13

14

15

16

17

18

19

20

21

22

23

24