

THE HOUSE OF REPRESENTATIVES  
Wednesday, February 28, 2007

Committee Substitute for  
**House Bill No. 1454**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1454 - By: JOHNSON (ROB) of the House and GUMM of the Senate.

An Act relating to motor vehicles; creating the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act; stating legislative purpose; defining terms; specifying acts that constitute violations of the act; providing for termination of dealer agreements; providing circumstances for existence of good cause; providing procedures for notice of termination of dealer agreement; providing procedures for requesting the sale or transfer of business; providing for termination of single-line dealer agreements; providing circumstances for existence of good cause; providing notice requirements; providing for consideration of request for new dealer agreement upon death of dealer; prohibiting entitlement to operate dealership without certain consent; providing 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. BE IT

ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

20 As used in this act:

21 1. “Act” means the Fair Practices of Equipment Manufacturers, Distributors,  
22 Wholesalers and Dealers Act;

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

9           3. “Current net parts cost” means the current net parts price less any trade or cash  
10 discounts typically given to the dealer with respect to the normal, ordinary course of  
11 orders of repair parts by the dealer;

12           4. “Dealer” means any person, not including mass retailers who sell through large  
13 stores, engaged in the business of:

- 14           a.       selling or leasing equipment or repair parts to the consumer, and
- 15           b.       repairing or servicing equipment;

16           5. “Dealer agreement” means either an oral or written agreement or arrangement  
17 for a definite or indefinite period between a dealer and a supplier that provides for the  
18 rights and obligations of the parties with respect to the purchase or sale of equipment or  
19 repair parts. Notwithstanding the foregoing, if a dealer has more than one business  
20 location covered by the same dealer agreement, the requirements of this act shall be  
21 applied to the repurchase of the inventory of a dealer at a particular location upon the  
22 closing of such location;

1           6. “Dealership” means the retail sale business engaged in by a dealer under a  
2 dealer agreement;

3           7. “Demonstrator” means equipment in the inventory of a dealer that has never  
4 been sold at retail, but has had its usage demonstrated to potential customers, either  
5 without charge or pursuant to a short-term rental agreement, with the intent of  
6 encouraging the person to purchase such equipment, and which has been authorized for  
7 such use by the supplier;

8           8. “Equipment” means:

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

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

12           (1) lawn, garden, golf course, landscaping or grounds maintenance,

13           (2) planting, cultivating, irrigating, harvesting, and producing of  
14 agricultural or forestry products,

15           (3) raising, feeding, tending to or harvesting  
16 products from livestock or any other activity in  
17 connection therewith, or

18           (4) industrial, construction, maintenance, mining or  
19 utility activities or applications;

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

1           9. “Family member” means a spouse, child, son-in-law, daughter-in-law or lineal  
2 descendant;

3           10. “Good cause” has the meaning set forth in Section 5 or 7 of this act, as  
4 applicable;

5           11. “Index” means the United States Bureau of Labor Statistics purchase price  
6 index for construction machinery, series identification number, or any successor index  
7 measuring substantially similar information;

8           12. “Inventory” means new equipment, repair parts, data process hardware or  
9 software, and specialized service or repair tools;

10          13. “Net equipment cost” means the price the dealer actually paid to the supplier  
11 for equipment, including:

- 12           a.       freight, at truckload rates in effect as of the effective date of the  
13                    termination of a dealer agreement, if freight was paid by the dealer  
14                    from the location of the supplier to the location of the dealer, and  
15           b.       reimbursement for labor incurred in preparing the equipment for retail  
16                    sale or rental, which labor will be reimbursed at the standard labor  
17                    rate charged by the dealer to its customers for nonwarranty repair  
18                    work; provided, however, if a supplier has established a reasonable set-  
19                    up time, such labor will be reimbursed at an amount equal to the  
20                    reasonable set-up time in effect as of the date of delivery multiplied by  
21                    the standard labor rate of the dealer;

1           14. “New equipment” means, for purposes of determining whether a dealer is a  
2 single-line dealer, any equipment that could be returned to the supplier upon a  
3 termination of a dealer agreement pursuant to Sections 10 and 11 of this act;

4           15. “Person” means a natural person, corporation, partnership, limited liability  
5 company, company, trust, or any and all other forms of business enterprise, including  
6 any other entity in which it has a majority interest or of which it has control, as well as  
7 the individual officers, directors, and other persons in active control of the activities of  
8 each entity;

9           16. “Repair parts” means all parts related to the repair of equipment, including  
10 superseded parts;

11          17. “Single-line dealer” means a dealer that has:

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

1           18. “Single-line supplier” means the supplier that is selling the single-line dealer  
2 construction, industrial, forestry and mining equipment constituting seventy-five percent  
3 (75%) of the new equipment of the dealer;

4           19. “Supplier” means any person engaged in the business of manufacturing,  
5 assembly or wholesale distribution of equipment or repair parts. The term “supplier”  
6 and the provisions of this act shall be interpreted liberally and will not be limited to  
7 traditional doctrines of corporate successor liability or take into account whether:

- 8           a.       a successor expressly assumed the liabilities of the supplier, or  
9           b.       there has been one or more intermediate successors to the initial  
10                   supplier.

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

20           20. “Terminate” means to terminate, cancel, fail to renew, or substantially change  
21 the competitive circumstances of a dealer agreement.

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

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

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

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

16 3. To coerce any dealer into a refusal to purchase equipment manufactured by  
17 another supplier. However, it shall not be a violation of this section to require separate  
18 facilities, financial 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 reasonable time, after  
21 receipt of the order of the dealer, to any dealer having a dealer agreement for the retail  
22 sale of new equipment sold or distributed by such supplier, equipment covered by such

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

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

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

- 17 a. such differences are due to differences in the cost of manufacture, sale  
18 or delivery of the equipment or repair parts,  
19 b. the supplier can show that its lower price was made in good faith to  
20 meet an equally low price of a competitor, or  
21 c. such differences are related to the volume of equipment purchased by  
22 dealers;

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

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

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

13           A dealer may terminate a dealer agreement without cause. The dealer must give  
14 the supplier at least thirty (30) days prior written notice of termination. No supplier  
15 may terminate a dealer agreement without good cause. Except as otherwise specifically  
16 provided in this act, good cause means the failure by a dealer to substantially comply  
17 with essential and reasonable requirements imposed upon the dealer by the dealer  
18 agreement, provided such requirements are not different from those requirements  
19 imposed on other similarly situated dealers either by their terms or in the manner of  
20 their enforcement. In addition, good cause shall exist whenever:

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

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

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

8           4. The dealer has defaulted under any chattel mortgage or other security  
9 agreement between the dealer and the supplier, or there has been a revocation of any  
10 guarantee of the present or future obligations of the dealer to the supplier; provided,  
11 however, good cause will not exist if a person revokes any guarantee in connection  
12 with or following the transfer of the entire ownership interest of the person in the  
13 dealer unless the supplier requires such person to execute a new guarantee of the  
14 present or future obligations of the dealer in connection with such transfer of  
15 ownership interest;

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

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

20           7. The dealer has engaged in conduct which is injurious or detrimental to the  
21 customers of the dealer or to the public welfare or the representation or reputation of the  
22 product of the supplier; or

1           8. The dealer has consistently failed to meet and maintain the requirements of  
2 the supplier for reasonable standards and performance objectives, so long as the  
3 supplier has given the dealer reasonable standards and performance objectives that  
4 are based on the experience of the manufacturer in other comparable market areas.  
5 The provisions of this section shall not apply to the dealer agreements between a single-  
6 line dealer and its single-line supplier.

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

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

1           B. If a supplier has contractual authority to approve or deny a request for a sale or  
2 transfer of the business of a dealer or an equity ownership interest therein, the supplier  
3 shall approve or deny such a request within sixty (60) days after receiving a written  
4 request from the dealer. If the supplier has neither approved nor denied the request  
5 within the sixty-day period, the request will be deemed approved. The request of the  
6 dealer shall include reasonable financial, personal background, character references and  
7 work history information for the acquiring persons. If a supplier denies a request made  
8 pursuant to this paragraph, the supplier must provide the dealer with a written notice of  
9 such denial that states the reasons for such denial. A supplier may only deny a request  
10 based on the failure of the proposed transferees to meet the reasonable requirements  
11 consistently imposed by the supplier in determining approval of such transfer or  
12 approvals of new dealers.

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

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

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

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

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

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

15 1. There has been a closeout or sale of a substantial part of the assets of the  
16 dealer related to the equipment business, or there has been a commencement of a  
17 dissolution or liquidation of the dealer;

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

21 3. The dealer has substantially defaulted under a chattel mortgage or other  
22 security agreement between the dealer and the supplier, or there has been a

1 revocation or discontinuance of a guarantee of a present or future obligation of the  
2 dealer to the supplier;

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

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

7 6. The dealer transfers an interest in the dealership, or a person with a  
8 substantial interest in the ownership or control of the dealership, including an  
9 individual proprietor, partner or major shareholder, withdraws from the dealership or  
10 dies, or a substantial reduction occurs in the interest of a partner or major  
11 shareholder in the dealership; provided, however, good cause does not exist if the  
12 supplier consents to an action described in this paragraph.

13 C. Except as otherwise provided in this paragraph, a supplier shall provide a  
14 dealer with at least ninety (90) days written notice of termination. The notice must  
15 state all reasons constituting good cause for such termination and must state that the  
16 dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is  
17 rectified within sixty (60) days, the notice will be void. Notwithstanding the  
18 foregoing, if the good cause for termination is due to the failure of the dealer to meet  
19 or maintain the requirements of the supplier for market penetration, a reasonable  
20 period of time shall have existed where the supplier has worked with the dealer to  
21 gain the desired market share. The notice and right to cure provisions under this

1 paragraph shall not apply if the reason for termination is for any reason set forth in  
2 paragraphs 1 through 6 of subsection B of this section.

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

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

8 B. If a dealer dies, a supplier shall have ninety (90) days in which to consider and  
9 make a determination on a request by a family member to enter into a new dealer  
10 agreement to operate the dealership. If the supplier determines that the requesting  
11 family member is not acceptable, the supplier shall provide the family member with a  
12 written notice of its determination with the stated reasons for nonacceptance. This  
13 section does not entitle an heir, personal representative or family member to operate a  
14 dealership without the specific written consent of the supplier.

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

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

1           A. If a dealer submits a warranty claim to a supplier while the dealer agreement is  
2 in effect or within sixty (60) days after the termination of the dealer agreement, if the  
3 claim is for work performed before the termination or expiration of the dealer agreement,  
4 the supplier must accept or reject such warranty claim by written notice to the dealer  
5 within thirty (30) days after the receipt by the supplier thereof. If the supplier does not  
6 reject the warranty claim in the time period specified above, the claim will be deemed to  
7 be accepted. If the supplier accepts the warranty claim, the supplier must pay or credit  
8 to the account of the dealer all amounts owed with respect to the claim to the dealer  
9 within thirty (30) days after it is accepted. If the supplier rejects a warranty claim, the  
10 supplier must give the dealer written or electronic notice of the grounds for rejection,  
11 which reasons must be consistent with the reasons of the supplier for rejecting warranty  
12 claims of other dealers, both in their terms and manner of enforcement. If no grounds for  
13 rejection are given, the claim will be deemed to be accepted.

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

18           C. Warranty work performed by the dealer shall be compensated in accordance  
19 with the reasonable and customary amount of time required to complete such work,  
20 expressed in hours and fractions thereof multiplied by the established customer hourly  
21 retail labor rate of the dealer, which shall have previously been made known to the

1 supplier. Parts used in warranty repair work shall be reimbursed at the current net  
2 price plus fifteen percent (15%).

3 D. For purposes of this act, any repair work or installation of replacement parts  
4 performed with respect to the equipment of the dealer in inventory or equipment of the  
5 customers of the dealer at the request of the supplier, including work performed  
6 pursuant to a product improvement program, will be deemed to create a warranty claim  
7 for which the dealer shall be paid pursuant to the provisions of this section.

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

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

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

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

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

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

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

17           1. A sum equal to one hundred percent (100%) of the net equipment cost of all  
18 new, unsold, undamaged equipment, one hundred percent (100%) of the net  
19 equipment cost of all unsold, undamaged demonstrators, less a downward adjustment  
20 to reflect a reasonable allowance for depreciation due to usage of such demonstrators,  
21 which adjustment will be based on published industry rental rates to the extent such  
22 rates are available, and ninety percent (90%) of the current net parts prices on new,

1 unsold, undamaged repair parts, that had previously been purchased from such  
2 supplier and held by such dealer on the date that the dealer agreement terminates or  
3 expires. Notwithstanding anything to the contrary contained herein, demonstrators  
4 with less than fifty (50) hours, for machines with hour meters, of use will be  
5 considered new, unsold, undamaged equipment subject to repurchase under this  
6 paragraph;

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

12 3. The fair market value of any specific data processing hardware or software  
13 that the supplier required the dealer to acquire or purchase to satisfy the  
14 requirements of the supplier, including computer equipment required and approved  
15 by the supplier to communicate with the supplier. Fair market value of property  
16 subject to repurchase pursuant to this paragraph will be deemed to be the acquisition  
17 cost thereof, including any shipping, handling and set-up fees, less straight line  
18 depreciation of such acquisition cost over three (3) years. If the dealer purchased data  
19 processing hardware or software that exceeded the minimum requirements of the  
20 supplier, the acquisition cost of such data processing hardware or software will be  
21 deemed to be the acquisition cost of hardware or software of similar quality that did  
22 not exceed the minimum requirements of the supplier; or

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

7           B. Upon the payment or allowance of credit to the account of the dealer of the  
8 sums required by this section, the title to all inventory purchased hereunder shall  
9 pass to the supplier making such payment, and such supplier shall be entitled to the  
10 possession of such inventory. All payments or allowances of credit due dealers shall  
11 be paid or credited within ninety (90) days after receipt by the supplier of property  
12 required to be repurchased hereunder. Any payments or allowances of credit due  
13 dealers that are not paid within such ninety-day period will accrue interest at the  
14 maximum rate allowed by law. The supplier may withhold payments due under this  
15 paragraph during the period of time in which the dealer fails to comply with its  
16 contractual obligations to remove any signage indicating that the dealer is an  
17 authorized dealer of the supplier.

18           C. If any supplier refuses to repurchase any inventory covered under the  
19 provisions of this act after cancellation, nonrenewal or discontinuance of the dealer  
20 agreement, the supplier will be civilly liable to the dealer for one hundred ten percent  
21 (110%) of the amount that would have been due for such inventory if the supplier had  
22 timely complied with this act, any freight charges paid by the dealer, interest accrued,

1 and the actual costs of the dealer of any court or arbitration proceeding, including  
2 costs for attorney fees and costs for arbitrators.

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

6 E. Notwithstanding any provision to the contrary in the uniform commercial  
7 code adopted by this state, the dealer will retain a first and prior lien against all  
8 inventory returned by the dealer to the supplier under the provisions of this act until  
9 the dealer is paid all amounts owed by the supplier for the repurchase of such  
10 inventory required under the provisions of this act.

11 F. The provisions of this section shall not be construed to affect in any way any  
12 security interest which the supplier may have in the inventory of the dealer, and any  
13 repurchase hereunder shall not be subject to the provisions of the bulk sales law or to  
14 the claims of any secured or unsecured creditors of the supplier or any assignee of the  
15 supplier until such time as the dealer has received full payment or credit, as  
16 applicable, due hereunder.

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

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

21 1. Any repair part which is in a broken or damaged package; provided, however,  
22 the supplier will be required to repurchase a repair part in a broken or damaged

1 package, for a repurchase price that is equal to eighty-five percent (85%) of the  
2 current net price for such repair part, if the aggregate current net price for the entire  
3 package of repair parts is Seventy-five Dollars (\$75.00) or higher;

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

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

8 4. Any inventory which the dealer desires to keep, provided the dealer has a  
9 contractual right to do so;

10 5. Any equipment or repair parts which are not in new, unsold, undamaged,  
11 complete condition; subject, however, to the provisions of this act relating to the  
12 demonstrators;

13 6. Any equipment delivered to the dealer prior to the beginning of the thirty-six-  
14 month period immediately preceding the date of notification of termination;

15 7. Any equipment or repair parts which were ordered by the dealer on or after  
16 the date of notification of termination;

17 8. Any equipment or repair parts which were acquired by the dealer from any  
18 source other than the supplier, unless such equipment or repair parts were ordered  
19 from, or invoiced to, the dealer by the supplier; or

20 9. Any equipment or repair parts which are not returned to the supplier within  
21 ninety (90) days after the later of:

22 a. the effective date of termination of a dealer agreement, and

1           b.     the date the dealer receives from the supplier all information,  
2                   documents or supporting materials required by the supplier to  
3                   comply with the return policy of the supplier; provided, however,  
4                   this paragraph shall not be applicable to a dealer if the supplier did  
5                   not give the dealer notice of the ninety-day deadline at the time the  
6                   applicable notice of termination was sent to the dealer.

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

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

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

21           An attempted waiver of a provision of this act or application of this act shall be void.  
22 Any provision in a dealer agreement that purports to elect the application of the law of a

1 state other than this state shall be void. Any provision in a dealer agreement that  
2 requires a dealer to pay attorney fees incurred by a supplier shall be void.

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

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

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

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

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

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

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

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

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

9           COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT AND  
10 TRANSPORTATION, dated 02-27-07- DO PASS, As Amended and Coauthored.