

SB 1069

THE STATE SENATE  
Monday, February 26, 2007

Senate Bill No. 1069  
As Amended

SENATE BILL NO. 1069 - By: GUMM of the Senate and JOHNSON (Rob) of the House.

[ motor vehicles - creating the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act - codification - effective date ]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-1000 of Title 47, unless there is created a duplication in numbering, reads as follows:

This act shall be know and may be cited as the "Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16-1001 of Title 47, unless there is created a duplication in numbering, reads as follows:

The Legislature finds and declares that the retail distribution, sales and rental of agricultural, construction, utility, industrial, mining, outdoor power, forestry and lawn and garden equipment, utilizing independent dealers operating under contract with the supplier vitally affects the general economy of this state, the public interest and the public welfare. Therefore, the Legislature

1 has determined that it is necessary to regulate the business  
2 relations between the independent dealers and the equipment  
3 suppliers as contemplated in the Fair Practices of Equipment  
4 Manufacturers, Distributors, Wholesalers and Dealers Act and that  
5 any action taken in violation of this act will result in a violation  
6 of an important public policy of this state.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 16-1003 of Title 47, unless  
9 there is created a duplication in numbering, reads as follows:

10 As used in the Fair Practices of Equipment Manufacturers,  
11 Distributors, Wholesalers and Dealers Act:

12 1. "Current net parts price" means, with respect to current  
13 parts, the price for repair parts listed in the supplier's price  
14 list or catalogue in effect at the time the dealer agreement is  
15 cancelled or discontinued, or for purposes of section 9 of the Fair  
16 Practices of Equipment Manufacturers, Distributors, Wholesalers and  
17 Dealers Act, the price list or catalogue in effect at the time the  
18 repair parts were ordered. Current net parts price means, with  
19 respect to superseded repair parts, the price listed in the  
20 supplier's price list or catalogue in effect at the time the dealer  
21 agreement is cancelled or discontinued for the part that performs  
22 the same function and purpose as the superseded part, but is simply  
23 listed under a different part number;

1           2. "Current net parts cost" means the current net parts price  
2 less any trade or cash discounts typically given to the dealer with  
3 respect to such dealer's normal, ordinary course orders of repair  
4 parts;

5           3. "Dealer" means any person, not including mass retailers who  
6 sell through "big box" stores, engaged in the business of:

7           a. selling or leasing equipment or repair parts therefore  
8           to the ultimate consumer thereof, and

9           b. repairing or servicing equipment;

10          4. "Dealer Agreement" means either an oral or written agreement  
11 or arrangement for a definite or indefinite period between a dealer  
12 and a supplier that provides for the rights and obligations of the  
13 parties with respect to the purchase or sale of equipment or repair  
14 parts. Notwithstanding the foregoing, if a dealer has more than one  
15 business location covered by the same dealer agreement, the  
16 requirements of the Fair Practices of Equipment Manufacturers,  
17 Distributors, Wholesalers and Dealers Act will be applied to the  
18 repurchase of a dealer's inventory at a particular location upon the  
19 closing of such location;

20          5. "Dealership" means the retail sale business engaged in by a  
21 dealer under a dealer agreement;

22          6. "Demonstrator" means equipment in a dealer's inventory that  
23 has never been sold at retail, but has had its usage demonstrated to

1 potential customers, either without charge or pursuant to a short-  
2 term rental agreement, with the intent of encouraging the person to  
3 purchase the equipment and which has been authorized for the use by  
4 the supplier;

5 7. "Equipment" means:

- 6 a. all-terrain vehicles, regardless of how used, and
- 7 b. other machinery, equipment, implements or attachments  
8 therefore, used for or in connection with the  
9 following purposes:
  - 10 (1) lawn, garden, golf course, landscaping or grounds  
11 maintenance,
  - 12 (2) planting, cultivating, irrigating, harvesting,  
13 and producing of agricultural and/or forestry  
14 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 Equipment shall not mean self-propelled vehicles designed  
21 primarily for the transportation of persons or property on a street  
22 or highway;

1           8. "Family Member" means a spouse, child, son-in-law, daughter-  
2 in-law or lineal descendant;

3           9. "Good Cause" has the meaning as set forth in Section 5 or  
4 Section 6 of this act, as applicable;

5           10. "Index" means the United States Bureau of Labor Statistics  
6 purchase price index (industry data) for construction machinery,  
7 series identification number pcu333120333120 or any successor index  
8 measuring substantially similar information;

9           11. "Inventory" means new equipment, repair parts, data  
10 processing hardware or software, and specialized service or repair  
11 tools;

12           12. "Net equipment cost" means the price the dealer actually  
13 paid to the supplier for equipment, plus:

14           a. freight, at truckload rates in effect as of the  
15 effective date of the termination of a dealer  
16 agreement, if freight was paid by the dealer from the  
17 supplier's location to the dealer's location, and

18           b. reimbursement for labor incurred in preparing the  
19 equipment for retail sale or rental, also known as  
20 set-up costs, which labor will be reimbursed at the  
21 dealer's standard labor rate charged by the dealer to  
22 its customers for nonwarranty repair work; provided,  
23 however, if a supplier has established a reasonable

1 set-up time, such labor will be reimbursed at an  
2 amount equal to the reasonable set-up time in effect  
3 as of the date of delivery multiplied by the dealer's  
4 standard labor rate;

5 13. "New equipment" means, for purposes of determining whether  
6 a dealer is a single-line dealer, any equipment that could be  
7 returned to the supplier upon a termination of a dealer agreement  
8 pursuant to Sections 10 and 11 of the Fair Practices of Equipment  
9 Manufacturers, Distributors, Wholesalers and Dealers Act;

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

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

18 16. "Single-line dealer" means a dealer that has:

19 a. purchased construction, industrial, forestry and  
20 mining equipment from a single supplier constituting  
21 seventy-five percent (75%) of the dealer's new  
22 equipment, calculated on the basis of net cost, and

1           b.    a total annual average sales volume in excess of  
2                   Twenty Million Dollars (\$20,000,000.00) for the three  
3                   (3) calendar years immediately preceding the  
4                   applicable determination date; provided, however, the  
5                   Twenty Million Dollars (\$20,000,000.00) threshold will  
6                   be increased each year by an amount equal to the then  
7                   current threshold multiplied by the percentage  
8                   increase in the Index from January of the immediately  
9                   preceding year to January of the current year;

10          17.   "Single-line Supplier" means the supplier that is selling  
11   the single-line dealer construction, industrial, forestry and mining  
12   equipment constituting seventy-five percent (75%) of the dealer's  
13   new equipment;

14          18.   "Supplier" means any person engaged in the business of  
15   manufacturing, assembly or wholesale distribution of equipment or  
16   repair parts. The term supplier and the provisions of the Fair  
17   Practices of Equipment Manufacturers, Distributors, Wholesalers and  
18   Dealers Act shall be interpreted liberally and will not be limited  
19   to traditional doctrines of corporate successor liability or take  
20   into account whether:

21           a.    a successor expressly assumed the liabilities of the  
22                   supplier or

1           b.     there has been one or more intermediate successors to  
2                     the initial supplier.

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

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

17         SECTION 4.         NEW LAW         A new section of law to be codified  
18 in the Oklahoma Statutes as Section 16-1004 of Title 47, unless  
19 there is created a duplication in numbering, reads as follows:

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

22         1. To coerce, compel or require any dealer to accept delivery  
23 of any equipment or repair parts which the dealer has not

1 voluntarily ordered, except as required by any applicable law or  
2 unless such equipment or repair parts are safety features required  
3 by a supplier;

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

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

16 4. To refuse to deliver in reasonable quantities and within a  
17 reasonable time, after receipt of the dealer's order, to any dealer  
18 having a dealer agreement for the retail sale of new equipment sold  
19 or distributed by such supplier, equipment covered by such dealer  
20 agreement specifically advertised or represented by such supplier to  
21 be available for immediate delivery. The failure to deliver any  
22 such equipment will not be considered a violation of the Fair  
23 Practices of Equipment Manufacturers, Distributors, Wholesalers and

1 Dealers Act if such failure is due to prudent and reasonable  
2 restrictions on extensions of credit by the supplier to the dealer,  
3 an act of nature, work stoppage or delay due to a strike or labor  
4 difficulty, a bona fide shortage of materials, freight embargo, or  
5 other cause over which the supplier has no control or a business  
6 decision by the supplier to limit the production volume of the  
7 equipment;

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

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

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

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 the Fair Practices of Equipment Manufacturers,  
18   Distributors, Wholesalers and Dealers Act.

19          SECTION 5.        NEW LAW        A new section of law to be codified  
20   in the Oklahoma Statutes as Section 16-1005 of Title 47, unless  
21   there is created a duplication in numbering, reads as follows:

22          A.    A dealer may terminate a dealer agreement without cause.  
23   The dealer must give the supplier at least thirty (30) days prior

1 written notice of termination. No supplier may terminate a dealer  
2 agreement without good cause. Except as otherwise specifically  
3 provided in the Fair Practices of Equipment Manufacturers,  
4 Distributors, Wholesalers and Dealers Act, good cause means the  
5 failure by a dealer to substantially comply with essential and  
6 reasonable requirements imposed upon the dealer by the dealer  
7 agreement, provided such requirements are not different from those  
8 requirements imposed on other similarly situated dealers either by  
9 their terms or in the manner of their enforcement. In addition, good  
10 cause shall exist whenever:

11 1. The dealer or dealership has transferred a controlling  
12 ownership interest in its business without the supplier's consent;

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

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

22 4. The dealer has defaulted under any chattel mortgage or other  
23 security agreement between the dealer and the supplier, or there has

1 been a revocation of any guarantee of the dealer's present or future  
2 obligations to the supplier; provided, however, good cause will not  
3 exist if a person revokes any guarantee in connection with or  
4 following the transfer of such person's entire ownership interest in  
5 the dealer unless the supplier requires the person to execute a new  
6 guarantee of the dealer's present or future obligations in  
7 connection with the transfer of ownership interest;

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

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

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

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

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

1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 16-1006 of Title 47, unless  
3 there 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 the Fair Practices of Equipment Manufacturers, Distributors,  
13 Wholesalers and Dealers Act unless the supplier gives the dealer  
14 notice of such action at least two (2) years before the effective  
15 date of the action. If the dealer achieves the supplier's  
16 requirements for reasonable standards or performance objectives  
17 before the expiration of the two-year notice period, the notice will  
18 be void and the dealer agreement will continue in full force and  
19 effect. The notice and right to cure provisions under this section  
20 shall not apply if the reason for termination is for any reason set  
21 forth in paragraphs 1 through 8 of Section 5 of the Fair Practices  
22 of Equipment Manufacturers, Distributors, Wholesalers and Dealers  
23 Act.

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

16           C. If a dealer dies and the supplier has contractual authority  
17 to approve or deny a request for a sale or transfer of the dealer's  
18 business or equity ownership interest therein, the dealer's estate,  
19 or such other person with authority to transfer assets of the  
20 dealer, will have one hundred eighty (180) days to submit to the  
21 supplier a written request for a sale or transfer of the business or  
22 equity ownership interest. If the request is timely submitted, the  
23 supplier shall approve or deny the request in accordance with

1 subsection B of this section. Notwithstanding anything to the  
2 contrary contained in the Fair Practices of Equipment Manufacturers,  
3 Distributors, Wholesalers and Dealers Act, any attempt by the  
4 supplier to terminate the dealer or the dealership as a result of  
5 the death of a dealer will be delayed until there has been  
6 compliance with the terms of this section or the one-hundred-eighty  
7 -day period has expired, as applicable.

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

11 SECTION 7. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 16-1007 of Title 47, unless  
13 there is created a duplication in numbering, reads as follows:

14 A. This section will only apply to the dealer agreements  
15 between a single-line dealer and its single-line supplier.

16 B. No supplier may terminate a dealer agreement without good  
17 cause. For purposes of Sections 7 and 8 of the Fair Practices of  
18 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act  
19 only, "good cause" means failure by a dealer to comply with  
20 requirements imposed upon the dealer by the dealer agreement if such  
21 requirements are not different from those imposed on other similarly  
22 situated dealers. In addition, good cause exists whenever:

1           1. There has been a closeout or sale of a substantial part of  
2 the dealer's assets related to the equipment business, or there has  
3 been a commencement of a dissolution or liquidation of the dealer;

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

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

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

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

18          6. The dealer transfers an interest in the dealership, or a  
19 person with a substantial interest in the ownership or control of  
20 the dealership, including an individual proprietor, partner or major  
21 shareholder, withdraws from the dealership or dies, or a substantial  
22 reduction occurs in the interest of a partner or major shareholder

1 in the dealership; provided, however, good cause does not exist if  
2 the supplier consents to an action described in this paragraph.

3 C. Except as otherwise provided in this subsection, a supplier  
4 shall provide a dealer with at least ninety (90) days written notice  
5 of termination. The notice must state all reasons constituting good  
6 cause for such termination and must state that the dealer has sixty  
7 (60) days in which to cure any claimed deficiency. If the  
8 deficiency is rectified within sixty (60) days, the notice will be  
9 void. Notwithstanding the foregoing, if the good cause for  
10 termination is due to the dealer's failure to meet or maintain the  
11 supplier's requirements for market penetration, a reasonable period  
12 of time shall have existed where the supplier has worked with the  
13 dealer to gain the desired market share. The notice and right to  
14 cure provisions under this paragraph shall not apply if the reason  
15 for termination is for any reason set forth in paragraphs 1 through  
16 6 of subsection B of this section.

17 SECTION 8. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 16-1008 of Title 47, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. This section will only apply to the dealer agreements  
21 between a single-line dealer and its single-line supplier.

22 B. If a dealer dies, a supplier shall have ninety (90) days in  
23 which to consider and make a determination on a request by a family

1 member to enter into a new dealer agreement to operate the  
2 dealership. If the supplier determines that the requesting family  
3 member is not acceptable, the supplier shall provide the family  
4 member with a written notice of its determination with the stated  
5 reasons for nonacceptance. This section does not entitle an heir,  
6 personal representative or family member to operate a dealership  
7 without the specific written consent of the supplier.

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

13 SECTION 9. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 16-1009 of Title 47, unless  
15 there is created a duplication in numbering, reads as follows:

16 A. If a dealer submits a warranty claim to a supplier while the  
17 dealer agreement is in effect or within sixty (60) days after the  
18 termination of the dealer agreement, if the claim is for work  
19 performed before the termination or expiration of the dealer  
20 agreement, the supplier must accept or reject such warranty claim by  
21 written notice to the dealer within thirty (30) days after the  
22 supplier's receipt thereof. If the supplier does not reject the  
23 warranty claim in the time period specified above, the claim will be

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

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

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

22 D. For purposes of the Fair Practices of Equipment  
23 Manufacturers, Distributors, Wholesalers and Dealers Act, any repair

1 work or installation of replacement parts performed with respect to  
2 the dealer's equipment in inventory or equipment of the dealer's  
3 customers at the request of the supplier, including work performed  
4 pursuant to a product improvement program (PIP), will be deemed to  
5 create a warranty claim for which the dealer shall be paid pursuant  
6 to this section.

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

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

21 G. A dealer may choose to accept alternate reimbursement terms  
22 and conditions in lieu of the requirements of subsections A, B and C  
23 of this section if there is a written dealer agreement between the

1 supplier and the dealer that requires the supplier to compensate the  
2 dealer for warranty labor costs either as:

- 3 a. a discount in the pricing of the equipment to the  
4 dealer; or
- 5 b. a lump sum payment to the dealer that is made to the  
6 dealer within ninety (90) days of the sale of the  
7 supplier's new equipment. The discount or lump sum  
8 must be no less than five percent (5%) of the  
9 suggested retail price of the equipment,

10 If the requirements of this subsection are met and alternate  
11 terms and conditions are in place, subdivisions subsections A, B and  
12 C of this section do not apply and the alternate terms and  
13 conditions are enforceable. Nothing contained in this subsection  
14 shall be deemed to effect the supplier's obligation to reimburse the  
15 dealer for parts in accordance with subsection C of this section.

16 SECTION 10. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 16-1010 of Title 47, unless  
18 there is created a duplication in numbering, reads as follows:

19 A. Whenever any dealer enters into a dealer agreement with a  
20 supplier and either the supplier or the dealer desires to cancel,  
21 not renew or otherwise discontinue the dealer agreement, the  
22 supplier shall pay to the dealer or credit to the dealer's account,

1 if the dealer has outstanding any sums owing the supplier, unless  
2 the dealer should desire to keep such equipment or repair parts:

3 1. A sum equal to one hundred percent (100%) of the net  
4 equipment cost of all new, unsold, undamaged equipment, one hundred  
5 percent (100%) of the net equipment cost of all unsold, undamaged  
6 demonstrators, less a downward adjustment to reflect a reasonable  
7 allowance for depreciation due to usage of such demonstrators, which  
8 adjustment will be based on published industry rental rates to the  
9 extent the rates are available, and ninety percent (90%) of the  
10 current net parts prices on new, unsold, undamaged repair parts,  
11 that had previously been purchased from the supplier and held by the  
12 dealer on the date that the dealer agreement terminates or expires.  
13 Notwithstanding anything to the contrary contained herein,  
14 demonstrators with less than fifty (50) hours, for machines with  
15 hour meters, of use will be considered new, unsold, undamaged  
16 equipment subject to repurchase under this paragraph;

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

1           3. The fair market value of any specific data processing  
2 hardware or software that the supplier required the dealer to  
3 acquire or purchase to satisfy the requirements of the supplier,  
4 including computer equipment required and approved by the supplier  
5 to communicate with the supplier. Fair market value of property  
6 subject to repurchase pursuant to this paragraph will be deemed to  
7 be the acquisition cost thereof, including any shipping, handling  
8 and set-up fees, less straight line depreciation of the acquisition  
9 cost over three (3) years. If the dealer purchased data processing  
10 hardware or software that exceeded the supplier's minimum  
11 requirements, the acquisition cost of the data processing hardware  
12 or software will be deemed to be the acquisition cost of hardware or  
13 software of similar quality that did not exceed the minimum  
14 requirements of the supplier; or

15           4. A sum equal to seventy-five (75%) of the net cost, including  
16 shipping, handling and set-up fees, of all specialized service or  
17 repair tools previously purchased pursuant to requirements of the  
18 supplier within fifteen (15) years prior to the date of the  
19 applicable notification of termination of the dealer agreement. The  
20 specialized service or repair tools must be unique to the supplier's  
21 product line and must be complete and in good operating condition.

22           B. Upon the payment or allowance of credit to the dealer's  
23 account of the sums required by this section, the title to all

1 inventory purchased hereunder shall pass to the supplier making such  
2 payment, and the supplier shall be entitled to the possession of the  
3 inventory. All payments or allowances of credit due dealers shall  
4 be paid or credited within ninety (90) days after receipt by the  
5 supplier of property required to be repurchased hereunder. Any  
6 payments or allowances of credit due dealers that are not paid  
7 within the ninety-day period will accrue interest at the maximum  
8 rate allowed by law. The supplier may withhold payments due under  
9 this subsection during the period of time in which the dealer fails  
10 to comply with its contractual obligations to remove any signage  
11 indicating that the dealer is an authorized dealer of the supplier.

12 C. If any supplier refuses to repurchase any inventory covered  
13 under the provisions of the Fair Practices of Equipment  
14 Manufacturers, Distributors, Wholesalers and Dealers Act after  
15 cancellation, nonrenewal or discontinuance of the dealer agreement,  
16 the supplier will be civilly liable to the dealer for one hundred  
17 ten percent (110%) of the amount that would have been due for the  
18 inventory if the supplier had timely complied with this act, any  
19 freight charges paid by the dealer, interest accrued, and the  
20 dealer's actual costs of any court or arbitration proceeding,  
21 including costs for attorney fees and costs for arbitrators.

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

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

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

17 SECTION 11. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 16-1011 of Title 47, unless  
19 there is created a duplication in numbering, reads as follows:

20 The provisions of the Fair Practices of Equipment Manufacturers,  
21 Distributors, Wholesalers and Dealers Act shall not require the  
22 repurchase from a dealer of:

- 1        1. Any repair part which is in a broken or damaged package;  
2 provided, however, the supplier will be required to repurchase a  
3 repair part in a broken or damaged package, for a repurchase price  
4 that is equal to eighty-five percent (85%) of the current net price  
5 for the repair part, if the aggregate current net price for the  
6 entire package of repair parts is Seventy-five Dollars (\$75.00) or  
7 higher;
- 8        2. Any repair part which because of its condition is not  
9 resalable as a new part without repackaging or reconditioning;
- 10       3. Any inventory for which the dealer is unable to furnish  
11 evidence, satisfactory to the supplier, of clear title, free and  
12 clear of all claims, liens and encumbrances;
- 13       4. Any inventory which the dealer desires to keep, provided the  
14 dealer has a contractual right to do so;
- 15       5. Any equipment or repair parts which are not in new, unsold,  
16 undamaged, complete condition, subject, however, to the provisions  
17 of this act relating to the demonstrators;
- 18       6. Any equipment delivered to the dealer prior to the beginning  
19 of the thirty-six-month period immediately preceding the date of  
20 notification of termination;
- 21       7. Any equipment or repair parts which were ordered by the  
22 dealer on or after the date of notification of termination;

1           8. Any equipment or repair parts which were acquired by the  
2 dealer from any source other than the supplier unless such equipment  
3 or repair parts were ordered from, or invoiced to the dealer by, the  
4 supplier; or

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

7           a. the effective date of termination of a dealer  
8 agreement, and

9           b. the date the dealer receives from the supplier all  
10 information, documents or supporting materials  
11 required by the supplier to comply with the supplier's  
12 return policy; provided, however, this paragraph will  
13 not be applicable to a dealer if the supplier did not  
14 give the dealer notice of the ninety-day deadline at  
15 the time the applicable notice of termination was sent  
16 to the dealer.

17           SECTION 12.       NEW LAW       A new section of law to be codified  
18 in the Oklahoma Statutes as Section 16-1012 of Title 47, unless  
19 there is created a duplication in numbering, reads as follows

20           If any supplier violates any provision of this act, a dealer may  
21 bring an action against such supplier in a court of competent  
22 jurisdiction for damages sustained by the dealer as a consequence of  
23 the supplier's violation, including, but not limited to, damages for

1 lost profits, together with the actual costs of the action,  
2 including the dealer's attorney and paralegal fees and costs of  
3 arbitrators, and the dealer also may be granted injunctive relief  
4 against unlawful termination. The remedies set forth in this  
5 section shall not be deemed exclusive and shall be in addition to  
6 any other remedies permitted by law.

7 SECTION 13. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 16-1013 of Title 47, unless  
9 there is created a duplication in numbering, reads as follows:

10 An attempted waiver of a provision of this act or application of  
11 this act shall be void. Any provision in a dealer agreement that  
12 purports to elect the application of the law of a state other than  
13 this state shall be void. Any provision in a dealer agreement that  
14 requires a dealer to pay attorney fees incurred by a supplier shall  
15 be void.

16 SECTION 14. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 16-1014 of Title 47, unless  
18 there is created a duplication in numbering, reads as follows:

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

1           SECTION 15.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 16-1015 of Title 47, unless  
3 there is created a duplication in numbering, reads as follows:

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

11           **SECTION 16.           NEW LAW           A new section of law to be codified**  
12 **in the Oklahoma Statutes as Section 16-1016 of Title 47, unless**  
13 **there is created a duplication in numbering, reads as follows:**

14           Provided this act shall not apply to suppliers unless the  
15 supplier as part of its dealer agreement with a dealer requires  
16 purchase of equipment not requested by the dealer.

17           SECTION 17. This act shall become effective November 1, 2007.

18 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-19-07 -  
19 DO PASS, As Amended and Coauthored.