

STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2056

By: Thompson

COMMITTEE SUBSTITUTE

An Act relating to contracts; creating the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act; stating legislative intent; defining terms; specifying violations; providing for termination of certain dealer agreements; providing for notification of termination of certain dealer agreements; providing deadlines for approval of sale of certain businesses; providing for termination of certain single-line dealer agreements; establishing requirements for certain dealer agreements in certain circumstances; providing for reimbursement of certain warranty claims; establishing procedures for cancellation or discontinuation of certain dealer agreements; providing certain exceptions to repurchase requirements; providing for remedies and enforcement; specifying certain waivers are void; providing for application to certain existing agreements; specifying choice of remedy options; repealing 15 O.S. 2001, Sections 245, as amended by Section 1, Chapter 120, O.S.L. 2008, 245A, 246, 247, 248, 249, 250, 250A and 251 (15 O.S. Supp. 2008, Section 245), which relate to manufacturers, wholesalers, and distributors and repurchase of inventory; 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
2 in the Oklahoma Statutes as Section 773.1 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

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

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 773.2 of Title 15, unless there
9 is created a duplication in numbering, reads as follows:

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

SECTION 3. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section 773.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

- a. selling or leasing equipment or repair parts therefor to the ultimate consumer thereof, and

1 b. repairing or servicing equipment;

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

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

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

19 7. "Equipment" means all-terrain vehicles, regardless of how
20 used, and other machinery, equipment, implements or attachments
21 therefor, used for or in connection with the following purposes:
22 lawn, garden, golf course, landscaping or grounds maintenance;
23 planting, cultivating, irrigating, harvesting, and producing of
24 agricultural and forestry products; raising, feeding, tending to or

1 harvesting products from livestock or any other activity in
2 connection therewith, or industrial, construction, maintenance,
3 mining or utility activities or applications; provided, however,
4 self-propelled vehicles designed primarily for the transportation of
5 persons or property on a street or highway are specifically excluded
6 from the definition of equipment;

7 8. "Family member" means a spouse, child, son-in-law, daughter-
8 in-law or lineal descendent;

9 9. "Good cause" has the meaning set forth in Sections 5 and 7
10 of this act, as applicable;

11 10. "Index" means the United States Bureau of Labor Statistics
12 purchase price index, industry data, for construction machinery,
13 series identification number pcu333120333120 or any successor index
14 measuring substantially similar information;

15 11. "Inventory" means new equipment, repair parts, data process
16 hardware or software, and specialized service or repair tools;

17 12. "Net equipment cost" means the price the dealer actually
18 paid to the supplier for equipment, plus freight, at truckload rates
19 in effect as of the effective date of the termination of a dealer
20 agreement, if freight was paid by the dealer from the supplier's
21 location to the dealer's location, and reimbursement for labor
22 incurred in preparing the equipment for retail sale or rental, which
23 labor will be reimbursed at the dealer's standard labor rate charged
24 by the dealer to its customers for nonwarranty repair work;

1 provided, however, if a supplier has established a reasonable set-up
2 time, such labor will be reimbursed at an amount equal to the
3 reasonable set-up time in effect as of the date of delivery
4 multiplied by the dealer's 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 this act;

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

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

17 16. "Single-line dealer" means a dealer that has purchased
18 construction, industrial, forestry and mining equipment from a
19 single supplier constituting seventy-five percent (75%) of the
20 dealer's new equipment, calculated on the basis of net cost, and a
21 total annual average sales volume in excess of Twenty Million
22 Dollars (\$20,000,000.00) for the three (3) calendar years
23 immediately preceding the applicable determination date; provided,
24 however, the twenty-million-dollar threshold will be increased each

1 year by an amount equal to the then current threshold multiplied by
2 the percentage increase in the index from January of the immediately
3 preceding year to January of the current year;

4 17. "Single-line supplier" means the supplier that is selling
5 the single-line dealer construction, industrial, forestry and mining
6 equipment constituting seventy-five percent (75%) of the dealer's
7 new equipment;

8 18. "Supplier" means any person engaged in the business of
9 manufacturing, assembly or wholesale distribution of equipment or
10 repair parts. The term "supplier" and the provisions of this act
11 shall be interpreted liberally and shall not be limited to
12 traditional doctrines of corporate successor liability or take into
13 account whether a successor expressly assumed the liabilities of the
14 supplier or there has been one or more intermediate successors to
15 the initial supplier. The obligations of a supplier hereunder shall
16 consequently apply to any actual or effective successor in interest
17 to a supplier, including but not limited to a purchaser of all or
18 substantially all of the assets of a supplier or all or
19 substantially all of the assets of any division or product line of a
20 supplier, any receiver, trustee, liquidator or assignee of the
21 supplier, or any surviving corporation resulting from a merger,
22 liquidation or reorganization of the original or any intermediate
23 successor supplier. Purchasers of all or substantially all of the
24 inventory of a supplier or a supplier's division or product line

1 will constitute a purchaser of all or substantially all of the
2 supplier's assets; and

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

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 773.4 of Title 15, unless there
8 is created a duplication in numbering, reads as follows:

9 It shall be a violation of the Fair Practices of Equipment
10 Manufacturers, Distributors, Wholesalers, and Dealers Act for a
11 supplier to take any one or more of the following actions:

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

17 2. To require any dealer to purchase goods or services as a
18 condition to the sale by the supplier to the dealer of any
19 equipment, repair parts or other goods or services; except that
20 nothing herein shall prohibit a supplier from requiring the dealer
21 to purchase all repair parts, special tools and training reasonably
22 necessary to maintain the safe operation or quality of operation in
23 the field of any equipment offered for sale by the dealer;

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

7 4. To refuse to deliver in reasonable quantities and within a
8 reasonable time, after receipt of the dealer's order, to any dealer
9 having a dealer agreement for the retail sale of new equipment sold
10 or distributed by such supplier to be available for immediate
11 delivery. The failure to deliver any such equipment will not be
12 considered a violation of the Fair Practices of Equipment
13 Manufacturers, Distributors, Wholesalers, and Dealers Act if such
14 failure is due to prudent and reasonable restrictions on extensions
15 of credit by the supplier to the dealer, an act of God, work
16 stoppage or delay due to a strike or labor difficulty, a bona fide
17 shortage of materials, freight embargo, or other cause over which
18 the supplier has no control or a business decision by the supplier
19 to limit the production volume of the equipment;

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

23 6. To discriminate, directly or indirectly, in price between
24 different dealers with respect to purchases of equipment or repair

1 parts of like grade and quality and identical brand, if the effect
2 of such discrimination may be to substantially lessen competition,
3 tend to create a monopoly in any line of commerce or injure,
4 destroy, or prevent competition with any dealer who either grants or
5 knowingly receives the benefit of such discrimination; provided,
6 however, different prices may be charged if such differences are due
7 to differences in the cost of manufacture, sale or delivery of the
8 equipment or repair parts or the supplier can show that its lower
9 price was made in good faith to meet an equally low price of a
10 competitor or such differences are related to the volume of
11 equipment purchased by dealers;

12 7. To prevent, by contract or otherwise, any dealer from
13 changing its capital structure, ownership or the means by or through
14 which the dealer finances its operations, so long as the dealer
15 gives prior notice to the supplier and provided such change by the
16 dealer does not result in a change in the person with actual or
17 effective control of a majority of the voting interests of the
18 dealer; or

19 8. To require a dealer to assent to a release, assignment,
20 novation, waiver, or estoppel which would relieve any person from
21 liability imposed by the Fair Practices of Equipment Manufacturers,
22 Distributors, Wholesalers, and Dealers Act.

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1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 773.5 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A dealer may terminate a dealer agreement without cause.

5 The dealer must give the supplier at least thirty (30) days' prior
6 written notice of termination. No supplier may terminate a dealer
7 agreement without good cause. Except as otherwise specifically
8 provided in the Fair Practices of Equipment Manufacturers,
9 Distributors, Wholesalers, and Dealers Act, good cause means the
10 failure by a dealer to substantially comply with essential and
11 reasonable requirements imposed upon the dealer by the dealer
12 agreement, provided such requirements are not different from those
13 requirements imposed on other similarly situated dealers either by
14 their terms or in the manner of their enforcement. In addition,
15 good cause shall exist whenever:

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

19 2. The dealer has filed a voluntary petition in bankruptcy or
20 has had an involuntary petition in bankruptcy filed against it which
21 has not been discharged within thirty (30) days after such filing,
22 or there has been a closeout or sale of a substantial part of the
23 dealer's assets related to the business, or there has been a
24 commencement of dissolution or liquidation of the dealer;

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

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

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

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

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

21 8. The dealer has consistently failed to meet and maintain the
22 supplier's requirements for reasonable standards and performance
23 objectives, so long as the supplier has given the dealer reasonable
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1 standards and performance objectives that are based on the
2 manufacturer's experience in other comparable market areas; or

3 9. The dealer has failed to satisfy any payment obligation as
4 it became due and payable to the supplier or failed to promptly
5 account to the supplier for any proceeds from the sale of equipment
6 as provided in the dealer agreement between the parties.

7 B. The provisions of subsection A shall not apply to dealer
8 agreements between a single-line dealer and its single-line
9 supplier.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 773.6 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Except as otherwise provided in this section, a supplier
14 shall provide a dealer at least one hundred eighty (180) days' prior
15 written notice of termination of a dealer agreement. The notice
16 must state all reasons constituting good cause for such termination
17 and must state that the dealer has sixty (60) days in which to cure
18 any claimed deficiency. If the deficiency is rectified within sixty
19 (60) days, the notice shall be void. A supplier shall not terminate
20 a dealer agreement for the reason set forth in paragraph 8 of
21 subsection A of Section 5 of this act unless the supplier gives the
22 dealer notice of such action at least two (2) years before the
23 effective date of such action. If the dealer achieves the
24 supplier's requirements for reasonable standards or performance

1 objectives before the expiration of the two-year-notice period, the
2 notice shall be void and the dealer agreement shall continue in full
3 force and effect. The notice and right-to-cure provisions under
4 this section shall not apply if the reason for termination is for
5 any reason set forth in paragraphs 1 through 7 of subsection A of
6 Section 5 of this act.

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

22 C. If a dealer dies and the supplier has contractual authority
23 to approve or deny a request for a sale or transfer of the dealer's
24 business or the dealer's equity ownership interest therein, the

1 dealer's estate or other person with authority to transfer assets of
2 the dealer shall have one hundred eighty (180) days to submit to the
3 supplier a written request for a sale or transfer of such business
4 or equity ownership interest. If such a request is timely
5 submitted, the supplier shall approve or deny such request in
6 accordance with subsection B of this section. Notwithstanding
7 anything to the contrary contained in the Fair Practices of
8 Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act,
9 any attempt by the supplier to terminate the dealer or the
10 dealership as a result of the death of a dealer shall be delayed
11 until there has been compliance with the terms of this section or
12 the one-hundred-eighty-day period has expired, as applicable.

13 D. The provisions of this section shall not apply to dealer
14 agreements between a single-line dealer and its single-line
15 supplier.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 773.7 of Title 15, unless there
18 is created a duplication in numbering, reads as follows:

19 A. This section shall only apply to dealer agreements between
20 single-line dealers and single-line suppliers.

21 B. No supplier may terminate a dealer agreement without good
22 cause. For purposes of this section and Section 8 of this act,
23 "good cause" means failure by a dealer to comply with requirements
24 imposed upon the dealer by the dealer agreement if such requirements

1 are not different from those imposed on other similarly situated
2 dealers. In addition, good cause exists whenever:

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

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

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

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

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

20 6. The dealer transfers an interest in the dealership, or a
21 person with a substantial interest in the ownership or control of
22 the dealership, including an individual proprietor, partner or major
23 shareholder, withdraws from the dealership or dies, or a substantial
24 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 paragraph, a supplier
4 shall provide a dealer with at least a ninety-day written notice of
5 termination. The notice shall state all reasons constituting good
6 cause for such termination and shall 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 shall 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 in which 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 subsection B of this
16 section.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 773.8 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A. This section shall only apply to dealer agreements between
21 single-line dealers and single-line suppliers.

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
24 member to enter into a new dealer agreement to operate the

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

7 C. Notwithstanding subsections A and B of this section, if a
8 supplier and dealer have previously executed an agreement concerning
9 succession rights prior to the death of the dealer, and if such
10 agreement is still in effect, such agreement shall be observed even
11 if the agreement designates someone other than the surviving spouse
12 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 773.9 of Title 15, unless there
15 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 shall accept or reject such warranty claim
21 by 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 shall
24 be deemed to be accepted. If the supplier accepts the warranty

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

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

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

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

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

1 of the equipment to the dealer, or a lump-sum payment to the dealer
2 that is made to the dealer within ninety (90) days of the sale of
3 the supplier's new equipment. The discount or lump sum shall be no
4 less than five percent (5%) of the suggested retail price of the
5 equipment. If the requirements of this subsection are met and
6 alternate terms and conditions are in place, subsections A through C
7 of this section do not apply and the alternate terms and conditions
8 are enforceable. Nothing contained in this subsection shall be
9 deemed to effect the supplier's obligation to reimburse the dealer
10 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 773.10 of Title 15, 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 dealer's
18 account, if the dealer has any outstanding 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, which
2 adjustment shall be based on published industry rental rates to the
3 extent such rates are available, and ninety percent (90%) of the
4 current net parts prices on new, unsold, undamaged repair parts,
5 that had previously been purchased from such supplier and held by
6 such dealer on the date that the dealer agreement terminates or
7 expires. Notwithstanding any provision to the contrary described
8 herein, demonstrators with less than fifty (50) hours, for machines
9 with hour meters, of use shall be considered new, unsold, undamaged
10 equipment subject to repurchase under this paragraph;

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

17 3. A fair market value of any specific data processing hardware
18 or software that the supplier required the dealer to acquire or
19 purchase to satisfy the requirements of the supplier, including
20 computer equipment required and approved by the supplier to
21 communicate with the supplier. Fair market value of property
22 subject to repurchase pursuant to this paragraph shall be deemed to
23 be the acquisition cost thereof, including any shipping, handling
24 and set-up fees, less straight-line depreciation of such acquisition

1 cost over three (3) years. If the dealer purchased data processing
2 hardware or software that exceeded the supplier's minimum
3 requirements, the acquisition cost of such data processing hardware
4 or software shall be deemed to be the acquisition cost of hardware
5 or software of similar quality that did not exceed the minimum
6 requirements of the supplier; and

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

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

1 this subsection during the period of time in which the dealer fails
2 to comply with its contractual obligations to remove any signage
3 indicating that the dealer is an authorized dealer of the supplier.

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

14 D. The supplier and dealer shall each pay fifty percent (50%)
15 of the costs of freight, at truckload rates, to ship any equipment
16 or repair parts returned to the supplier pursuant to the Fair
17 Practices of Equipment Manufacturers, Distributors, Wholesalers, and
18 Dealers Act.

19 E. Notwithstanding any provision to the contrary in the Uniform
20 Commercial Code adopted by this state, the dealer shall retain a
21 first and prior lien against all inventory returned by the dealer to
22 the supplier under the provisions of the Fair Practices of Equipment
23 Manufacturers, Distributors, Wholesalers, and Dealers Act until the
24

1 dealer is paid all amounts owed by the supplier for the repurchase
2 of such inventory required under the provisions of this act.

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

10 SECTION 11. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 773.11 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 The provisions of the Fair Practices of Equipment Manufacturers,
14 Distributors, Wholesalers, and Dealers Act shall not require the
15 repurchase from a dealer of:

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

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

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

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

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

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

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

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

18 9. Any equipment or repair parts which are not returned to the
19 supplier within ninety (90) days after the later of either the
20 effective date of termination of a dealer agreement or the date the
21 dealer receives from the supplier all information, documents or
22 supporting materials required by the supplier to comply with the
23 supplier's return policy; provided, however, this paragraph shall
24 not be applicable to a dealer if the supplier did not give the

1 dealer notice of the ninety-day deadline at the time the applicable
2 notice 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 773.12 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

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

18 SECTION 13. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 773.13 of Title 15, unless there
20 is created a duplication in numbering, reads as follows:

21 An attempted waiver of a provision of the Fair Practices of
22 Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act
23 or application of this act shall be void. Any provision in a dealer
24 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
2 dealer agreement that requires a dealer to pay attorney fees
3 incurred by a supplier shall be void.

4 SECTION 14. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 773.14 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 The provisions of the Fair Practices of Equipment Manufacturers,
8 Distributors, Wholesalers, and Dealers Act shall apply to all dealer
9 agreements now in effect which have no expiration date and are a
10 continuing contract, and all other dealer agreements entered into or
11 renewed after November 1, 2009. All other dealer agreements shall
12 be governed by the law as it existed prior to this act.

13 SECTION 15. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 773.15 of Title 15, unless there
15 is created a duplication in numbering, reads as follows:

16 The provisions of the Fair Practices of Equipment Manufacturers,
17 Distributors, Wholesalers, and Dealers Act shall be supplemental to
18 any dealer agreement between the dealer and the supplier which
19 provides the dealer with greater protection. The dealer may elect
20 to pursue its contract remedy or the remedy provided by state law,
21 or both, and an election by the dealer to pursue such remedies shall
22 not bar its right to exercise any other remedies that may be granted
23 at law or in equity.

24

1 SECTION 16. REPEALER 15 O.S. 2001, Sections 245, as
2 amended by Section 1, Chapter 120, O.S.L. 2008, 245A, 246, 247, 248,
3 249, 250, 250A and 251 (15 O.S. Supp. 2008, Section 245), are hereby
4 repealed.

5 SECTION 17. This act shall become effective November 1, 2009.

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