

THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2009

Committee Substitute for
House Bill No. 2056

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2056 - By: THOMPSON of the House.

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 in the Oklahoma
- 2 Statutes as Section 773.1 of Title 15, unless there is created a duplication in numbering,
- 3 reads as follows:
- 4 This act shall be known and may be cited as the “Fair Practices of Equipment
- 5 Manufacturers, Distributors, Wholesalers, and Dealers Act”.

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

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

14 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 773.3 of Title 15, unless there is created a duplication in numbering,
16 reads as follows:

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

19 1. "Current net parts price" means, with respect to current parts, the price for
20 repair parts listed in the supplier's price list or catalog in effect at the time the dealer
21 agreement is cancelled or discontinued or, for purposes of Section 9 of this act, the price
22 list or catalog in effect at the time the repair parts were ordered. "Current net parts

1 price” means, with respect to superseded repair parts, the price listed in the supplier’s
2 price list or catalog in effect at the time the dealer agreement is cancelled or discontinued
3 for the part that performs the same function and purpose as the superseded part, but is
4 simply listed under a different part number;

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

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

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

12 b. repairing or servicing equipment;

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

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

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

6 7. “Equipment” means all-terrain vehicles, regardless of how used, and other
7 machinery, equipment, implements or attachments therefor, used for or in connection
8 with the following purposes: lawn, garden, golf course, landscaping or grounds
9 maintenance; planting, cultivating, irrigating, harvesting, and producing of agricultural
10 and forestry products; raising, feeding, tending to or harvesting products from livestock
11 or any other activity in connection therewith, or industrial, construction, maintenance,
12 mining or utility activities or applications; provided, however, self-propelled vehicles
13 designed primarily for the transportation of persons or property on a street or highway
14 are specifically excluded from the definition of equipment;

15 8. “Family member” means a spouse, child, son-in-law, daughter-in-law or lineal
16 descendent;

17 9. “Good cause” has the meaning set forth in Sections 5 and 7 of this act, as
18 applicable;

19 10. “Index” means the United States Bureau of Labor Statistics purchase price
20 index, industry data, for construction machinery, series identification number
21 pcu333120333120 or any successor index measuring substantially similar information;

1 11. “Inventory” means new equipment, repair parts, data process hardware or
2 software, and specialized service or repair tools;

3 12. “Net equipment cost” means the price the dealer actually paid to the supplier
4 for equipment, plus freight, at truckload rates in effect as of the effective date of the
5 termination of a dealer agreement, if freight was paid by the dealer from the supplier’s
6 location to the dealer’s location, and reimbursement for labor incurred in preparing the
7 equipment for retail sale or rental, which labor will be reimbursed at the dealer’s
8 standard labor rate charged by the dealer to its customers for nonwarranty repair work;
9 provided, however, if a supplier has established a reasonable set-up time, such labor will
10 be reimbursed at an amount equal to the reasonable set-up time in effect as of the date of
11 delivery multiplied by the dealer’s standard labor rate;

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

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

20 15. “Repair parts” means all parts related to the repair of equipment, including
21 superseded parts;

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

9 17. “Single-line supplier” means the supplier that is selling the single-line dealer
10 construction, industrial, forestry and mining equipment constituting seventy-five percent
11 (75%) of the dealer’s new equipment;

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

1 intermediate successor supplier. Purchasers of all or substantially all of the inventory of
2 a supplier or a supplier's division or product line will constitute a purchaser of all or
3 substantially all of the supplier's assets; and

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

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

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

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

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

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

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

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

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

1 discrimination; provided, however, different prices may be charged if such differences are
2 due to differences in the cost of manufacture, sale or delivery of the equipment or repair
3 parts or the supplier can show that its lower price was made in good faith to meet an
4 equally low price of a competitor or such differences are related to the volume of
5 equipment purchased by dealers;

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

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

14 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 773.5 of Title 15, unless there is created a duplication in numbering,
16 reads as follows:

17 A. A dealer may terminate a dealer agreement without cause. The dealer must
18 give the supplier at least thirty (30) days' prior written notice of termination. No
19 supplier may terminate a dealer agreement without good cause. Except as otherwise
20 specifically provided in the Fair Practices of Equipment Manufacturers, Distributors,
21 Wholesalers, and Dealers Act, good cause means the failure by a dealer to substantially
22 comply with essential and reasonable requirements imposed upon the dealer by the

1 dealer agreement, provided such requirements are not different from those requirements
2 imposed on other similarly situated dealers either by their terms or in the manner of
3 their enforcement. In addition, good cause shall exist whenever:

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

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

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

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

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

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

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

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

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

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

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

18 A. Except as otherwise provided in this section, a supplier shall provide a dealer at
19 least one hundred eighty (180) days' prior written notice of termination of a dealer
20 agreement. The notice must state all reasons constituting good cause for such
21 termination and must state that the dealer has sixty (60) days in which to cure any
22 claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice shall be

1 void. A supplier shall not terminate a dealer agreement for the reason set forth in
2 paragraph 8 of subsection A of Section 5 of this act unless the supplier gives the dealer
3 notice of such action at least two (2) years before the effective date of such action. If the
4 dealer achieves the supplier's requirements for reasonable standards or performance
5 objectives before the expiration of the two-year notice period, the notice shall be void and
6 the dealer agreement shall continue in full force and effect. The notice and right-to-cure
7 provisions under this section shall not apply if the reason for termination is for any
8 reason set forth in paragraphs 1 through 7 of subsection A of Section 5 of this act.

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

20 C. If a dealer dies and the supplier has contractual authority to approve or deny a
21 request for a sale or transfer of the dealer's business or the dealer's equity ownership
22 interest therein, the dealer's estate or other person with authority to transfer assets of

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

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

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

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

16 B. No supplier may terminate a dealer agreement without good cause. For
17 purposes of this section and Section 8 of this act, "good cause" means failure by a dealer
18 to comply with requirements imposed upon the dealer by the dealer agreement if such
19 requirements are not different from those imposed on other similarly situated dealers.

20 In addition, good cause exists whenever:

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

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

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

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

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

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

21 C. Except as otherwise provided in this paragraph, a supplier shall provide a dealer
22 with at least a ninety-day written notice of termination. The notice shall state all

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

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

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

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

21 C. Notwithstanding subsections A and B of this section, if a supplier and dealer
22 have previously executed an agreement concerning succession rights prior to the death of

1 the dealer, and if such agreement is still in effect, such agreement shall be observed even
2 if the agreement designates someone other than the surviving spouse or heirs of the
3 decedent as the successor.

4 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 773.9 of Title 15, unless there is created a duplication in numbering,
6 reads as follows:

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

20 B. Any claim which is disapproved by the supplier based upon the dealer's failure
21 to properly follow the procedural or technical requirements for submission of warranty

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 claims may be resubmitted in proper form by the dealer within thirty (30) days of receipt
2 by the dealer of the supplier's notification of such disapproval.

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

9 D. For purposes of the Fair Practices of Equipment Manufacturers, Distributors,
10 Wholesalers, and Dealers Act, any repair work or installation of replacement parts
11 performed with respect to the dealer's equipment in inventory or equipment of the
12 dealer's customers at the request of the supplier, including work performed pursuant to a
13 product improvement program, shall be deemed to create a warranty claim for which the
14 dealer shall be paid pursuant to this section.

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

20 F. The requirements of subsections A through C of this section shall apply to all
21 warranty claims submitted by a dealer to a supplier in which the dealer has complied
22 with the supplier's reasonable policies and procedures for warranty reimbursement. A

1 supplier's warranty reimbursement policies and procedures shall be deemed
2 unreasonable to the extent they conflict with any of the provisions of this section.

3 G. A dealer may choose to accept alternate reimbursement terms and conditions in
4 lieu of the requirements of subsections A through C of this section if there is a written
5 dealer agreement between the supplier and the dealer that requires the supplier to
6 compensate the dealer for warranty labor costs, either as a discount in the pricing of the
7 equipment to the dealer, or a lump-sum payment to the dealer that is made to the dealer
8 within ninety (90) days of the sale of the supplier's new equipment. The discount or
9 lump sum shall be no less than five percent (5%) of the suggested retail price of the
10 equipment. If the requirements of this subsection are met and alternate terms and
11 conditions are in place, subsections A through C of this section do not apply and the
12 alternate terms and conditions are enforceable. Nothing contained in this subsection
13 shall be deemed to effect the supplier's obligation to reimburse the dealer for parts in
14 accordance with subsection C of this section.

15 SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 773.10 of Title 15, unless there is created a duplication in numbering,
17 reads as follows:

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

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

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

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

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

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

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

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

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

13 E. Notwithstanding any provision to the contrary in the Uniform Commercial Code
14 adopted by this state, the dealer shall retain a first and prior lien against all inventory
15 returned by the dealer to the supplier under the provisions of the Fair Practices of
16 Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act until the dealer is
17 paid all amounts owed by the supplier for the repurchase of such inventory required
18 under the provisions of this act.

19 F. The provisions of this section shall not be construed to affect in any way any
20 security interest which the supplier may have in the inventory of the dealer, and any
21 repurchase hereunder shall not be subject to the provisions of the bulk sales law or to the
22 claims of any secured or unsecured creditors of the supplier or any assignee of the

1 supplier until such time as the dealer has received full payment or credit, as applicable,
2 due hereunder.

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

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

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

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

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

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

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

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

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

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

8 9. Any equipment or repair parts which are not returned to the supplier within
9 ninety (90) days after the later of either the effective date of termination of a dealer
10 agreement or the date the dealer receives from the supplier all information, documents
11 or supporting materials required by the supplier to comply with the supplier's return
12 policy; provided, however, this paragraph shall not be applicable to a dealer if the
13 supplier did not give the dealer notice of the ninety-day deadline at the time the
14 applicable notice of termination was sent to the dealer.

15 SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 773.12 of Title 15, unless there is created a duplication in numbering,
17 reads as follows:

18 If any supplier or dealer violates any provision of the Fair Practices of Equipment
19 Manufacturers, Distributors, Wholesalers, and Dealers Act, a supplier or dealer may
20 bring an action against such supplier or dealer in a court of competent jurisdiction for
21 damages sustained by the supplier or dealer as a consequence of the supplier's or dealer's
22 violation, including, but not limited to, damages for lost profits, together with the actual

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

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

8 An attempted waiver of a provision of the Fair Practices of Equipment
9 Manufacturers, Distributors, Wholesalers, and Dealers Act or application of this act shall
10 be void. Any provision in a dealer agreement that purports to elect the application of the
11 law of a state other than this state shall be void. Any provision in a dealer agreement
12 that requires a dealer to pay attorney fees incurred by a supplier shall be void.

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

10 SECTION 16. REPEALER 15 O.S. 2001, Sections 245, as amended by Section
11 1, Chapter 120, O.S.L. 2008, 245A, 246, 247, 248, 249, 250, 250A and 251 (15 O.S. Supp.
12 2008, Section 245), are hereby repealed.

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

14 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
15 FINANCIAL SERVICES, dated 02-25-09 - DO PASS, As Amended.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.