

1 **SENATE FLOOR VERSION**

2 March 1, 2011

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 789

By: Marlatt of the Senate

and

Sanders of the House

6  
7  
8  
9 [ specialty equipment - creating the Fair Practices  
10 of Equipment Manufacturers, Distributors, Wholesalers  
11 and Dealers Act - contractual authority - dealer  
12 agreements - codification - effective date ]

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

14 SECTION 1. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 244 of Title 15, unless there is  
16 created a duplication in numbering, reads as follows:

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

20 SECTION 2. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 244A of Title 15, unless there  
22 is created a duplication in numbering, reads as follows:

23 The Legislature finds and declares that the retail distribution,  
24 sales and rental of agricultural, construction, utility, industrial,

1 mining, outdoor power, forestry and lawn and garden equipment  
2 utilizing independent dealers operating under contract with the  
3 supplier, vitally affects the general economy of this state, the  
4 public interest and the public welfare. Therefore, the Legislature  
5 has determined that it is necessary to regulate the business  
6 relations between the independent dealers and the equipment  
7 suppliers as contemplated in the Fair Practices of Equipment  
8 Manufacturers, Distributors, Wholesalers and Dealers Act and that  
9 any action taken in violation of this act will result in a violation  
10 of an important public policy of this state.

11 SECTION 3. AMENDATORY 15 O.S. 2001, Section 245, as  
12 last amended by Section 1, Chapter 130, O.S.L. 2010 (15 O.S. Supp.  
13 2010, Section 245), is amended to read as follows:

14 Section 245. For the purposes of ~~Sections 245 through 251 of~~  
15 ~~this title~~ the Fair Practices of Equipment Manufacturers,  
16 Distributors, Wholesalers and Dealers Act:

17 1. ~~"Actual dealer cost" means the original invoice price the~~  
18 ~~retailer paid for the merchandise to the manufacturer, wholesaler or~~  
19 ~~distributor, less all applicable discounts allowed, plus the freight~~  
20 ~~cost from the location of the manufacturer, wholesaler or~~  
21 ~~distributor to the location of the retailer;~~

22 2. ~~"Dealer agreement" means an oral or written contract or~~  
23 ~~agreement of definite or indefinite duration, between a supplier and~~

24

1 ~~an equipment dealer, which provides for the rights and obligations~~  
2 ~~of the parties with respect to purchase or sale of equipment;~~

3 ~~3. "Inventory" means farm tractors, farm implements, utility~~  
4 ~~and industrial tractors, all terrain vehicles, forestry,~~  
5 ~~construction, industrial, maintenance, paving, outdoor power and~~  
6 ~~lawn and garden equipment sold by retailers as defined herein, and~~  
7 ~~the attachments and repair parts thereto;~~

8 ~~4. "Current model" means a model listed in the current sales~~  
9 ~~manual of the manufacturer, wholesaler or distributor or any~~  
10 ~~supplements to the current sales manual;~~

11 ~~5. "Current net price" means the price listed in the printed~~  
12 ~~price list or catalog of the manufacturer, wholesaler or distributor~~  
13 ~~in effect at the time the dealer agreement is canceled or~~  
14 ~~discontinued, less any applicable trade and cash discounts or, for~~  
15 ~~purposes of Section 250A of this title, at the time a claim for~~  
16 ~~payment is made for services performed for a customer pursuant to a~~  
17 ~~warranty issued by a supplier;~~

18 ~~6. "Retailer" or "equipment dealer" or "equipment dealership"~~  
19 ~~means any person having a dealer agreement for selling and retailing~~  
20 ~~farm tractors, utility and industrial tractors, farm implements,~~  
21 ~~forestry, construction, industrial, maintenance, paving, outdoor~~  
22 ~~power and lawn and garden equipment and the attachments or repair~~  
23 ~~parts thereto. Provided however, "retailer" or "equipment dealer"~~  
24 ~~or "equipment dealership" shall not mean a "single line dealer";~~

1       ~~7. "Single line dealer" means a person, partnership,~~  
2 ~~corporation, association or other business enterprise that:~~

3           ~~a. has purchased seventy five percent (75%) or more of~~  
4           ~~the dealer's total new product inventory from a single~~  
5           ~~supplier, and~~

6           ~~b. has a total annual average sales volume for the~~  
7           ~~previous three (3) years in excess of Twenty Million~~  
8           ~~Dollars (\$20,000,000.00) for the entire territory for~~  
9           ~~which the dealer is responsible;~~

10       ~~8. "Supplier" means a person, partnership, corporation,~~  
11 ~~association or other business enterprise engaged in the~~  
12 ~~manufacturing, assembly or wholesale distribution of equipment. The~~  
13 ~~term shall also include any successor in interest, including a~~  
14 ~~purchaser of assets or stock, or a surviving corporation resulting~~  
15 ~~from a merger, liquidation or reorganization of the original~~  
16 ~~supplier~~ "Current net parts price" means, with respect to current  
17 parts, the price for repair parts listed in the supplier's price  
18 list or catalogue in effect at the time the dealer agreement is  
19 cancelled or discontinued, or for purposes of Section 9 of this act,  
20 the price list or catalogue in effect at the time the repair parts  
21 were ordered. Current net parts price means, with respect to  
22 superseded repair parts, the price listed in the supplier's price  
23 list or catalogue in effect at the time the dealer agreement is  
24 cancelled or discontinued for the part that performs the same

1 function and purpose as the superseded part, but is simply listed  
2 under a different part number;

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

7 3. "Dealer" means any person primarily engaged in the business  
8 of:

9 a. selling or leasing equipment or repair parts to the  
10 ultimate consumer, and

11 b. repairing or servicing equipment;

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

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

24

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

7       7. "Equipment" means:

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

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

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

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

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

20           (4) industrial, construction, maintenance, mining or  
21 utility activities or applications.

22       Equipment shall not mean trailers or self-propelled vehicles  
23 designed primarily for the transportation of persons or property on  
24 a street 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 6  
4 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 the cost stated on the invoice, if  
15           available, and if not the truckload rates in effect as  
16           of the effective date of the termination of a dealer  
17           agreement, if freight was paid by the dealer from the  
18           supplier's location to the dealer's location, and

19           b. reimbursement for labor incurred in preparing the  
20           equipment for retail sale or rental, also known as  
21           set-up costs, which labor will be reimbursed at the  
22           dealer's standard labor rate charged by the dealer to  
23           its customers for nonwarranty repair work; provided,  
24           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 246 and 247 of this title;

9           14. "Person" means a natural person, corporation, partnership,  
10           limited liability company, company, trust or any and all other forms  
11           of business enterprise, including any other entity in which it has a  
12           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:

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

22           b. a total annual average sales volume in excess of  
23           Twenty-Five Million Dollars (\$25,000,000.00) for the  
24           three (3) calendar years immediately preceding the



1 applicable determination date; provided, however, the  
2 Twenty-Five-Million-Dollar threshold will be increased  
3 each year by an amount equal to the then current  
4 threshold multiplied by the percentage increase in the  
5 Index from January of the immediately preceding year  
6 to January of the current year;

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

11 18. "Specialty agricultural equipment" means equipment that is  
12 solely intended for use in:

13 a. planting, cultivating, irrigating, harvesting and  
14 producing of the agricultural products, or

15 b. raising, feeding, tending to or harvesting products  
16 from livestock;

17 19. "Specialty agricultural equipment supplier" means a  
18 supplier of specialty agricultural equipment whose gross sales  
19 revenue to the dealer is less than the threshold amount and whose  
20 product line does not include farm tractors or combines and whose  
21 sales of outdoor power equipment to the dealer does not exceed ten  
22 percent (10%) of its total sales to the dealer during the one-year  
23 period ending on the last day of the calendar month immediately  
24 preceding the effective date of the termination of the dealer

1 agreement. Whether a supplier qualifies as a specialty agricultural  
2 equipment supplier is determined on a case by case basis depending  
3 on the sales of the applicable dealer and to the applicable dealer  
4 by such specialty agricultural equipment supplier;

5 20. "Supplier" means any person engaged in the business of  
6 manufacturing, assembly or wholesale distribution of equipment or  
7 repair parts. The term shall also include any successor in  
8 interest, including any receiver, trustee, liquidator, assignee,  
9 purchaser of assets or stock, or a surviving corporation resulting  
10 from a merger, liquidation or reorganization of the original  
11 supplier. Purchasers of all, or substantially all, of the inventory  
12 of a supplier or a supplier's division or product line will  
13 constitute a purchaser of all or substantially all of the supplier's  
14 assets;

15 21. "Terminate" means to terminate, cancel, fail to renew or  
16 substantially change the competitive circumstances of a dealer  
17 agreement; and

18 22. "Threshold amount" means that the lesser of:

19 a. ten percent (10%) of the dealer's gross sales revenue,

20 or

21 b. Three Hundred Fifty Thousand Dollars (\$350,000.00), in  
22 each case based on net sales of the dealership during  
23 the one year period ending on the last day of the  
24 calendar month immediately preceding the effective

1 date of the termination of the dealer agreement;  
2 provided, however, the Three-Hundred-Fifty-Thousand-  
3 Dollar amount will be increased each year by an amount  
4 equal to the then current amount multiplied by the  
5 percentage increase in the Index from January of the  
6 immediately preceding year to January of the current  
7 year.

8 SECTION 4. AMENDATORY 15 O.S. 2001, Section 245A, is  
9 amended to read as follows:

10 Section 245A. ~~A.~~ It shall be a violation of ~~Section 245 et~~  
11 ~~seq. of this title~~ the Fair Practices of Equipment Manufacturers,  
12 Distributors, Wholesalers and Dealers Act for a supplier to take any  
13 one or more of the following actions:

14 1. ~~Except as required by any applicable law or unless such~~  
15 ~~special features or accessories are safety features or accessories~~  
16 ~~required by a supplier, to coerce or compel any equipment dealer to~~  
17 ~~order or accept delivery of any equipment or parts or any equipment~~  
18 ~~with special features or accessories not included in the base list~~  
19 ~~price of such equipment as publicly advertised by the supplier which~~  
20 ~~the equipment dealer has not voluntarily ordered;~~

21 2. ~~To coerce or compel any equipment dealer to enter into any~~  
22 ~~agreement, warranty agreement or otherwise, whether written or oral,~~  
23 ~~supplementary to an existing dealer agreement with the supplier~~

1 ~~unless the supplementary or amendatory agreement is imposed on all~~  
2 ~~other similarly situated dealers in this state;~~

3 ~~3. To discriminate in the delivery of any equipment to any~~  
4 ~~dealer in reasonable quantities and within a reasonable time after~~  
5 ~~receipt of the equipment dealer's order, if such equipment covered~~  
6 ~~by such dealer agreement was specifically represented by such~~  
7 ~~supplier to be available for immediate delivery; however, the~~  
8 ~~failure to deliver any such equipment shall not be considered a~~  
9 ~~violation of Section 245 et seq. of this title if such failure is~~  
10 ~~due to restrictions on extension of credit by the supplier to the~~  
11 ~~equipment dealer, any breach of or default under the agreement by~~  
12 ~~the equipment dealer, an act of God, work stoppage or delay due to a~~  
13 ~~strike or labor difficulty, a bona fide shortage of materials,~~  
14 ~~freight embargo, or other cause over which the supplier has no~~  
15 ~~control;~~

16 ~~4. To coerce or compel an equipment dealer to accept late~~  
17 ~~delivery of backordered items of equipment, when said backordered~~  
18 ~~equipment is of special value in a particular time of year because~~  
19 ~~of predictable seasonal demand, and when equipment is substantially~~  
20 ~~less marketable and less valuable after the seasonal demand period~~  
21 ~~has ended; provided, if such backordered equipment is received by~~  
22 ~~the retailer after the seasonal demand period has ended, and if the~~  
23 ~~retailer requests the same in writing within ten (10) days of~~  
24 ~~receipt of such backordered equipment, then the supplier shall take~~

1 ~~back any unwanted backordered equipment at no cost to the retailer,~~  
2 ~~unless the supplier has given notice to the dealer of the status of~~  
3 ~~the backordered equipment prior to the actual shipment to the~~  
4 ~~dealer;~~

5 ~~5. To terminate, cancel, or fail to renew a dealer agreement or~~  
6 ~~substantially change the competitive circumstances of the dealer~~  
7 ~~agreement without cause;~~

8 ~~6. To require as a condition of renewal or extension of a~~  
9 ~~dealership agreement that the dealer complete substantial renovation~~  
10 ~~of the dealer's place of business, or acquire new or additional~~  
11 ~~space to serve as the dealer's place of business, unless the~~  
12 ~~supplier provides at least one (1) year's written notice of the~~  
13 ~~condition which states all grounds supporting the condition; the~~  
14 ~~supplier, further, must provide a reasonable time for the dealer to~~  
15 ~~complete the renovation or acquisition;~~

16 ~~7. To sell or offer to sell any new equipment to any retail~~  
17 ~~outlet in which the supplier has any ownership interest at a lower~~  
18 ~~actual price therefor than the actual price sold or offered to any~~  
19 ~~other equipment dealer for the same equipment identically equipped~~  
20 ~~or to utilize any device, including but not limited to sale~~  
21 ~~promotion plans or programs, which results in such lesser actual~~  
22 ~~price, or results in a fixed price predetermined solely by the~~  
23 ~~supplier; provided, however, the provisions of this paragraph shall~~  
24 ~~not apply to sales to an equipment dealer for resale to any unit or~~

1 ~~agency of the United States government, this state, or any of its~~  
2 ~~political subdivisions, or any municipality located within this~~  
3 ~~state or to any major fleet account, or to any organization for~~  
4 ~~testing or demonstration;~~

5 ~~8. To prevent by contract or otherwise, any equipment dealer or~~  
6 ~~any officer, member, partner, or stockholder of any equipment dealer~~  
7 ~~from selling or transferring any part of the interest of any of them~~  
8 ~~to any other party or parties; however, no equipment dealer,~~  
9 ~~officer, partner, member, or stockholder shall have the right to~~  
10 ~~sell, transfer, or assign the equipment dealership or power of~~  
11 ~~management or control thereunder without the written consent of the~~  
12 ~~supplier, except that such consent shall not be unreasonably~~  
13 ~~withheld;~~

14 ~~9. To unreasonably withhold consent, in the event of the death~~  
15 ~~of the equipment dealer or the principal owner of the equipment~~  
16 ~~dealership, to the transfer of the equipment dealer's interest in~~  
17 ~~the equipment dealership to a member or members of the family of the~~  
18 ~~equipment dealer or the principal owner of the equipment dealership~~  
19 ~~if the family member meets the reasonable financial, business~~  
20 ~~experience and character standards of the supplier; provided, if a~~  
21 ~~supplier determines that the designated family member is not~~  
22 ~~acceptable, the supplier shall provide the equipment dealer with~~  
23 ~~written notice of the supplier's objection and specific reasons for~~  
24 ~~withholding its consent; provided, a supplier shall have ninety (90)~~

1 ~~days to consider an equipment dealer's request to make a transfer to~~  
2 ~~a family member; further provided, as used in this paragraph,~~  
3 ~~"family" means and includes a spouse, parents, siblings, children,~~  
4 ~~stepchildren, sons in law, daughters in law, and lineal descendants,~~  
5 ~~including those by adoption of the equipment dealer or principal~~  
6 ~~owner of the equipment dealership; and further provided, that~~  
7 ~~notwithstanding the foregoing, in the event that a supplier and~~  
8 ~~equipment dealer have duly executed an agreement concerning~~  
9 ~~succession rights prior to the equipment dealer's death, and if such~~  
10 ~~agreement has not been revoked or otherwise terminated by either~~  
11 ~~party, such agreement shall be observed; or~~

12 10. 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, provided 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;

24

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 requirement;

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

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



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

9           a. such differences are due to differences in the cost of  
10           manufacture, sale or delivery of the equipment or  
11           repair parts,

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

15           c. such differences are related to the volume of  
16           equipment purchased by dealers;

17       7. To prevent by contract or otherwise, any dealer from  
18 changing its capital structure, ownership or the means by or through  
19 which the dealer finances its operations, so long as the dealer  
20 gives prior notice to the supplier, and provided the dealer at all  
21 times meets any reasonable capital standards agreed to between the  
22 dealer and the supplier and imposed on similarly situated dealers,  
23 and provided such change by the dealer does not result in a change  
24

1 in the person with actual or effective control of a majority of the  
2 voting interests of the dealer; and

3 8. To require ~~an equipment~~ a dealer to assent to a release,  
4 assignment, novation, waiver, or estoppel which would relieve any  
5 person from liability imposed by ~~Section 245 et seq. of this title~~  
6 act.

7 ~~B. Notwithstanding the provisions of paragraphs 8 and 9 of~~  
8 ~~subsection A of this section, the supplier may determine that a~~  
9 ~~dealer's area of responsibility or trade area does not afford~~  
10 ~~sufficient sales potential to continue to reasonably support a~~  
11 ~~dealer.~~

12 SECTION 5. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 245A.1 of Title 15, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. The dealer must give the supplier at least thirty (30) days  
16 prior written notice of termination. No supplier may terminate a  
17 dealer agreement without good cause. Except as otherwise  
18 specifically provided in the Fair Practices of Equipment  
19 Manufacturers, Distributors, Wholesalers and Dealers Act, "good  
20 cause" means the failure by a dealer to substantially comply with  
21 essential and reasonable requirements imposed upon the dealer by the  
22 dealer agreement, provided such requirements are not different from  
23 those requirements imposed on other similarly situated dealers

24

1 either by their terms or in the manner of their enforcement. In  
2 addition, good cause shall exist whenever:

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

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

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

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

23

24

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

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

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

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

14           B. The provisions of this section will not apply to the dealer  
15 agreements between a single-line dealer and its single-line  
16 supplier.

17           SECTION 6.           NEW LAW           A new section of law to be codified  
18 in the Oklahoma Statutes as Section 245A.2 of Title 15, unless there  
19 is created a duplication in numbering, reads as follows:

20           A. Except as otherwise provided in this section, a supplier  
21 must provide a dealer at least one hundred eighty (180) days prior  
22 written notice of termination of a dealer agreement. The notice  
23 must state all reasons constituting good cause for such termination  
24 and must state that the dealer has sixty (60) days in which to cure

1 any claimed deficiency. If the deficiency is rectified within sixty  
2 (60) days, the notice will be void. A supplier, other than a  
3 specialty agricultural equipment supplier, may not terminate a  
4 dealer agreement for the reason set forth in paragraph 8 of  
5 subsection A of Section 5 of this act unless the supplier gives the  
6 dealer notice of such action at least two (2) years before the  
7 effective date of the action. If the dealer achieves the supplier's  
8 requirements for reasonable standards or performance objectives  
9 before the expiration of the two-year notice period, the notice will  
10 be void and the dealer agreement will continue in full force and  
11 effect. The notice and right to cure provisions under this section  
12 shall not apply if the reason for termination is for any reason set  
13 forth in paragraphs 1 through 7 of subsection A of Section 5 of this  
14 act.

15 B. If a supplier has contractual authority to approve or deny a  
16 request for a sale or transfer of a dealer's business or an equity  
17 ownership interest therein, the supplier shall approve or deny such  
18 a request within sixty (60) days after receiving a written request  
19 from the dealer. If the supplier has neither approved nor denied  
20 the request within the sixty-day period, the request will be deemed  
21 approved. The dealer's request shall include reasonable financial,  
22 personal background, character references and work history  
23 information for the acquiring persons. If a supplier denies a  
24 request made pursuant to this subsection, the supplier must provide

1 the dealer with a written notice of the denial that states the  
2 reasons for the denial. A supplier may only deny a request based on  
3 the failure of the proposed transferees to meet the reasonable  
4 requirements consistently imposed by the supplier in determining  
5 approval of the transfer and/or approvals of new dealers.

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

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

24

1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 245A.3 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

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

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

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

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

18           3. The dealer has substantially defaulted under a chattel  
19 mortgage or other security agreement between the dealer and the  
20 supplier, or there has been a revocation or discontinuance of a  
21 guarantee of a present or future obligation of the dealer to the  
22 supplier;

23

24

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

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

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

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



1 cure provisions under this paragraph shall not apply if the reason  
2 for termination is for any reason set forth in paragraphs 1 through  
3 6 of subsection B of this section.

4 SECTION 8. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 245A.4 of Title 15, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. This section shall only apply to the dealer agreements  
8 between a single-line dealer and its single-line supplier.

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

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

23

24

1 SECTION 9. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 245A.5 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. If a dealer submits a warranty claim to a supplier while the  
5 dealer agreement is in effect or within sixty (60) days after the  
6 termination of the dealer agreement, if the claim is for work  
7 performed before the termination or expiration of the dealer  
8 agreement, the supplier must accept or reject such warranty claim by  
9 written notice to the dealer within forty-five (45) days after the  
10 supplier's receipt thereof. If the supplier does not reject the  
11 warranty claim in the time period specified above, the claim will be  
12 deemed to be accepted. If the supplier accepts the warranty claim,  
13 the supplier must pay or credit to the dealer's account all amounts  
14 owed with respect to the claim to the dealer within thirty (30) days  
15 after it is accepted. If the supplier rejects a warranty claim, the  
16 supplier must give the dealer written or electronic notice of the  
17 grounds for rejection, which reasons must be consistent with the  
18 supplier's reasons for rejecting warranty claims of other dealers,  
19 both in their terms and manner of enforcement. If no grounds for  
20 rejection are given, the claim will be deemed to be accepted.

21 B. Any claim which is disapproved by the supplier based upon  
22 the dealer's failure to properly follow the procedural or technical  
23 requirements for submission of warranty claims may be resubmitted in  
24

1 proper form by the dealer within thirty (30) days of receipt by the  
2 dealer of the supplier's notification of the disapproval.

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

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

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

1 F. The requirements of subsections A, B and C of this section  
2 apply to all warranty claims submitted by a dealer to a supplier in  
3 which the dealer has complied with the supplier's reasonable  
4 policies and procedures for warranty reimbursement and such claims  
5 are warranted claims under the supplier's warranty policy. A  
6 supplier's warranty reimbursement policies and procedures will be  
7 deemed unreasonable to the extent they conflict with any of the  
8 provisions of this section.

9 G. A dealer may choose to accept alternate reimbursement terms  
10 and conditions in lieu of the requirements of subsections A, B and C  
11 of this section if there is a written dealer agreement between the  
12 supplier and the dealer that requires the supplier to compensate the  
13 dealer for warranty labor costs either as:

- 14 a. a discount in the pricing of the equipment to the  
15 dealer, or
- 16 b. a lump sum payment to the dealer that is made to the  
17 dealer within ninety (90) days of the sale of the  
18 supplier's new equipment. The discount or lump sum  
19 must be no less than five percent (5%) of the  
20 suggested retail price of the equipment.

21 If the requirements of this subsection are met and alternate  
22 terms and conditions are in place, subsections A, B and C of this  
23 section do not apply and the alternate terms and conditions are  
24 enforceable. Nothing contained in this subsection shall be deemed

1 to affect the supplier's obligation to reimburse the dealer for  
2 parts in accordance with subsection C of this section.

3 SECTION 10. AMENDATORY 15 O.S. 2001, Section 246, is  
4 amended to read as follows:

5 Section 246. A. ~~If any retailer enters into a dealer agreement~~  
6 ~~with a supplier and subsequently the dealer agreement is terminated,~~  
7 ~~the supplier shall repurchase the inventory as provided in this act.~~  
8 ~~The retailer may keep the inventory if he desires and has a~~  
9 ~~contractual right to do so. Upon such termination, the supplier~~  
10 ~~shall accept or reject all warranty claims made by the retailer~~  
11 ~~within forty five (45) days after receipt and shall pay accepted~~  
12 ~~claims within sixty (60) days after receipt. All claims not~~  
13 ~~specifically rejected within forty five (45) days after receipt~~  
14 ~~shall be deemed to have been accepted~~ Whenever any dealer enters  
15 into a dealer agreement with a supplier and either the supplier or  
16 the dealer desires to cancel, not renew or otherwise discontinue the  
17 dealer agreement, the supplier shall pay to the dealer or credit to  
18 the dealer's account, if the dealer has outstanding any sums owing  
19 the supplier, unless the dealer should desire to keep such equipment  
20 or repair parts:

21 1. A sum equal to one hundred percent (100%) of the net  
22 equipment cost of all new, unsold, undamaged equipment, less a  
23 downward adjustment for such equipment between twenty-four (24)  
24 months and thirty-six (36) months old that reflect a reasonable

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

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

21 3. The fair market value of any specific data processing  
22 hardware or software that the supplier required the dealer to  
23 acquire or purchase to satisfy the requirements of the supplier,  
24 including computer equipment required and approved by the supplier

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

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

18 ~~B. The supplier shall repurchase that inventory previously~~  
19 ~~purchased from him and held by the retailer on the date of~~  
20 ~~termination of the dealer agreement. The supplier shall pay to the~~  
21 ~~retailer one hundred percent (100%) of the actual dealer cost of all~~  
22 ~~new, unsold, undamaged and complete farm tractors, farm implements,~~  
23 ~~utility and industrial tractors, and the attachments thereto or~~  
24 ~~outdoor power equipment, lawn and garden equipment and attachments~~

1 ~~thereto, and eighty five percent (85%) of the current net price on~~  
2 ~~new, unused and undamaged repair parts. The retailer shall, within~~  
3 ~~one hundred twenty (120) days after notice of termination by either~~  
4 ~~party, provide to the supplier a detailed listing, including trade~~  
5 ~~names, descriptions and serial numbers where applicable, of whole~~  
6 ~~goods merchandise furnished by the supplier, and in possession of~~  
7 ~~the retailer, of such merchandise which qualifies under this act for~~  
8 ~~reimbursement or credit memorandum by the supplier. The supplier~~  
9 ~~shall have sixty (60) days from the date shown on the retailer's~~  
10 ~~listing of merchandise to question any item. Any item of~~  
11 ~~merchandise not protested in writing and received by the retailer~~  
12 ~~within the sixty day period shall be deemed to have been accepted by~~  
13 ~~the supplier as part of the inventory in question. After the~~  
14 ~~expiration of sixty (60) days, the supplier shall have thirty (30)~~  
15 ~~additional days to tender the amount due to the retailer or to the~~  
16 ~~retailer's named financial institution. If the retailer has any~~  
17 ~~outstanding debts to the supplier, then the repurchase amount may be~~  
18 ~~credited to the account of the retailer. The supplier shall pay the~~  
19 ~~retailer five percent (5%) of the current net price on all new,~~  
20 ~~unused and undamaged repair parts returned to cover the cost of~~  
21 ~~handling, packing and loading. The supplier shall have the option~~  
22 ~~of performing the handling, packing and loading in lieu of paying~~  
23 ~~the five percent (5%) for these services. The retailer and the~~  
24 ~~supplier shall share equally the freight costs for the return of the~~



1 ~~merchandise to such supplier or to such other retailers to whom the~~  
2 ~~supplier wishes to send merchandise. The retailer's share of the~~  
3 ~~cost of returning merchandise to other retailers shall be his share~~  
4 ~~of the actual transportation costs, but not to exceed the retailer's~~  
5 ~~share of the cost of returning the merchandise to the principal site~~  
6 ~~of business of the supplier. Within sixty (60) days of the~~  
7 ~~effective date of termination of a dealer agreement, a supplier~~  
8 ~~shall advise the dealer in writing of the destination or~~  
9 ~~destinations to which inventory items which qualify for~~  
10 ~~reimbursement or credit memoranda are to be sent~~ Upon the payment or  
11 allowance of credit to the dealer's account of the sums required by  
12 this section, the title to all inventory purchased hereunder shall  
13 pass to the supplier making such payment, and the supplier shall be  
14 entitled to the possession of the inventory. All payments or  
15 allowances of credit due dealers shall be paid or credited within  
16 ninety (90) days after receipt by the supplier of property required  
17 to be repurchased hereunder. Any payments or allowances of credit  
18 due dealers that are not paid within the ninety-day period will  
19 accrue interest at the maximum rate allowed by law. The supplier  
20 may withhold payments due under this subsection during the period of  
21 time in which the dealer fails to comply with its contractual  
22 obligations to remove any signage indicating that the dealer is an  
23 authorized dealer of the supplier.  
24

1       C. ~~The supplier shall repurchase at its fair market value or~~  
2 ~~assume the lease responsibilities of any specific data processing~~  
3 ~~hardware and software that the supplier required the retailer to~~  
4 ~~purchase or lease, including computers, related software and~~  
5 ~~peripheral equipment required and approved by the supplier to~~  
6 ~~communicate with the supplier, to satisfy the minimum requirements~~  
7 ~~of the dealership, and further that the supplier shall repurchase at~~  
8 ~~seventy five percent (75%) of the net retailer cost of specialized~~  
9 ~~repair tools previously purchased in the previous three (3) years~~  
10 ~~pursuant to requirements of the supplier and held by the retailer on~~  
11 ~~the date of termination. Such specialized repair tools must be~~  
12 ~~unique to the supplier product line and must be complete and in~~  
13 ~~salable condition~~ If any supplier refuses to repurchase any  
14 inventory covered under the provisions of the Fair Practices of  
15 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act  
16 after cancellation, nonrenewal or discontinuance of the dealer  
17 agreement, the supplier will be civilly liable to the dealer for one  
18 hundred ten percent (110%) of the amount that would have been due  
19 for the inventory if the supplier had timely complied with this act,  
20 any freight charges paid by the dealer, interest accrued, and the  
21 dealer's actual costs of any court or arbitration proceeding,  
22 including costs for attorney fees and costs for arbitrators.

23       D. ~~Upon payment of the repurchase amount to the retailer, the~~  
24 ~~ownership and right of possession to the repurchased inventory shall~~

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

5 E. ~~The time periods allowed in this section for action by any~~  
6 ~~parties involved in the termination process of a retailer shall be~~  
7 ~~considered as minimum standards which may be shortened or exceeded~~  
8 ~~in a written agreement signed by both the supplier and the retailer~~  
9 ~~executed after the effective date of the termination agreement~~  
10 Notwithstanding any provision to the contrary in the Uniform  
11 Commercial Code adopted by this state, the dealer will retain title  
12 to and have a first and prior lien against all inventory returned by  
13 the dealer to the supplier under the provisions of this act until  
14 the dealer is paid all amounts owed by the supplier for the  
15 repurchase of such inventory required under the provisions of this  
16 act and the supplier shall hold the proceeds of such inventory in  
17 trust for the benefit of the dealer.

18 F. The provisions of this section shall not be construed to  
19 affect in any way any security interest which the supplier may have  
20 in the inventory of the dealer, and any repurchase hereunder shall  
21 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  
23 assignee of the supplier until such time as the dealer has received  
24 full payment or credit, as applicable, due hereunder.

1        G. The provisions of this section shall not apply to a  
2 specialty agricultural equipment supplier if the dealer terminates  
3 the dealer agreement and such termination is without good reason. A  
4 dealer has good reason to terminate the dealer agreement for any of  
5 the following reasons:

6        1. The death or disability of a majority owner of a dealership;

7        2. The dealership terminates the dealer agreement and:

8            a. substantially all of the dealership assets or all  
9            shares of stock of the dealership are sold to a new  
10           owner, and

11           b. no owner of the terminated dealership continues to own  
12           an interest in the continuing dealership;

13        3. The filing of bankruptcy by or against the dealership which  
14 has not been discharged within thirty (30) days after the filing,  
15 the appointment of a receiver or assignment for the benefit of  
16 creditors; or

17        4. The specialty agricultural equipment supplier:

18           a. abandons the market or withdraws from the market by no  
19           longer selling to the dealer a type of equipment  
20           previously sold to the dealer that constituted a  
21           material part of the specialty agricultural equipment  
22           sold by such supplier,

- 1        b. consistently sells product to the dealer that is  
2        defective or breaches the implied warranty of  
3        merchantability,
- 4        c. consistently fails to provide adequate product support  
5        for the type and use of the product, which includes,  
6        but is not limited to, technical assistance, operator  
7        and repair manuals, and part lists and diagrams,
- 8        d. consistently fails to provide adequate training,  
9        required by such supplier, for maintenance, repair, or  
10       usage of such supplier's product,
- 11       e. consistently fails to provide marketing and marketing  
12       support for such supplier's product and marketing is a  
13       requirement of the dealer contract,
- 14       f. consistently fails to meet such supplier's warranty  
15       obligations to the dealer as required by contract or  
16       law including obligations under the Fair Practices of  
17       Equipment Manufacturers, Distributors, Wholesalers and  
18       Dealers Act,
- 19       g. engaged in conduct that is injurious or detrimental to  
20       the dealer's customers, the public welfare or the  
21       reputation of the dealer,
- 22       h. made material misrepresentations or falsification of  
23       any record, or
- 24

1            i.    breached the dealer agreement or a violated a  
2                            provision of the Fair Practices of Equipment  
3                            Manufacturers, Distributors, Wholesalers and Dealers  
4                            Act.

5            Nothing in this subsection shall be construed to limit a  
6 specialty agricultural equipment supplier's obligation to repurchase  
7 a dealer's inventory as provided in this section if such supplier  
8 cancels or fails to renew or otherwise discontinues a dealer  
9 agreement.

10            SECTION 11.            AMENDATORY            15 O.S. 2001, Section 247, is  
11 amended to read as follows:

12            Section 247. The provisions of ~~this act~~ the Fair Practices of  
13 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act  
14 shall not require the repurchase from a ~~retailer~~ dealer of:

15            1. Any repair part ~~which has a limited storage life or is~~  
16 ~~otherwise subject to deterioration, such as rubber items, gaskets or~~  
17 ~~batteries unless such items were purchased from the supplier within~~  
18 ~~the twenty four (24) months prior to date of termination~~ which is in  
19 a broken or damaged package; provided, however, the supplier will be  
20 required to repurchase a repair part in a broken or damaged package,  
21 for a repurchase price that is equal to eighty-five percent (85%) of  
22 the current net cost for the repair part, if the aggregate current  
23 net cost for the entire package of repair parts is Seventy-five  
24 Dollars (\$75.00) or higher;

1       2. Any repair part which ~~is in a broken or damaged package~~  
2 because of its condition is not resalable as a new part without  
3 repackaging or reconditioning;

4       3. ~~Any single repair part which is priced as a set of two or~~  
5 ~~more items;~~

6       4. ~~Any repair part which, because of its condition, is not~~  
7 ~~resalable as a new part without repackaging or reconditioning;~~

8       5. Any inventory for which the ~~retailer~~ dealer is unable to  
9 furnish evidence, satisfactory to the supplier, of clear title free  
10 and clear of all claims, liens and encumbrances or which will not be  
11 free and clear of all claims, liens and encumbrances immediately  
12 upon payment by the supplier of amounts due herein to such lien  
13 holders;

14       6. 4. Any inventory which the ~~retailer~~ dealer desires to keep,  
15 provided the ~~retailer~~ dealer has a contractual right to do so;

16       7. ~~Any farm tractors, farm implements, utility and industrial~~  
17 ~~tractors, and the attachments thereto, or outdoor power and lawn and~~  
18 ~~garden equipment and attachments thereto which are not current~~  
19 ~~models or which are not in new, undamaged or complete condition;~~

20       8. 5. Any equipment or repair parts which are not in new,  
21 ~~unused,~~ unsold, undamaged ~~or,~~ complete condition, subject, however,  
22 to the provisions of this act relating to the demonstrators;

23       9. ~~Any farm tractors, farm implements, utility and industrial~~  
24 ~~tractors, or the attachments thereto, or outdoor power and lawn and~~

1 ~~garden equipment and attachments thereto which were purchased more~~  
2 ~~than twenty four (24) months prior to notice of termination of the~~  
3 ~~dealer agreement;~~

4 ~~10. Any inventory which was ordered by the retailer on or after~~  
5 ~~the date of notification of termination of the dealer agreement; and~~

6 ~~11. Any inventory which was acquired by the retailer from any~~  
7 ~~source other than the supplier~~

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

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

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

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

19 a. the effective date of termination of a dealer  
20 agreement, and

21 b. the date the dealer receives from the supplier all  
22 information, documents or supporting materials  
23 required by the supplier to comply with the supplier's  
24 return policy; provided, however, this paragraph will



1 not be applicable to a dealer if the supplier did not  
2 give the dealer notice of the ninety-day deadline at  
3 the time the applicable notice of termination was sent  
4 to the dealer.

5 SECTION 12. AMENDATORY 15 O.S. 2001, Section 248, is  
6 amended to read as follows:

7 Section 248. ~~If any manufacturer, wholesaler or distributor~~  
8 ~~fails or refuses to repurchase any inventory covered under the~~  
9 ~~provisions of this act within sixty (60) days after shipment of such~~  
10 ~~inventory, he shall be liable for one hundred percent (100%) of the~~  
11 ~~current net price of the inventory, plus any freight charges paid by~~  
12 ~~the retailer, attorney's fees of the retailer, court costs and~~  
13 ~~interest on the current net price computed at the legal interest~~  
14 ~~rate from the sixty first day after shipment~~ supplier violates any  
15 provision of this act, a dealer may bring an action against such  
16 supplier in a court of competent jurisdiction for damages sustained  
17 by the dealer as a consequence of the supplier's violation,  
18 including, but not limited to, damages for lost profits, together  
19 with the actual costs of the action, including the dealer's attorney  
20 and paralegal fees and costs of arbitrators, and the dealer also may  
21 be granted injunctive relief against unlawful termination. The  
22 remedies set forth in this section shall not be deemed exclusive and  
23 shall be in addition to any other remedies permitted by law.

1 SECTION 13. AMENDATORY 15 O.S. 2001, Section 249, is  
2 amended to read as follows:

3 Section 249. ~~In the event of the death of the retailer or the~~  
4 ~~majority stockholder of a corporation or a partner in a partnership~~  
5 ~~operating as a retailer, the manufacturer, wholesaler or distributor~~  
6 ~~shall, at the option of the heirs, repurchase the inventory from the~~  
7 ~~heirs of the retailer or majority stockholder as if the~~  
8 ~~manufacturer, wholesaler or distributor had terminated the~~  
9 ~~franchise. The heirs shall have two hundred seventy (270) days from~~  
10 ~~the date of the death of the retailer or majority stockholder to~~  
11 ~~exercise their options under this act. Nothing in this act shall~~  
12 ~~require the repurchase of any inventory if the heirs and the~~  
13 ~~manufacturer, wholesaler or distributor enter into a new franchise~~  
14 ~~to operate the retail dealership~~ An attempted waiver of a provision  
15 of this act or application of this act shall be void. Any provision  
16 in a dealer agreement that purports to elect the application of the  
17 law of a state other than this state shall be void. Any provision  
18 in a dealer agreement that requires a dealer to pay attorney fees  
19 incurred by a supplier shall be void.

20 SECTION 14. AMENDATORY 15 O.S. 2001, Section 250, is  
21 amended to read as follows:

22 Section 250. The provisions of ~~this act~~ the Fair Practices of  
23 Equipment Manufacturers, Distributors, Wholesalers and Dealers Act  
24 ~~shall not be construed to affect in any way any security interest~~

1 ~~which the manufacturer, wholesaler or distributor may have in the~~  
2 ~~inventory of the retailer. The retailer, manufacturer, wholesaler~~  
3 ~~or distributor shall furnish a representative to inspect all parts~~  
4 ~~and certify their acceptability when packed for shipment~~ apply to:

5 1. All dealer agreements now in effect which have no expiration  
6 date and are deemed a continuing contract; and

7 2. All other dealer agreements entered into or renewed after  
8 November 1, 2011.

9 SECTION 15. AMENDATORY 15 O.S. 2001, Section 250A, is  
10 amended to read as follows:

11 Section 250A. A. ~~This section shall apply to a claim for~~  
12 ~~payment for services performed for a customer pursuant to a warranty~~  
13 ~~issued by the dealer's supplier:~~

14 ~~1. While a~~ The provisions of the Fair Practices of Equipment  
15 Manufacturers, Distributors, Wholesalers and Dealers Act shall be  
16 supplemental to any dealer agreement ~~is in effect which authorizes~~  
17 ~~the dealer to perform services pursuant to a warranty; or~~

18 ~~2. After the termination of a dealer agreement, if the claim is~~  
19 ~~for work performed before the effective date of the termination.~~

20 B. ~~Not later than thirty (30) days after the date a supplier~~  
21 ~~receives a warranty claim from a dealer, the supplier shall accept~~  
22 ~~or reject the claim. A claim rejected after the deadline is deemed~~  
23 ~~accepted.~~

24

1 ~~C. Not later than thirty (30) days after the date a claim is~~  
2 ~~accepted or rejected, the supplier shall:~~

3 ~~1. Pay an accepted claim; or~~

4 ~~2. Send the dealer written notice of the reason for rejection~~  
5 ~~of the claim.~~

6 ~~D. A supplier who pays a claim may not pay less than the amount~~  
7 ~~the dealer regularly charges for the labor and other expenses~~  
8 ~~involved in performing the same or similar services for a retail~~  
9 ~~customer who does not assert a warranty and the dealer's current net~~  
10 ~~price plus fifteen percent (15%) for parts. The number of hours of~~  
11 ~~labor claimed may not exceed one and three tenths (1 3/10) times the~~  
12 ~~supplier's recommended hours for the repair involved. Other~~  
13 ~~expenses shall not include items that are expressly excluded under~~  
14 ~~the supplier's warranty to the customer.~~

15 ~~E. After payment of a claim, a supplier may not charge back,~~  
16 ~~set off, or otherwise attempt to recover all or part of the amount~~  
17 ~~of the claim unless:~~

18 ~~1. The claim was fraudulent;~~

19 ~~2. The services for which the claim was made were not properly~~  
20 ~~performed or were unnecessary to comply with the warranty; or~~

21 ~~3. The dealer did not substantiate the claim according to the~~  
22 ~~written requirements of the supplier in effect when the claim arose~~  
23 ~~between the dealer and the supplier which provides the dealer with~~  
24 ~~greater protection. The dealer can elect to pursue its contract~~

1 remedy or the remedy provided by state law, or both, and an election  
2 by the dealer to pursue such remedies shall not bar its right to  
3 exercise any other remedies that may be granted at law or in equity.

4 SECTION 16. AMENDATORY 15 O.S. 2001, Section 251, is  
5 amended to read as follows:

6 Section 251. Any person who is injured in his or her business  
7 or property by a violation of ~~this act~~ the Fair Practices of  
8 Equipment Manufactures, Distributors, Wholesalers and Dealers Act or  
9 because he or she refuses to accede to a proposal for an arrangement  
10 which, if consummated, would be in violation of ~~this~~ such act, may  
11 bring a civil action in a court of competent jurisdiction in this  
12 state to enjoin further violations and to recover the damages  
13 sustained by him or her together with the costs of the suit,  
14 including a reasonable ~~attorney's~~ attorney fee.

15 SECTION 17. This act shall become effective November 1, 2011.

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & COMMERCE, dated 2-24-11  
17 - DO PASS, As Amended and Coauthored.

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