

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1169 Session of 2011

INTRODUCED BY WAUGH, BAKER, SOLOBAY, SCHWANK, ALLOWAY, RAFFERTY, YAW, WOZNIAK, EICHELBERGER, FOLMER, VOGEL AND FERLO, JUNE 23, 2011

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED, DECEMBER 14, 2011

AN ACT

1 Amending the act of December 18, 1987 (P.L.412, No.86), entitled
2 "An act providing for the repurchase by the wholesaler,
3 manufacturer or distributor, from dealers or heirs of
4 dealers, of certain equipment, certain attachments and parts
5 held for sale upon termination of agreement whereby the
6 dealer agrees to maintain a stock of such implements,
7 attachments and parts, and for the repurchase of certain
8 tools," further providing for definitions, for termination of
9 dealer agreement, AND for death or incapacitation of dealer
10 and for repurchase of unused specialized repair tools;
11 repealing provisions relating to coercion; and providing for
12 violations of act, for warranty UNLAWFUL ACTS BY SUPPLIER,
13 for remedies and enforcement and for waiver.

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14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 2 of the act of December 18, 1987
17 (P.L.412, No.86), known as the Pennsylvania Fair Dealership Law,
18 is amended to read:

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

1 "Construction equipment manufacturer." A manufacturer of  
2 construction, industrial, forestry, paving and mining equipment,  
3 repair parts or specialized repair tools that does not  
4 manufacture consumer or farming equipment either by itself or  
5 through an affiliate.

6 "Consumer equipment." Machinery designed and manufactured  
7 primarily for household use.

8 "Current net price." The price, applicable to an individual  
9 dealer, listed in the printed price list or catalog or invoice  
10 in use by the supplier on the date the dealer agreement is  
11 terminated or canceled or has failed to be renewed.

12 "Dealer." Any person, firm or corporation engaged primarily  
13 in the business of retail sale or repair of equipment. The term  
14 includes the heir or authorized representative of a person or  
15 majority stockholder of a corporation operating as a dealer in  
16 the event such person or stockholder dies or becomes  
17 incapacitated. The term does not include a person, firm or  
18 corporation that complies with all of the following:

19 (1) Has purchased new equipment from a single  
20 construction equipment manufacturer, constituting no less  
21 than 75% of the person's, firm's or corporation's new  
22 equipment, calculated on the basis of net cost.

23 (2) Has an annual average sales volume in excess of  
24 \$100,000,000 over the seven-calendar-year period immediately  
25 preceding the applicable determination date; provided,  
26 however, the \$100,000,000 threshold shall be increased each  
27 year by an amount equal to the then-current threshold  
28 multiplied by the percentage increase in the index from  
29 January of the immediately preceding calendar year to January  
30 of the current year.

1           (3) Directly employs over 250 persons.

2           (4) Has a written agreement with a construction  
3 equipment manufacturer that requires the construction  
4 equipment manufacturer to compensate the person, firm or  
5 corporation for warranty labor costs either as:

6           (i) a discount in the pricing of the equipment to  
7 the person, firm or corporation; or

8           (ii) a lump sum payment to the person, firm or  
9 corporation that is made within 90 days of the sale of  
10 the construction equipment manufacturer's new equipment.

11       "Dealer agreement." An oral or written contract, franchise  
12 agreement or security agreement between a dealer and supplier  
13 whereby the dealer agrees to acquire from the supplier and to  
14 maintain an inventory of equipment, repair parts or specialized  
15 repair tools.

16       "DUAL" OR "DUALING." A DEALERSHIP HAVING TWO OR MORE LINE-  
17 MAKES OF EQUIPMENT LOCATED IN THE SAME DEALERSHIP FACILITIES.



18       "Equipment." Machines, implements of husbandry, golf, turf  
19 and grounds maintenance machines, outdoor power equipment,  
20 utility vehicles and machine attachments, accessories,  
21 completing packages and bundles designed for or adapted and used  
22 for agriculture, horticulture, floriculture, construction,  
23 livestock raising, silviculture, landscaping and grounds  
24 maintenance, even though incidentally operated or used upon the  
25 highways, including, but not limited to, tractors, farm  
26 implements, loaders, backhoes, lawn mowers, rototillers, etc.,  
27 and any business signs purchased by requirement of the supplier  
28 which are less than five years old. The term shall not include[:

29           (1) equipment manufactured solely for the purpose of  
30       industrial construction; or

1 (2)] all-terrain vehicles as defined in 75 Pa.C.S. §  
2 7702 (relating to definitions).

3 "Farming equipment." Machinery designed and used for  
4 agricultural operations, including farm tractors, choppers,  
5 balers, reapers, mowers, pickers, threshers, combines, plows,  
6 harrows, planters and any other vehicles or machines primarily  
7 designed for use as implements of husbandry or multipurpose  
8 agricultural vehicles.

9 "Index." The producer price index prepared by the United  
10 States Department of Labor, Bureau of Labor Statistics, as it  
11 relates to construction, mining and forestry equipment.

12 "LINE-MAKE." GROUPS OF EQUIPMENT THAT ARE OFFERED FOR SALE, ←  
13 LEASE OR DISTRIBUTION UNDER A COMMON NAME, TRADEMARK, SERVICE  
14 MARK OR BRAND NAME OF THE SUPPLIER OF THE SAME EQUIPMENT.

15 "Mining equipment." Machinery designed and used in the  
16 production process at a mine site, including off-highway mining  
17 trucks, large-wheel loaders, large track-type tractors, large-  
18 wheel dozers, mining motor graders, open bowl scrapers and  
19 underground mining trucks.

20 "Net cost." The amount paid by the dealer to the supplier,  
21 plus the cost of freight, if any, incurred by the dealer[.], as  
22 long as the manufacturer initiates the termination or  
23 nonrenewal. The term does not include the cost of freight if the  
24 dealer initiates the termination or nonrenewal.

25 "Nonservicing dealer." A dealer that sells equipment but  
26 does not provide parts and service.

27 "Paving equipment." Machinery designed and used for asphalt  
28 paving, including asphalt pavers, cold planers, asphalt  
29 compactors, pneumatic compactors and rotary mixers.

30 "Repair parts." All parts, component parts and superseded

1 parts related to a sale and related to repair of equipment. The  
2 term includes bundled parts, which means several related parts,  
3 components or accessories, bound together as one inclusive item  
4 or priced as an inclusive item.

5 "SITE-CONTROL AGREEMENT" OR "EXCLUSIVE USE AGREEMENT." AN ←  
6 AGREEMENT THAT, REGARDLESS OF ITS NAME, TITLE, FORM OR THE  
7 PARTIES ENTERING INTO IT, HAS THE EFFECT OF:

8 (1) CONTROLLING THE USE AND DEVELOPMENT OF THE PREMISES  
9 OF A DEALER'S FACILITY;

10 (2) REQUIRING A DEALER TO ESTABLISH OR MAINTAIN AN  
11 EXCLUSIVE DEALERSHIP FACILITY ON THE PREMISES OF A DEALER'S  
12 FACILITY;

13 (3) RESTRICTING THE POWER OR AUTHORITY OF THE DEALER OR  
14 THE LESSOR IF THE DEALER LEASES THE DEALERSHIP PREMISES TO  
15 TRANSFER, SELL, LEASE, DEVELOP, REDEVELOP OR CHANGE THE USE  
16 OF THE DEALERSHIP PREMISES, WHETHER BY SUBLEASE, LEASE,  
17 COLLATERAL PLEDGE OF LEASE, RIGHT OF FIRST REFUSAL TO  
18 PURCHASE OR LEASE, OPTION TO PURCHASE OR LEASE OR ANY SIMILAR  
19 ARRANGEMENT; OR

20 (4) PREVENTING THE DEALER FROM DUALING A COMPETITIVE  
21 LINE-MAKE OF EQUIPMENT AT THE SAME FACILITY.

22 "Specialized repair tools." Tools and equipment, including  
23 diagnostic equipment, designed to be used or useful only in the  
24 maintenance and repair of equipment.

25 "Supplier." [A manufacturer of equipment or repair parts or  
26 a wholesaler or distributor of equipment or repair parts who has  
27 a valid existing contract with a manufacturer of equipment or  
28 repair parts, including the successors or assigns of such  
29 manufacturer, wholesaler or distributor.] A distributor,  
30 manufacturer or wholesaler of equipment, repair parts or

1 specialized repair tools who enters into a dealer agreement with  
2 a dealer.

3 Section 2. Section ~~3(a)~~ 3(A), (C) and (f) of the act are ←  
4 amended and the section is amended by adding a subsection to  
5 read:

6 Section 3. Termination of dealer agreement.

7 (a) General provisions.--

8 (1) A dealer may terminate a dealer agreement with good  
9 cause. A dealer shall give the supplier at least 30 -days'  
10 prior notice via registered letter mailed to the last known  
11 address of the supplier.

12 (2) It shall be unlawful for a supplier to terminate,  
13 cancel or fail to renew a dealer agreement or substantially  
14 change the competitive circumstances of a dealer agreement  
15 without good cause except as provided in subsection (b) or  
16 (c).

17 \* \* \*

18 (C) OTHER EXCEPTIONS.--[SUBJECT TO THE PROVISIONS OF THIS ←  
19 SUBSECTION, A SUPPLIER MAY TERMINATE, CANCEL OR FAIL TO RENEW A  
20 DEALER AGREEMENT UNDER SUCH CONDITIONS AS MAY BE PROVIDED FOR IN  
21 THE DEALER AGREEMENT. WHEN A DEALER AGREEMENT IS TERMINATED OR  
22 CANCELED OR HAS FAILED TO BE RENEWED BY THE SUPPLIER UNDER A  
23 CONDITION PROVIDED FOR IN THE DEALER AGREEMENT, OTHER THAN A  
24 CONDITION SET FORTH IN SUBSECTION (B), THE] THE SUPPLIER, UPON  
25 WRITTEN REQUEST OF THE DEALER, SHALL PAY TO THE DEALER, OR  
26 CREDIT TO THE DEALER'S ACCOUNT IF THE DEALER HAS OUTSTANDING ANY  
27 SUMS OWING THE SUPPLIER:

28 (1) A SUM EQUAL TO 100% OF THE NET COST OF ALL EQUIPMENT  
29 THAT THE DEALER PURCHASED FROM THE SUPPLIER AND NOT  
30 PREVIOUSLY SOLD AND PUT INTO REGULAR USE OR SERVICE PRECEDING

1 NOTIFICATION BY EITHER PARTY OF INTENT TO CANCEL, TERMINATE  
2 OR FAIL TO RENEW THE DEALER AGREEMENT.

3 (2) A SUM EQUAL TO 100% OF THE CURRENT NET PRICE OF  
4 REPAIR PARTS, INCLUDING SUPERSEDED REPAIR PARTS, PREVIOUSLY  
5 PURCHASED FROM THE SUPPLIER AND 75% OF THE CURRENT NET PRICE  
6 OF SPECIALIZED REPAIR TOOLS PREVIOUSLY PURCHASED PURSUANT TO  
7 THE REQUIREMENTS OF THE SUPPLIER AND HELD BY THE DEALER ON  
8 THE DATE OF TERMINATION, CANCELLATION OR FAILURE TO RENEW THE  
9 DEALER AGREEMENT. IN ADDITION, THE SUPPLIER SHALL PAY THE  
10 DEALER, OR CREDIT TO THE DEALER'S ACCOUNT IF THE DEALER HAS  
11 OUTSTANDING ANY SUMS OWING THE SUPPLIER, A SUM EQUAL TO 5% OF  
12 THE CURRENT NET PRICE OF ALL REPAIR PARTS, EXCLUDING INCOMING  
13 FREIGHT COST, AND SPECIALIZED REPAIR TOOLS RETURNED TO THE  
14 SUPPLIER TO COMPENSATE THE DEALER FOR THE INVENTORY, PACKING  
15 AND LOADING OF THE SAME TO THE SUPPLIER, PROVIDED THAT THE  
16 SUPPLIER MAY PERFORM SUCH INVENTORY, PACKING AND LOADING IN  
17 LIEU OF PAYING 5% TO THE DEALER. UPON THE PAYMENT OR  
18 ALLOWANCE OF CREDIT TO THE DEALER'S ACCOUNT, AS APPLICABLE,  
19 IN THE SUM REQUIRED BY THIS SECTION, ALL OF THE DEALER'S  
20 TITLE AND INTEREST IN AND TO THE EQUIPMENT, REPAIR PARTS AND  
21 SPECIALIZED REPAIR TOOLS SHALL PASS TO THE SUPPLIER, AND THE  
22 SUPPLIER SHALL BE ENTITLED TO THE POSSESSION OF THE SAME.  
23 PAYMENTS OR ALLOWANCE OF CREDIT TO THE DEALER, AS APPLICABLE,  
24 REQUIRED BY THIS SECTION SHALL BE MADE NO LATER THAN 90 DAYS  
25 AFTER SUCH TERMINATION, CANCELLATION OR DISCONTINUANCE OR 60  
26 DAYS AFTER THE SUPPLIER'S RECEIPT OF THE EQUIPMENT, REPAIR  
27 PARTS OR SPECIALIZED REPAIR TOOLS.

28 (3) IN THE EVENT A DEALER TERMINATES A DEALER AGREEMENT,  
29 THE OBLIGATION OF THE SUPPLIER TO REPURCHASE EQUIPMENT,  
30 REPAIR PARTS AND SPECIALIZED REPAIR TOOLS SHALL BE GOVERNED

1 BY THE TERMS AND CONDITIONS THEN IN EFFECT IN THE DEALER  
2 AGREEMENT BETWEEN THE SUPPLIER AND THE DEALER AND NOT BY THE  
3 PROVISIONS OF THIS ACT.

4 \* \* \*

5 (f) Deficiencies may be cured.--Except for termination,  
6 cancellation or discontinuance for reasons set forth in  
7 subsection (b) (3) through (7), the supplier shall allow the  
8 dealer no less than [60] 90 days to cure the deficiencies set  
9 forth in the notice required under subsection (e). Any such time  
10 provided to the dealer to cure deficiencies shall be calculated  
11 from the date of receipt of notice.

12 (g) Definition.--As used in this section, the term "good  
13 cause" means the failure by a dealer to substantially comply  
14 with the requirements imposed upon the dealer by the dealer  
15 agreement, as long as the requirements are not different from  
16 requirements imposed on other dealers of the same size,  
17 geographic region and market demographics, either by their terms  
18 or in the manner of their enforcement.

19 Section 3. ~~Sections 5 and 6~~ SECTION 5 of the act are IS ←  
20 amended to read:

21 Section 5. Death or incapacitation of dealer.

22 In the event of the death or incapacity of a dealer, the  
23 supplier shall repurchase, at the option of the heir or  
24 authorized representative of such person or stockholder, the  
25 equipment, repair parts and specialized repair tools of the  
26 dealer as if the supplier had terminated, canceled or failed to  
27 renew the contract. The heir or authorized representative shall  
28 have [120 days] one year from the date of the death of such  
29 dealer or from the date such dealer is determined to be  
30 incapacitated or becomes totally disabled, as applicable, to



1 exercise the option under this section. Nothing in this act  
2 requires the repurchase of any equipment, repair parts and  
3 specialized repair tools if the heir and supplier enter into a  
4 new contract to operate the retail dealership.

5 ~~Section 6. Repurchase of [unused specialized repair tools]~~ ←  
6 ~~specialized support products required by~~  
7 ~~manufacturer.~~

8 ~~(a) General rule. A supplier shall repurchase, upon the~~  
9 ~~written request of a dealer, any specialized repair tool~~  
10 ~~purchased by the dealer pursuant to the requirements of the~~  
11 ~~supplier which remains unused for more than a 12 month period~~  
12 ~~after the dealer receives the same. The repurchase price payable~~  
13 ~~to the dealer under this section shall be the original cost to~~  
14 ~~the dealer plus a handling charge equal to 10% of such original~~  
15 ~~cost. A supplier shall repurchase at fair market value any~~  
16 ~~specific signage, data processing hardware, computer equipment,~~  
17 ~~communications equipment or software the supplier required the~~  
18 ~~dealer to acquire or purchase to satisfy the requirements of the~~  
19 ~~supplier. Fair market value of property subject to repurchase~~  
20 ~~pursuant to this section shall include the acquisition cost,~~  
21 ~~including any installation, shipping, handling, and set up fees,~~  
22 ~~less straight line depreciation of such acquisition cost over~~  
23 ~~five years.~~

24 ~~(b) Amount. Specialized repair tools shall be repurchased~~  
25 ~~at a sum equal to 75% of the last published net cost, including~~  
26 ~~shipping, handling and set up fees, of all specialized repair~~  
27 ~~tools previously purchased pursuant to requirements of the~~  
28 ~~supplier. The specialized repair tools must be complete and in~~  
29 ~~working condition and must have been purchased within ten years~~  
30 ~~prior to the date of notification of termination of the dealer~~

1 agreement.

2 Section 4. Section 9 of the act is repealed:

3 [Section 9. No coercion.

4 It shall be a violation for any supplier to require, attempt  
5 to require, coerce or attempt to coerce any dealer in this  
6 Commonwealth to order or accept delivery of any equipment or  
7 repair parts not required by law which shall not have been  
8 voluntarily ordered by the dealer.]

9 Section 5. The act is amended by adding sections to read:

10 Section 9.1. Violations of act.



11 It shall be a violation for any supplier:

12 (1) To mandate or coerce a dealer concerning the  
13 opportunity to represent, purchase or sell competitive  
14 equipment.

15 (2) To mandate or coerce a dealer to order or accept  
16 delivery of equipment or repair parts not required by law  
17 which have not been voluntarily ordered by the dealer unless  
18 the equipment or repair parts are safety features required by  
19 the supplier.

20 (3) To refuse a dealer the opportunity to participate in  
21 the management or investment to acquire any other business.

22 (4) To refuse to deliver in reasonable quantities and  
23 within a reasonable time, after receipt of the dealer's  
24 order, to a dealer having a dealer agreement for the retail  
25 sale of new equipment sold or distributed by the supplier,  
26 equipment covered by the dealer agreement specifically  
27 advertised or represented by the supplier to be available for  
28 immediate delivery. The failure to deliver the equipment  
29 shall not be considered a violation of this act if the  
30 failure is due to prudent and reasonable restrictions on

~~extension of credit by the supplier to the dealer, an act of God, work stoppage or delay due to strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control.~~

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

~~(6) To discriminate, directly or indirectly, in price between different dealers with respect to purchases of equipment or repair parts of like quality, if the effect of the discrimination may be to substantially lessen competition; to tend to create a monopoly in a line of commerce; or to injure, destroy or prevent competition with a dealer that either grants or knowingly receives the benefit of the discrimination. However, different prices may be charged if:~~

~~(i) the differences are due to the cost of manufacture, sale or delivery of the equipment or repair parts;~~

~~(ii) the supplier can show that its lower price was made in good faith to meet an equally low price of a competitor; or~~

~~(iii) the supplier can show that the difference in price is due to a volume based incentive program or volume based discounts.~~

~~(7) To require a dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act.~~

1 ~~Section 9.2. Warranty.~~

2 ~~(a) General rule. Warranty obligations include product~~  
3 ~~improvement programs, product upgrade programs and recalls and~~  
4 ~~warranty work. Warranty compensation shall include compensation~~  
5 ~~for diagnostic time, repair service time, parts and a dealer's~~  
6 ~~transportation costs of equipment to the dealership for needed~~  
7 ~~warranty repairs and the return of the equipment to the~~  
8 ~~customer. Transportation costs paid by the supplier must be~~  
9 ~~based upon the distance to the nearest in line dealer from the~~  
10 ~~customer's location. Compensation and labor rate shall be at the~~  
11 ~~publicly posted shop labor rate.~~

12 ~~(b) Payment of warranty claim. Whenever a supplier and a~~  
13 ~~dealer enter into an agreement providing the dealer's customer~~  
14 ~~warranties, the supplier shall pay any warranty claim made by~~  
15 ~~the dealer for warranty parts or service within 30 days after~~  
16 ~~its receipt and approval. The supplier shall approve or~~  
17 ~~disapprove a warranty claim within 30 days after its receipt. If~~  
18 ~~a claim is not specifically disapproved in writing within 30~~  
19 ~~days after its receipt, it is deemed to be approved and payment~~  
20 ~~shall be made by the supplier within 30 days. The following~~  
21 ~~apply:~~

22 ~~(1) A dealer that performs warranty work as provided for~~  
23 ~~in this section shall be compensated for the dealer's labor~~  
24 ~~in an amount that is not less than the reasonable and~~  
25 ~~customary amount of time required to complete the work,~~  
26 ~~expressed in hours and fraction of hours, multiplied by the~~  
27 ~~dealer's posted hourly labor rate.~~

28 ~~(2) A dealer that performs warranty work as provided for~~  
29 ~~in this section shall be compensated for parts used in~~  
30 ~~fulfilling the warranty work in accordance with the~~

~~manufacturer's stated warranty policy but in no case in an amount that is less than the dealer's costs for the parts plus 20%, plus all freight and handling charges applicable to such parts, to reimburse the dealer's reasonable costs of doing business and providing the warranty service on behalf of the supplier. If the warranty work is provided on behalf of the supplier on a product sold by a nonservicing dealer, the compensation for parts used in fulfilling the warranty work must be at an amount that is not less than the supplier's suggested list price or dealer's cost plus a minimum of 30%, whichever is greater, plus freight and handling charges applicable to the parts.~~

~~(c) Indemnity. If a supplier and a dealer enter into a dealer agreement, the supplier shall indemnify and hold harmless the dealer against any judgment for damages arising from breach of warranty or rescission of the sale by the supplier as long as the dealer has no independent liability for misstatement or misrepresentation to the customer regarding the supplier's product or product warranty.~~

SECTION 9.1. UNLAWFUL ACTS BY SUPPLIER.

(A) UNLAWFUL COERCIVE ACTS.--IT SHALL BE A VIOLATION FOR ANY SUPPLIER, OR ANY REPRESENTATIVE, OFFICER OR AGENT WHATSOEVER OF SUCH SUPPLIER TO REQUIRE, ATTEMPT TO REQUIRE, COERCE OR ATTEMPT TO COERCE ANY DEALER IN THIS COMMONWEALTH TO:

(1) ORDER OR ACCEPT DELIVERY OF ANY EQUIPMENT, PART OR ACCESSORY THEREOF, EQUIPMENT OR ANY OTHER COMMODITY NOT REQUIRED BY LAW WHICH SHALL NOT HAVE BEEN VOLUNTARILY ORDERED BY THE DEALER, EXCEPT THAT THIS PARAGRAPH IS NOT INTENDED TO MODIFY OR SUPERSEDE ANY TERMS OR PROVISIONS OF THE DEALER AGREEMENT REQUIRING DEALERS TO MARKET A REPRESENTATIVE LINE



1 OF EQUIPMENT WHICH THE SUPPLIER IS PUBLICLY ADVERTISING.

2 (2) ORDER OR ACCEPT DELIVERY OF ANY EQUIPMENT WITH  
3 SPECIAL FEATURES, ACCESSORIES OR EQUIPMENT NOT INCLUDED IN  
4 THE LIST PRICE OF SUCH EQUIPMENT AS PUBLICLY ADVERTISED BY  
5 THE SUPPLIER.

6 (3) PARTICIPATE MONETARILY IN AN ADVERTISING CAMPAIGN OR  
7 CONTEST OR TO PURCHASE UNNECESSARY OR UNREASONABLE QUANTITIES  
8 OF ANY PROMOTIONAL MATERIALS, TRAINING MATERIALS, SHOWROOM OR  
9 OTHER DISPLAY DECORATIONS OR MATERIALS AT THE EXPENSE OF THE  
10 DEALER.

11 (4) ENTER INTO ANY AGREEMENT WITH THE SUPPLIER OR TO DO  
12 ANY OTHER ACT PREJUDICIAL TO THE DEALER BY THREATENING TO  
13 TERMINATE OR NOT RENEW A DEALER AGREEMENT OR ANY OTHER  
14 CONTRACTUAL AGREEMENT EXISTING BETWEEN THE DEALER AND THE  
15 SUPPLIER, EXCEPT THAT THIS PARAGRAPH IS NOT INTENDED TO  
16 PRECLUDE THE SUPPLIER FROM INSISTING ON COMPLIANCE WITH THE  
17 REASONABLE TERMS OR PROVISIONS OF THE DEALER AGREEMENT OR ANY  
18 OTHER CONTRACTUAL AGREEMENT AND NOTICE IN GOOD FAITH TO ANY  
19 DEALER OF THE DEALER'S VIOLATION OF SUCH TERMS OR PROVISIONS  
20 SHALL NOT CONSTITUTE A VIOLATION OF THIS ACT.

21 (5) CHANGE THE CAPITAL STRUCTURE OF THE DEALER OR THE  
22 MEANS BY OR THROUGH WHICH THE DEALER FINANCES THE OPERATION  
23 OF THE DEALERSHIP, PROVIDED THAT THE DEALER AT ALL TIMES  
24 MEETS ANY REASONABLE CAPITAL STANDARDS DETERMINED BY THE  
25 SUPPLIER IN ACCORDANCE WITH UNIFORMLY APPLIED CRITERIA, AND  
26 ALSO PROVIDED THAT NO CHANGE IN THE CAPITAL STRUCTURE SHALL  
27 CAUSE A CHANGE IN THE PRINCIPAL MANAGEMENT OR HAVE THE EFFECT  
28 OF A SALE OF THE DEALERSHIP WITHOUT THE CONSENT OF THE  
29 SUPPLIER. THE CONSENT SHALL BE GRANTED OR DENIED WITHIN 60  
30 DAYS OF RECEIPT OF A WRITTEN REQUEST FROM THE DEALER.

1           (6) REFRAIN FROM PARTICIPATION IN THE MANAGEMENT OF,  
2 INVESTMENT IN OR THE ACQUISITION OF ANY OTHER LINE-MAKE OF  
3 EQUIPMENT OR RELATED PRODUCTS. THIS PARAGRAPH DOES NOT APPLY  
4 UNLESS THE DEALER MAINTAINS A REASONABLE LINE OF CREDIT FOR  
5 EACH LINE-MAKE OF EQUIPMENT, THE DEALER REMAINS IN COMPLIANCE  
6 WITH THE REASONABLE TERMS OF THE DEALER AGREEMENT AND ANY  
7 REASONABLE FACILITIES REQUIREMENTS OF THE SUPPLIER, AND NO  
8 CHANGE IS MADE IN THE PRINCIPAL MANAGEMENT OF THE DEALER. THE  
9 REASONABLE FACILITIES REQUIREMENTS SHALL NOT INCLUDE ANY  
10 REQUIREMENT THAT A DEALER ESTABLISH OR MAINTAIN EXCLUSIVE  
11 FACILITIES, PERSONNEL OR DISPLAY SPACE WHEN SUCH REQUIREMENTS  
12 OR ANY OF THEM WOULD BE UNREASONABLE IN LIGHT OF ECONOMIC  
13 CONDITIONS AND WOULD NOT OTHERWISE BE JUSTIFIED BY REASONABLE  
14 BUSINESS CONSIDERATIONS. BEFORE THE ADDITION OF A LINE-MAKE  
15 TO THE DEALERSHIP FACILITIES, THE DEALER SHALL FIRST REQUEST  
16 THE CONSENT OF SUPPLIER IF REQUIRED BY THE DEALER AGREEMENT.  
17 ANY DECISION OF THE SUPPLIER WITH REGARD TO DUALING OF TWO OR  
18 MORE LINE-MAKES SHALL BE RENDERED WITHIN 60 DAYS OF RECEIPT  
19 OF A WRITTEN REQUEST FROM THE DEALER. FAILURE ON THE PART OF  
20 THE SUPPLIER TO TIMELY RESPOND TO A DUALING REQUEST SHALL BE  
21 DEEMED AN APPROVAL OF THE DEALER'S REQUEST. NO SUPPLIER SHALL  
22 LIMIT OR RESTRICT THE ADDITION OF A LINE-MAKE TO THE  
23 DEALERSHIP FACILITIES WHERE THE DEALER MAINTAINS A REASONABLE  
24 LINE OF CREDIT FOR THAT SUPPLIER'S LIKE-MAKE OF EQUIPMENT AND  
25 THE DEALER REMAINS IN COMPLIANCE WITH THE REASONABLE TERMS OF  
26 THE DEALER AGREEMENT AND ANY REASONABLE FACILITIES  
27 REQUIREMENTS OF A SUPPLIER.

28           (7) PROSPECTIVELY ASSENT TO A RELEASE, ASSIGNMENT,  
29 NOVATION, WAIVER OR ESTOPPEL WHICH WOULD RELIEVE ANY PERSON  
30 FROM LIABILITY TO BE IMPOSED BY THIS ACT OR TO REQUIRE ANY

1 CONTROVERSY BETWEEN A DEALER AND A SUPPLIER TO BE REFERRED TO  
2 ANY PERSON OTHER THAN THE DULY CONSTITUTED COURTS OF THIS  
3 COMMONWEALTH OR THE UNITED STATES, IF SUCH REFERRAL WOULD BE  
4 BINDING UPON THE DEALER. A DEALER AND THE SUPPLIER, BY  
5 THEMSELVES OR THROUGH THEIR RESPECTIVE COUNSEL, ARE PERMITTED  
6 TO AGREE TO EXECUTE A WRITTEN AGREEMENT OR TO ARBITRATE IN A  
7 BINDING OR NONBINDING MANNER AFTER A CONTROVERSY ARISES.

8 (8) EXPAND, CONSTRUCT OR SIGNIFICANTLY MODIFY FACILITIES  
9 WITHOUT ASSURANCES THAT THE SUPPLIER WILL PROVIDE A  
10 REASONABLE SUPPLY OF EQUIPMENT WITHIN A REASONABLE TIME SO AS  
11 TO JUSTIFY SUCH AN EXPANSION IN LIGHT OF THE MARKET AND  
12 ECONOMIC CONDITIONS OR REQUIRE A SEPARATE FACILITY FOR THE  
13 SALE OR SERVICE OF A LINE-MAKE OF EQUIPMENT IF THE MARKET AND  
14 ECONOMIC CONDITIONS DO NOT CLEARLY JUSTIFY THE SEPARATE  
15 FACILITY.

16 (B) VIOLATIONS.--IT SHALL BE A VIOLATION FOR ANY SUPPLIER,  
17 OR ANY REPRESENTATIVE, OFFICER OR AGENT WHATSOEVER OF SUCH  
18 SUPPLIER UNDER THE ACT TO:

19 (1) DELAY, REFUSE OR FAIL TO DELIVER EQUIPMENT OR PARTS  
20 OR ACCESSORIES IN A REASONABLE TIME AND IN REASONABLE  
21 QUANTITY RELATIVE TO THE DEALER'S FACILITIES AND SALES  
22 POTENTIAL AFTER ACCEPTANCE OF AN ORDER FROM A DEALER HAVING A  
23 DEALER AGREEMENT FOR THE RETAIL SALE OF ANY EQUIPMENT SOLD OR  
24 DISTRIBUTED OF AN ORDER FROM A DEALER HAVING A DEALER  
25 AGREEMENT FOR THE RETAIL SALE OF ANY EQUIPMENT SOLD OR  
26 DISTRIBUTED BY THE SUPPLIER AS ARE COVERED BY SUCH DEALER  
27 AGREEMENT, IF SUCH EQUIPMENT, PARTS OR ACCESSORIES ARE  
28 PUBLICLY ADVERTISED AS BEING AVAILABLE FOR IMMEDIATE  
29 DELIVERY. THERE IS NO VIOLATION IF THE FAILURE IS CAUSED BY  
30 ACTS OR CAUSES BEYOND THE CONTROL OF THE SUPPLIER.



1           (2) UNFAIRLY DISCRIMINATE AMONG ITS DEALERS WITH RESPECT  
2 TO WARRANTY, RECALL, SERVICE CONTRACT OR ANY OTHER SERVICE  
3 REQUIRED BY THE SUPPLIER WITH REGARD TO LABOR OR PARTS  
4 REIMBURSEMENT.

5           (3) UNREASONABLY WITHHOLD CONSENT TO THE SALE, TRANSFER  
6 OR EXCHANGE OF THE DEALERSHIP TO A QUALIFIED BUYER CAPABLE OF  
7 BEING A DEALER IN THIS COMMONWEALTH WHO MEETS THE SUPPLIER'S  
8 REASONABLE REQUIREMENTS FOR APPOINTMENT AS A DEALER.

9           (4) ARBITRARILY AND CAPRICIOUSLY WITHHOLD CONSENT TO THE  
10 RELOCATION OF AN EXISTING DEALERSHIP.

11           (5) FAIL TO RESPOND IN WRITING TO A REQUEST FOR CONSENT  
12 AS SPECIFIED IN PARAGRAPHS (3) AND (4) WITHIN 60 DAYS OF  
13 RECEIPT OF A WRITTEN REQUEST ON THE FORMS, IF ANY, GENERALLY  
14 UTILIZED BY A SUPPLIER FOR SUCH PURPOSES AND CONTAINING THE  
15 INFORMATION REQUIRED. THE FAILURE TO RESPOND SHALL BE DEEMED  
16 TO BE APPROVAL OF THE REQUEST. A SUPPLIER SHALL ACKNOWLEDGE  
17 IN WRITING TO THE APPLICANT THE RECEIPT OF THE FORMS, AND, IF  
18 THE SUPPLIER REQUIRES ADDITIONAL INFORMATION TO COMPLETE ITS  
19 REVIEW, THE SUPPLIER SHALL NOTIFY THE APPLICANT WITHIN 15  
20 DAYS OF THE RECEIPT OF THE FORMS. IF THE SUPPLIER FAILS TO  
21 REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT WITHIN 15  
22 DAYS AFTER RECEIPT OF THE INITIAL FORMS, THE 60-DAY TIME  
23 PERIOD FOR APPROVAL SHALL BE DEEMED TO RUN FROM THE INITIAL  
24 RECEIPT DATE, OTHERWISE, THE 60-DAY TIME PERIOD FOR APPROVAL  
25 SHALL RUN FROM RECEIPT OF THE SUPPLEMENTAL REQUESTED  
26 INFORMATION. IN NO EVENT SHALL THE TOTAL TIME PERIOD FOR  
27 APPROVAL EXCEED 75 DAYS FROM THE DATE OF THE RECEIPT OF THE  
28 INITIAL FORMS.

29           (6) PREVENT OR ATTEMPT TO PREVENT BY CONTRACT OR  
30 OTHERWISE ANY DEALER FROM CHANGING THE EXECUTIVE MANAGEMENT

1 CONTROL OF THE DEALER UNLESS THE SUPPLIER, HAVING THE BURDEN  
2 OF PROOF, CAN SHOW THAT SUCH CHANGE OF EXECUTIVE MANAGEMENT  
3 WILL RESULT IN EXECUTIVE MANAGEMENT OR CONTROL BY A PERSON OR  
4 PERSONS WHO ARE NOT OF GOOD MORAL CHARACTER OR WHO DO NOT  
5 MEET REASONABLE, PREEXISTING, AND, WITH CONSIDERATION GIVEN  
6 TO THE VOLUME OF SALES AND SERVICE OF THE DEALERSHIP,  
7 UNIFORMLY APPLIED MINIMUM BUSINESS EXPERIENCE STANDARDS.  
8 WHERE THE SUPPLIER REJECTS A PROPOSED CHANGE IN EXECUTIVE  
9 MANAGEMENT CONTROL, THE SUPPLIER SHALL GIVE WRITTEN NOTICE OF  
10 ITS REASONS TO THE DEALER WITHIN 60 DAYS OF NOTICE TO THE  
11 SUPPLIER BY THE DEALER OF THE PROPOSED CHANGE, OTHERWISE, THE  
12 CHANGE IN THE EXECUTIVE MANAGEMENT OF THE DEALER SHALL BE  
13 PRESUMPTIVELY DEEMED APPROVED.

14 (7) OFFER IN CONNECTION WITH A SALE OF EQUIPMENT TO THE  
15 FEDERAL GOVERNMENT, THE COMMONWEALTH OR ANY POLITICAL  
16 SUBDIVISION THEREOF ANY DISCOUNTS, REFUNDS OR ANY OTHER TYPE  
17 OF INDUCEMENT TO ANY DEALER WITHOUT MAKING THE SAME OFFER OR  
18 OFFERS AVAILABLE TO ALL OTHER OF ITS DEALERS WITHIN THIS  
19 COMMONWEALTH. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO  
20 PREVENT THE OFFERING OF INCENTIVE PROGRAMS OR OTHER DISCOUNTS  
21 IF THE DISCOUNTS ARE EQUALLY AVAILABLE TO ALL DEALERS IN THIS  
22 COMMONWEALTH ON A PROPORTIONALLY EQUAL BASIS.

23 (8) FAIL TO INDEMNIFY ITS DEALERS, NOTWITHSTANDING THE  
24 TERMS OF ANY DEALER AGREEMENT, AGAINST ANY JUDGMENT FOR  
25 DAMAGES OR SETTLEMENT APPROVED IN WRITING BY THE SUPPLIER,  
26 INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE  
27 ATTORNEY FEES OF THE DEALER, ARISING OUT OF COMPLAINTS,  
28 CLAIMS OR LAWSUITS, INCLUDING, BUT NOT LIMITED TO, STRICT  
29 LIABILITY, NEGLIGENCE, MISREPRESENTATION, EXPRESS OR IMPLIED  
30 WARRANTY OR RESCISSION OF THE SALE AS DEFINED IN 13 PA.C.S. §

1 2608 (RELATING TO REVOCATION OF ACCEPTANCE IN WHOLE OR IN  
2 PART) TO THE EXTENT THAT THE JUDGMENT OR SETTLEMENT RELATES  
3 SOLELY TO THE ALLEGED DEFECTIVE OR NEGLIGENT FUNCTIONS BY THE  
4 SUPPLIER BEYOND THE CONTROL OF THE DEALER.

5 (9) SELL OR EXCHANGE WITH A SECOND OR FINAL STAGE  
6 SUPPLIER, RETAIL CONSUMER OR END USER EXCEPT THROUGH A  
7 LICENSED DEALER. THIS PARAGRAPH SHALL NOT APPLY TO SUPPLIER  
8 SALES OF EQUIPMENT TO THE FEDERAL GOVERNMENT, CHARITABLE  
9 ORGANIZATIONS AND EMPLOYEES OF THE SUPPLIER.

10 (10) MODIFY A DEALER AGREEMENT DURING THE TERM OF THE  
11 DEALER AGREEMENT OR UPON ITS RENEWAL IF THE MODIFICATION  
12 SUBSTANTIALLY AND ADVERSELY AFFECTS THE DEALER'S RIGHTS,  
13 OBLIGATIONS, INVESTMENT OR RETURN ON INVESTMENT WITHOUT  
14 GIVING 60 DAYS' WRITTEN NOTICE OF THE PROPOSED MODIFICATION  
15 TO THE DEALER UNLESS THE MODIFICATION IS REQUIRED BY LAW OR  
16 COURT ORDER. THE SUPPLIER SHALL PROVIDE IN THE WRITTEN NOTICE  
17 THE GOOD CAUSE AND RELEVANT FACTORS OF THE PROPOSED DEALER  
18 AGREEMENT MODIFICATION, INCLUDING, BUT NOT LIMITED TO:

19 (I) THE REASONS FOR THE PROPOSED MODIFICATION.

20 (II) WHETHER THE PROPOSED MODIFICATION IS APPLIED TO  
21 OR AFFECTS ALL DEALERS IN A NONDISCRIMINATORY MANNER.

22 (III) WHETHER THE PROPOSED MODIFICATION WILL HAVE A  
23 SUBSTANTIAL AND ADVERSE EFFECT UPON THE DEALER'S  
24 INVESTMENT OR RETURN ON INVESTMENT.

25 (IV) WHETHER THE PROPOSED MODIFICATION IS IN THE  
26 PUBLIC INTEREST.

27 (V) WHETHER THE PROPOSED MODIFICATION IS NECESSARY  
28 TO THE ORDERLY AND PROFITABLE DISTRIBUTION OF PRODUCTS BY  
29 THE SUPPLIER.

30 (VI) WHETHER THE PROPOSED MODIFICATION IS OFFSET BY

1           OTHER MODIFICATIONS BENEFICIAL TO THE DEALER.

2           (11) FAIL OR REFUSE TO OFFER TO ITS DEALERS ALL NEW  
3 MODEL EQUIPMENT MANUFACTURED FOR THAT LINE-MAKE OR REQUIRE  
4 ANY OF ITS DEALERS TO PAY AN UNREASONABLE FEE, UNREASONABLY  
5 REMODEL OR RENOVATE THE DEALER'S EXISTING FACILITIES,  
6 UNREASONABLY PURCHASE OR CONSTRUCT A NEW FACILITY,  
7 UNREASONABLY PURCHASE PARTS, SUPPLIES, TOOLS, EQUIPMENT,  
8 OPERATIONAL SERVICES, OTHER MERCHANDISE OR UNREASONABLY  
9 PARTICIPATE IN TRAINING PROGRAMS IN ORDER TO RECEIVE ANY  
10 EQUIPMENT, PARTS OR ACCESSORIES. IT SHALL NOT BE A VIOLATION  
11 OF THIS PARAGRAPH IF THE SUPPLIER FAILS TO SUPPLY DEALERS  
12 WITH EQUIPMENT, PARTS OR ACCESSORIES DUE TO CIRCUMSTANCES  
13 BEYOND THE CONTROL OF THE SUPPLIER, INCLUDING, BUT NOT  
14 LIMITED TO, STRIKE OR LABOR DIFFICULTY, SHORTAGE OF  
15 MATERIALS, FREIGHT EMBARGO OR TEMPORARY LACK OF CAPACITY.

16           (12) OPERATE A SYSTEM FOR THE ALLOCATION OF EQUIPMENT  
17 WHICH IS NOT REASONABLE OR FAIR TO A DEALER. UPON THE WRITTEN  
18 REQUEST OF ANY OF ITS DEALERS, A SUPPLIER SHALL DISCLOSE TO  
19 THE DEALER THE METHOD ON WHICH THE EQUIPMENT IS ALLOCATED  
20 AMONG THE DEALERS OF THE SAME LINE-MAKE. THE SUPPLIER HAS THE  
21 BURDEN OF ESTABLISHING THE FAIRNESS OF ITS ALLOCATION.

22           (13) OWN, OPERATE OR CONTROL, EITHER DIRECTLY OR  
23 INDIRECTLY, ANY EQUIPMENT WARRANTY FACILITY. NOTHING IN THIS  
24 SUBSECTION SHALL PROHIBIT ANY SUPPLIER FROM OWNING, OPERATING  
25 OR CONTROLLING ANY WARRANTY FACILITY FOR WARRANTY REPAIRS ON  
26 EQUIPMENT OWNED OR OPERATED BY THE SUPPLIER.

27           (14) COMPEL A DEALER THROUGH A FINANCE SUBSIDIARY OF THE  
28 SUPPLIER TO AGREE TO UNREASONABLE OPERATING REQUIREMENTS OR  
29 TO DIRECTLY OR INDIRECTLY TERMINATE A DEALER THROUGH THE  
30 ACTIONS OF A FINANCE SUBSIDIARY OF THE SUPPLIER. THIS

1 PARAGRAPH SHALL NOT LIMIT THE RIGHT OF A FINANCING ENTITY TO  
2 ENGAGE IN BUSINESS PRACTICES IN ACCORDANCE WITH THE TRADE OF  
3 RETAIL OR WHOLESALE EQUIPMENT FINANCING.

4 (15) USE ANY SUBSIDIARY CORPORATION, AFFILIATED  
5 CORPORATION OR ANY OTHER CONTROLLED CORPORATION, PARTNERSHIP,  
6 ASSOCIATION, ENTITY OR PERSON TO ACCOMPLISH WHAT WOULD  
7 OTHERWISE BE ILLEGAL CONDUCT UNDER THIS ACT ON THE PART OF  
8 THE SUPPLIER.

9 (16) VARY THE PRICE CHARGED TO ANY OF ITS DEALERS, WHICH  
10 HAS THE EFFECT OF CAUSING A DIFFERENCE IN THE PRICE OF ANY  
11 SIMILARLY EQUIPPED EQUIPMENT TO ITS DEALERS OR TO THE  
12 ULTIMATE PURCHASER. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO  
13 PREVENT THE OFFERING OF INCENTIVE PROGRAMS OR OTHER DISCOUNTS  
14 IF THE INCENTIVE OR DISCOUNTS ARE AVAILABLE TO ALL COMPETING  
15 DEALERS OF THE SAME LINE-MAKE IN THIS COMMONWEALTH ON A  
16 PROPORTIONATELY EQUAL BASIS.

17 (17) (I) DIRECTLY OR INDIRECTLY CONDITION ANY OF THE  
18 FOLLOWING ACTIONS ON A DEALER, PROSPECTIVE DEALER OR  
19 OWNER OF AN INTEREST IN A DEALERSHIP OR FACILITY TO ENTER  
20 INTO A SITE-CONTROL AGREEMENT OR EXCLUSIVE USE AGREEMENT:

21 (A) AWARDING OF A DEALERSHIP TO A PROSPECTIVE  
22 DEALER;

23 (B) ADDING OF A LINE-MAKE OR DEALERSHIP TO AN  
24 EXISTING DEALER'S FACILITY;

25 (C) RENEWAL OF AN EXISTING DEALER'S DEALER  
26 AGREEMENT;

27 (D) APPROVING OF THE RELOCATION OF AN EXISTING  
28 DEALER'S FACILITY; OR

29 (E) APPROVING OF THE SALE OR TRANSFER OF A  
30 DEALER'S OWNERSHIP OF A DEALERSHIP OR FACILITY.

1           (II) NOTHING IN THIS PARAGRAPH PROHIBITS A DEALER,  
2           PROSPECTIVE DEALER OR OWNER OF AN INTEREST IN A  
3           DEALERSHIP OR FACILITY FROM VOLUNTARILY ENTERING INTO  
4           SUCH AN AGREEMENT FOR OTHER CONSIDERATION. HOWEVER, A  
5           PROVISION CONTAINED IN AN AGREEMENT WHICH IS NOT  
6           VOLUNTARILY ENTERED INTO BY A DEALER, PROSPECTIVE DEALER  
7           OR OWNER OF AN INTEREST IN A DEALERSHIP OR FACILITY ON OR  
8           AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH THAT IS  
9           INCONSISTENT WITH THE PROVISIONS OF THIS SECTION SHALL BE  
10          A VIOLATION OF THIS ACT.

11 Section 9.3 9.2. Remedies and enforcement. ←

12          The provisions of this act shall be supplemental to any  
13 dealer agreement between the dealer and the supplier which  
14 provides the dealer with greater protection. The dealer may  
15 elect to pursue its contract remedy or the remedy provided by  
16 State law, or both; and an election by the dealer to pursue such  
17 remedies shall not bar its right to exercise any other remedies  
18 that may be granted at law or in equity. If a supplier violates  
19 this act, a dealer may bring an action against the supplier in a  
20 court of competent jurisdiction for damages sustained by the  
21 dealer as a consequence of the supplier's violation, including  
22 consequential damages and incidental damages, court costs,  
23 attorney fees and costs of arbitrators. The dealer also may be  
24 granted injunctive relief against unlawful termination,  
25 cancellation, nonrenewal or substantial change of competitive  
26 circumstances. The remedies set forth in this section shall not  
27 be deemed exclusive and shall be in addition to any other  
28 remedies permitted by law.

29 Section 9.4 9.3. Waiver. ←

30          (a) Waiver of act void.--An attempted waiver of a provision

1 of this act shall be void. Any provision in a dealer agreement  
2 that purports to elect the application of the law of a state  
3 other than Pennsylvania shall be void. Any provision in a dealer  
4 agreement that requires a dealer to pay attorney fees incurred  
5 by a supplier shall be void.

6 (b) Waiver of right to trial by jury.--No supplier may  
7 require a dealer to waive the right to a trial by jury as a  
8 remedy to a supplier and dealer contract or agreement dispute.

9 Section 6. This act shall take effect immediately.