

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 CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MARCH 26, 2012

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 repealing provisions relating to coercion; and providing for
11 unlawful acts by supplier, for remedies and enforcement and ←
12 for waiver.

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

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

18 Section 2. Definitions.

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

22 "Construction equipment manufacturer." A manufacturer of

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

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

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

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

18 ~~(1) Has purchased new equipment from a single~~ THE TERM ←
19 DOES NOT INCLUDE:

20 (1) A PERSON, FIRM OR CORPORATION ENGAGED IN THE
21 BUSINESS OF SELLING GARDEN SUPPLIES, HOUSEHOLD REPAIR OR
22 MAINTENANCE PRODUCTS, INCLUDING CONSUMER EQUIPMENT.

23 (2) A PERSON, FIRM OR CORPORATION THAT COMPLIES WITH ALL
24 OF THE FOLLOWING:

25 (I) HAS PURCHASED NEW EQUIPMENT FROM A SINGLE
26 construction equipment manufacturer, constituting no less
27 than 75% of the person's, firm's or corporation's new
28 equipment, calculated on the basis of net cost.

29 ~~(2) Has an annual average sales volume in excess of~~ ←

30 (II) HAS AN ANNUAL AVERAGE SALES VOLUME IN EXCESS OF ←

1 \$100,000,000 over the seven-calendar-year period
2 immediately preceding the applicable determination date;
3 provided, however, the \$100,000,000 threshold shall be
4 increased each year by an amount equal to the then-
5 current threshold multiplied by the percentage increase
6 in the index from January of the immediately preceding
7 calendar year to January of the current year.

8 ~~(3) Directly employs over 250 persons.~~ ←

9 ~~(4) Has a written agreement with a construction~~

10 (III) DIRECTLY EMPLOYS OVER 250 PERSONS. ←

11 (IV) HAS A WRITTEN AGREEMENT WITH A CONSTRUCTION

12 equipment manufacturer that requires the construction

13 equipment manufacturer to compensate the person, firm or

14 corporation for warranty labor costs either as:

15 ~~(i) a discount in the pricing of the equipment to~~ ←

16 (A) A DISCOUNT IN THE PRICING OF THE EQUIPMENT ←

17 TO the person, firm or corporation; or

18 ~~(ii) a lump sum payment to the person, firm or~~ ←

19 (B) A LUMP SUM PAYMENT TO THE PERSON, FIRM OR ←

20 corporation that is made within 90 days of the sale

21 of the construction equipment manufacturer's new

22 equipment.

23 "Dealer agreement." An oral or written contract, franchise
24 agreement or security agreement between a dealer and supplier
25 whereby the dealer agrees to acquire from the supplier and to
26 maintain an inventory of equipment, repair parts or specialized
27 repair tools.

28 "Dual" or "dualing." A dealership having two or more line ←

29 makes of equipment ANY OF THE FOLLOWING located in the same ←

30 dealership facilities: ←

1 (1) TWO OR MORE LINE-MAKES OF EQUIPMENT.

2 (2) REPAIR PARTS.

3 (3) WARRANTY OR REPAIR SERVICES.

4 "Equipment." Machines, implements of husbandry, golf, turf
5 and grounds maintenance machines, outdoor power equipment,
6 utility vehicles and machine attachments, accessories,
7 completing packages and bundles designed for or adapted and used
8 for agriculture, horticulture, floriculture, construction,
9 livestock raising, silviculture, landscaping and grounds
10 maintenance, even though incidentally operated or used upon the
11 highways, including, but not limited to, tractors, farm
12 implements, loaders, backhoes, lawn mowers, rototillers, etc.,
13 and any business signs purchased by requirement of the supplier
14 which are less than five years old. The term shall not include[:

15 (1) equipment manufactured solely for the purpose of
16 industrial construction; or

17 (2)] all-terrain vehicles as defined in 75 Pa.C.S. §
18 7702 (relating to definitions).

19 "Farming equipment." Machinery designed and used for
20 agricultural operations, including farm tractors, choppers,
21 balers, reapers, mowers, pickers, threshers, combines, plows,
22 harrows, planters and any other vehicles or machines primarily
23 designed for use as implements of husbandry or multipurpose
24 agricultural vehicles.

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

28 "Line-make." Groups of equipment that are offered for sale,
29 lease or distribution under a common name, trademark, service
30 mark or brand name of the supplier of the same equipment.

1 "Mining equipment." Machinery designed and used in the
2 production process at a mine site, including off-highway mining
3 trucks, large-wheel loaders, large track-type tractors, large-
4 wheel dozers, mining motor graders, open bowl scrapers and
5 underground mining trucks.

6 "Net cost." The amount paid by the dealer to the supplier,
7 plus the cost of freight, if any, incurred by the dealer[.], as
8 long as the manufacturer initiates the termination or
9 nonrenewal. The term does not include the cost of freight if the
10 dealer initiates the termination or nonrenewal.

11 "Nonservicing dealer." A dealer that sells equipment but
12 does not provide parts and service.

13 "Paving equipment." Machinery designed and used for asphalt
14 paving, including asphalt pavers, cold planers, asphalt
15 compactors, pneumatic compactors and rotary mixers.

16 "Repair parts." All parts, component parts and superseded
17 parts related to a sale and related to repair of equipment. The
18 term includes bundled parts, which means several related parts,
19 components or accessories, bound together as one inclusive item
20 or priced as an inclusive item.

21 "Site-control agreement" or "exclusive use agreement." An
22 agreement that, regardless of its name, title, form or the
23 parties entering into it, has the effect of:

24 (1) controlling the use and development of the premises
25 of a dealer's facility;

26 (2) requiring a dealer to establish or maintain an
27 exclusive dealership facility on the premises of a dealer's
28 facility;

29 (3) restricting the power or authority of the dealer or
30 the lessor if the dealer leases the dealership premises to

1 transfer, sell, lease, develop, redevelop or change the use
2 of the dealership premises, whether by sublease, lease,
3 collateral pledge of lease, right of first refusal to
4 purchase or lease, option to purchase or lease or any similar
5 arrangement; or

6 (4) preventing the dealer from dualing a competitive
7 line-make of equipment at the same facility.

8 "Specialized repair tools." Tools and equipment, including
9 diagnostic equipment, designed to be used or useful only in the
10 maintenance and repair of equipment.

11 "Supplier." [A manufacturer of equipment or repair parts or
12 a wholesaler or distributor of equipment or repair parts who has
13 a valid existing contract with a manufacturer of equipment or
14 repair parts, including the successors or assigns of such
15 manufacturer, wholesaler or distributor.] A distributor,
16 manufacturer or wholesaler of equipment, repair parts or
17 specialized repair tools who enters into a dealer agreement with
18 a dealer.

19 ~~Section 2. Section 3(a), (c) and (f) of the act are amended~~ ←
20 ~~and the section is amended by adding a subsection to read:~~

21 SECTION 2. SECTIONS 3(C) INTRODUCTORY PARAGRAPH AND (F) AND ←
22 5 OF THE ACT ARE AMENDED TO READ:

23 Section 3. Termination of dealer agreement.

24 ~~(a) General provisions.~~ ←

25 ~~(1) A dealer may terminate a dealer agreement with good~~
26 ~~cause. A dealer shall give the supplier at least 30 days'~~
27 ~~prior notice via registered letter mailed to the last known~~
28 ~~address of the supplier.~~

29 ~~(2) It shall be unlawful for a supplier to terminate,~~
30 ~~cancel or fail to renew a dealer agreement or substantially~~

~~change the competitive circumstances of a dealer agreement without good cause except as provided in subsection (b) or (c).~~

* * *

(c) Other exceptions.--~~Subject to the provisions of this subsection, a supplier may terminate, cancel or fail to renew a dealer agreement under such conditions as may be provided for in~~ **←**
~~[the] A dealer agreement THAT COMPLIES WITH THIS ACT. When a~~ **←**
~~dealer agreement is terminated or canceled or has failed to be renewed by the supplier under a condition provided for in the dealer agreement, other than a condition set forth in subsection (b), the~~ **←**
~~The supplier, upon written request of the dealer,~~ **←**
~~shall pay to the dealer, or credit to the dealer's account if the dealer has outstanding any sums owing the supplier:~~

~~(1) A sum equal to 100% of the net cost of all equipment that the dealer purchased from the supplier and not previously sold and put into regular use or service preceding notification by either party of intent to cancel, terminate or fail to renew the dealer agreement.~~ **←**

~~(2) A sum equal to 100% of the current net price of repair parts, including superseded repair parts, previously purchased from the supplier and 75% of the current net price of specialized repair tools previously purchased pursuant to the requirements of the supplier and held by the dealer on the date of termination, cancellation or failure to renew the dealer agreement. In addition, the supplier shall pay the dealer, or credit to the dealer's account if the dealer has outstanding any sums owing the supplier, a sum equal to 5% of the current net price of all repair parts, excluding incoming freight cost, and specialized repair tools returned to the~~

1 ~~supplier to compensate the dealer for the inventory, packing~~
2 ~~and loading of the same to the supplier, provided that the~~
3 ~~supplier may perform such inventory, packing and loading in~~
4 ~~lieu of paying 5% to the dealer. Upon the payment or~~
5 ~~allowance of credit to the dealer's account, as applicable,~~
6 ~~in the sum required by this section, all of the dealer's~~
7 ~~title and interest in and to the equipment, repair parts and~~
8 ~~specialized repair tools shall pass to the supplier, and the~~
9 ~~supplier shall be entitled to the possession of the same.~~
10 ~~Payments or allowance of credit to the dealer, as applicable,~~
11 ~~required by this section shall be made no later than 90 days~~
12 ~~after such termination, cancellation or discontinuance or 60~~
13 ~~days after the supplier's receipt of the equipment, repair~~
14 ~~parts or specialized repair tools.~~

15 ~~(3) In the event a dealer terminates a dealer agreement,~~
16 ~~the obligation of the supplier to repurchase equipment,~~
17 ~~repair parts and specialized repair tools shall be governed~~
18 ~~by the terms and conditions then in effect in the dealer~~
19 ~~agreement between the supplier and the dealer and not by the~~
20 ~~provisions of this act.~~

21 * * *

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

29 ~~(g) Definition. As used in this section, the term "good~~
30 ~~cause" means the failure by a dealer to substantially comply~~



1 ~~with the requirements imposed upon the dealer by the dealer~~
2 ~~agreement, as long as the requirements are not different from~~
3 ~~requirements imposed on other dealers of the same size,~~
4 ~~geographic region and market demographics, either by their terms~~
5 ~~or in the manner of their enforcement.~~

6 Section 3. ~~Section 5 of the act is amended to read:~~

7 Section 5. Death or incapacitation of dealer.

8 In the event of the death or incapacity of a dealer, the
9 supplier shall repurchase, at the option of the heir or
10 authorized representative of such person or stockholder, the
11 equipment, repair parts and specialized repair tools of the
12 dealer as if the supplier had terminated, canceled or failed to
13 renew the contract. The heir or authorized representative shall
14 have [120 days] one year from the date of the death of such
15 dealer or from the date such dealer is determined to be
16 incapacitated or becomes totally disabled, as applicable, to
17 exercise the option under this section. Nothing in this act
18 requires the repurchase of any equipment, repair parts and
19 specialized repair tools if the heir and supplier enter into a
20 new contract to operate the retail dealership.

21 Section ~~4~~ 3. Section 9 of the act is repealed: ←

22 [Section 9. No coercion.

23 It shall be a violation for any supplier to require, attempt
24 to require, coerce or attempt to coerce any dealer in this
25 Commonwealth to order or accept delivery of any equipment or
26 repair parts not required by law which shall not have been
27 voluntarily ordered by the dealer.]

28 Section ~~5~~ 4. The act is amended by adding sections to read: ←

29 Section 9.1. Unlawful acts by supplier.

30 ~~(a) Unlawful coercive acts. It shall be a violation for any~~ ←

1 ~~supplier, or any representative, officer or agent whatsoever of~~
2 ~~such supplier to require, attempt to require, coerce or attempt~~
3 ~~to coerce any dealer in this Commonwealth to:~~

4 (A) UNLAWFUL ACTS.--IT SHALL BE A VIOLATION FOR ANY SUPPLIER ←
5 OR ANY REPRESENTATIVE, OFFICER OR AGENT OF THE SUPPLIER TO CAUSE
6 OR REQUIRE ANY DEALER, PROSPECTIVE DEALER OR OWNER OF AN
7 INTEREST IN A DEALERSHIP OR FACILITY IN THIS COMMONWEALTH TO:

8 (1) ENTER INTO A SITE-CONTROL AGREEMENT OR EXCLUSIVE USE
9 AGREEMENT.

10 (2) PROVIDE FOR EQUIPMENT REPAIR PARTS OR WARRANTY OR
11 REPAIR SERVICES TO BE SOLD OR PROVIDED IN SEPARATE OR
12 EXCLUSIVE FACILITIES.

13 ~~(1)~~ (3) Order or accept delivery of any equipment, part ←
14 or accessory thereof, equipment or any other commodity not
15 required by law which shall not have been voluntarily ordered
16 by the dealer, except that this paragraph is not intended to
17 modify or supersede any terms or provisions of the dealer
18 agreement requiring dealers to market a representative line
19 of equipment which the supplier is publicly advertising.

20 ~~(2)~~ (4) Order or accept delivery of any equipment with ←
21 special features, accessories or equipment not included in
22 the list price of such equipment as publicly advertised by
23 the supplier.

24 ~~(3)~~ Participate monetarily in an advertising campaign or ←
25 contest or to purchase unnecessary or unreasonable quantities
26 of any promotional materials, training materials, showroom or
27 other display decorations or materials at the expense of the
28 dealer.

29 ~~(4)~~ Enter into any agreement with the supplier or to do
30 any other act prejudicial to the dealer by threatening to

1 ~~terminate or not renew a dealer agreement or any other~~
2 ~~contractual agreement existing between the dealer and the~~
3 ~~supplier, except that this paragraph is not intended to~~
4 ~~preclude the supplier from insisting on compliance with the~~
5 ~~reasonable terms or provisions of the dealer agreement or any~~
6 ~~other contractual agreement and notice in good faith to any~~
7 ~~dealer of the dealer's violation of such terms or provisions~~
8 ~~shall not constitute a violation of this act.~~

9 ~~(5) Change the capital structure of the dealer or the~~
10 ~~means by or through which the dealer finances the operation~~
11 ~~of the dealership, provided that the dealer at all times~~
12 ~~meets any reasonable capital standards determined by the~~
13 ~~supplier in accordance with uniformly applied criteria, and~~
14 ~~also provided that no change in the capital structure shall~~
15 ~~cause a change in the principal management or have the effect~~
16 ~~of a sale of the dealership without the consent of the~~
17 ~~supplier. The consent shall be granted or denied within 60~~
18 ~~days of receipt of a written request from the dealer.~~

19 ~~(6) Refrain from participation in the management of,~~
20 ~~investment in or the acquisition of any other line make of~~
21 ~~equipment or related products. This paragraph does not apply~~
22 ~~unless the dealer maintains a reasonable line of credit for~~
23 ~~each line make of equipment, the dealer remains in compliance~~
24 ~~with the reasonable terms of the dealer agreement and any~~
25 ~~reasonable facilities requirements of the supplier, and no~~
26 ~~change is made in the principal management of the dealer. The~~
27 ~~reasonable facilities requirements shall not include any~~
28 ~~requirement that a dealer establish or maintain exclusive~~
29 ~~facilities, personnel or display space when such requirements~~
30 ~~or any of them would be unreasonable in light of economic~~

~~conditions and would not otherwise be justified by reasonable
business considerations. Before the addition of a line make
to the dealership facilities, the dealer shall first request
the consent of supplier if required by the dealer agreement.
Any decision of the supplier with regard to dualing of two or
more line makes shall be rendered within 60 days of receipt
of a written request from the dealer. Failure on the part of
the supplier to timely respond to a dualing request shall be
deemed an approval of the dealer's request. No supplier shall
limit or restrict the addition of a line make to the
dealership facilities where the dealer maintains a reasonable
line of credit for that supplier's like make of equipment and
the dealer remains in compliance with the reasonable terms of
the dealer agreement and any reasonable facilities
requirements of a supplier.~~

~~(7) Prospectively assent to a release, assignment,
novation, waiver or estoppel which would relieve any person
from liability to be imposed by this act or to require any
controversy between a dealer and a supplier to be referred to
any person other than the duly constituted courts of this
Commonwealth or the United States, if such referral would be
binding upon the dealer. A dealer and the supplier, by
themselves or through their respective counsel, are permitted
to agree to execute a written agreement or to arbitrate in a
binding or nonbinding manner after a controversy arises.~~

~~(5) EXCEPT AS PROVIDED UNDER SECTION 3(B), TO ENTER INTO
ANY AGREEMENT BY REQUIRING THE WAIVER OF ANY PROVISION OF
THIS ACT OR TO DO ANY OTHER ACT PREJUDICIAL TO THE DEALER BY
THREATENING TO TERMINATE OR NOT RENEW A DEALER AGREEMENT OR
ANY OTHER CONTRACTUAL AGREEMENT EXISTING BETWEEN THE DEALER~~



1 AND THE SUPPLIER.

2 ~~(8)~~ (6) Expand, construct or significantly modify ←
3 facilities without assurances that the supplier will provide
4 a reasonable supply of equipment within a reasonable time so
5 as to justify such an expansion in light of the market and
6 economic conditions or require a separate facility for the
7 sale or service of a line-make of equipment if the market and
8 economic conditions do not clearly justify the separate
9 facility.

10 (b) Violations.--It shall be a violation for any supplier,
11 or any representative, officer or agent whatsoever of such
12 supplier under the act to:

13 (1) Delay, refuse or fail to deliver equipment or parts
14 or accessories in a reasonable time and in reasonable
15 quantity relative to the dealer's facilities and sales
16 potential after acceptance of an order from a dealer having a
17 dealer agreement for the retail sale of any equipment sold or
18 distributed of an order from a dealer having a dealer ←
19 agreement for the retail sale of any equipment sold or
20 distributed by the supplier as are covered by such dealer
21 agreement, if such equipment, parts or accessories are
22 publicly advertised as being available for immediate
23 delivery. There is no violation if the failure is caused by
24 acts or causes beyond the control of the supplier.

25 (2) Unfairly discriminate among its dealers with respect
26 to warranty, recall, service contract or any other service
27 required by the supplier with regard to labor or parts
28 reimbursement.

29 (3) Unreasonably withhold consent to the sale, transfer
30 or exchange of the dealership to a qualified buyer capable of

1 being a dealer in this Commonwealth who meets the supplier's
2 reasonable requirements for appointment as a dealer.

3 (4) Arbitrarily and capriciously UNREASONABLY withhold ←
4 consent to the relocation of an existing dealership.

5 (5) Fail to respond APPROVE OR DENY in writing to a ←
6 request for consent as specified in paragraphs (3) and (4)
7 within 60 days of receipt of a written request on the forms, ←
8 if any, generally utilized by a supplier for such purposes
9 and containing the information required. The failure to
10 respond shall be deemed to be approval of the request. A
11 supplier shall acknowledge in writing to the applicant the
12 receipt of the forms, and, if the supplier requires
13 additional information to complete its review, the supplier
14 shall notify the applicant within 15 days of the receipt of
15 the forms. If the supplier fails to request additional
16 information from the applicant within 15 days after receipt
17 of the initial forms, the 60 day time period for approval
18 shall be deemed to run from the initial receipt date,
19 otherwise, the 60 day time period for approval shall run from
20 receipt of the supplemental requested information. In no
21 event shall the total time period for approval exceed 75 days
22 from the date of the receipt of the initial forms.

23 (6) Prevent or attempt to prevent by contract or
24 otherwise any dealer from changing the executive management
25 control of the dealer unless the supplier, having the burden
26 of proof, can show that such change of executive management
27 will result in executive management or control by a person or
28 persons who are not of good moral character or who do not
29 meet reasonable, preexisting, and, with consideration given
30 to the volume of sales and service of the dealership,

1 ~~uniformly applied minimum business experience standards.~~
2 ~~Where the supplier rejects a proposed change in executive~~
3 ~~management control, the supplier shall give written notice of~~
4 ~~its reasons to the dealer within 60 days of notice to the~~
5 ~~supplier by the dealer of the proposed change, otherwise, the~~
6 ~~change in the executive management of the dealer shall be~~
7 ~~presumptively deemed approved.~~

8 ~~(7) Offer in connection with a sale of equipment to the~~
9 ~~Federal Government, the Commonwealth or any political~~
10 ~~subdivision thereof any discounts, refunds or any other type~~
11 ~~of inducement to any dealer without making the same offer or~~
12 ~~offers available to all other of its dealers within this~~
13 ~~Commonwealth. This paragraph shall not be construed to~~
14 ~~prevent the offering of incentive programs or other discounts~~
15 ~~if the discounts are equally available to all dealers in this~~
16 ~~Commonwealth on a proportionally equal basis.~~

17 ~~(8) Fail to indemnify its dealers, notwithstanding the~~
18 ~~terms of any dealer agreement, against any judgment for~~
19 ~~damages or settlement approved in writing by the supplier,~~
20 ~~including, but not limited to, court costs and reasonable~~
21 ~~attorney fees of the dealer, arising out of complaints,~~
22 ~~claims or lawsuits, including, but not limited to, strict~~
23 ~~liability, negligence, misrepresentation, express or implied~~
24 ~~warranty or rescission of the sale as defined in 13 Pa.C.S. §~~
25 ~~2608 (relating to revocation of acceptance in whole or in~~
26 ~~part) to the extent that the judgment or settlement relates~~
27 ~~solely to the alleged defective or negligent functions by the~~
28 ~~supplier beyond the control of the dealer.~~

29 ~~(9) (6) Sell or exchange with a second or final stage~~ ←
30 ~~supplier, retail consumer or end user except through a~~

1 licensed dealer. This paragraph shall not apply to supplier
2 sales of equipment to the Federal Government, charitable
3 organizations and employees of the supplier.

4 ~~(10)~~ (7) Modify a dealer agreement during the term of ←
5 the dealer agreement or upon its renewal if the modification
6 substantially and adversely affects the dealer's rights,
7 obligations, investment or return on investment without
8 giving 60 days' written notice of the proposed modification
9 to the dealer unless the modification is required by law or
10 court order. The supplier shall provide in the written notice
11 the good cause and relevant factors of the proposed dealer
12 agreement modification, including, but not limited to: ←

13 ~~(i)~~ The reasons for the proposed modification.

14 ~~(ii)~~ Whether the proposed modification is applied to
15 or affects all dealers in a nondiscriminatory manner.

16 ~~(iii)~~ Whether the proposed modification will have a
17 substantial and adverse effect upon the dealer's
18 investment or return on investment.

19 ~~(iv)~~ Whether the proposed modification is in the
20 public interest.

21 ~~(v)~~ Whether the proposed modification is necessary
22 to the orderly and profitable distribution of products by
23 the supplier.

24 ~~(vi)~~ Whether the proposed modification is offset by
25 other modifications beneficial to the dealer.

26 ~~(11)~~ Fail or refuse to offer to its dealers all new
27 model equipment manufactured for that line make or require
28 any of its dealers to pay an unreasonable fee, unreasonably
29 remodel or renovate the dealer's existing facilities,
30 unreasonably purchase or construct a new facility,

~~unreasonably purchase parts, supplies, tools, equipment,
operational services, other merchandise or unreasonably
participate in training programs in order to receive any
equipment, parts or accessories. It shall not be a violation
of this paragraph if the supplier fails to supply dealers
with equipment, parts or accessories due to circumstances
beyond the control of the supplier, including, but not
limited to, strike or labor difficulty, shortage of
materials, freight embargo or temporary lack of capacity.~~

~~(12) (8) Operate a system for the allocation of
equipment which is not reasonable or fair to a dealer. Upon
the written request of any of its dealers, a supplier shall
disclose to the dealer the method on which the equipment is
allocated among the dealers of the same line-make. The
supplier has the burden of establishing the fairness of its
allocation.~~ ←

~~(13) (9) Own, operate or control, either directly or
indirectly, any equipment warranty facility. Nothing in this
subsection shall prohibit any supplier from owning, operating
or controlling any warranty facility for warranty repairs on
equipment owned or operated by the supplier.~~ ←

~~(14) Compel a dealer through a finance subsidiary of the
supplier to agree to unreasonable operating requirements or
to directly or indirectly terminate a dealer through the
actions of a finance subsidiary of the supplier. This
paragraph shall not limit the right of a financing entity to
engage in business practices in accordance with the trade of
retail or wholesale equipment financing.~~ ←

~~(15) Use any subsidiary corporation, affiliated
corporation or any other controlled corporation, partnership,~~

1 ~~association, entity or person to accomplish what would~~
2 ~~otherwise be illegal conduct under this act on the part of~~
3 ~~the supplier.~~

4 ~~(16) (10) Vary the price charged to any of its dealers,~~ ←
5 ~~which has the effect of causing a difference in the price of~~
6 ~~any similarly equipped equipment to its dealers or to the~~
7 ~~ultimate purchaser. This paragraph shall not be construed to~~
8 ~~prevent the offering of incentive programs or other discounts~~
9 ~~if the incentive or discounts are available to all competing~~
10 ~~dealers of the same line-make in this Commonwealth on a~~
11 ~~proportionately equal basis.~~

12 ~~(17) (i) Directly or indirectly condition any of the~~ ←
13 ~~following actions on a dealer, prospective dealer or~~
14 ~~owner of an interest in a dealership or facility to enter~~
15 ~~into a site control agreement or exclusive use agreement:~~

16 ~~(A) awarding of a dealership to a prospective~~
17 ~~dealer;~~

18 ~~(B) adding of a line make or dealership to an~~
19 ~~existing dealer's facility;~~

20 ~~(C) renewal of an existing dealer's dealer~~
21 ~~agreement;~~

22 ~~(D) approving of the relocation of an existing~~
23 ~~dealer's facility; or~~

24 ~~(E) approving of the sale or transfer of a~~
25 ~~dealer's ownership of a dealership or facility.~~

26 ~~(ii) Nothing in this paragraph prohibits a dealer,~~
27 ~~prospective dealer or owner of an interest in a~~
28 ~~dealership or facility from voluntarily entering into~~
29 ~~such an agreement for other consideration. However, a~~
30 ~~provision contained in an agreement which is not~~

1 ~~voluntarily entered into by a dealer, prospective dealer~~
2 ~~or owner of an interest in a dealership or facility on or~~
3 ~~after the effective date of this paragraph that is~~
4 ~~inconsistent with the provisions of this section shall be~~
5 ~~a violation of this act.~~

6 ~~Section 9.2. Remedies and enforcement.~~

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

24 ~~Section 9.3. Waiver.~~

25 ~~(a) Waiver of act void. An attempted waiver of a provision~~
26 ~~of this act shall be void. Any provision in a dealer agreement~~
27 ~~that purports to elect the application of the law of a state~~
28 ~~other than Pennsylvania shall be void. Any provision in a dealer~~
29 ~~agreement that requires a dealer to pay attorney fees incurred~~
30 ~~by a supplier shall be void.~~

1 ~~(b) Waiver of right to trial by jury. No supplier may~~

2 SECTION 9.2. WAIVER. ←

3 NO SUPPLIER MAY require a dealer to waive the right to a
4 trial by jury as a remedy to a supplier and dealer contract or
5 agreement dispute.

6 Section ~~6~~ 5. This act shall take effect immediately. ←