

BILL ANALYSIS

Senate Research Center

H.B. 3079
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas laws governing the relationship between a dealer of certain equipment used for agricultural, construction, utility, industrial, mining, outdoor power, forestry, and landscaping purposes and the suppliers of such equipment need to be updated to reflect recent developments in those relationships and to conform Texas laws with those of other states. H.B. 3079 seeks to make those revisions.

H.B. 3079 amends current law relating to dealer agreements regarding the purchase and sale of certain equipment or machinery used for agricultural, construction, industrial, mining, outdoor power, forestry, and landscaping purposes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the legislature finds that the retail distribution, sales, and rental of agricultural, construction, industrial, mining, outdoor power, forestry, and lawn and garden equipment through the use of independent dealers operating under contract with the equipment suppliers vitally affect the general economy of this state, the public interest, and the public welfare. Provides, therefore, that the legislature determines that state regulation of the business relationship between the independent dealers and equipment suppliers as contemplated in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act is necessary and that any action taken in violation of this Act would violate the public policy of this state.

SECTION 2. Amends Title 4, Business & Commerce Code, by adding Chapter 57, as follows:

CHAPTER 57. AGRICULTURAL, CONSTRUCTION, INDUSTRIAL, MINING, FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. SHORT TITLE. Provides that this chapter may be cited as the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

Sec. 57.002. DEFINITIONS. Defines, in this chapter, "current net parts cost," "current net parts price," "dealer," "dealer agreement," "dealership," "demonstrator," "equipment," "family member," "index," "inventory," "net equipment cost," "new equipment," "person," "repair parts," "single-line dealer," "single-line dealer agreement," "single-line supplier," "specialty agricultural equipment," "specialty agricultural equipment supplier," "supplier," "terminate" or "termination," and "threshold amount."

Sec. 57.003. WAIVER OF CHAPTER VOID. Provides that an attempted waiver of a provision of this chapter or of the application of this chapter is void.

[Reserves Sections 57.004-57.050 for expansion.]

SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

Sec. 57.051. CERTAIN PROVISIONS VOID. Provides that the following provisions contained in a dealer agreement are void:

- (1) any provision that purports to elect the application of a law of another state instead of the law of this state; and
- (2) any provision that requires a dealer to pay attorney's fees incurred by the supplier.

Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. Prohibits a supplier from preventing, by contract or otherwise, a dealer from changing its capital structure or the means by or through which the dealer finances its operations, if:

- (1) the dealer gives prior notice of the change to the supplier; and
- (2) the dealer at all times meets any reasonable capital standards required by the supplier pursuant to a right granted in the dealer agreement and imposed on similarly situated dealers.

Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. Prohibits a supplier from requiring a dealer to assent to a release, assignment, novation, waiver, or estoppel that would release any person from liability imposed by this chapter.

[Reserves Sections 57.054-57.100 for expansion.]

SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) Provides that this section applies only to single-line dealer agreements.

(b) Provides that if a dealer dies, a supplier has 90 days in which to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. Requires the supplier, if the supplier determines that the requesting family member is not acceptable, to provide the family member with a written notice of its determination with the stated reasons for nonacceptance. Provides that this section does not entitle an heir, personal representative, or family member of the dealer to operate a dealership without the specific written consent of the supplier.

(c) Requires an agreement previously executed by a supplier and a dealer before the dealer's death concerning succession rights, if that agreement is still in effect, to be observed even if it designates someone other than the surviving spouse or an heir of the decedent as the successor, notwithstanding Subsection (b).

Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT DEALER'S REQUEST. (a) Provides that this section applies only to a dealer agreement that is not a single-line dealer agreement.

(b) Authorizes a dealer, if a supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, to request that the supplier approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business to a proposed buyer or transferee. Requires that

the dealer's request be in writing and include character references and reasonable financial, personal background, and work history information with respect to the proposed buyer or transferee.

(c) Requires the supplier, not later than the 60th day after receipt of a request under Subsection (b), to either approve the sale or transfer or send a written response to the dealer stating the supplier's denial of the request and the specific reasons for the denial. Provides that the request is considered approved if the supplier does not approve or deny the request by the deadline.

(d) Authorizes a supplier to deny a request made under this section only if the proposed buyer or transferee fails to meet the reasonable requirements consistently imposed by the supplier for purposes of determining whether to approve a new dealer or a request for approval of a sale or transfer of a dealer's business or equity ownership in the dealer's business.

Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT REQUEST OF PERSONAL REPRESENTATIVE. (a) Provides that this section applies only to a dealer agreement that is not a single-line dealer agreement.

(b) Requires the personal representative of the dealer's estate, or any other person with authority to transfer the dealer's assets, if a dealer dies and the supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, to submit to the supplier a written request for approval of the sale or transfer of the business or ownership interest not later than the 180th day after the date of the dealer's death.

(c) Requires the supplier, if a timely request for approval of a sale or transfer is made as provided by Subsection (b), to approve or deny the request in accordance with the procedures prescribed by Sections 57.102(c) and (d) for a supplier's approval or denial of a request for a sale or transfer made under Section 57.102.

(d) Provides that notwithstanding any other provision of this chapter to the contrary, any attempt by the supplier to terminate the dealer agreement as a result of the death of a dealer will be delayed until there has been compliance with the terms of this section or the 180-day period has expired, as applicable.

[Reserves Sections 57.104-57.150 for expansion.]

SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE DEALER AGREEMENTS

Sec. 57.151. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a dealer agreement that is not a single-line dealer agreement.

Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. Requires a dealer to give the supplier at least 30 days' prior written notice of termination.

Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. Prohibits a supplier from terminating a dealer agreement without good cause.

Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Provides that, except as specifically provided otherwise by this chapter, good cause for termination of a dealer agreement exists for purposes of this subchapter if:

(1) the dealer fails to substantially comply with essential and reasonable requirements imposed on the dealer under the terms of the dealer agreement, provided that such requirements are not different from

requirements imposed on other similarly situated dealers either by their terms or by the manner in which they are enforced;

(2) the dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;

(3) the dealer has filed a voluntary petition in bankruptcy or an involuntary petition in bankruptcy has been filed against the dealer and has not been discharged earlier than the 31st day after the date the petition was filed;

(4) there has been a sale or other closeout of a substantial part of the dealer's assets related to the business;

(5) there has been commencement of an action or proceeding for the dissolution or liquidation of the dealership;

(6) there has been a change in dealer or dealership locations without the prior written approval of the supplier;

(7) the dealer has defaulted under the terms of any chattel mortgage or other security agreement between the dealer and the supplier;

(8) there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier, except as provided by Subsection (b);

(9) the dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the dealer's business;

(10) the dealer has been convicted of or pleaded nolo contendere to a felony affecting the relationship between the dealer and supplier;

(11) the dealer has engaged in conduct that is injurious or otherwise detrimental to:

(A) the dealer's customers;

(B) the public welfare; or

(C) the representation or reputation of the supplier's product; or

(12) the dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has provided the dealer with reasonable standards and performance objectives based on the supplier's experience in other comparable market areas.

(b) Provides that good cause is not considered to exist for purposes of Subsection (a)(8) if:

(1) a person revokes any guarantee of the dealer's obligations to the supplier in connection with or following the transfer of the person's entire ownership interest in the dealership; and

(2) the supplier does not require the person to execute a new guarantee of the dealer's present or future obligations to the supplier in connection with the transfer of the person's ownership interest in the dealership.

Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Requires a supplier to provide a dealer written notice of termination of a dealer

agreement at least 180 days before the effective date of termination, except as otherwise provided by this section. Requires that the notice state all reasons constituting good cause for the termination and that the dealer has 60 days in which to cure any claimed deficiency. Provides that if the deficiency is cured within 60 days, the notice will be void.

(b) Prohibits a supplier, other than a specialty agricultural equipment supplier, from terminating a dealer agreement for the reason stated in Section 57.154(a)(12) unless the supplier gives the dealer notice of the action at least two years before the effective date of the termination. Provides that if the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice will be void and the dealer agreement will continue in effect.

(c) Provides that the notice and right to cure provisions in this section do not apply if the reason for termination is for any reason stated in Sections 57.154(a)(1)-(11).

[Reserves Sections 57.156-57.200 for expansion.]

SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

Sec. 57.201. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a single-line dealer agreement.

Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. Provides that no supplier may terminate a dealer agreement without good cause.

Sec. 57.203. GOOD CAUSE DETERMINATION. (a) Defines, for purposes of this subchapter, "good cause."

(b) Provides that, in addition to the good cause reason for termination stated in Subsection (a), good cause for termination of a dealer agreement exists when:

(1) there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business;

(2) there has been commencement of a dissolution or liquidation of the dealer;

(3) the dealer has changed its principal place of business or has added additional locations without the supplier's prior approval, which shall not be unreasonably withheld;

(4) the dealer has substantially defaulted under a chattel mortgage or other security agreement between the dealer and the supplier or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the dealer to the supplier;

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

(6) the dealer has been convicted of or pleaded guilty to a felony affecting the relationship between the dealer and supplier; or

(7) the dealer transfers an interest in the dealership or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership, provided, however, good

cause does not exist if the supplier consents to an action described by this subdivision.

Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Requires a supplier, except as provided by Subsection (b) and Section 57.205, to provide a dealer with at least 90 days' written notice of termination. Requires that the notice state all reasons constituting good cause for the termination and state that the dealer has 60 days in which to cure any claimed deficiency. Provides that if the deficiency is cured within 60 days, the notice will be void.

(b) Provides that notwithstanding Subsection (a), if the good cause reason for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time has existed where the supplier has worked with the dealer to gain the desired market share.

Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES. Provides that the notice and right to cure provisions under Section 57.204 do not apply if the reason for termination is contained in Sections 57.203(b)(1)-(7).

[Reserves Sections 57.206-57.250 for expansion.]

SUBCHAPTER F. WARRANTY CLAIMS

Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. Provides that, for purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH SUBCHAPTER. (a) Provides that Sections 57.253, 57.254, and 57.255 apply to a warranty claim submitted by a dealer who has complied with the supplier's reasonable policies and procedures for reimbursement of the warranty claim and the claim is a warranted claim under the supplier's warranty policy.

(b) Provides that a supplier's warranty reimbursement policies and procedures are considered unreasonable to the extent of any conflict with this subchapter.

Sec. 57.253. WARRANTY CLAIM. (a) Provides that this section applies to a warranty claim submitted by a dealer to the supplier:

(1) while the dealer agreement is in effect; or

(2) not later than the 60th day after the termination or expiration date of the dealer agreement, if the claim is for work performed before the effective date of the termination or expiration.

(b) Requires a supplier, not later than the 45th day after the date the supplier receives a warranty claim from a dealer, to accept or reject the claim by providing written notice to the dealer. Provides that a claim not rejected before that deadline is considered accepted.

(c) Requires the supplier to pay or credit to the dealer's account all amounts owed to the dealer with respect to the accepted claim not later than the 30th day after the date the claim is accepted if the warranty claim is accepted.

(d) Requires the supplier, if the supplier rejects the warranty claim, to give the dealer written or electronic notice of the grounds for rejection of a rejected claim, which must be consistent with the supplier's grounds for rejection of warranty claims of other dealers, both in the terms and manner of enforcement.

(e) Provides that if no grounds for rejection of a rejected claim are given to the dealer, the claim is considered accepted.

Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. Authorizes the dealer to resubmit a claim in proper form not later than the 30th day after the date the dealer receives notice of the claim's rejection if the warranty claim was rejected on the ground that the dealer failed to properly follow the procedural or technical requirements for submission of a warranty claim.

Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Requires that warranty work performed by the dealer be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours, multiplied by the dealer's established customer hourly retail labor rate for non-warranty repair work, which must have previously been made known to the supplier. Requires that parts used in warranty repair work be reimbursed at the current net parts cost plus 15 percent.

Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR INSTALLATION OF REPLACEMENT PARTS. Provides that any repair work or installation of replacement parts performed with respect to inventory equipment of a dealer or with respect to equipment of a dealer's customers, at the request of a supplier, including work performed under a product improvement program, constitutes a warranty claim for which the dealer must be paid under this subchapter.

Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Authorizes a supplier to audit a warranty claim submitted by a dealer until the first anniversary of the date the claim was paid and to charge back the amount of any claim that is shown by audit to have been misrepresented, except as provided by Subsection (b).

(b) Authorizes the supplier, if an audit conducted under this section shows that a warranty claim has been misrepresented, to audit any other warranty claims submitted by the affected dealer within the three-year period ending on a date a claim is shown by audit to be misrepresented.

Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE. (a) Provides that Sections 57.253, 57.254, and 57.255 do not apply if the terms of a written dealer agreement between the parties require the supplier to compensate the dealer for warranty labor costs either as:

(1) a discount in the price of the equipment to the dealer, subject to Subsection (b); or

(2) a lump-sum payment made to the dealer not later than the 90th day after the date the supplier's new equipment is sold to the dealer, subject to Subsection (b).

(b) Requires that the discount or lump-sum payment under Subsection (a) be or result in an amount that is not less than five percent of the suggested retail price of the equipment.

(c) Provides that the alternate reimbursement terms of a dealer agreement that comply with Subsections (a) and (b) are enforceable.

(d) Provides that this section does not affect the supplier's obligation to reimburse the dealer for parts in accordance with Section 57.255.

[Reserves Sections 57.259-57.300 for expansion.]

SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO PURCHASE.

(a) Prohibits a supplier from coercing, compelling, or requiring a dealer to accept delivery of equipment or a repair part that has not been voluntarily ordered by the dealer, unless:

(1) the equipment or repair part is a safety feature required by the supplier or applicable law; or

(2) the dealer is otherwise required by applicable law to accept the delivery.

(b) Prohibits a supplier from coercing a dealer to refuse purchase of equipment manufactured by another supplier.

(c) Provides that it shall not be considered a violation of this section if the supplier requires a dealer to have or provide separate facilities, financial statements, or sales staff for major competing product lines if the supplier gives the dealer at least three years' notice of such a requirement.

Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES. (a) Prohibits a supplier from conditioning the sale of equipment, repair parts, or goods or services to a dealer on the purchase of other goods or services.

(b) Provides that this section does not prohibit a supplier from requiring a dealer to purchase all repair parts, special tools, or training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer.

Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR IMMEDIATE DELIVERY. Prohibits a supplier from refusing to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement and specifically advertised or represented by the supplier as available for immediate delivery, unless the refusal is due to:

(1) the supplier's prudent and reasonable restrictions on extensions of credit to the dealer;

(2) a business decision by the supplier to limit the production volume of the equipment; or

(3) an act of nature, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control.

Sec. 57.304. DISCRIMINATION IN ORDERS. Prohibits a supplier from discriminating, 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.

Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT. (a) Prohibits a supplier, except as provided by Subsection (b), from discriminating, directly or indirectly, in the price among different dealers with respect to a purchase of equipment or a repair part of like grade and quality and identical brand, where the effect of such discrimination may be to:

(1) substantially lessen competition;

(2) tend to create a monopoly in any line of commerce; or

(3) injure, destroy, or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination.

(b) Authorizes a supplier to charge a different price among dealers for purchases described by Subsection (a) if:

(1) the price difference is due to differences in the cost of manufacture, sale, or delivery of the equipment or repair part;

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

(3) the price difference is related to the volume of equipment purchased by dealers or market share obtained by dealers.

[Reserves Sections 57.306-57.350 for expansion.]

SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING CANCELLATION OR NONRENEWAL OF AGREEMENT

Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. Provides that, for purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. Provides that if a dealer has more than one of its business locations covered by the same dealer agreement, this subchapter applies to the repurchase of the dealer's inventory at the particular business location being closed unless the closing occurs without the permission of the supplier.

Sec. 57.353. PAYMENTS OR CREDITS. (a) Requires a supplier, when the supplier or dealer terminates or otherwise discontinues the dealer agreement entered into between the two parties, to pay to the dealer, or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier:

(1) an amount equal to 100 percent of the net equipment cost of all new, unsold, and undamaged equipment, less a downward adjustment for new, unsold, and undamaged equipment between 24 and 36 months old to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(2) an amount equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(3) an amount equal to 90 percent of the current net parts cost of new, unsold, and undamaged repair parts previously purchased from the supplier and held by the dealer on the date that the dealer agreement is terminated or expires;

(4) an amount equal to five percent of the current net parts price of all repair parts returned to the supplier to compensate the dealer for the handling, packing, and loading of those repair parts for return to the supplier, unless the supplier elects to perform the handling, packing, and loading of the repair parts itself;

(5) an amount equal to the fair market value of any specific data processing hardware or software that the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including

computer equipment required and approved by the supplier to communicate with the supplier; and

(6) an amount equal to 75 percent of the net cost, including shipping, handling, and set-up fees, of all specialized service or repair tools that:

(A) were previously purchased pursuant to the requirements of the supplier within 15 years before the date of the applicable notification of termination of the dealer agreement; and

(B) are unique to the supplier's product line and are complete and in good operating condition.

(b) Provides that fair market value of property subject to repurchase under Subsection (a)(5) is considered to be the acquisition cost of the property, including any shipping, handling, and set-up fees, less straight line depreciation of the acquisition cost over a three-year period. Provides that if the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software for purposes of this section is considered to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.

(c) Provides that notwithstanding any other provision of this chapter, with respect to machines with hour meters, demonstrators with less than 50 hours of use will be considered new, unsold, undamaged equipment subject to repurchase under this section.

(d) Provides that on payment of the amount due under this section or on credit to the dealer's account of the amount required by this section, title transfers to all inventory repurchased under this subchapter to the supplier, and entitles the supplier to possession of the inventory.

Sec. 57.354. LATE PAYMENT OR CREDIT. (a) Requires that all payments or allowances of credit due to a dealer be paid or credited within 90 days after receipt by the supplier of property required to be repurchased under this subchapter.

(b) Provides that any payment or allowance of credit due a dealer that is not paid within the 90-day period will accrue interest at the maximum rate allowed by law.

(c) Authorizes the supplier to withhold payments due under this subchapter during the period in which the dealer fails to comply with its contractual obligation to remove any signage indicating that the dealer is an authorized dealer of the supplier.

Sec. 57.355. LIABILITY. (a) Provides that a supplier who refuses to repurchase any inventory covered under this chapter after termination or discontinuation of the dealer agreement is liable to the dealer for:

(1) 110 percent of the amount that would have been due for the inventory had the supplier timely complied with the requirements of this chapter;

(2) any freight charges paid by the dealer;

(3) any accrued interest; and

(4) the actual costs of any court or arbitration proceeding incurred by the dealer, including attorney's fees or arbitrator fees.

(b) Provides that the supplier and dealer will each pay 50 percent of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this chapter.

(c) Provides that notwithstanding any provision to the contrary in the Uniform Commercial Code, the dealer retains title to and has a first and prior lien against all inventory returned by the dealer to the supplier under this chapter until the dealer is paid all amounts owed by the supplier under this subchapter for the repurchase of the inventory required under this chapter, and the supplier is required to hold the proceeds of the inventory in trust for the dealer's benefit.

Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S CLAIMS. Prohibits this subchapter from being construed to affect any security interest the supplier may have in the inventory of the dealer, and any repurchase of the dealer's inventory under this subchapter may not be subject to the claims of any secured or unsecured creditor of the supplier or any assignee of the supplier until the dealer has received full payment or credit, as applicable, under this subchapter.

Sec. 57.357. AGREEMENT TERMINATED BY DEALER; INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a) Provides that this subchapter does not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement without good reason. Provides that a dealer has good reason to terminate the dealer agreement for any of the following reasons:

- (1) the death or disability of a majority owner of the dealership;
- (2) the dealership terminates the dealer agreement and:
 - (A) substantially all of the dealership assets or all shares of stock of the dealership are sold to a new owner; and
 - (B) no owner of the terminated dealership continues to own an interest in the continuing dealership;
- (3) the filing of bankruptcy by or against the dealership that has not been discharged within 30 days after the date of the filing, the appointment of a receiver, or an assignment for the benefit of creditors; or
- (4) the specialty agricultural equipment supplier:
 - (A) abandons the market or withdraws from the market by no longer selling to the dealer a type of equipment previously sold to the dealer that constituted a material part of the specialty agricultural equipment sold by the supplier;
 - (B) consistently sells products to the dealer that are defective or breach the implied warranty of merchantability;
 - (C) consistently fails to:
 - (i) provide adequate product support for the type and use of the product, including technical assistance, operator and repair manuals, and part lists and diagrams;
 - (ii) provide adequate training required by the supplier for maintenance, repair, or use of the supplier's products; or
 - (iii) provide marketing and marketing support for the supplier's product if marketing is a requirement of the dealer agreement;

(D) consistently fails to meet the supplier's warranty obligations to the dealer as required by contract or law, including obligations under this chapter;

(E) has engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare, or the dealer's reputation;

(F) has made material misrepresentations to the dealer or has falsified a record;

(G) has breached the dealer agreement; or

(H) has violated this chapter.

(b) Prohibits this subchapter from being construed to limit a specialty agricultural equipment supplier's obligation to repurchase a dealer's inventory as provided by this section if the supplier terminates or otherwise discontinues the dealer agreement.

Sec. 57.358. EXCEPTIONS. (a) Provides that a supplier is not required to repurchase from a dealer:

(1) a repair part that, except as provided by Subsection (b), is in a broken or damaged package;

(2) a repair part that because of its condition cannot be resold as a new part without repackaging or reconditioning;

(3) any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens, and encumbrances unless the inventory will be free and clear of all claims, liens, and encumbrances immediately on payment by the supplier of amounts due in this subchapter to the lienholders;

(4) any inventory that the dealer wants to keep, provided the dealer has a contractual right to keep the inventory;

(5) equipment delivered to the dealer before the beginning of the 36-month period preceding the date of notification of termination; and

(6) equipment or a repair part that:

(A) is ordered by the dealer on or after the date of notification of termination;

(B) is acquired by the dealer from a source other than the supplier, unless the equipment or repair part was ordered from, or invoiced to the dealer by, the supplier;

(C) is not in new, unsold, undamaged, or complete condition, subject to the provisions of this chapter relating to demonstrators; and

(D) is not returned to the supplier before the 90th day after the later of:

(i) the effective date of termination of a dealer agreement; or

(ii) the date the dealer receives from the supplier all information, including documents or supporting materials, required by the supplier to comply with the supplier's return policy.

(b) Provides that the supplier will be required to repurchase a repair part in a broken or damaged package for a repurchase price that is equal to 85 percent of the current net parts cost for the repair part if the aggregate current net parts cost for the entire package of repair parts is \$75 or more.

(c) Provides that Subsection (a)(6)(D) does not apply to a dealer if the supplier did not give the dealer notice of the 90-day deadline at the time the applicable notice of termination was sent to the dealer.

[Reserves Sections 57.359-57.400 for expansion.]

SUBCHAPTER I. ACTIONS AND REMEDIES

Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) Authorizes a dealer to bring an action against the supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including damages for lost profits, together with the actual costs of the action, including the dealer's attorney's fees and paralegal fees and the costs of arbitrators if a supplier violates any provision of this chapter. Authorizes the dealer to also be granted injunctive relief for unlawful termination.

(b) Provides that a remedy provided by this section is not exclusive and is in addition to any other remedy permitted by law.

Sec. 57.402. CHOICE OF REMEDIES. Provides that the provisions of this chapter are supplemental to any dealer agreement between the dealer and the supplier that provides the dealer with greater protection. Authorizes a dealer to elect to pursue its contract remedy or the remedy provided by state law, or both. Provides that an election by the dealer to pursue those remedies does not bar the dealer's right to exercise any other remedies that may be granted at law or in equity.

SECTION 3. Repealer: Chapter 55 (Farm, Industrial, Off-Road Construction, Forestry), Business & Commerce Code.

SECTION 4. (a) Provides that Chapter 57, Business & Commerce Code, as added by this Act, applies to:

(1) a dealer agreement entered into or renewed on or after the effective date of this Act; and

(2) a dealer agreement that was entered into before the effective date of this Act, has no expiration date, and is a continuing contract.

(b) Provides that a dealer agreement entered into before the effective date of this Act, other than a dealer agreement described by Subsection (a)(2) of this section, is governed by the law as it existed on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2011.