

CHAPTER 116

AGRICULTURE

SENATE BILL 95-018

BY SENATORS Ament and Matsunaka;
also REPRESENTATIVES Moellenberg, Chlouber, Entz, and Schwarz.

AN ACT

CONCERNING TRADE PRACTICES IN THE FARM EQUIPMENT INDUSTRY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 38 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 38
Colorado Farm Equipment Fair Dealership Act

35-38-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO FARM EQUIPMENT FAIR DEALERSHIP ACT".

35-38-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEALER AGREEMENT" MEANS AN ORAL OR WRITTEN CONTRACT OR AGREEMENT OF DEFINITE OR INDEFINITE DURATION BETWEEN A SUPPLIER AND AN EQUIPMENT DEALER THAT PRESCRIBES THE RIGHTS AND OBLIGATIONS OF EACH PARTY WITH RESPECT TO THE PURCHASE OR SALE OF EQUIPMENT.

(2) "EQUIPMENT" MEANS A MACHINE DESIGNED FOR OR ADAPTED AND USED FOR AGRICULTURE, LIVESTOCK, GRAZING, LIGHT INDUSTRIAL, UTILITY, AND OUTDOOR POWER EQUIPMENT. "EQUIPMENT" DOES NOT INCLUDE EARTHMOVING AND HEAVY CONSTRUCTION EQUIPMENT, MINING EQUIPMENT, OR FORESTRY EQUIPMENT.

(3) "EQUIPMENT DEALER" OR "DEALER" MEANS ANY PERSON, PARTNERSHIP,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CORPORATION, ASSOCIATION, OR OTHER FORM OF BUSINESS ENTERPRISE THAT IS PRIMARILY ENGAGED IN THE RETAIL SALE OF EQUIPMENT.

(4) "NET COST" MEANS THE PRICE THE EQUIPMENT DEALER PAYS TO THE SUPPLIER FOR EQUIPMENT, INCLUDING THE FREIGHT COSTS FROM THE SUPPLIER'S LOCATION TO THE EQUIPMENT DEALER'S LOCATION, MINUS ALL APPLICABLE DISCOUNTS ALLOWED BY THE SUPPLIER.

(5) "NET PRICE" MEANS THE PRICE LISTED FOR REPAIR PARTS IN THE SUPPLIER'S PRICE LIST OR CATALOG IN EFFECT AT THE TIME THE DEALER'S AGREEMENT TERMINATES.

(6) "SUPERSEDED PART" MEANS ANY PART WITH A DISCONTINUED PART NUMBER ALREADY PURCHASED FROM THE SUPPLIER THAT HAS NOT BEEN MODIFIED OR IMPROVED AND CAN PERFORM THE SAME FUNCTION AS A PART CURRENTLY AVAILABLE FOR PURCHASE FROM SUCH SUPPLIER'S STOCK.

(7) (a) "SUPPLIER" MEANS ANY PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER BUSINESS ENTERPRISE THAT IS ENGAGED IN THE MANUFACTURING, ASSEMBLY, OR WHOLESALE INSTITUTION OF EQUIPMENT OR REPAIR PARTS, OR BOTH, AND INCLUDES ANY SUCCESSOR IN INTEREST. "SUPPLIER" INCLUDES A PURCHASER OF ASSETS OR A SURVIVING CORPORATION THAT RESULTS FROM A MERGER, LIQUIDATION, OR REORGANIZATION OF THE ORIGINAL SUPPLIER.

(b) "SUPPLIER" DOES NOT MEAN ANY PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER BUSINESS ENTERPRISE, THAT IS NOT OTHERWISE A SUPPLIER, THAT ENGAGES IN THE MANUFACTURE OR WHOLESALE DISTRIBUTION OF NONMOVING PARTS THAT ARE NOT EQUIPMENT BUT THAT MAY BE USED TO ENHANCE THE OPERATION OR COMFORT OF EQUIPMENT.

35-38-103. Prohibited acts. (1) IT IS A VIOLATION OF THIS ARTICLE FOR A SUPPLIER TO:

(a) COERCE OR COMPEL AN EQUIPMENT DEALER TO ENTER INTO A WRITTEN OR ORAL AGREEMENT THAT IS SUPPLEMENTARY TO AN EXISTING DEALER AGREEMENT WITH THE SUPPLIER UNLESS THAT AGREEMENT IS IMPOSED ON ALL OTHER SIMILARLY SITUATED DEALERS IN THIS STATE;

(b) (I) REFUSE TO DELIVER, WITHIN A REASONABLE TIME AFTER RECEIPT OF AN ORDER, EQUIPMENT COVERED BY THE DEALER AGREEMENT SPECIFICALLY REPRESENTED BY THE SUPPLIER TO BE AVAILABLE FOR IMMEDIATE DELIVERY, IF SUCH EQUIPMENT IS AVAILABLE IN REASONABLE QUANTITIES.

(II) THIS PARAGRAPH (b) SHALL NOT APPLY IF FAILURE IS DUE TO ANY OF THE FOLLOWING:

(A) RESTRICTIONS ON THE EXTENSION OF CREDIT BY THE SUPPLIER TO THE EQUIPMENT DEALER;

(B) A BREACH OF OR A DEFAULT UNDER THE AGREEMENT BY THE EQUIPMENT DEALER;

- (C) AN ACT OF GOD;
- (D) WORK STOPPAGE OR DELAY DUE TO A STRIKE OR LABOR DIFFICULTY;
- (E) A BONA FIDE SHORTAGE OF MATERIALS; OR
- (F) OTHER CAUSES OVER WHICH THE SUPPLIER HAS NO CONTROL.

(c) TERMINATE, CANCEL, OR FAIL TO RENEW A DEALER AGREEMENT OR TO SUBSTANTIALLY CHANGE THE COMPETITIVE CIRCUMSTANCES OF THE DEALER AGREEMENT WITHOUT CAUSE;

(d) REQUIRE AS A CONDITION OF RENEWAL OR EXTENSION OF A DEALER AGREEMENT THAT THE DEALER COMPLETE SUBSTANTIAL RENOVATION TO THE DEALER'S PLACE OF BUSINESS OR TO ACQUIRE NEW OR ADDITIONAL SPACE TO SERVE AS THE DEALER'S PLACE OF BUSINESS UNLESS THE SUPPLIER PROVIDES:

(I) AT LEAST ONE YEAR'S WRITTEN NOTICE OF SUCH CONDITION;

(II) ALL OF THE GROUNDS SUPPORTING THIS CONDITION; AND

(III) A REASONABLE PERIOD OF TIME IN WHICH TO COMPLETE THE RENOVATION OR ACQUISITION AFTER THE ONE-YEAR NOTICE PERIOD EXPIRES;

(e) (I) DISCRIMINATE IN THE PRICES CHARGED FOR EQUIPMENT OF LIKE GRADE AND QUANTITY SOLD BY THE SUPPLIER TO SIMILARLY SITUATED DEALERS IN THIS STATE.

(II) NOTHING IN THIS PARAGRAPH (e) SHALL BE CONSTRUED TO:

(A) PREVENT THE USE OF DIFFERENTIALS THAT RESULT FROM THE DIFFERING QUANTITIES IN WHICH EQUIPMENT IS SOLD OR DELIVERED AND DOES NOT PREVENT A SUPPLIER FROM OFFERING A LOWER PRICE IN ORDER TO MEET A COMPETITOR'S EQUALLY LOW PRICE OR THE SERVICES OR FACILITIES FURNISHED BY A COMPETITOR; OR

(B) APPLY TO SALES TO AN EQUIPMENT DEALER FOR RESALE TO A UNIT OR AGENCY OF THE UNITED STATES GOVERNMENT, THIS STATE OR ITS POLITICAL SUBDIVISIONS, A MAJOR FLEET ACCOUNT, OR AN ORGANIZATION FOR TESTING OR DEMONSTRATION PURPOSES.

(f) PREVENT, BY ANY MEANS, AN EQUIPMENT DEALER FROM CHANGING THE CAPITAL STRUCTURE OF THE EQUIPMENT DEALERSHIP OR THE MEANS BY WHICH THE DEALERSHIP IS FINANCED, IF THE DEALER MEETS REASONABLE CAPITAL STANDARDS IMPOSED BY THE SUPPLIER OR AS OTHERWISE AGREED TO BETWEEN THE DEALER AND THE SUPPLIER AT ALL TIMES AND THIS CHANGE DOES NOT CAUSE A CHANGE OF THE CONTROLLING INTEREST IN THE EXECUTIVE MANAGEMENT OR THE BOARD OF DIRECTORS OR OF A GUARANTOR OF THE DEALERSHIP;

(g) (I) PREVENT, BY ANY MEANS, AN EQUIPMENT DEALER OR ANY OFFICER, MEMBER, PARTNER, OR STOCKHOLDER OF A DEALER FROM SELLING OR TRANSFERRING ANY PART OF THE INTEREST OF THE OFFICER, MEMBER, PARTNER, OR STOCKHOLDER

TO ANY OTHER PERSON.

(II) NO DEALER, OFFICER, PARTNER, MEMBER, OR STOCKHOLDER MAY SELL, TRANSFER, OR ASSIGN THE EQUIPMENT DEALERSHIP OR POWER OF MANAGEMENT OR CONTROL OF THE DEALERSHIP WITHOUT THE WRITTEN CONSENT OF THE SUPPLIER.

(III) IF A SUPPLIER DETERMINES THAT THE DESIGNATED TRANSFEREE IS NOT ACCEPTABLE, THE SUPPLIER SHALL PROVIDE THE DEALER WITH WRITTEN NOTICE OF THE SUPPLIER'S OBJECTION AND THE SPECIFIC REASONS FOR WITHHOLDING ITS CONSENT.

(h) REQUIRE AN EQUIPMENT DEALER TO ASSENT TO A RELEASE, ASSIGNMENT, NOVATION, WAIVER, OR ESTOPPEL THAT WOULD RELIEVE A PERSON FROM COMPLYING WITH THIS ARTICLE;

(i) (I) WITHHOLD REASONABLE CONSENT TO THE TRANSFER OF THE EQUIPMENT DEALER'S INTEREST IN THE DEALERSHIP TO A MEMBER OF THE DEALER'S OR THE PRINCIPAL OWNER'S FAMILY, IF SUCH EQUIPMENT DEALER OR THE PRINCIPAL OWNER OF THE DEALERSHIP DIES AND THE FAMILY MEMBER MEETS THE REASONABLE FINANCIAL, BUSINESS, ABILITY, EXPERIENCE, AND CHARACTER STANDARDS OF THE SUPPLIER.

(II) IF THE SUPPLIER DETERMINES THAT A FAMILY MEMBER DOES NOT MEET THE SUPPLIER'S STANDARDS, THE SUPPLIER SHALL PROVIDE THE DEALER'S REPRESENTATIVE WITH WRITTEN NOTICE OF THE SUPPLIER'S SPECIFIC OBJECTIONS. A SUPPLIER HAS NINETY DAYS TO CONSIDER A REQUEST TO MAKE A TRANSFER.

(III) FOR THE PURPOSES OF THIS PARAGRAPH (i), "FAMILY MEMBER" MEANS A SPOUSE, PARENT, SIBLING, CHILD, STEPCHILD, SON-IN-LAW, OR DAUGHTER-IN-LAW AND ANY LINEAL DESCENDANT AND INCLUDES AN ADOPTED CHILD AND ANY LINEAL DESCENDANT OF SUCH CHILD.

(IV) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (i), IF A SUPPLIER AND DEALER HAVE EXECUTED AN AGREEMENT CONCERNING SUCCESSION RIGHTS BEFORE THE DEALER'S DEATH AND THAT AGREEMENT HAS NOT BEEN REVOKED OR OTHERWISE TERMINATED BY EITHER PARTY, SUCH AGREEMENT SHALL CONTROL THE TERMS OF SUCCESSION.

(2) NOTWITHSTANDING PARAGRAPHS (g) AND (i) OF SUBSECTION (1) OF THIS SECTION, A SUPPLIER MAY WITHHOLD CONSENT TO A TRANSFER OF INTEREST IN A DEALERSHIP IF THE DEALER'S AREA OF RESPONSIBILITY OR TRADE AREA DOES NOT AFFORD SUFFICIENT SALES POTENTIAL TO REASONABLY SUPPORT THE DEALER. THE SUPPLIER HAS THE BURDEN OF DEMONSTRATING THIS FACT.

35-38-104. Dealer agreement cancellation. (1) (a) UNLESS ONE OR MORE OF THE PROVISIONS FOUND IN SUBPARAGRAPHS (I) TO (X) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION APPLY, A SUPPLIER SHALL GIVE AN EQUIPMENT DEALER ONE HUNDRED EIGHTY DAYS WRITTEN NOTICE OF THE SUPPLIER'S INTENT TO TERMINATE, CANCEL, OR NOT RENEW A DEALER AGREEMENT OR TO CHANGE THE COMPETITIVE CIRCUMSTANCES OF SUCH AGREEMENT.

(b) (I) NOTICE SENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL STATE THE REASONS FOR TERMINATION, CANCELLATION, OR NONRENEWAL AND STATE THAT THE DEALER HAS ONE HUNDRED EIGHTY DAYS IN WHICH TO CURE ANY CLAIMED DEFICIENCY.

(II) IF THE DEALER CURES THE DEFICIENCY TO THE SUPPLIER'S SATISFACTION WITHIN THE ONE-HUNDRED-EIGHTY-DAY PERIOD, THE SUPPLIER MAY NOT TERMINATE, CANCEL, REFUSE TO RENEW, OR CHANGE THE COMPETITIVE CIRCUMSTANCES OF THE AGREEMENT FOR THE REASONS SPECIFIED IN THE NOTICE. THE TERMS OF THE AGREEMENT SHALL NOT EXPIRE AND THE SUPPLIER SHALL NOT CHANGE THE COMPETITIVE CIRCUMSTANCES OF THE AGREEMENT BEFORE THE END OF THE ONE-HUNDRED-EIGHTY-DAY PERIOD WITHOUT THE DEALER'S WRITTEN CONSENT.

(2) (a) A SUPPLIER, EITHER DIRECTLY OR THROUGH AN AGENT, SHALL NOT TERMINATE, CANCEL, FAIL TO RENEW, OR SUBSTANTIALLY CHANGE THE COMPETITIVE CIRCUMSTANCES OF A DEALERSHIP AGREEMENT WITHOUT CAUSE.

(b) FOR PURPOSES OF THIS SUBSECTION (2), "CAUSE" MEANS WHEN A DEALER:

(I) FAILS TO COMPLY WITH THE TERMS OF THE AGREEMENT IF THESE REQUIREMENTS ARE NOT DIFFERENT FROM THOSE IMPOSED ON OTHER SIMILARLY SITUATED DEALERS IN THIS STATE;

(II) TRANSFERS A CONTROLLING OWNERSHIP INTEREST IN THE DEALERSHIP WITHOUT THE SUPPLIER'S CONSENT; EXCEPT THAT THE SUPPLIER SHALL NOT WITHHOLD CONSENT WITHOUT GOOD REASON;

(III) MAKES A MATERIAL MISREPRESENTATION OR FALSIFICATION OF A RECORD;

(IV) FILES A VOLUNTARY PETITION IN BANKRUPTCY OR HAS AN INVOLUNTARY PETITION IN BANKRUPTCY FILED AGAINST HIM OR HER THAT HAS NOT BEEN DISCHARGED WITHIN THE SIXTY-DAY PERIOD AFTER IT WAS FILED;

(V) IS INSOLVENT OR IN RECEIVERSHIP;

(VI) PLEADS GUILTY TO OR IS CONVICTED OF A FELONY;

(VII) FAILS TO OPERATE IN THE NORMAL COURSE OF BUSINESS FOR SEVEN CONSECUTIVE BUSINESS DAYS OR TERMINATES THE BUSINESS;

(VIII) RELOCATES OR ESTABLISHES A NEW OR ADDITIONAL EQUIPMENT DEALER'S PLACE OF BUSINESS, REPRESENTING THE SAME SUPPLIER, WITHOUT THE SUPPLIER'S CONSENT;

(IX) FAILS TO SATISFY A PAYMENT OBLIGATION AS IT COMES DUE AND PAYABLE TO THE SUPPLIER;

(X) FAILS TO PROMPTLY ACCOUNT TO THE SUPPLIER FOR ANY PROCEEDS FROM THE SALE OF EQUIPMENT OR TO HOLD SUCH PROCEEDS IN TRUST FOR THE SUPPLIER'S BENEFIT;

(XI) CONSISTENTLY ENGAGES IN BUSINESS PRACTICES THAT ARE DETRIMENTAL TO THE CONSUMER OR THE SUPPLIER, INCLUDING USE OF EXCESSIVE PRICING OR MISLEADING ADVERTISING OR FAILING TO PROVIDE SERVICE AND REPLACEMENT PARTS OR PERFORM WARRANTY OBLIGATIONS;

(XII) CONSISTENTLY FAILS TO MEET THE SUPPLIER'S MARKET PENETRATION REQUIREMENTS BASED ON AVAILABLE RECORD INFORMATION AND AFTER RECEIVING NOTICE FROM THE SUPPLIER OF THE SUPPLIER'S REQUIREMENTS;

(XIII) CONSISTENTLY FAILS TO MEET BUILDING AND HOUSEKEEPING REQUIREMENTS;

(XIV) CONSISTENTLY FAILS TO PROVIDE ADEQUATE SALES, SERVICE, OR PARTS PERSONNEL COMMENSURATE WITH THE DEALER AGREEMENT;

(XV) CONSISTENTLY FAILS TO COMPLY WITH THE APPLICABLE LICENSING LAWS PERTAINING TO THE PRODUCTS AND SERVICES THE DEALER REPRESENTS FOR AND ON THE SUPPLIER'S BEHALF.

35-38-105. Surplus parts inventory - credits. (1) (a) UNLESS THIS SECTION IS SPECIFICALLY WAIVED IN WRITING BY THE DEALER, A SUPPLIER SHALL ALLOW A DEALER TO PERIODICALLY, BUT NO LESS THAN ONCE EVERY TWELVE MONTHS, RETURN A PORTION OF THE DEALER'S SURPLUS PARTS INVENTORY FOR CREDIT.

(b) THE SUPPLIER SHALL NOTIFY THE DEALER OF A TIME PERIOD DURING WHICH A DEALER MAY SUBMIT THE DEALER'S SURPLUS PARTS LIST AND RETURN INVENTORY. A SUPPLIER MAY STAGGER RETURN PERIODS FOR ITS DEALERS.

(2) IF A SUPPLIER HAS NOT NOTIFIED ITS DEALER OF A SPECIFIC TIME PERIOD FOR RETURNING SURPLUS PARTS WITHIN THE PRECEDING TWELVE-MONTH PERIOD, IT SHALL ALLOW THE DEALER TO RETURN SURPLUS PARTS WITHIN SIXTY DAYS OF RECEIVING THE DEALER'S REQUEST TO MAKE SUCH RETURN.

(3) (a) A SUPPLIER SHALL ALLOW SURPLUS-PARTS RETURN ON A DOLLAR VALUE OF PARTS EQUAL TO TEN PERCENT OF THE TOTAL DOLLAR VALUE OF ALL PARTS PURCHASED BY THE DEALER FROM THE SUPPLIER DURING EITHER THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE SUPPLIER'S NOTIFICATION TO THE DEALER OF THE SUPPLIER'S RETURN PROGRAM OR, IF SUBSECTION (2) OF THIS SECTION APPLIES, THE MONTH THE DEALER MAKES A RETURN REQUEST.

(b) THE DEALER MAY ELECT TO RETURN A DOLLAR VALUE OF THE SURPLUS PARTS EQUAL TO LESS THAN TEN PERCENT OF THE TOTAL DOLLAR VALUE OF THE PARTS THE DEALER PURCHASED DURING THE PRECEDING TWELVE MONTHS.

(4) A DEALER MAY NOT RETURN OBSOLETE PARTS; EXCEPT THAT A DEALER MAY RETURN A PART FOR CREDIT IF SUCH PART IS FOUND IN THE SUPPLIER'S CURRENT RETURNABLE PARTS LIST OR ANY SUPERSEDED PART THAT IS NOT THE SUBJECT OF THE SUPPLIER'S PARTS RETURN PROGRAM AS OF THE DATE OF TERMINATION.

(5) A DEALER SHALL RETURN ONLY NEW AND UNUSED PARTS TO THE SUPPLIER OF SUCH PARTS.

(6) THE MINIMUM CREDIT ALLOWED FOR RETURNED PARTS IS NINETY-FIVE PERCENT OF THE NET PRICE AS LISTED IN THE SUPPLIER'S CURRENT RETURNABLE PARTS LIST AS OF THE DATE THAT THE SUPPLIER PROVIDES NOTICE OF ITS RETURN PROGRAM OR, IF SUBSECTION (2) OF THIS SECTION APPLIES, THE DATE THAT THE DEALER SUBMITS A REQUEST FOR RETURN.

(7) A SUPPLIER SHALL ISSUE CREDIT WITHIN NINETY DAYS AFTER RECEIVING A RETURN PART.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A SUPPLIER FROM CHARGING BACK TO THE DEALER'S ACCOUNT AMOUNTS PREVIOUSLY PAID OR CREDITED AS A DISCOUNTED INCIDENT TO THE DEALER'S PURCHASE OF EQUIPMENT.

35-38-106. Cancellation of contract - repurchase of inventory. (1) IF A DEALER AGREEMENT IS CANCELED OR NOT RENEWED BY EITHER PARTY OR BY MUTUAL CONSENT, THE SUPPLIER SHALL REPURCHASE THE DEALER'S REMAINING INVENTORY AND ANY SPECIFIC DATA PROCESSING HARDWARE AND SOFTWARE THAT THE SUPPLIER REQUIRED THE DEALER TO PURCHASE, INCLUDING COMPUTER SYSTEMS EQUIPMENT THE SUPPLIER REQUIRED FOR COMMUNICATIONS PURPOSES. THE SUPPLIER SHALL REPURCHASE SUCH EQUIPMENT AT ITS FAIR MARKET VALUE.

(2) (a) THE SUPPLIER SHALL REPURCHASE SPECIALIZED REPAIR TOOLS PURCHASED BY THE DEALER PURSUANT TO THE SUPPLIER'S REQUIREMENTS. SUCH SPECIALIZED REPAIR TOOLS MUST BE UNIQUE TO THE SUPPLIER PRODUCT LINE AND IN COMPLETE AND USABLE CONDITION.

(b) THE SUPPLIER SHALL REPURCHASE SPECIALIZED REPAIR TOOLS AT A PRICE EQUAL TO SEVENTY-FIVE PERCENT OF THE TOTAL INVOICE AMOUNT CHARGED BY THE SUPPLIER TO THE DEALER.

(3) THE SUPPLIER SHALL PAY THE DEALER ONE HUNDRED PERCENT OF THE NET COST OF ALL NEW, UNSOLD, UNDAMAGED, AND COMPLETE EQUIPMENT THAT IS RESALABLE. THE SUPPLIER MAY DEDUCT A REASONABLE ALLOWANCE FOR DEPRECIATION DUE TO THE DEALER'S USAGE AND DETERIORATION CAUSED BY WEATHER CONDITIONS AT THE DEALER'S LOCATION. THE SUPPLIER MAY ALSO DEDUCT ALL PROGRAMS AND DISCOUNTS IT PREVIOUSLY ALLOWED.

(4) (a) THE SUPPLIER SHALL PAY THE DEALER NINETY-FIVE PERCENT OF THE CURRENT NET PRICE OF ALL NEW, UNUSED, AND UNDAMAGED REPAIR PARTS AND ACCESSORIES THAT ARE LISTED IN THE SUPPLIER'S EFFECTIVE PRICE LIST OR CATALOG.

(b) A DEALER MAY NOT RETURN OBSOLETE PARTS; EXCEPT THAT A DEALER MAY RETURN A PART FOR CREDIT IF IT IS FOUND IN THE SUPPLIER'S CURRENT RETURNABLE PARTS LIST OR ANY SUPERSEDED PART THAT IS NOT THE SUBJECT TO THE SUPPLIERS PARTS RETURN PROGRAM AS OF THE DATE OF TERMINATION.

(5) (a) THE SUPPLIER SHALL PAY THE DEALER FIVE PERCENT OF THE CURRENT NET PRICE ON ALL NEW, UNUSED, AND UNDAMAGED REPAIR PARTS THAT THE DEALER RETURNS TO COVER THE COST OF HANDLING, PACKING, AND LOADING.

(b) THE SUPPLIER MAY PERFORM THE HANDLING, PACKING, AND LOADING ITSELF

INSTEAD OF PAYING THE FIVE PERCENT HANDLING FEE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5). THE DEALER SHALL MAKE AVAILABLE TO THE SUPPLIER ALL EQUIPMENT PREVIOUSLY PURCHASED BY THE DEALER. THE DEALER SHALL MAKE SUCH EQUIPMENT AVAILABLE AT THE DEALER'S PLACE OF BUSINESS OR AT THOSE PLACES WHERE THE EQUIPMENT IS LOCATED.

(6) THIS SECTION DOES NOT REQUIRE A SUPPLIER TO REPURCHASE ANY OF THE FOLLOWING:

(a) A REPAIR PART THAT HAS A LIMITED STORAGE LIFE OR THAT IS SUBJECT TO DETERIORATION;

(b) A SINGLE REPAIR PART THAT IS PRICED AS A SET OF TWO OR MORE ITEMS;

(c) A REPAIR PART THAT, BECAUSE OF ITS CONDITION IS NOT RESALABLE AS A NEW PART WITHOUT BEING REPAIRED OR RECONDITIONED;

(d) INVENTORY FOR WHICH THE EQUIPMENT DEALER IS UNABLE TO FURNISH EVIDENCE, TO THE SUPPLIER'S SATISFACTION, OF GOOD TITLE THAT IS FREE AND CLEAR OF ALL CLAIMS, LIENS, AND ENCUMBRANCES;

(e) INVENTORY THAT THE DEALER WANTS TO KEEP, INCLUDING LEASE OR RENTAL EQUIPMENT IF THE DEALER HAS A CONTRACTUAL RIGHT TO DO SO;

(f) EQUIPMENT THAT IS NOT IN NEW, UNUSED, UNDAMAGED, AND COMPLETE CONDITION;

(g) (I) EQUIPMENT THAT HAS BEEN USED BY THE DEALER OR HAS DETERIORATED BECAUSE OF WEATHER CONDITIONS AT THE DEALER'S LOCATION UNLESS THE SUPPLIER RECEIVES AN ALLOWANCE FOR THIS USAGE OR DETERIORATION.

(II) FOR PURPOSES OF THIS PARAGRAPH (g), PREVIOUSLY UNSOLD DEMONSTRATED EQUIPMENT THAT HAS LESS THAN FIFTY HOURS OF USE AND THAT IS EQUIPPED WITH AN HOUR METER IS NEW EQUIPMENT.

(h) REPAIR PARTS THAT ARE NOT IN NEW, UNUSED, AND UNDAMAGED CONDITION;

(i) INVENTORY THAT THE DEALER ORDERED ON OR AFTER THE DATE THE DEALER RECEIVED THE NOTIFICATION OF THE SUPPLIER'S TERMINATION OF THE DEALER AGREEMENT; OR

(j) INVENTORY THAT THE DEALER ACQUIRED FROM ANY SOURCE OTHER THAN THE SUPPLIER OR THE SUPPLIER'S SUCCESSOR IN INTEREST.

(7) IF A SUPPLIER FAILS OR REFUSES TO REPURCHASE INVENTORY AS REQUIRED BY THIS SECTION, THE SUPPLIER SHALL BE LIABLE FOR:

(a) ONE HUNDRED TEN PERCENT OF THE CURRENT NET PRICE OF THE INVENTORY;

(b) ANY FREIGHT CHARGES PAID BY THE DEALER;

(c) INTEREST AT THE STATUTORY RATE FROM THE DATE OF SHIPMENT TO THE SUPPLIER; AND

(d) FIVE PERCENT OF THE INVENTORY'S CURRENT NET PRICE TO COVER HANDLING, PACKING, AND LOADING.

35-38-107. Repurchase - title - security interest. UPON PAYING THE EQUIPMENT DEALER, THE TITLE AND RIGHT TO POSSESSION OF THE REPURCHASED INVENTORY SHALL TRANSFER TO THE SUPPLIER AND THE EQUIPMENT DEALER SHALL HAVE A CONTINUING PERFECTED SECURITY INTEREST IN THE INVENTORY. UPON SUCH PAYMENT, THE SECURITY INTEREST OF THE SUPPLIER SHALL BE PERFECTED WITHOUT THE FILING OF A FINANCING STATEMENT FOR A PERIOD OF SIX YEARS.

35-38-108. Death or incapacitation of equipment dealer. (1) IF AN EQUIPMENT DEALER DIES OR BECOMES INCAPACITATED, THE SUPPLIER SHALL REPURCHASE THE INVENTORY FROM THE ESTATE PURSUANT TO THE INVENTORY REPURCHASE PROVISION OF SECTION 35-38-104 AS IF THE SUPPLIER HAD TERMINATED THE DEALER AGREEMENT. THE GUARDIAN, THE EXECUTOR, OR, IF THE DEALER DIES INTTESTATE, THE HEIRS SHALL HAVE SIX MONTHS FROM THE DATE OF THE DEALERS INCAPACITY OR DEATH TO SUBMIT INVENTORY FOR REPURCHASE.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A SUPPLIER TO REPURCHASE INVENTORY IF THE SUPPLIER AND A DEALER'S FAMILY MEMBER HAVE ENTERED INTO A NEW DEALER AGREEMENT.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ENTITLE A GUARDIAN, HEIR, OR PERSONAL REPRESENTATIVE OF AN INCAPACITATED OR DECEASED DEALER TO OPERATE A DEALERSHIP FOR MORE THAN SIX MONTHS AFTER THE DEALER'S INCAPACITY OR DEATH WITHOUT THE CONSENT OF THE SUPPLIER.

(4) THIS SECTION SHALL BE SUPPLEMENTAL TO AN AGREEMENT BETWEEN THE DEALER AND THE SUPPLIER THAT COVERS THE RETURN OF EQUIPMENT, ATTACHMENTS, AND REPAIR PARTS.

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RIGHT OF A SUPPLIER TO CHARGE BACK TO THE DEALER'S ACCOUNT AMOUNTS PREVIOUSLY PAID OR CREDITED AS A DISCOUNT PERTAINING TO THE EQUIPMENT DEALER'S PURCHASE OF EQUIPMENT.

(6) FOR THE PURPOSES OF THIS SECTION, "DEALER" MEANS AN OWNER, AN EQUAL OR MAJORITY PARTNER, OR THE MAJORITY STOCKHOLDER OF A CORPORATION WHO OPERATES AS AN EQUIPMENT DEALER.

35-38-109. Cause of action - remedies. (1) AN EQUIPMENT DEALER MAY BRING AN ACTION AGAINST A SUPPLIER IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES SUSTAINED BY THE DEALER AS A CONSEQUENCE OF THE SUPPLIER'S VIOLATION OF THE PROVISIONS OF THIS ARTICLE. THE DEALER MAY ALSO RECOVER COSTS AND REASONABLE ATTORNEY FEES.

(2) AN EQUIPMENT DEALER MAY BE GRANTED INJUNCTIVE RELIEF AGAINST UNLAWFUL TERMINATION, CANCELLATION, NONRENEWAL, OR CHANGE IN

COMPETITIVE CIRCUMSTANCES.

(3) THE REMEDIES PROVIDED BY THIS SECTION ARE IN ADDITION TO ANY OTHER REMEDIES PERMITTED BY LAW AND SHALL NOT AFFECT LAWS RELATING TO PRODUCT LIABILITY ACTIONS.

35-38-110. Current agreements - effect of law - void provisions.

(1) EFFECTIVE JULY 1, 1995, THIS ARTICLE SHALL APPLY TO DEALER AGREEMENTS AT THE TIME SUCH AGREEMENTS ARE EXTENDED, REVISED, MODIFIED, OR CHANGED IN ANY MANNER AND SHALL APPLY TO ALL DEALER AGREEMENTS ENTERED INTO OR RENEWED ON OR AFTER JULY 1, 1995.

(2) A PROVISION IN ANY CONTRACT OR AGREEMENT WITH RESPECT TO A SUPPLIER THAT REQUIRES JURISDICTION OR VENUE OUTSIDE OF THIS STATE OR REQUIRES THE APPLICATION OF THE LAWS OF ANOTHER STATE OR COUNTRY IS VOID WITH RESPECT TO A CLAIM OTHERWISE ENFORCEABLE UNDER THIS ARTICLE.

35-38-111. Warranties. (1) A SUPPLIER SHALL PROVIDE A FAIR AND REASONABLE WARRANTY AGREEMENT ON ANY NEW EQUIPMENT THAT IT SELLS AND SHALL FAIRLY COMPENSATE EACH DEALER FOR PARTS AND LABOR USED IN FULFILLING SUCH WARRANTY AGREEMENT.

(2) ANY CLAIM MADE BY A DEALER RELATED TO A WARRANTY AGREEMENT SHALL BE:

(a) APPROVED OR DISAPPROVED WITHIN SIXTY DAYS AFTER RECEIPT BY THE SUPPLIER; AND

(b) PAID WITHIN THIRTY DAYS AFTER APPROVAL BY THE SUPPLIER.

(3) FOR DISAPPROVAL OF ANY WARRANTY CLAIM SUBMITTED BY A DEALER, SUCH DEALER SHALL BE NOTIFIED IN WRITING OF THE SPECIFIC REASONS FOR THE DISAPPROVAL AND OF ANY ACTION NECESSARY FOR APPROVAL OF THE CLAIM AND SHALL BE GIVEN A REASONABLE TIME PERIOD IN WHICH TO COMPLETE SUCH ACTION.

(4) WARRANTY WORK PERFORMED BY A DEALER PURSUANT TO THIS SECTION SHALL BE COMPENSATED AT A REIMBURSEMENT RATE THAT IS REASONABLE AND CUSTOMARY TO THE INDUSTRY.

(5) THE SUPPLIER SHALL HAVE THE RIGHT TO ADJUST FOR ERRORS DISCOVERED DURING AN AUDIT AND TO ADJUST ANY CLAIMS COLLECTED IN ERROR.

SECTION 2. Effective date. This article shall take effect July 1, 1995.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Became Law Without Governor's Signature May 2, 1995