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Survey of State Dealership Laws Addressing Termination, Repurchase Requirements and Warranties

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Prepared for OPEESA by Lathrop GPM

Eric L. Yaffe
Kristin Stock

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I. INTRODUCTION

This Memorandum contains a state-by-state examination of statutes that govern the relationship of outdoor power equipment manufacturers and their dealers. Many states have statutes outlining the conditions for termination of a dealer in one form or another. Also addressed are the applicable warranty and repurchase requirements. We have also included statutes relating to the regulation of farm equipment. Further discussion of these statutes, including relevant portions of the statutes, are discussed in Section II of this Memorandum. Finally, in Section III, we have included an appendix citing the state statutes discussed herein for ease of reference.

While this Memorandum outlines the state statutes governing the relationship between manufacturers and their dealers, it does not discuss relevant case law or otherwise address the interpretation of various state law provisions. As a result, the readers should consult the full text of the statutes, as well as applicable case law, when considering specific termination, repurchase or warranty requirements.

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II. ANALYSIS

Alabama

Alabama does not explicitly regulate "outdoor power equipment," but instead has enacted "The Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act" which regulates the relationship between suppliers and dealers. Ala. Code § 8-21A-2. "Equipment" is defined as "machines designed for or adapted and used for agriculture, horticulture, irrigation for agriculture or horticulture, livestock, grazing, lawn and garden, and/or light industrial purposes." *Id*. The statute defines "supplier" as "the manufacturer, wholesaler, or distributor of the tractor, equipment, lawn and garden equipment, light industrial tractors and equipment, and/or repair parts to be sold by the dealer." *Id*. The statute's definition of "inventory" includes "[t]ractors, farm implements, machinery, equipment, lawn and garden tractors and equipment…and repair parts held by the dealer." *Id*.

A. Termination

The Alabama statute requires that suppliers provide dealers with at least ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or change the dealer's competitive circumstances. Ala. Code § 8-21A-4(a). The notice must state all reasons relied upon by the supplier to show good cause for the action and must provide the dealer with a reasonable time in which to correct any claimed deficiency, with a minimum cure period of at least six months. *Id*. Once mutually agreeable steps have been outlined, agreed upon by both parties, and implemented, the notice of termination becomes void. *Id*. Further, the contractual terms of the dealer agreement must not expire "or a change be made in the dealer's competitive circumstances, without the written consent of the dealer" before the expiration of the ninety days following notice. *Id*.

The statute defines "good cause" as "[f]ailure of the dealer to substantially comply with requirements of the dealer agreement, provided such requirements are not different from, nor enforced differently than those requirements imposed on other similarly situated dealers." Ala. Code § 8-21A-2(7). Under the statute, good cause exists when a dealer has done any of the following:

> (1) Transferred a controlling ownership interest in the dealership without the supplier's consent.
>
> (2) Made a material misrepresentation to the supplier when applying for the dealer agreement.
>
> (3) Filed a voluntary petition in bankruptcy or had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within 60 days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership.

(4) Been convicted of a felony.

(5) Failed to operate in the normal course of business for seven consecutive business days or has terminated the business.

(6) Relocated the dealer's place of business without the supplier's consent.

(7) Consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations.

(8) Consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf.

Id. at § 8-21A-4(b). However, the statute limits good cause termination by the following:

(c) No supplier shall base its decision to terminate, cancel, or not renew a dealer agreement or to change the dealer's competitive circumstances on any of the subdivisions of subsection (b) except subdivisions (1), (2), (3), (4), (5), or (6) thereof unless the supplier can demonstrate through written documentation and clear and convincing evidence, the alleged lack of sales demand to support a dealership, alleged misconduct and/or lack of performance or other deficiency of the dealer. Furthermore, supplier shall also show that the reason for the decision to terminate, cancel, or not renew the dealer agreement or change the dealer's competitive circumstances was in no way caused by supplier's actions.

Id. at § 8-21A-4(c).

In addition, before termination due to a dealer's failure to meet reasonable marketing criteria or market penetration, the manufacturer, distributor, or wholesaler must provide written notice of that intention at least one year in advance. Ala. Code § 8-21-4(d). After notice, the manufacturer or other entity issuing the notice must make good faith efforts to work with the dealer to gain the desired market share including, without limitation, reasonably making available to the dealer an adequate inventory of new equipment and parts and competitive marketing programs. *Id*. The manufacturer, at the end of the one-year notice period, may terminate or elect not to renew the agreement only upon further written notice specifying the reasons for determining that the dealer failed to meet reasonable criteria or market penetration. *Id*. The written notice must specify that termination is effective ninety days from the date of the notice. *Id*. If the dealer cures the claimed deficiency within ninety days, the agreement is not terminated. *Id*.

B. Repurchase and return of surplus parts

Alabama requires suppliers to provide dealers with repair parts throughout the reasonable useful life of any equipment sold by the supplier or dealer. Ala. Code § 8-21-5(a). Additionally, Alabama requires suppliers to give written notice to and provide to their dealers, on at least an annual basis, an opportunity to return a portion of the dealers' surplus parts inventory for credit. *Id*. at § 8-21-5(b). This annual return requirement must adhere to the following:

> (1) The supplier must notify its equipment dealers of a time period, in no event less than 90 days duration, during which time equipment dealers may submit their surplus parts lists and return their surplus parts to the supplier.
>
> (2) Pursuant to this subdivision, a supplier must allow surplus parts return authority on a dollar value of parts equal to 10 percent of the total dollar value of parts purchased on stock order by the dealer from the supplier during the twelve month period immediately preceding the notification to the dealer by the supplier or the surplus parts return program, or the month the dealer's return request is made, whichever is applicable. However, the dealer may wish to return less than 10 percent of the total value of stock order parts purchased by the dealer from supplier during the preceding twelve month period as provided above. This has no effect on the validity of this section or the dealer's rights hereunder.

Id. However, the Alabama statute does not require the repurchase of any of the following:

> (1) Any single repair part which is priced as a set of two or more items.
>
> (2) Any repair part which, because of the condition, is not resalable as a new part without repackaging or reconditioning.
>
> (3) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the manufacturer, distributor, wholesaler, of good title, free and clear of all claims, liens, and encumbrances.
>
> (4) Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so. No obsolete or superseded part may be returned, but any part listed in the supplier's current parts price list or any superseded part that has not been the subject of the supplier's parts return program at the date of notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable shall be eligible for return for the credit specified.

Id. at § 8-21A-5(c). The minimum allowed amount for returned parts is eighty-five percent of the dealer's cost as listed in the supplier's current parts list at the date of the notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's

parts return request. *Id*. at § 8-21A-5(d). Dealers must pay the return packing and freight expenses for all returned surplus parts. *Id*. at § 8-21A-5(f).

Alabama also requires suppliers to repurchase inventory from dealers with whom they have entered into agreements that require the dealers to maintain an inventory of equipment and/or repair parts when those agreements are terminated or not renewed by either party. Ala. Code § 8-21A-6(a). Suppliers must repurchase at its fair market value or assume the lease responsibilities of any specific data processing hardware and/or software they required the dealer to purchase, and must also repurchase any merchandising tools, accessories, and specialized repair tools previously purchased pursuant to the requirements of the supplier and held by the dealer on the date of termination, at seventy-five percent of the current net price. *Id*.

Repurchase is further dictated by the following terms:

> If the dealer decides not to keep the inventory, supplier shall repurchase the inventory, specific data processing hardware and software, merchandising equipment, tools, and accessories, and specialized repair tools previously purchased by dealer and held by dealer on the date of termination of the dealer agreement. Supplier shall pay 100 percent of the net cost of all new, unsold, undamaged and complete tractors and equipment, 100 percent of the current net price of all new, unused, undamaged repair parts and accessories which are listed in the supplier's effective price list or catalog. The supplier shall also pay the dealer six percent of the current net price of all new, unused and undamaged repair parts returned as payment for the cost of handling, packing, and loading. Supplier shall have the option of performing the handling, packing, and loading and paying 100 percent of the current net price of parts in lieu of paying the additional six percent sum imposed herein for these services and in this case, the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer, after a satisfactory repurchase amount has been negotiated. Provided, however, that merchandising tools and accessories and specialized repair tools must have been purchased within the last three years, and must be complete, usable and unique to the product line.

Ala. Code § 8-21A-6(b).

The Alabama statute does not require the repurchase of the following in situations where suppliers require dealers to maintain inventory:

> (1) Any single repair part which is priced as a set of two or more items;
>
> (2) Any repair part which, because of its condition, is not resalable as a new part without reconditioning or repairing;

(3) Any inventory from which the dealer is unable to furnish evidence, reasonably satisfactory to the supplier, of good title, free and clear of all claims, liens, and encumbrances;

(4) Any inventory which the equipment dealer desires to keep, provided dealer has a contractual right to do so;

(5) Any equipment or repair parts which are not in new, unused, undamaged condition;

(6) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination or nonrenewal of the dealer agreement; or

(7) Any inventory which was acquired by the dealer from any source other than the supplier, other than a successor in interest as provided in Section 8-21A-9.

Ala. Code § 8-21A-6(d).

Failure or refusal by a supplier to repurchase any inventory as required by the statute within 90 days after termination or nonrenewal of dealer agreement results in civil liability in the amount of one hundred fifteen percent of the current net price of the inventory, plus any freight charges paid by the dealer, plus all cost of financing such repurchase, including court costs and reasonable attorneys' fees. Ala. Code § 8-21A-6(e). Upon the death or incapacity of the dealer or majority stockholder of the dealer, if the dealer is a corporation, the supplier shall repurchase inventory at the option of the heirs at law, as if the agreement had been terminated with good cause. *Id*. at § 8-21A-7(a). The heirs have nine months following the death or incapacity of the dealer to exercise this option. *Id*.

C. Warranties

Alabama requires every supplier to provide "a fair and reasonable warranty agreement on any new equipment which it sells and shall fairly compensate each of its dealers for parts and labor used in fulfilling the warranty agreement." Ala. Code § 8-21A-10(a). All warranty claims must be paid within thirty days of approval by the supplier. *Id*. Claims must be either approved or disapproved within sixty days after their receipt by the supplier. *Id*. If a claim is disapproved, suppliers must submit in writing the specific reasons for their disapproval and curative steps required, within thirty days. *Id*.

Dealers must be compensated for warranty work pursuant to the following:

All warranty work performed by the dealer under this section shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof multiplied by the dealer's established customer hourly labor rate, which shall have previously been

> made known to supplier. All parts used by dealer in warranty work shall be paid to dealer in the amount of dealer's net price for the parts, plus 15 percent of that sum or the supplier's current reimbursement program for warranty work, whichever is greater. The payment is to reimburse the dealer for dealer's reasonable costs of doing business and providing such warranty service on the supplier's behalf. The supplier shall have the right to adjust errors discovered during audit and if necessary to adjust claims collected in error.

Ala. Code § 8-21A-10(b). Suppliers may audit warranty claims submitted by their dealers during the year following payment of the claims and may adjust payment for invalid claims. *Id*. at § 8-21A-10(d).

Alaska

Alaska does not explicitly regulate "outdoor power equipment," but the "Distributorships" statute, Alaska Stat. § 45.45.700 *et seq.*, may include outdoor power equipment dealers. "Dealer" is defined as "a person who enters into a distributorship agreement and who, under the agreement, receives merchandise or services from a distributor." Alaska Stat. § 45.45.790. "Distributor" is defined as "a person who enters into a distributorship agreement and who, under the agreement, provides merchandise or services to a dealer. *Id.* at § 45.45.790(2). The term includes: (1) a wholesaler; (2) a manufacturer; (3) a person that is a parent corporation or an affiliated corporation of a wholesaler or manufacturer, and a field representative, officer, agent or other direct or indirect representative of (1), (2), or (3). *Id.* "Distributorship agreement" is defined as "an agreement, whether express, implied, oral, or written, between two or more persons:

> (A) by which a person receives the right to
>
> > (i) sell or lease merchandise or services at retail or wholesale; or
> >
> > (ii) use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol; and
>
> (B) in which the parties to the agreement have a joint interest, whether equal or unequal, in the offering, selling, or leasing of the merchandise or services;"

Id. at § 45.45.790(3). "Terminate" includes failing to renew. *Id.* at § 45.45.790(5).

A. Repurchase

Upon the termination of a contract:

> (a) If a dealer maintains a stock of merchandise supplied for the dealer's resale under a distributorship agreement and if the distributor or the dealer terminates the distributorship agreement, the distributor shall, unless the dealer chooses to keep the merchandise, pay the dealer for the merchandise that was purchased from the distributor and that is held by the dealer on the date of the termination an amount equal to
>
> > (1) the fair market value for merchandise that is unused and for which the retailer has paid the distributor, plus 100 percent of the transportation charges paid by the dealer to return the merchandise to the distributor; in this paragraph,

> (A) "fair market value" means the amount the distributor would realize from the sale of the merchandise to another retailer using reasonable good faith efforts;
>
> (B) "unused" means unopened merchandise that is still in the original factory packaging or container;
>
> (2) 85 percent of the current net price, as listed in the current price list or catalog of the distributor, for repair parts, including superseded parts; and
>
> (3) five percent of the current net price of repair parts to cover the handling, packing, and transportation of the repair parts back to the distributor.
>
> (b) Upon payment of the amounts required by (a) of this section, the title to the merchandise passes to the distributor making the payment, and the distributor is entitled to the possession of the merchandise for which the payment was made.
>
> (c) In (a) of this section, if a repair part is not listed in a current price list or catalog of the distributor, the current net price is the higher of the fair market value or the latest price published by the distributor for the repair part if a dealer has actual proof of the purchase of the repair part from the distributor and if the repair part was purchased within 10 years before the termination.

Alaska Stat. § 45.45.710. Additionally, if a distributor terminates a distributorship agreement or makes substantial changes in the competitive situation of the distributor's dealer with regard to distribution of the merchandise or services that are the subject of the distribution agreement, the distributor shall:

> (1) purchase that portion of the dealer's business directly affected by the distributorship agreement or the change, including assets and machinery, at commercially reasonable business valuations; and
>
> (2) reimburse the dealer for the expenses that were necessarily incurred by the dealer
>
> > (A) for that portion of the dealer's business covered by the distributorship agreement; and
> >
> > (B) during the 12 months before the termination or change.

Id. at § 45.45.740(a). Distributors must make payments to the dealer not later than three months after the date the agreement is terminated. *Id.* at § 45.45.720. When the payment is made, the distributor must provide the dealer with a final detailed statement of account for the purchase. *Id.*

Unless the distributorship agreement is continued by the personal representative, an heir, a devisee, or another successor in interest of the individual, upon the death or disability of an individual who is a dealer or holds a majority interest in a dealer, a distributor who supplied merchandise to the dealer must repurchase from the personal representative, heir, devisee, or other successor in interest the merchandise that was purchased from the distributor and that remains when the distributorship agreement is terminated under this section. Alaska Stat. § 45.45.730. To repurchase under this section, the distributor must pay an amount equal to the amount identified under AS 45.45.710(a) and (c), and the repurchase is subject to AS 45.45.720. *Id.*

Arizona

The Arizona statute does not specifically include "outdoor power equipment," but the statute's definition of "equipment" may encompass some outdoor power equipment. Ariz. Rev. Stat. §§ 44-6701 *et seq*. "Equipment" is defined as "machines designed for or adapted and used for agriculture, livestock, grazing, light industrial and utility purposes." *Id*. at § 44-6701(2). The definition of equipment "does not include earthmoving and heavy construction equipment, mining equipment or forestry equipment." "Supplier" is defined as "any person, partnership, corporation, association or other business enterprise that is engaged in the manufacturing, assembly or wholesale distribution of equipment or repair parts, or both, and includes any successor in interest, including a purchaser of assets or stock, or a surviving corporation that results from a merger, liquidation or reorganization of the original supplier." *Id*.

A. Termination

Arizona requires suppliers to give equipment dealers ninety days' written notice of the suppliers' intent to terminate, cancel or not renew a dealer agreement or to change the competitive circumstances of that agreement. Ariz. Rev. Stat. § 44-6703(A). Under the statute, the notice must "state the reasons for this action and that the dealer has sixty days to cure any claimed deficiency." *Id*. If the dealer cures the deficiency within that time, the supplier may not terminate, cancel, refuse to renew or change the competitive circumstances of the agreement for the reasons stated in the notice. *Id*. Further "[t]he agreement's terms do not expire and the supplier shall not change the competitive circumstances of the agreement before the end of the ninety day period without the dealer's written consent." *Id*.

The statute prohibits termination, cancellation, failure to renew, or the substantial change in the competitive circumstances of a dealership agreement without cause. Ariz. Rev. Stat. § 44-6703(B). The statute defines "cause" as meaning that a dealer:

> 1. 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.
>
> 2. Transfers a controlling ownership interest in the dealership without the supplier's consent. The supplier shall not withhold consent without good reason.
>
> 3. Makes a material misrepresentation or falsification of a record.
>
> 4. Files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against him that has not been discharged within sixty days after it was filed.
>
> 5. Is insolvent or in receivership.

6. Pleads guilty to or is convicted of a felony.

7. Fails to operate in the normal course of business for seven consecutive business days or terminates the business.

8. Relocates or establishes a new or additional equipment dealer's place of business without the supplier's consent.

9. Fails to satisfy a payment obligation as it comes due and payable to the supplier.

10. Fails to promptly account to the supplier for any proceeds from the sale of equipment or to hold these proceeds in trust for the supplier's benefit.

11. Consistently engages in business practices that are detrimental to the consumer or the supplier including excessive pricing, misleading advertising or failing to provide service and replacement parts or to perform warranty obligations.

12. 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.

13. Consistently fails to meet building and housekeeping requirements.

14. Consistently fails to provide adequate sales, service or parts personnel commensurate with the dealer agreement.

15. Consistently fails to comply with the applicable licensing laws pertaining to the products and services the dealer represents as being for and on the supplier's behalf.

Id.

B. Repurchase

Arizona requires that upon the cancellation or nonrenewal of a dealer agreement, the supplier must repurchase inventory. Ariz. Rev. Stat. § 44-6705(A). Suppliers must also repurchase any specific data processing hardware they required dealers to purchase, including computer systems equipment required for communication, at its fair market value. *Id.* Additional repurchase terms are as follows:

B. The supplier shall repurchase specialized repair tools purchased by the dealer pursuant to the supplier's requirements. The specialized repair tools shall be unique to the supplier product line and shall be complete and in usable condition. The supplier shall repurchase the specialized repair tools at a price equal to seventy-five per cent of the total invoice amount charged by the supplier to the dealer.

C. The supplier shall pay the dealer one hundred per cent 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.

D. The supplier shall pay the dealer ninety-five per cent 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. In computing the amount owed to the dealer the supplier may deduct from the current net price all programs and discounts previously allowed by the supplier to the dealer.

E. The supplier shall pay the dealer five per cent of the current net price on all new, unused and undamaged repair parts the dealer returns to cover the cost of handling, packing and loading. The supplier may perform the handling, packing and loading itself instead of paying this amount. The dealer shall make available to the supplier all equipment previously purchased by the dealer. The dealer shall make this equipment available at the dealer's place of business or at those places where the equipment is located.

Id. at § 44-6705(B)-(E).

The statute does not require the repurchase of any of the following:

1. A repair part that has a limited storage life or that is subject to deterioration.

2. A single repair part that is priced as a set of two or more items.

3. A repair part that, because of its condition, is not resalable as a new part without being repaired or reconditioned.

4. 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.

5. Inventory that the dealer wishes to keep, including lease or rental equipment, if the dealer has a contractual right to do so.

6. Equipment that is not in new, unused, undamaged and complete condition.

7. 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. Previously unsold demonstrated equipment that has less than fifty hours of use and that is equipped with an hour meter is new equipment.

8. Repair parts that are not in new, unused and undamaged condition.

9. Inventory that the dealer ordered on or after the date the dealer received the notification of the supplier's termination of the dealer agreement.

10. Inventory that the dealer acquired from any source other than the supplier or the supplier's successor in interest.

Ariz. Rev. Stat. § 44-6705(F).

If a supplier fails or refuses to repurchase inventory as required by the statute, the supplier becomes liable for one hundred ten percent of the current net price of the inventory plus any freight charges, interest, and five percent of the inventory's current net price to cover handling, packing, and loading. Ariz. Rev. Stat. § 44-6705(G).

If an equipment dealer dies or becomes incapacitated, Arizona requires suppliers to repurchase the inventory as if the dealer had been terminated. Ariz. Rev. Stat. § 44-6707(A). The dealer's heirs may opt to keep the inventory, however, and have six months from the date of the dealer's incapacity or death to exercise this option. *Id*.

Arkansas

Arkansas directly regulates the relationship between manufacturers, wholesalers, distributors and retailers of outdoor power equipment. The statute specifically includes "lawn and garden outdoor powered machinery and equipment" in its definitions of "retailer" and "inventory" in its Farm Equipment Retailer Franchise Protection Act. Ark. Code Ann. § 4-72-301(3)-(4). Similarly, the statute defines "manufacturer, wholesaler, or distributor" as including an "enterprise engaged in the manufacturing, assembly, or wholesale distribution" of "lawn and garden outdoor powered machinery and equipment, and attachments." *Id*. at § 4-72-301(5).

A. Repurchase

In Arkansas, manufacturers, wholesalers, and distributors are required to repurchase "that inventory previously purchased from him or her and held by the retailer on the date of termination of the contract." Ark. Code Ann. § 4-72-304(a). The wholesaler, manufacturer, or distributor must pay one hundred percent of the net cost of all new, unsold, undamaged, and complete farm implements, machinery, utility and industrial equipment, and attachments, and one hundred percent of the current net price of all new, unused, and undamaged repair parts. *Id.* at 4-72-304(b). Additionally, the wholesaler, manufacturer, or distributor must pay the retailer five percent of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. *Id.* at § 4-72-304(c)(1). Alternatively, the wholesaler, manufacturer, or distributor may perform the handling, packing, and loading in lieu of paying the five percent for these services. *Id.* at § 4-72-304(c)(2). Repurchase of inventory is also required upon a retailer's death, at the option of the retailer's heirs. *Id*. at § 4-72-306(a).

Manufacturers, wholesalers, and distributors are not required to repurchase the following:

> (1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or batteries;
>
> (2) Any repair part which is in a broken or damaged package;
>
> (3) Any single repair part which is priced as a set of two (2) or more items;
>
> (4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
>
> (5) Any inventory for which the retailer is unable to furnish satisfactory evidence to the wholesaler, manufacturer, or distributor of clear title, free and clear of all claims, liens, and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, and attachments which are not current models or which are not in new, unused, undamaged, complete condition;

(8) Any repair parts which are not in new, unused, undamaged condition;

(9) Any farm implements, machinery, utility and industrial equipment, lawn and garden outdoor powered machinery and equipment, or attachments which were purchased twenty-four (24) months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract; or

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer, or distributor.

Ark. Code Ann. § 4-72-307.

Failure or refusal by any manufacturer, wholesaler, or distributor to repurchase inventory within sixty days after the shipment of the inventory renders the manufacturer, wholesaler, or distributor liable for one hundred percent of the current net price of the inventory plus any freight charges, as well as attorneys' fees, court costs, and interest. Ark. Code Ann. § 4-72-309.

B. Warranties

Arkansas requires that warranty claims submitted by dealers must be either approved or disapproved within thirty days of receipt by the manufacturer. Ark. Code Ann. § 4-72-311(b)(1). Additionally, all claims for payment must be paid within thirty days of their approval and notification of disapproved claims must be made within thirty days of their receipt. *Id*. at § 4-72-311(b)(2)-(3)(A). Claims not specifically disapproved within thirty days are deemed approved and payment must follow within thirty days. *Id*. at § 4-72-311(b)(3)(B). Even after termination, a manufacturer must either approve or disapprove warranty claims within thirty days. *Id*. at § 4-72-311(b)(3)(4). Claims not paid within the time allotted accrue interest. *Id*. at § 4-72-311(b)(3)(5). Additionally, manufacturers must compensate dealers for all warranty work "in accordance with the reasonable and customary amount of time required to complete the work…." *Id*. at § 4-72-311(c)(1)(A).

Further, manufacturers must compensate dealers for the net price of any parts used in performing warranty service, plus a minimum of fifteen percent premium in order to reimburse dealers for the reasonable cost of doing business in performing the warranty

service. *Id*. at § 4-72-311(c)(3)(A)-(B). Manufacturers may, however, adjust compensation to dealers for errors discovered during an audit. *Id*. § 4-72-311(c)(4). Finally, dealers may accept a manufacturer's reimbursement terms in lieu of the terms contained in the statute. *Id*. § 4-72-311(d).

California

California does not explicitly regulate "outdoor power equipment," but instead defines "equipment" as "all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes: "(A) lawn, garden, golf course, landscaping, or grounds maintenance; (B) "[p]lanting, cultivating, irrigating, harvesting, and producing agricultural or forestry products; (C) [r]aising, feed, or tending to, or harvesting products from, livestock and any other activity in connection with those activities; (D) [i]ndustrial, construction, maintenance, mining, or utility activities or applications, including, but not limited to, material handling equipment." Cal. Bus. & Prof. Code § 22901(j). The statute defines "dealer" as "any person primarily engaged in the retail sale of equipment as defined in subdivision (j)." *Id*. at § 22901(f). "Inventory" is defined as "equipment, repair parts, data-processing hardware or software, and specialized service or repair parts." *Id*. at § 22901(n). A "supplier" means any person engaged in the business of manufacturing, assembly, or whole distribution of equipment or repair parts." *Id*. at § 22901(v).

A. Termination

In many cases, except (1)-(8) listed below, California requires suppliers to give dealers one hundred eighty days written notice of the supplier's intent to terminate a dealer contract. Cal. Bus. & Prof. Code § 22903(b). The notice must include all reasons constituting good cause for the termination and must provide the dealer with sixty days to cure any claimed deficiency. *Id*. If the deficiency is cured within sixty days to the satisfaction of the supplier (which must be determined in good faith), the notice of termination is void. *Id*. In most cases, a supplier may not terminate a dealer contract for the consistent failure to meet and maintain the supplier's requirements for reasonable standards and performance objectives, unless the supplier gives the dealer notice of termination at least one year before the effective date of the termination. *Id*. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives within the year, the termination notice is void. *Id*.

California prohibits suppliers from terminating, cancelling, failing to renew, or materially changing the competitive circumstances of a dealer contract without good cause. Cal. Bus. & Prof. Code § 22903(c). The statute defines "good cause" as the "failure by a dealer to comply with the requirements imposed on the dealer by the dealer contract, if those requirements are not different from those requirements imposed on other similarly situated dealers in this state." *Id*. at § 22901(l). In addition, the statute states that good cause exists whenever a dealer has taken any of the following actions:

> (1) Transferred a controlling ownership interest in the dealership without the consent of the supplier, who shall not withhold consent unreasonably.
>
> (2) Made a material misrepresentation or falsification of any record.

(3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer that has not been discharged within 60 days after the filing or is insolvent or in receivership.

(4) Pleaded guilty to or has been convicted of a felony involving an act of moral turpitude.

(5) Failed to operate in the normal course of business for seven consecutive business days, without the consent of the supplier, or has terminated the business.

(6) Relocated or established a new or additional dealer's place of business without the supplier's consent.

(7) Materially defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. However, good cause does not exist if a person revokes any guarantee in connection with or following the transfer of that person's entire ownership interest in the dealer unless the supplier requires that person to execute a new guarantee of the dealer's present or future obligations in connection with that transfer of ownership interest.

(8) Failed to satisfy any payment obligation as it became due and payable to the supplier, failed to promptly account to the supplier for any proceeds from the sale of equipment, or failed to hold those proceeds in trust for the benefit of the supplier.

(9) Engaged in conduct that is injurious or detrimental to any of the following:

> (A) The dealer's customers. This includes, but is not limited to, the following conduct: excessive pricing, misleading advertising, failure to provide service and replacement parts, and failure to perform warranty obligations.
>
> (B) The public welfare.
>
> (C) The representation or reputation of the supplier's product.

(10) Consistently failed to meet building and housekeeping requirements, or failed to provide adequate sales, service, or parts personnel commensurate with the dealer contract.

(11) Consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on the supplier's behalf.

(12) Consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, if the supplier has given the

> dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

Id. at § 22903(c).

The California statute further states that if the sales, service, rental, and repair of a supplier's product represents the lesser of ten percent of the dealer's total gross annual revenue or $350,000, the supplier may terminate a dealer contract based on the failure to meet and maintain the supplier's requirements as listed at § 22903(c)(12). *Id*. at § 22903(d). In such an instance, however, the supplier must provide at least one hundred eighty days notice. *Id*. If the dealer achieves the supplier's standards within sixty days of receipt of the termination notice, the notice is deemed void. *Id*.

B. Repurchase

California requires suppliers to repurchase inventory whenever a dealer contract is terminated by cancellation or nonrenewal. Cal. Bus. & Prof. Code § 22905. Repurchase is required pursuant to the following terms:

> (a) The supplier shall repurchase at its fair market value or assume the lease responsibilities of any specific data-processing hardware that the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer contract, including computer systems equipment required and approved by the supplier to communicate with the supplier. The fair market value of property subject to repurchase shall be deemed to be equal to the acquisition cost, including any shipping, handling and set-up fees, less straight line depreciation of that acquisition cost over three years. If the dealer purchased data-processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of that data-processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.
>
> (b) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all new, unsold, undamaged, and complete equipment.
>
> (c) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less depreciation due to usage of those demonstrators. The depreciation adjustment shall be based on published industry rental rates to the extent those rates are available. For purposes of this subdivision, demonstrators, with hour meters that have less than 50 hours of use shall be considered new, unsold equipment subject to repurchase under this section.
>
> (d) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold and undamaged equipment used in a manufacturer created incentive program, as defined in subdivision (p) of Section 22901, less depreciation due to

usage and bonus or volume incentive received by the dealer for the equipment. The depreciation adjustment shall be based on published industry rental rates to the extent these rates are available. For purposes of this subdivision, equipment with hour meters used in a manufacturer created incentive program with less than 50 hours of use will be considered new, unsold equipment subject to repurchase under this section.

(e) The supplier shall pay a sum equal to 95 percent of the current net parts costs on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date that the dealer contract terminates or expires.

(f) The supplier shall also pay the dealer 5 percent of the current net parts cost on all new, unused, and undamaged repair parts returned, to cover the cost of handling, packing, and loading of those parts for return to the supplier. The dealer may allow the supplier to perform the handling, packing, and loading of parts instead of receiving the 5 percent payment for these services. When the supplier is chosen to perform these services, the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer.

(g) The supplier shall pay a sum equal to 75 percent of the net equipment cost, including shipping, handling and set-up fees, of all specialized equipment or repair tools previously purchased pursuant to requirements of the supplier prior to the date of the applicable notification of termination or nonrenewal of the dealer contract. The specialized equipment or repair tools must be unique to the supplier's product line and must be complete and in operating condition.

Id. at §§ 22905(a)-(g). In addition, suppliers and dealers each pay fifty percent of the costs of freight. *Id*. at § 22905(i). Repayment must be received or credited within ninety days, at which point interest begins to accrue. *Id*. at § 22905(h).

Repurchase of the following is *not* required:

(1) Any repair part that is in a broken or damaged package. However, the supplier shall 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 price for the entire package of repair parts is seventy-five dollars ($75) or higher.

(2) Any repair part that, because of its condition, is not resalable as a new part without 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.

(4) Any inventory that the dealer desires to keep if the dealer has a contractual right to do so.

(5) Any equipment or repair parts that are not in new, unsold, undamaged, complete condition; subject to the provisions of this act relating to demonstrators.

(6) Any equipment or repair parts acquired by the dealer from any source other than the supplier unless that equipment or those repair parts were ordered from, or invoiced to, the dealer by the supplier.

(7) Any equipment or repair parts that are not returned to the supplier within 90 days after the latter of (A) the effective date of termination of a dealer contract or (B) the date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return policy. However, this paragraph shall not be applicable 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.

Cal. Bus. & Prof. Code § 22905(j).

The statute imposes civil liability on any supplier who fails or refuses to repurchase inventory within ninety days after termination. Cal. Bus. & Prof. Code § 22905(k). The statute imposes liability in the amount of one hundred ten percent of the current net equipment cost of the inventory, plus any freight paid by the dealer, any interest, five percent for handling, packing, and loading, and court costs and attorneys' fees. *Id*.

C. Warranties

California requires suppliers to either accept or reject all warranty claims submitted for work performed while the dealer contract was in effect, within forty-five days after the supplier's receipt of the warranty claim. Cal. Bus. & Prof. Code § 22903.3(a). Any approved claims must be paid within 30 days of approval. *Id*.

Claims rejected upon the dealer's failure to follow procedural or technical requirements for submission of the claim may be resubmitted within thirty days. Cal. Bus. & Prof. Code § 22903.3(b). Dealers must be compensated for warranty work at the dealer's established customer hourly retail labor rate, which must have been previously made known to the supplier. *Id*. at § 22903.3(c). Suppliers must compensate dealers for parts at the current net parts' cost plus fifteen percent and the cost of freight. *Id*. Repair work or installation of replacement parts at the supplier's request creates a warranty claim, for which the dealer must be paid. *Id*. at § 22903.3(d).

Suppliers may audit warranty claims submitted by dealers for one year following their submission. Cal. Bus. & Prof. Code § 22903.3(e). Suppliers may adjust repayment

for misrepresented claims. *Id*. If any misrepresented claim is uncovered, suppliers may then audit the previous two years' worth of claims. *Id*. Further, dealers may choose to accept alternate reimbursement terms if there is a written dealer contract that requires the supplier to compensate the dealer for warranty labor costs either as:

> (1) a discount in the pricing of the equipment to the dealer; or
>
> (2) a lump-sum payment to the dealer that is made to the dealer within 90 days of the sale of the supplier's new equipment.

Id. at § 22903.3(g).

The failure or refusal to pay a dealer for warranty work within thirty days results in the imposition of civil liability in the amount of one hundred ten percent of the total claim, plus interest, and actual costs for court and attorneys' fees. Cal. Bus. & Prof. Code § 22903.3(h).

Colorado

Colorado regulates the relationship between suppliers and dealers of outdoor power equipment through the Colorado Farm Equipment Fair Dealership Act. The statute explicitly includes "outdoor power equipment" in its definition of "equipment." Colo. Rev. Stat. § 35-38-102. "Supplier" is defined as "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…." *Id*.

A. Termination

The Colorado statute states that unless the circumstances (I) to (X) below apply, a supplier must 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 an agreement. Colo. Rev. Stat. § 35-38-104(1)(a). The required notice must state the reasons for termination, cancellation, or nonrenewal and must state that the dealer has one hundred eighty days in which to cure any deficiency. *Id*. at § 35-38-104(1)(b). If the deficiencies are cured within the one hundred eighty day period, suppliers may not terminate, cancel, refuse to renew, or change the competitive circumstances of an agreement for the reasons specified in the notice. *Id*. Further, the agreement cannot expire and the supplier cannot change the competitive circumstances of the agreement before the end of the one hundred eighty day period without the dealer's written consent. *Id*.

The statute requires that a supplier may not terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement without cause. Colo. Rev. Stat. § 35-35-104(2)(a). Under the statute, "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 suppliers 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.

Id. at 35-38-104(2)(b).

B. Repurchase

Under the Colorado statute, in the event that a dealer agreement is cancelled or not renewed by either party or by mutual consent, suppliers of outdoor power equipment are required to repurchase inventory. Colo. Rev. Stat. § 35-38-106(1). Additionally, suppliers are required to repurchase any specific data processing hardware and software that the supplier required the dealer to purchase, at fair market value. *Id*. Similarly, suppliers must repurchase, at seventy-five percent of the total invoice amount, any specialized repair tools purchased by the dealer pursuant to the supplier's requirements as long as the specialized repair tools are unique to the supplier's product line and in complete and usable condition. *Id*. at § 35-38-106(2)(a)-(b).

Suppliers are responsible for repurchasing all new, unsold, undamaged, and complete equipment that is resalable at one hundred percent of the net cost, minus reasonable allowances for depreciation due to the dealer's use and deterioration caused by

weather at the dealer's location. Col. Rev. Stat. § 35-38-106(3). Further, suppliers must pay ninety-five percent of the current net price for all new, unused, and undamaged repair parts and accessories, excluding obsolete parts, listed in the supplier's effective price list or catalog. *Id*. at § 35-38-106(4)(a). Suppliers must pay dealers five percent of the current net price on all new, unused, and undamaged repair parts that the dealer returns in order to cover the cost of handling, packing, and loading. *Id*. at § 35-38-106(5)(b). Additionally, upon the death or incapacitation of a dealer, the supplier must repurchase the inventory from the estate unless the dealer's heirs have entered into a new dealer agreement. *Id*. at 35-38-108.

> Suppliers are not required 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.

Colo. Rev. Stat. § 35-38-106(6)(a)-(j).

Civil liability applies to suppliers who either fail or refuse to repurchase inventory as required by the statute. Colo. Rev. Stat. § 35-38-106(7).

C. Warranties

The Colorado statute requires suppliers to provide "a fair and reasonable warranty agreement on any new equipment" sold. Colo. Rev. Stat. § 35-38-111(1). Further, the statute requires suppliers to fairly compensate dealers for parts and labor used in fulfilling warranty agreements. *Id*. Warranty claims must be approved or disapproved within sixty days of receipt by the supplier, and paid within thirty days of approval. *Id*. at § 35-38-111(2)(a)-(b). Suppliers must notify dealers in writing of the specific reason for any disapproval of any warranty claim. *Id*. at § 35-38-111(3). Lastly, suppliers must compensate dealers at a reasonable rate for work performed on a warranty claim, but the supplier may adjust compensation for any errors discovered during an audit. *Id*. at § 35-38-111(4)-(5).

Connecticut

Connecticut explicitly regulates the relationship between dealers and suppliers of outdoor power equipment by including dealers of "yard and garden equipment" in its definition of "dealer." Conn. Gen. Stat. § 42-345(2). The statute defines "inventory" as including "yard and garden equipment, and attachments, accessories and repair parts for such items." *Id*. at § 42-345(4). "Supplier" is defined as "a wholesaler, manufacturer or distributor of inventory who enters into a dealer agreement with a dealer." *Id*. at § 42-345(6).

A. Termination

Connecticut's statute requires that prior to the termination of a dealer agreement, a supplier must notify a dealer of termination no less than one hundred twenty days before the effective date of the termination. Conn. Gen. Stat. § 42-346(a). Termination must be for "cause," which is defined as "the failure of a dealer to comply with any requirement imposed upon the dealer by a dealer agreement, provided such requirements are not substantially different from requirements imposed by agreement upon other similarly situated dealers in this state in the normal course of business." *Id*.

The statute authorizes suppliers to immediately terminate a dealer at any time upon the occurrence of any of the following:

> (1) The filing of a petition for bankruptcy or for receivership either by or against the dealer;
>
> (2) The making by the dealer to the supplier of an intentional and material misrepresentation as to the dealer's financial status;
>
> (3) Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
>
> (4) The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;
>
> (5) A change in the location of the dealer's principal place of business as set forth in the dealer agreement without the prior written approval of the supplier, if required by the dealer agreement; or
>
> (6) Withdrawal of an individual proprietor, partner or major shareholder of the dealer, the involuntary termination of a key manager of the dealer, or a substantial reduction in the interest of a partner or major shareholder of the dealer without the prior written consent of the supplier, if required by the dealer agreement.

Conn. Gen. Stat. § 42-346(b).

Without an agreement to the contrary, the statute requires dealers that intend to terminate a dealer agreement with a supplier to notify the supplier of such intent no less than one hundred twenty days prior to the effective date of the termination. Conn. Gen. Stat. § 42-346(c). Any notice required under the statute must be in writing, must be made by certified mail or by personal delivery and must contain: (1) a statement of intention to terminate the dealer agreement; (2) a statement of the reasons for such termination; and (3) the date on which such termination becomes effective. *Id*. at § 42-346(d).

B. Repurchase

Upon termination by either party of a dealer agreement where the dealer agrees to maintain an inventory, Connecticut requires suppliers to repurchase inventory upon the dealer's written request. Conn. Gen. Stat. § 42-347(a). The written request for repurchase must be filed no later than thirty days after the effective date of the termination. *Id*. However, no repurchase by the supplier is required if:

> (1) The dealer has made to the supplier an intentional and material misrepresentation as to the dealer's financial status;
>
> (2) The dealer has defaulted under a chattel mortgage or other security agreement between the dealer and the supplier; or
>
> (3) The dealer has filed a voluntary petition in bankruptcy.

Id. Within ninety days after a supplier receives a dealer's written request for repurchase, suppliers may examine any books or records of the dealer in order to verify the eligibility of any inventory item for repurchase. *Id*. at § 42-348(a). For any inventory repurchased, suppliers are obligated to repurchase all new yard and garden equipment at one hundred percent of the net cost and all new and undamaged repair parts at ninety percent of the current net price. *Id*. § 42-348(b)(1)-(2). Suppliers must also repurchase all undamaged superseded and non-current repair parts at eighty-five percent of the last published price. *Id*. at § 42-348(b)(3)-(4).

If a supplier required dealers to purchase any specific data processing hardware, including computer systems equipment, it must repurchase such hardware at fair market value. Conn. Gen. Stat. § 42-348(b)(5). Similarly, suppliers must repurchase any specialized repair tools, signage, books and supplies, required pursuant to the terms of the dealer agreement, at seventy-five percent of the net cost. *Id*. at § 42-348(b)(6). Payment for all items repurchases must be made to dealers within forty-five days after receipt of the inventory. *Id*. at § 42-348(d).

In addition, Connecticut law also requires suppliers to repurchase inventory from dealers with agreements requiring the dealers to maintain an inventory when the dealer dies or becomes incompetent, at the option of the dealer's heirs. Conn. Gen. Stat. § 42-347(b).

Repurchase upon a dealer's death or incompetence is required within six months of the dealer's death or a lawful determination of incompetence. *Id*.

> Connecticut does not require suppliers to repurchase the following:
>
> (1) A repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries;
>
> (2) A single repair part normally priced and sold in a set of two or more items;
>
> (3) A repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or a manufacturer;
>
> (4) Any inventory that the dealer elects to retain;
>
> (5) Any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or the supplier; or
>
> (6) Any inventory that was acquired by the dealer from a source other than the supplier or other qualified vendor under the dealer agreement.

Conn. Gen. Stat. § 42-349.

C. Warranties

In dealership contracts that provide for consumer warranties, Connecticut requires suppliers to provide payment on warranty claims within thirty days after the receipt and approval of such claims. Conn. Gen. Stat. § 42-351. Suppliers must approve or disapprove warranty claims within thirty days after the receipt of a claim and all disapprovals must be made in writing or they are deemed to be approved. *Id*.

In 2022, the Legislature amended the warranties section of this statute to require a supplier that pays a warranty claim to pay the dealer the current net price plus eighteen percent for any parts and the posted hourly labor rate the dealer charges consumers for nonwarranty repair work for service that has been previously made known to the supplier, provided such rate is reasonable, as compared to other same brand dealers of similar size in the geographic vicinity of the dealer. *Id*. at 42-351(b).

The Legislature also added a provision requiring suppliers to allow resubmissions of previously denied claims in certain instances. The statute now provides, "A supplier who denies a warranty claim made by a dealer or charges back such a claim following a timely audit based solely on the dealer's failure to comply with a claim processing procedure, a clerical error or other administrative technicality, provided such failure to comply does not call into question the legitimacy of the claim, shall allow the dealer an opportunity to resubmit such claim according to reasonable supplier guidelines not later than thirty days

after the initial claim denial or charge-back. A reasonable deadline to submit claims or supporting materials required by the supplier shall not be considered a claim processing procedure or administrative technicality for purposes of this subsection." *Id*. at 42-351(c).

Section 42-354 provides for civil liability for violations of sections 42-345 to 42-353.

Delaware

Delaware explicitly regulates outdoor power equipment supplier and dealer relationships by including outdoor power equipment in its definition of "dealer." Del. Code Ann. tit. 6 § 2720(4). Delaware defines "supplier" as "a wholesaler, manufacturer or distributor who enters into a contract agreement with a dealer." *Id*. at § 2720(7).

A. Termination

The Delaware statute requires suppliers to provide dealers with a notice of termination no less than six months prior to the effective date of the termination. Del. Code Ann. tit. 6 § 2721(a). If the termination results from an ongoing program or standard of which the dealer was aware at least six months prior to termination, the supplier need only provide ninety days' notice of termination. *Id*. The statute authorizes suppliers to immediately terminate the agreement at any time after the occurrence of any of the following events:

> (1) A petition under bankruptcy or receivership law has been filed against the dealer.
>
> (2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier.
>
> (3) Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier.
>
> (4) Close out or sale of a substantial part of the dealer's business related to the handling of the supplier's product, the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation, or a change, without the prior written approval of the supplier, in the location of the dealer's principal place of business under the agreement.
>
> (5) Withdrawal of an individual proprietor, partner, major shareholder or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.
>
> (6) Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

Id.

Dealers who terminate a contract agreement with a supplier must notify the supplier of the termination no less than six months prior to the effective date of the termination. Del. Code Ann. tit. 6 § 2721(b). Contract agreements between dealers and suppliers may also be terminated by the mutual written consent of the parties. *Id*. at § 2721(c). In addition,

any notification required by the statute must be in writing and must be by certified mail or personally delivered to the recipient and must contain:

(1) A statement of intention to terminate the agreement.

(2) A statement of the reasons for the termination.

(3) The date on which the termination takes effect.

Id. at § 2721(d).

B. Repurchase

Delaware requires suppliers to repurchase a dealer's inventory upon the termination of the dealer agreement by either party unless the dealer chooses to keep the inventory. Del. Code Ann. tit. 6 § 2722(a). Repurchase is also required upon the death or incompetence of a dealer if requested within one year by the dealer's personal representative. *Id*. at § 2722(b). The repurchase requirements under Delaware statute do not apply to dealer agreements that do not require the dealer to order and maintain an inventory in excess of $25,000 at current net price from the supplier. *Id*. at § 2722(c).

The repurchase terms required by Delaware include repurchase of all unsold inventory previously purchased by the dealer within ninety days after termination of the contract. Del. Gen. Stat. tit. 6 § 2723(a). Suppliers must pay dealers for one hundred percent of the net cost of all new, unused, undamaged, and complete inventory, except repair parts which must be repurchased at eighty-five percent of the current net price. *Id*. at § 2723(b)(1)-(2). Suppliers may adjust the repurchase price for deterioration attributable to weather conditions at the dealer's location and may withhold five percent of the current net price of repair parts if the supplier handles, packs, and loads the parts. *Id*.

Delaware's repurchase requirements do not include the following:

(1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries.

(2) Multiple packaged repair parts when the package has been broken.

(3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.

(4) Any inventory that the dealer chooses to keep.

(5) Any inventory that was acquired by the dealer from a source other than the supplier.

(6) Any tractors, implements, attachments or equipment that the dealer purchased from the supplier more than 36 months before date of the notice of termination.

Del. Gen. Code tit. 6 § 2724.

Failure or refusal to repurchase any inventory required to be repurchased results in civil liability imposed under the statute. Del. Gen. Code tit. 6 § 2727. Suppliers may be liable not only for one hundred percent of the current net price of the inventory, but also for the freight costs of shipping the inventory to the dealer's location, plus the reasonable cost of assembly performed by the dealer and the dealer's attorney's fees, court costs, and interest. *Id*. at § 2727(a). Further, "any person" who suffers monetary loss due to a violation of the repurchase requirements may bring a civil action to enjoin further violations and to recover damages and attorneys' fees. *Id*. at § 2727(b). Finally, if required notice of termination is not provided by the supplier or if the supplier otherwise violates the statute, the supplier is civilly liable for the dealer's loss of business for the time period the supplier is in violation of the notice of termination provisions, plus attorneys' fees. *Id*. at § 2727(d).

C. Warranties

If a warranty claim is submitted after the termination of the dealer for work performed before termination, the supplier must accept or reject the claim within forty-five days from the date the supplier received the claim. Del. Gen. Code tit. 6 § 2726. If a claim is not rejected within forty-five days, it is deemed accepted. *Id*. All accepted claims must be paid within sixty days after the date the claim is received. *Id*.

Florida

Florida regulates the sale, distribution, and dealer agreements for outdoor power equipment through the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act. *See* Fla. Stat. § 686.60. In addition, Florida regulates the conduct of manufacturers, distributors, and dealers of agricultural equipment via the Agricultural Equipment Manufacturers and Dealers Act. *See* Fla. Stat. § 686.40.

A. Termination

The Florida statute mandates that due cause must exist for manufacturers, distributors, and wholesalers to terminate, cancel, or not renew a selling agreement with a dealer. Fla. Stat. § 686.611(c)(1). Manufacturers, distributors, and wholesalers must provide at least ninety days' written notice of the termination or cancellation and state the specific grounds for termination or cancellation. *Id*. Manufacturers, distributors, and wholesalers must provide at least ninety days' notice before a selling agreement can legally expire under the statute. *Id*.

The statute provides tests for determining what constitutes "due cause" for a manufacturer, distributor, or wholesaler to terminate, cancel, or refuse to renew a dealer agreement and include whether the dealer:

a. Has transferred a majority ownership interest in the dealership without the manufacturer's, distributor's, or wholesaler's consent;

b. Has made a material misrepresentation in applying for or in acting under the agreement;

c. Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within 60 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer, distributor, or wholesaler, or is in receivership;

d. Has engaged in unfair business or trade practices;

e. Has inadequately represented the manufacturer's, distributor's, or wholesaler's products with respect to sales, service, or warranty work;

f. Has inadequate and insufficient sales and service facilities and personnel;

g. Has failed to comply with an applicable federal, state, or local licensing law;

h. Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, wholesaler, or dealership;

i. Has failed to operate in the normal course of business for 10 consecutive business days or has terminated the dealer's business;

j. Has relocated the dealer's place of business without the manufacturer's, distributor's, or wholesaler's consent; or

k. Has failed to comply with the terms of the agreement.

Fla. Stat. § 686.611(c)(2)(a)-(k).

B. Repurchase

Upon the termination of a dealer agreement, manufacturers, distributors, and wholesalers are required to repurchase inventory unless the dealer chooses to keep the inventory. Fla. Stat. § 686.606(1). The statute requires that all inventory previously purchased from the manufacturer, distributor, or wholesaler must be repurchased at one hundred percent of the actual dealer cost, including freight, for all new, unsold, undamaged, and complete outdoor power equipment. *Id*. at § 686.606(2)(a). All new, unused, and undamaged repair parts and accessories listed in the current returnable parts list must be repurchased at eighty-five percent of the current wholesale price. *Id*. at § 686.606(2)(b). Further, if they choose not to do it themselves, manufacturers, distributors, and wholesalers must also pay dealers six percent of the current wholesale price on all new, unused, and undamaged repair parts to cover the cost of packing and loading. *Id*.

In the event of the death or incapacity of a dealer, and at the option of the dealer's heirs, the manufacturer, distributor, or wholesaler is required to repurchase the inventory from the heirs as if the contract were terminated. Fla. Stat. § 686.607(1). The heirs have one year from the date of the death of the dealer to exercise this option. *Id*.

Repurchase of the following is not required:

(a) Any repair part which has a limited storage life or is otherwise subject to deterioration.

(b) Any single repair part which is priced as a set of two or more items.

(c) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

(d) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the manufacturer, distributor, or wholesaler, of good title, free and clear of all claims, liens, and encumbrances.

(e) Any inventory which the dealer desires to keep, if the dealer has a contractual right to keep it.

(f) Any outdoor power equipment or item of such equipment which is not in new, unused, undamaged, and complete condition.

(g) Any outdoor power equipment or item of such equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the manufacturer, distributor, or wholesaler receives a reasonable allowance for such usage or deterioration.

(h) Any repair parts which are not in new, unused, and undamaged condition.

(i) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement.

(j) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler.

Fla. Stat. § 686.606(4).

The failure or refusal to repurchase any inventory covered in the statute within sixty days after termination of a dealer contract exposes the manufacturer, distributor, or wholesaler to civil liability of one hundred percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, the dealer's attorneys' fees, court costs, and interest on the current wholesale price. Fla. Stat. § 686.606(5).

C. Warranties

Florida requires every "manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division" to provide a "fair and reasonable" warranty agreement on any new outdoor power equipment sold. Fla. Stat. § 686.604(1). Dealers must be compensated for warranty claims within thirty days of their approval. *Id*. at § 686.604 (2). Each warranty claim must be approved within thirty days after its receipt. *Id*. Written notification of the specific grounds for any disapproved claim must be provided with thirty days after the receipt of the claim. *Id*. Compensation for work performed on warranty claims must be calculated in the reasonable and customary amount of time required to complete such work. *Id*. at § 686.604(3)(a). Dealers must notify manufacturers, distributors, or wholesalers of their hourly retail labor rate *before* submitting a claim for reimbursement for work performed on a warranty claim. *Id*. The minimum basis for compensation to dealers for work performed on warranty claims is the dealer's cost for parts, including freight and handling charges, plus fifteen percent in order to compensate the dealer for the reasonable cost of doing business and providing warranty service on behalf of the manufacturer. *Id*. at § 686.604(3)(b).

D. Agricultural Equipment Manufacturers and Dealers Act

The statute defines "dealer" as "a person who sells, solicits, or advertises the sale of new and used equipment to the consuming public" but specifically excludes a public officer while performing her or his duties as such officer; a person making casual or isolated sales of her or his own equipment; a person engaged in the auction sale of equipment; a dealer in used equipment; and mass-market retailers. Fla. Stat. § 686.402(1). Equipment is defined as "those tractors or farm implements which are primarily designed for or used in agriculture." Fla. Stat. § 686.402(6) Note that equipment designed for or used in off-road construction, mining, utility, and industrial purposes is not included in this definition. *Id*.

1. Termination

It is unlawful for the manufacturer, distributor, wholesaler, or franchisor, without due cause, to fail to renew a franchise on terms then equally available to all of its dealers, to terminate a franchise, or to restrict the transfer of a franchise unless the franchisee receives fair and reasonable compensation for the inventory of the business. Fla. Stat. § 686.409.

2. Repurchase

The Act includes detailed rules about repurchasing or returning surplus parts:

> Every manufacturer or distributor shall provide to each of its dealers, annually, an opportunity to return a portion of its surplus parts inventories for credit. The surplus procedure shall be administered as follows:
>
> (a) The manufacturer or distributor may specify, and thereupon notify each of its dealers of, a time period of at least 60 days duration during which each of its dealers may submit its surplus parts list and return the surplus parts to the manufacturer or distributor.
>
> (b) If a manufacturer or distributor has not notified a dealer of a specific time period for returning surplus parts within the preceding 12 months, the manufacturer or distributor shall authorize and allow the dealer's surplus parts return request within 30 days after receipt of such request from such dealer.
>
> (c) A manufacturer or distributor must allow surplus parts return authority on a dollar value of parts equal to 6 percent of the total dollar value of parts purchased from the manufacturer or distributor by the dealer during the 12-month period immediately preceding the notification to such dealer by the manufacturer or distributor of the surplus parts return program, or the month such dealer's return request is made, whichever is applicable. However, the dealer may, at her or his option, elect to return a dollar value of her or his surplus parts equal to less than 6 percent of the total dollar value of parts purchased by such dealer from the

manufacturer or distributor during the preceding 12-month period as provided herein.

(d) No obsolete or superseded part may be returned, but any part listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list at the date of notification of the surplus parts return program by the manufacturer or distributor to the dealer, or the date of the dealer's parts return request, whichever is applicable, is eligible for return and credit specified. However, returned parts must be in new and unused condition and must have been purchased from the manufacturer, distributor, or wholesaler to whom they are returned.

(e) The minimum lawful credit to be allowed for returned parts is 85 percent of the wholesale cost of the parts as listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list at the date of the notification of the surplus parts return program by the manufacturer, wholesaler, or distributor to the dealer, or the date of the dealer's parts return request, whichever is applicable.

(f) Applicable credit must be issued or furnished by the manufacturer or distributor to the dealer within 60 days after receipt of her or his returned parts.

(g) The packing and return freight expense incurred in any return of surplus parts pursuant to the terms of this section shall be borne by the dealer.

Fla. Stat. § 686.406(3).

In addition, Florida has separate rules governing the repurchase of inventory pursuant to the termination of a franchise agreement:

(1) Whenever any dealer enters into a franchise agreement with a manufacturer, distributor, or wholesaler in which agreement the dealer agrees to maintain an inventory of equipment or repair parts and the franchise is subsequently terminated, the manufacturer, distributor, or wholesaler shall repurchase the inventory as provided in this section. However, the dealer may keep the inventory if he or she desires. If the dealer has any outstanding debts to the manufacturer, distributor, or wholesaler, then the repurchase amount may be credited to the dealer's account.

(2) If the dealer decides not to keep the inventory, the manufacturer, distributor, or wholesaler shall repurchase that inventory previously purchased from such manufacturer, distributor, or wholesaler and held by the dealer on the date of termination of the contract. The manufacturer, distributor, or wholesaler shall pay:

(a) One hundred percent of the actual dealer cost, including freight, of all new, unsold, undamaged, and complete equipment which is resalable, less a reasonable allowance for depreciation due to usage by the dealer and

deterioration directly attributable to weather conditions at the dealer's location; and

(b) Eighty-five percent of the current wholesale price of all new, unused, and undamaged repair parts and accessories which are listed in the manufacturer's, distributor's, or wholesaler's current returnable parts list. The manufacturer, distributor, or wholesaler shall also pay the dealer 6 percent of the current wholesale price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. However, the manufacturer, distributor, or wholesaler shall have the option of performing the handling, packing, and loading in lieu of paying the 6-percent sum imposed in this subsection for these services; and, in this event, after receipt by the dealer of the full repurchase amount as provided in this section, the dealer shall make available to the manufacturer, distributor, or wholesaler, at the dealer's address or at the places at which the equipment is located, all equipment previously purchased by the dealer.

(3) Upon payment within a reasonable time of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer or be transferred to the manufacturer, distributor, or wholesaler, as the case may be.

(4) The provisions of this section do not require the repurchase from a dealer of:

(a) Any single repair part which is priced as a set of two or more items.

(b) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

(c) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the manufacturer, distributor, or wholesaler, of good title, free and clear of all claims, liens, and encumbrances.

(d) Any inventory which the dealer desires to keep, if the dealer has a contractual right to keep it.

(e) Any equipment which is not in new, unused, undamaged, and complete condition.

(f) Any equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the manufacturer, distributor, or wholesaler receives a reasonable allowance for such usage or deterioration.

(g) Any repair parts which are not in new, unused, and undamaged condition.

(h) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise or contractual agreement.

(i) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler.

(5) If any manufacturer, distributor, or wholesaler fails or refuses to repurchase any inventory covered under the provisions of this section within 60 days after termination of a dealer's contract, he or she is civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the dealer, such dealer's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate provided in s. 687.01 from the 61st day after termination.

Fla. Stat. § 686.407.

In the event of the death or incapacity of a dealer, and at the option of the dealer's heirs, the manufacturer, distributor, or wholesaler is required to repurchase the inventory from the heirs as if the contract were terminated. Fla. Stat. § 686.408(1). The heirs have one year from the date of the death of the dealer to exercise this option. *Id*.

3. Warranties

Florida requires that every manufacturer, distributor, wholesaler, factory branch or division, distributor branch or division, or wholesale branch or division provide a fair and reasonable warranty agreement on any new equipment which it sells and specifies that they must fairly compensate each of their dealers for labor and parts used in fulfilling such warranty agreements. Fla. Stat. § 686.405(1). Each claim for payment under such warranty agreements made by a dealer for such labor and parts must be paid within 30 days following its approval or otherwise approved or disapproved within 30 days after its receipt. *Id.* at § 686.405(2)(a). When any such claim is disapproved, the dealer who submitted it must be notified in writing of such disapproval and the grounds upon which it is based must be stated. *Id*. Any special handling of claims required of the dealer may be enforced only after 30 days' notice in writing to the dealer and upon good and sufficient reason. *Id.* at § 686.405(2)(b).

Prior to filing a claim for reimbursement for warranty work, the dealer must notify the applicable manufacturer, distributor, or wholesaler of his or her hourly retail labor rate. Fla. Stat. § 686.405(3)(a). The rate must be calculated for labor in accordance with the reasonable and customary amount of time required to complete such work, expressed in hours and fractions of hours multiplied by the dealer's established hourly retail labor rate. *Id*. The minimum lawful basis for compensation to the dealer for parts used in fulfilling such warranty work is the dealer's costs for such parts, including all freight and handling charges applicable to such parts, plus 15 percent of the sum of such costs and charges to

reimburse the dealer's reasonable cost of doing business and providing such warranty service on behalf of the manufacturer. *Id.* at § 686.405(3)(b). It is unlawful to deny, delay payment for, or restrict a claim by a dealer for warranty service or parts, incentives, hold-backs, or other amounts owed to a dealer unless the denial, delay, or restriction is the direct result of a material defect in the claim that affects its validity. *Id.* at § 686.405(4).

Finally, a manufacturer, distributor, or wholesaler may audit warranty claims submitted by its dealers only for a period of up to 1 year following payment of such claims and may charge back to its dealers only those amounts based upon paid claims shown by the audit to be invalid. Fla. Stat. § 686.405(5). However, this limitation does not apply in any case of fraudulent claims. *Id.* Any audit of a dealer by or on behalf of a manufacturer, distributor, or wholesaler for sales incentives, service incentives, rebates, or other forms of incentive compensation shall be completed not later than 12 months after the date of termination of such incentive compensation program. *Id.* However, this limitation also does not apply in any case of fraudulent claims. *Id.* at § 686.405(6).

Georgia

The Georgia statute does not expressly include "outdoor power equipment" in its definition of "equipment," but certain types of outdoor power equipment may fall under the regulation of the statute. Ga. Code Ann. § 13-8-12. The statute defines "equipment" as "tractors, farm equipment, or equipment primarily designed for or used in agriculture, horticulture, irrigation for agriculture or horticulture, and other such equipment which is considered tax exempt and sold by the franchised equipment dealer." *Id*. at § 13-8-12(6). "Dealer" is defined as "any person who sells, maintains, solicits, or advertises the sale of new and used equipment to the consuming public." *Id*. at § 13-8-12(2). Note that a separate section of the statute covers both "farm equipment and implements." Ga. Code Ann. § 13-8-31 *et seq*. A different statute governs multiline heavy equipment. Ga. Code Ann. § 10-1-730.

A. Termination

Georgia prohibits the termination of a dealer without due cause. Ga. Code Ann. § 13-8-15(3). The statute enumerates tests for determining what constitutes due cause for a manufacturer or distributor to terminate an agreement as including whether the dealer:

> (i) Has transferred an ownership interest in the dealership without the manufacturer's or distributor's consent;
>
> (ii) Has made a material misrepresentation in applying for or acting under the franchise agreement;
>
> (iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within 30 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer or distributor, or is in receivership;
>
> (iv) Has engaged in an unfair business practice;
>
> (v) Has inadequately represented the manufacturer's or distributor's products with respect to sales, service, or warranty work;
>
> (vi) Has engaged in conduct which is injurious or detrimental to the public welfare;
>
> (vii) Has inadequate sales and service facilities and personnel;
>
> (viii) Has failed to comply with an applicable licensing law;
>
> (ix) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer, distributor, or dealership;

(x) Has failed to operate in the normal course of business for seven consecutive business days;

(xi) Has relocated the dealer's place of business without the manufacturer's or distributor's consent; or

(xii) Has failed to comply with the terms of the dealership or franchise agreement;

Id. at § 13-8-15(3)(C).

Under the Georgia Statute, with the exception of subsection (iii) above, suppliers must provide dealers with at least ninety days' written notice stating the specific grounds for termination. Ga. Code Ann. § 13-8-15(3)(A). If the dealer cures the deficiency within the ninety day period, the dealer is not terminated. *Id*. If the termination is for the dealer's failure to meet reasonable marketing criteria or market penetration, the supplier must provide at least one year's written notice. *Id*. at § 13-8-15(3)(B). After providing the notice, the supplier must make good faith efforts to work with the dealer to gain the desired market share. *Id*. At the end of the one year period, the supplier may terminate or elect not to renew only upon further written notice specifying the reasons for determining that the dealer failed to meet reasonable criteria or market penetration. *Id*. If the deficiency is cured within ninety days, the dealer is not terminated. *Id*.

B. Repurchase

If any dealer enters into a franchise agreement with a supplier wherein the dealer agrees to maintain an inventory of equipment or repair parts, and the dealer is subsequently terminated, Georgia requires the supplier to repurchase the inventory pursuant to the following terms, unless the dealer opts to keep the inventory:

- The manufacturer, distributor, or wholesaler shall repurchase that inventory previously purchased from it and held by the dealer on the date of termination of the contract.

- The manufacturer, distributor, or wholesaler shall pay 100 percent of the actual dealer cost, including freight, of all new, unsold, undamaged, and complete units of equipment which are resalable and 100 percent of the current wholesale price of all new, unused, undamaged repair parts and accessories which are listed in the manufacturer's current parts price list.

- The manufacturer, distributor, or wholesaler shall pay the dealer 5 percent of the current wholesale price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading.

- The manufacturer, distributor, or wholesaler shall have the option of performing the handling, packing, and loading in lieu of paying the 5 percent sum imposed by this subsection for these services.

Ga. Code Ann. § 13-8-22(b).

> The statute does not require the repurchase of the following:
>
> (1) Any single repair part which is priced as a set of two or more items;
>
> (2) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;
>
> (3) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the manufacturer, distributor, or wholesaler, of good title, free and clear of all claims, liens, and encumbrances;
>
> (4) Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;
>
> (5) Any unit of equipment which is not in new, unused, undamaged, complete condition;
>
> (6) Any repair parts which are not in new, unused, undamaged condition;
>
> (7) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the franchise; or
>
> (8) Any inventory which was acquired by the dealer from any source other than the manufacturer, distributor, or wholesaler.

Ga. Code Ann. § 13-8-22(d).

If a supplier fails or refuses to repurchase any inventory as required by the statute, Georgia imposes civil liability in the amount of one hundred percent of the current wholesale price of the inventory plus any freight charges, attorneys' fees, court costs, and interest. Ga. Code Ann. § 13-8-22(e).

If a dealer, or majority stockholder of a corporation operating as a dealer, dies or becomes incapacitated, Georgia requires suppliers to repurchase inventory as if the dealer had been terminated. Ga. Code Ann. § 13-8-23. However, if the dealer's heirs decide to keep the inventory, then no repurchase is required. *Id*. The dealer's heirs have one year from the date of the dealer's death to exercise this option. *Id*.

C. Warranties

Georgia requires suppliers to provide a "fair and reasonable warranty agreement on any new unit of equipment which it sells" and to "fairly compensate each of its dealers for labor and parts used in fulfilling such warranty agreement." Ga. Code Ann. § 13-8-17(a). Warranty claims must be either approved or disapproved within thirty days and must be paid within thirty days of their approval. *Id*. For disapproved claims, suppliers must notify dealers in writing of their disapproval and state the specific grounds upon which the disapproval is based. *Id*. Any special handling of claims required of the dealer by the supplier, and not uniformly required of all dealers, may be enforced only after thirty days' written notice to the dealer and "upon good and sufficient reason." *Id*.

Suppliers must compensate dealers for warranty work at the dealers' established hourly retail labor rate. Ga. Code Ann. § 13-8-17(b). Dealers must notify suppliers of their hourly retail labor rate before submitting a claim. *Id*. For parts used in warranty claims, suppliers must compensate dealers at the dealer's cost, including all freight and handling, plus fifteen percent to reimburse the dealers' reasonable costs of doing business and providing warranty service on the supplier's behalf. *Id*. The statute authorizes suppliers to audit warranty claims for one year following their submission and adjust payment based on any invalid claims. *Id*. at § 13-8-17(d).

D. Farm equipment and implements dealerships

Georgia has a separate statute covering "farm equipment and implements." Ga. Code Ann. § 13-8-31 *et seq*. It does not define "farm equipment or implements" beyond stating that it "means those farm implements primarily designed for use in agriculture." *Id*. at § 13-8-32(7).

1. Termination

It is a violation of the statute to terminate or cancel the franchise or selling agreement of any such wholesaler without due cause. Ga. Code Ann. § 13-8-35(c)(3)(A). Tests for determining what constitutes due cause for a manufacturer to terminate, cancel, or refuse to renew a franchise agreement includes whether the wholesaler:

> (i) Has transferred an ownership interest in the business without the manufacturer's consent;
>
> (ii) Has made a material misrepresentation in applying for or acting under the franchise agreement;
>
> (iii) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the wholesaler which has not been discharged within 30 days after the filing, is in default under the provisions of a security agreement in effect with the manufacturer, or is in receivership;

(iv) Has engaged in an unfair business practice;

(v) Has inadequately represented the manufacturer's products with respect to sales, service, or warranty work;

(vi) Has engaged in conduct which is injurious or detrimental to the public welfare;

(vii) Has inadequate sales and service facilities and personnel;

(viii) Has failed to comply with an applicable licensing law;

(ix) Has been convicted of a crime, the effect of which would be detrimental to the manufacturer or wholesale business;

(x) Has failed to operate in the normal course of business for seven consecutive business days;

(xi) Has relocated the wholesaler's place of business without the manufacturer's consent; or

(xii) Has failed to comply with the terms of the franchise agreement.

Id. § 13-8-35(c)(3)(B).

Except where the grounds for such termination or cancellation fall within division (iii) above, the manufacturer must notify a wholesaler in writing of the termination or cancellation of the franchise or selling agreement of such wholesaler at least 60 days before the effective date thereof, stating the specific grounds for such termination or cancellation. Ga. Code Ann. § 13-8-35(c)(3)(A). The contractual term of any such franchise or selling agreement cannot expire without the written consent of the wholesaler involved prior to the expiration of at least 60 days following such written notice. *Id.*

2. Repurchase

Every manufacturer must provide to his wholesalers, on an annual basis, an opportunity to return a portion of his surplus parts inventory for credit. Ga. Code Ann. § 13-8-36(c). The surplus parts return procedure shall be administered as follows:

(1) The manufacturer may specify and thereupon notify his wholesalers of a time period of at least 60 days' duration, during which time wholesalers may submit their surplus parts list and return their surplus parts to the manufacturer;

(2) If a manufacturer has not notified a wholesaler of a specific time period for

returning surplus parts within the preceding 12 months, then he shall authorize and allow the wholesaler's surplus parts return request within 30 days after receipt of such request from the wholesaler;

(3) Pursuant to the provisions of this subsection, a manufacturer must allow surplus parts return authority on a dollar value of parts equal to 10 percent of the total dollar value of purchases by the wholesaler from the manufacturer during the 12 month period immediately preceding the notification to the wholesaler by the manufacturer of the surplus parts return program, or the month the wholesaler's return request is made, whichever is applicable; provided, however, that the wholesaler may, at his option, elect to return a dollar value of his surplus parts less than 10 percent of the total dollar value of purchases by the wholesaler from the manufacturer during the preceding 12 month period as provided in this subsection;

(4) No obsolete or superseded part may be returned, but any part listed in the manufacturer's current parts price list at the date of notification to the wholesaler by the manufacturer of the surplus parts return program, or the date of a wholesaler's parts return request, whichever is applicable, shall be eligible for return and credit as specified in this subsection; provided, however, that returned parts must be in new and unused condition and must have been purchased from the manufacturer to whom they are returned;

(5) The minimum lawful credit to be allowed for returned parts shall be 85 percent of the wholesale cost thereof as listed in the manufacturer's current parts price list at the date of the notification to the wholesaler by the manufacturer of the surplus parts return program, or the date of a wholesaler's parts return request, whichever is applicable;

(6) Applicable credit pursuant to this subsection must be issued to the wholesaler within 30 days after receipt of his returned parts by the manufacturer; and

(7) Packing and return freight expense incurred in any return of surplus parts pursuant to the terms of this Code section shall be borne by the wholesaler.

Id.

The statute also requires and regulates repurchase of inventory upon termination of the franchise as follows:

(a) Whenever any wholesaler enters into a franchise agreement with a manufacturer wherein the wholesaler agrees to maintain an inventory of farm equipment or implements or repair parts and the franchise is subsequently terminated, the manufacturer shall repurchase the inventory as provided in this article. The wholesaler may keep the inventory if he desires. If the wholesaler has any outstanding debts to the manufacturer, then the repurchase amount may be credited to the wholesaler's account.

(b) The manufacturer shall repurchase that inventory previously purchased from him and held by the wholesaler on the date of termination of the contract. The manufacturer shall pay 100 percent of the actual wholesaler's cost, including freight, of all new, unsold, undamaged, and complete units of farm equipment or implements which are resalable, all demonstrator units of farm equipment or implements, and 100 percent of the current wholesale price of all new, unused, undamaged repair parts and accessories which are listed in the manufacturer's current parts price list. The manufacturer shall pay the wholesaler 5 percent of the current wholesale price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading.

(c) Upon payment within a reasonable time of the repurchase amount to the wholesaler, the title and right of possession to the repurchased inventory shall transfer to the manufacturer.

(d) The provisions of this article shall not require the repurchase from a wholesaler of:

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration;

(2) Any single repair part which is priced as a set of two or more items;

(3) Any repair part which, because of its condition, is not resalable as a new part without repackaging or reconditioning;

(4) Any inventory for which the wholesaler is unable to furnish evidence, reasonably satisfactory to the manufacturer, of good title, free and clear of all claims, liens, and encumbrances;

(5) Any inventory which the wholesaler desires to keep, provided the wholesaler has a contractual right to do so;

(6) Any unit of farm equipment or implement which is not in new, unused, undamaged, complete condition, except units that have been used by the wholesaler as demonstrators;

(7) Any repair parts which are not in new, unused, undamaged condition;

(8) Any inventory which was ordered by the wholesaler on or after the date of receipt of the notification of termination of the franchise; or

(9) Any inventory which was acquired by the wholesaler from any source other than the manufacturer.

(e) If any manufacturer shall fail or refuse to repurchase any inventory covered under the provisions of this article within 60 days after termination of a wholesaler's contract, he

shall be civilly liable for 100 percent of the current wholesale price of the inventory plus any freight charges paid by the wholesaler, the wholesaler's reasonable attorney's fees, court costs, and interest on the current wholesale price computed at the legal interest rate from the sixty-first day after termination.

Ga. Code Ann. § 13-8-42.

Finally, at the option of the heirs of the deceased, the statute requires the repurchase of inventory upon death or incapacity of the dealer or the majority stockholder of a corporate dealer as if the agreement had been terminated. Ga. Code Ann. § 13-8-43. The heirs have one year from the date of death of the wholesaler or majority stockholder to exercise this option. *Id*.

3. Warranties

Every manufacturer or factory branch or division shall reimburse its wholesalers for any expenses they incur in complying with the provisions of Georgia laws pertaining to warranty requirements for farm equipment or implements as they apply to products of the manufacturer. Ga. Code Ann. § 13-8-37.

E. Multiline heavy equipment dealerships

Georgia has a separate statute governing multiline heavy equipment. *See* Ga. Code Ann. § 10-1-730 *et seq*. "Heavy equipment" means "self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines, weighing 5,000 pounds or more and primarily employed for construction, industrial, maritime, mining, or forestry uses." *Id.* at § 10-1-731(2). It does not include motor vehicles requiring registration and certificates of title; farm machinery, equipment, and implements; or equipment that is consumer goods. *Id.*

1. Termination

It is a violation of the statute for a supplier to unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless the supplier has first complied with the provisions of this article and good cause exists for amendment, termination, cancellation, nonrenewal, or noncontinuance. Ga. Code Ann. § 10-1-732(a). The term "good cause" is limited to withdrawal by the supplier, its successors, and assigns of the sale of its products in Georgia or multiline dealer performance deficiencies including, but not limited to, the following:

(1) Bankruptcy or receivership of the multiline dealer;

(2) Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a multiline dealer for the purpose of securing financing in the ordinary course of business; or

(3) (A) Failure by the multiline dealer to comply substantially, without reasonable cause or justification, with any reasonable and material requirement imposed upon such dealer in writing by the supplier, including, but not limited to, a substantial failure by a multiline dealer to:

(i) Maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line; or

(ii) Render services comparable in quality, quantity, or volume to the services rendered by other dealers of the same product or product line similarly situated.

(B) In any determination as to whether a multiline dealer has failed to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon such dealer by the supplier, consideration shall be given to the relative size, population, geographical location, number of retail outlets, and demand for the products applicable to the market area of the multiline dealer in question and to comparable market area.

Id. In any dispute as to whether a supplier has acted with good cause as required by this Code section, the supplier shall have the burden of proof to establish that good cause existed. *Id*. at § 10-1-732(c).

A supplier must generally provide a multiline dealer at least 120 days prior written notice of any intention to amend, terminate, cancel, or decline to renew any agreement. Ga. Code Ann. § 10-1-733(a). The notice must state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. *Id*. Where such reason or reasons relate to a condition or conditions which may be rectified by action of the multiline dealer, he or she has 75 days in which to take such action and, within such 75 day period, must give written notice to the supplier if and when such action is taken. *Id*. at 10-1-733(b). If such condition or conditions have been rectified by action of the multiline dealer, then the proposed amendment, termination, cancellation, or nonrenewal shall be void and without legal effect. *Id.* However, where the supplier contends that action on the part of the multiline dealer has not rectified one or more of the conditions, the supplier must give written notice thereof to the multiline dealer within 15 days after the dealer gave notice to the supplier of the action taken. *Id*.

During the 120 day notice period, the multiline dealer has the right to contract for a transfer of his or her business to another person who meets the material and reasonable qualifications and standards required by the supplier of its multiline dealers. Ga. Code Ann. § 10-1-733(c). The multiline dealer must give notice of any such transfer to the supplier at least 45 days prior to the expiration of the 120 day notice period. *Id*.

Notwithstanding the above notice requirements, the agreement may be immediately terminated, amended, cancelled, or allowed to expire with no notice required if the reason for the amendment, termination, cancellation, or nonrenewal is:

(1) The bankruptcy or receivership of the multiline dealer;

(2) An assignment for the benefit of the creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a multiline dealer for the purpose of securing financing in the ordinary course of business;

(3) Willful or intentional misrepresentation made by the multiline dealer with the express intent to defraud the supplier;

(4) Failure of the multiline dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, unless such failure has resulted from acts of God, casualties, strikes, or other similar circumstances beyond the multiline dealer's reasonable control;

(5) Failure to pay any undisputed amount due the supplier continuing for 30 days after written notice thereof; or

(6) A final conviction of the multiline dealer of a felony.

Id. at § 10-1-733(d).

2. Warranties

The manufacturer must supply to the dealer and the dealer must present directly to the consumer at the time of purchase a written notice stating, in ten-point all-capital type, in substantially the following form:

> This equipment is subject to Article 29 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, entitled the "Farm Tractor Warranty Act." To be entitled to a refund or replacement, you must first notify the manufacturer or its agent and the authorized dealer which was a party to the sale of the problem in writing and give them an opportunity to repair the equipment.

Manufacturer	Agent	Dealer
Name	Name	Name
Address	Address	Address
Telephone Number	Telephone Number	Telephone Number

Ga. Code Ann. § 10-1-812.

If the farm tractor does not conform to applicable express written warranties and the consumer reports the nonconformity to the manufacturer and its authorized dealer within 18 months of the date of the original delivery of the farm tractor to the consumer, the manufacturer or its authorized dealers must make the repairs necessary to make the farm tractor conform to the express written warranties, notwithstanding that the repairs are made after the expiration of the warranty term or the 18 month period. *Id*. at § 10-1-813.

Idaho

Idaho includes outdoor power equipment in its definition of "equipment" and defines outdoor power equipment as "equipment powered by a two-cycle or four-cycle gas or diesel engine, or electric motor, which is used to maintain commercial, public or residential lawns and gardens or used in landscape, turf, golf course or plant nursery maintenance." Idaho Code Ann. § 28-24-102(5)(b). The statute defines "equipment dealer" as "any person, partnership, corporation, association or other form of business enterprise, primarily engaged in the retail sale and/or service of equipment in [Idaho] pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services." *Id*. at § 28-24-102(6). "Supplier" is defined as a "manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer…." *Id*. at § 28-24-102(8). Note that Idaho has a separate section governing the repurchase of farm machinery, implements, attachments, accessories and parts upon termination of a contract.

A. Termination

The Idaho statute prohibits termination, cancellation, failure to renew a dealer agreement, the substantial change of a dealer's competitive circumstances, the attempt to terminate or cancel, threaten not to renew, or threaten to substantially change the competitive circumstances of a dealer, without good cause. Idaho Code Ann. § 28-24-103(4). The statute defines "good cause" as the "failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement." *Id*. at § 28-24-102(7).

Written notice of termination, nonrenewal, or substantial change in the competitive circumstances of the agreement is required ninety days before the proposed action is to become effective. Idaho Code Ann. § 28-24-104(1). The notice must state the reasons constituting good cause for the proposed action to be taken and must advise the dealer if there is a right to cure. *Id*. With the exception of specific instances enumerated in sections (a) through (d) below, dealers must be given ninety days to cure any claimed deficiency. *Id*. If a dealer has ninety days in which to cure a deficiency, the statute mandates that the agreement shall not expire, nor can the dealer be terminated, cancelled, or have the competitive circumstances substantially changed, before the ninety days is up without the written consent of the dealer. *Id*.

Good cause exists, albeit not exclusively, in the following circumstances when the dealer has:

(a) Transferred a controlling ownership interest in the equipment dealership without the supplier's consent;

(b) Made a material misrepresentation to the supplier;

(c) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within ninety (90) days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;

(d) Been convicted of a crime, punishable for a term of imprisonment for one (1) year or more;

(e) Failed to operate in the normal course of business for ten (10) consecutive business days or has terminated said business;

(f) Relocated the equipment dealer's place of business without the supplier's consent;

(g) Inadequately represented the supplier over a one (1) year period of time or length of time or a time mutually agreed upon between the supplier and dealer to reflect the ongoing market conditions;

(h) Consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the dealer agreement;

(i) Failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf;

(j) Materially failed to comply with the terms of the dealer agreement.

Idaho Code Ann. § 28-24-104(2).

Before a supplier may terminate a dealer for the dealer's failure to achieve market penetration at levels consistent with similarly situated dealerships in the state, the supplier must provide written notice of its intention at least one year in advance. Idaho Code Ann. § 28-24-104(3). After issuing such a notice, the supplier must provide fair and reasonable efforts to work with the dealer to correct the problem. *Id*. at § 28-24-104(3)(a). At the end of one year of assisting the dealer with correcting the problem, the supplier may terminate or elect not to renew only upon written notice and must specify that termination or nonrenewal takes effect one hundred eighty days from the date of the notice, the reasons for determining that the dealer failed to meet reasonable market penetration, and that either party may petition the court for relief. *Id*. at § 28-24-104(3)(b). The supplier bears the burden of proving that a retailer's area does not afford sufficient sales potential to reasonably support the retailer; such proof must be in writing. *Id*. at § 28-24-104(3)(c).

B. Warranties

The statute allows dealers to submit warranty claims to suppliers while the dealer agreement is in effect or for work performed while the dealer agreement was in effect. Idaho Code Ann. § 28-24-104B(1). Warranty claims must be either accepted or rejected within thirty days of their receipt and all warranty claims not rejected within thirty days are considered accepted. *Id*. at § 28-24-104B(2). Accepted warranty claims must be paid within thirty days and written notice of the reason for rejected claims must be sent within thirty days. *Id*.

Suppliers must compensate dealers for labor at their established customer hourly retail labor rate. Idaho Code Ann. § 28-24-104B(4). Dealers are entitled to reimbursement for repair parts at a minimum of the net cost plus twenty percent to compensate for the reasonable cost of doing business. *Id*. Suppliers must reimburse dealers for transportation costs incurred for repair work for safety or mandatory modifications ordered by the supplier. *Id*. Idaho does not permit suppliers to charge back, off-set or otherwise attempt to recover from dealers all or part of the amount of the warranty claim unless: (1) the claim was submitted in error, (2) the work was not properly performed or unnecessary to comply with the warranty, or (3) the dealer did not substantiate the claim according to the supplier's written requirements in effect when the equipment was delivered to the dealer by the customer for warranty repairs. *Id*. at § 28-24-104B(5) Suppliers may not pass the cost of covering warranty claims on to a dealer through any means including surcharges, reduction of discounts, or certification standards. *Id*. at § 28-24-104B(7).

Idaho does not permit suppliers to audit a dealer's warranty claims submitted more than two years before the date of the audit. Idaho Stat. Ann. § 28-24-104C.

C. Repurchase of farm machinery, implements, attachments, accessories and parts upon termination of contract

This section of Idaho's statute requires that wholesalers, manufacturers, or distributors of farm machinery, implements or parts repurchase extra parts from retailers whenever their agreement terminates, except in cases where the retailer wishes to keep the parts. Idaho Stat. Ann. § 28-23-101. The statute defines "farm implements" as:

> every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways and all other consumer products supplied by the wholesaler, manufacturer or distributor of farm implements, equipment, machinery, attachments or repair parts to the retailer pursuant to a written or oral contract, sales agreement or security agreement.

Id. at § 28-27-107.

The payment must be equal to one hundred percent of the net cost of all unused, unsold and undamaged complete farm implements or equipment, machinery or attachments

in new condition which have been purchased by the retailer from the wholesaler, manufacturer or distributor within the thirty-six months immediately preceding notification by either party of intent to cancel or discontinue the contract and one hundred percent of the net cost of all demonstration or rental equipment that has not been retailed to an end user less a reasonable downward adjustment to reflect depreciation relating to such demonstration or rental activity, including the transportation charges to the retailer. Idaho Stat. Ann. § 28-23-101. The wholesaler, manufacturer or distributor must also pay to the retailer a reasonable reimbursement for services performed in connection with the assembly and predelivery inspections of the farm equipment and attachments. *Id.* In addition, the supplier assumes ownership of farm implements or equipment, machinery or attachments FOB the dealer location. *Id*.

The statute covers repair parts separately. It requires wholesalers, manufacturers and distributors to repurchase repair parts at the termination of a contract for the sum of:

> one hundred percent of the current net prices, including the transportation charges from the retailer to the wholesaler, manufacturer or distributor which have been paid by the retailer, or invoiced to a retailer's account by the wholesaler, manufacturer or distributor, for manuals and repair manuals, repair parts, including superseded or previously included parts listed in current price lists or catalogs or electronic catalogs in use, or previously used within thirty-six months prior to the latest parts price list issue date by the wholesaler, manufacturer or distributor on the date of cancellation or discontinuance of the contract, which parts had previously been purchased by the retailer from the wholesaler, manufacturer or distributor and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer or distributor.

Idaho Stat. Ann. § 28-23-102.

It also requires the wholesaler, manufacturer or distributor to credit the retailer's account with "five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer or distributor elects to perform inventorying, packing and loading of the parts themselves." Idaho Stat. Ann. § 28-23-102. The payments must be made or credited by the manufacturer, wholesaler, or distributor within ninety days from the termination date of the dealer agreement or else interest will start accruing. *Id*.

Upon payment or allowance of a credit to the dealer's account, title to the farm implements, equipment, machinery, attachments, accessories or repair parts passes to the manufacturer, wholesaler or distributor making the payment or allowing the credit. Idaho Stat. Ann. § 28-23-102. The manufacturer, wholesaler or distributor is then entitled to possession. *Id*.

Note that suppliers must repurchase from dealers "specialized repair tools," defined as "those tools required by the supplier and unique to the diagnosis or repair of the supplier's products." Idaho Stat. Ann. § 28-23-102. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent of the original net cost to the dealer. *Id.* For all other specialized repair tools, in complete and resalable condition, the purchase price is the original net cost to the dealer less twenty percent per year depreciation, but not less than fifty percent of the original purchase price. *Id.* Suppliers are also required to repurchase current signage, which is defined by statute as "the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both." *Id*. The purchase price must be the original net cost to the dealer less twenty percent per year, but may in no case be less than fifty percent of the original cost to the dealer. *Id.*

Notwithstanding the above rules, wholesalers, manufacturers or distributors are not required to repurchase from a retailer of a repair part when the retailer previously has failed to return the repair part after being offered a reasonable opportunity to return it at a price not less than one hundred percent of its net price and the required transportation charges specified above. Idaho Stat. Ann. § 28-23-106. The statute also excludes from its repurchasing requirements the repurchase from a retailer of repair parts the retailer purchased in a set of multiple parts, unless the set is complete and in resalable condition and parts which because of their condition are not resalable without reconditioning. *Id*.

In the event of the retailer's death, the wholesaler or distributor is required to repurchase the merchandise from the heir or heirs of the deceased in the same manner as provided for above unless the heir or heirs elect to continue to operate the dealership. Idaho Stat. Ann. § 28-23-104. In the event the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a cancellation or discontinuance of the contract. *Id*.

Illinois

Illinois explicitly regulates relationships between manufacturers and dealers of outdoor power equipment through the Illinois Equipment Fair Dealership Law. *See* 815 Ill. Comp. Stat. § 715. The statute includes "outdoor power equipment" in its definition of "inventory" and defines "retailer" as "any person, firm or corporation engaged in the business of selling and retailing outdoor power equipment…attachments, accessories or repair parts…." *Id*. at § 715/2(2),(4). Franchisors have additional responsibilities under the Illinois Franchise Disclosure Act. See 815 Ill. Comp. Stat. § 705 *et seq*.

A. Repurchase

When either the retailer or manufacturer terminates the retailer agreement, the retailer may require the manufacturer to repurchase inventory previously purchased from the manufacturer. 815 Ill. Comp. Stat. § 715/3-4. Manufacturers of outdoor power equipment are required to repurchase all new, unsold, undamaged, and complete inventory at one hundred percent of the net cost and pay transportation costs. *Id*. All new, unused, and undamaged repair parts are required to be repurchased at ninety-five percent of the current net price plus transportation costs. *Id*. Manufacturers may perform the handling, packaging and loading of items to be repurchased within forty-five days of termination or pay retailers five percent of the current net price for such services. *Id*.

In the event of a retailer's death, the manufacturer is required to repurchase the inventory upon the retailer's heirs' option as though the contract were terminated. 815 Ill. Comp. Stat. § 715/9. The retailer's heirs have one year to exercise this option following the retailer's death. *Id*.

Repurchase of the following items is not required:

(1) Any repair part which has a limited storage life and is in a deteriorated condition;

(2) Any repair part which is in a broken or damaged package;

(3) Any single repair part which is priced as a set of two or more items;

(4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any outdoor power equipment, farm implements, farm machinery, attachments and accessories, construction equipment, industrial equipment, attachments and accessories which are not in new, unused, undamaged, or complete condition;

(8) Any repair parts which are not in new, unused, or undamaged condition;

(9) Any outdoor power equipment, farm implements, farm machinery, attachments or accessories, construction equipment, industrial equipment, attachments or accessories which were purchased 24 months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor.

(12) Any repair parts not listed in the manufacturers' current price list in effect at date of notice of termination or classified as obsolete by the manufacturer. However, this exception to the repurchase requirement shall apply only if the wholesaler, manufacturer or distributor provided the retailer with the opportunity to return the parts prior to notice of termination of the dealership.

815 Ill. Comp. Stat. § 715/7.

Refusal or failure to repurchase any inventory as required by the statute results in civil liability for the manufacturer for one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorneys' fees, and court costs, plus interest. 815 Ill. Comp. Stat. § 715/8.

B. Warranties

Under the Illinois statute, retailers are entitled to reimbursement for work performed on claims brought under a manufacturer's express warranty. 815 Ill. Comp. Stat. § 715/4.5. Retailers must be compensated at an hourly rate the same or greater than the rate charged to consumers for non-warranty repair work. *Id.* The warranty provision of this statute does not apply to dealers where the written dealer agreement provides for compensation to a dealer for warranty labor costs either as part of the pricing of the equipment or in the form of a lump sum payment, provided the payment is not less than five percent of the suggested retail price of the equipment. *Id.*

C. Illinois Franchise Disclosure Act

1. Termination

If the business is a franchise, Illinois' Franchise Disclosure Act governs termination. It states that franchisors may not terminate a franchisee prior to the expiration of its term except for "good cause," defined as including but not limited to:

> (b) [T]he failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days
>
> (c) 'Good cause' shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee:
>
> > (1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business;
> >
> > (2) voluntarily abandons the franchise business;
> >
> > (3) is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor's trademark, service mark, trade name or commercial symbol; or
> >
> > (4) repeatedly fails to comply with the lawful provisions of the franchise or other agreement.

815 § Ill. Comp. Stat. 705/19.

2. Repurchase

It is a violation of the Act for a franchisor to refuse to renew a franchise of a franchised business without compensating the franchisee, either by repurchase or by other means, for the diminution in the value of the franchised business caused by the expiration of the franchise where:

> (a) the franchisee is barred by the franchise agreement (or by the refusal of the franchisor at least 6 months prior to the expiration date of the franchise to waive any portion of the franchise agreement which prohibits the franchisee) from continuing to conduct substantially the same business under another trademark, service mark, trade name or commercial symbol in the same area subsequent to the expiration of the franchise; or
>
> (b) the franchisee has not been sent notice of the franchisor's intent not to

renew the franchise at least 6 months prior to the expiration date or any extension thereof of the franchise.

815 § Ill. Comp. Stat. 705/20.

Indiana

Indiana law does not expressly mention "outdoor power equipment" but regulates contractual relations between manufacturers and retailers of "farm or industrial machinery." Ind. Code §§ 15-12-3 *et seq*. The statute defines "farm or industrial machinery" as (1) farm implements, (2) tractors, (3) farm machinery, (4) utility and industrial equipment, (5) construction machinery, including track and wheel tractors, motor graders, and excavators, or (6) attachments or repair parts for one or more machines referred to in subdivisions (1) through (5). *Id*. at § 15-12-3-4. All terrain vehicles are not included in the definition. *Id.* "Retailer" is defined as:

> (a) As used in this chapter, "retailer" means a person engaged in the business of selling, at retail, farm or industrial machinery.
>
> (b) The term does not include a retail seller of:
>
> (1) petroleum products, if the sale of petroleum products is the primary purpose of the retail seller's business;
> (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
> (3) automotive care and replacement products.
>
> (c) The term includes the heirs, personal representative, guardian, or receiver of a retailer.

Id. at § 15-12-3-8.

A. Repurchase

Upon termination, Indiana requires manufacturers, wholesalers, and distributors of farm or industrial machinery to repurchase inventory from retailers with whom they have entered into agreements requiring the retailers to maintain an inventory. Ind. Code § 15-12-3-10(a). Repurchase is not required when a contract is terminated based upon:

> (1) the conviction of the retailer (or a principal owner or operator of the retailer) of an offense involving theft, dishonesty, or false statement; or
> (2) a fraudulent misrepresentation by the retailer to the wholesaler, manufacturer, or distributor that is material to the contract.

Id. at § 15-12-3-10(c). Otherwise, the statute requires suppliers to repurchase farm or industrial machinery that:

> (1) the retailer previously purchased from the wholesaler, manufacturer, or distributor; and
>
> (2) the retailer held as inventory on the date of the termination of the contract.

Id. at § 15-12-3-11. Proof of purchase from the supplier includes retail invoices from the supplier or a reference to an item in a current or past supplier price book. *Id*.

The terms of the repurchase price are dictated under the statute by the following:

(a) The price for a repurchase must equal:

(1) one hundred percent (100%) of the net cost of all new, unsold, undamaged, and complete farm or industrial machinery (except repair parts); plus

(2) one hundred percent (100%) of the current net price of all new, unused, and undamaged repair parts.

(b) A wholesaler, manufacturer, or distributor that is required to repurchase farm or industrial machinery from a retailer under this chapter shall pay freight charges incurred in shipping the farm or industrial machinery (except repair parts) back to the wholesaler, manufacturer, or distributor.

(c) A retailer shall pay freight charges incurred in shipping repair parts that are repurchased under this chapter back to the wholesaler, manufacturer, or distributor.

(d) A retailer is responsible for the packaging of all farm or industrial machinery that is repurchased from the retailer under this chapter in preparation for the shipment of that farm or industrial machinery back to the wholesaler, manufacturer, or distributor.

Ind. Code § 15-12-3-12.

Repurchase of the following items is not required:

(1) A repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, batteries, solvents, or lubricants.

(2) A single repair part that is priced as a set of two (2) or more items.

(3) Inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer, or distributor, of clear title, free and clear of all claims, liens, and encumbrances.

(4) Inventory that the retailer desires to keep, provided the retailer has a contractual right to keep the inventory.

(5) Inventory that is not in a new, unused, and undamaged condition.

(6) Inventory that was ordered by the retailer on or after the date of notification of termination of the contract.

(7) Inventory that was acquired by the retailer from a source other than the wholesaler, manufacturer, or distributor.

(8) Complete farm and industrial machinery, except repair parts, that were purchased thirty-six (36) months or more before the date of termination.

(9) A repair part that is in a broken or damaged package, if that package is necessary for the resale of the repair part to a customer by a retailer.

Ind. Code § 15-12-3-14.

Upon the death or incapacitation of a retailer, or if the retailer is a corporation, the insolvency of the retailer, the retailer's heirs, personal representative, guardian, or receiver may require a wholesaler, manufacturer, or distributor to repurchase inventory as if the retailer had been terminated. Ind. Code § 15-12-3-16.

The statute imposes civil liability on manufacturers, wholesalers, and distributors who fail or refuse to repurchase inventory as required under the statute. Ind. Code § 15-12-3-15. Liability is imposed in the amount of:

(1) one hundred percent (100%) of the current net price of repair parts;

(2) one hundred percent (100%) of the net cost of all other inventory;

(3) the retailer's reasonable attorney's fees;

(4) court costs; and

(5) interest on the amounts determined under subdivisions (1) through (2), computed at a simple interest rate that is set by the court at no less than six percent (6%) per year and no more than ten percent (10%) per year, and beginning to accrue on the sixty-first day after the termination of the contract.

Id.

Iowa

Iowa specifically includes outdoor power equipment in its definition of "equipment." Iowa Code § 322F.1(6). Iowa defines "dealer" as "a person engaged in the retail sale of equipment." *Id*. at § 322F.1(4). "Supplier" is defined as "the manufacturer, wholesaler, or distributor of equipment sold by a dealer." *Id*. at § 322F.1(11). Farm implement, motorcycle, snowmobile, and all-terrain vehicle franchises are governed by a separate section of the statute. *See* Iowa Code § 322D.1.

A. Termination

Suppliers of outdoor power equipment may terminate their dealership agreements by cancellation or nonrenewal with dealers in Iowa only upon good cause and upon at least ninety days' prior written notice delivered to the dealer by restricted certified mail or hand delivered by the supplier's representative. Iowa Code § 322F.2(1)(a). The statute defines "good cause" as "a condition which occurs under any of the following circumstances:"

> a. The dealer fails to substantially comply with an essential and reasonable requirement imposed upon the dealer by the dealership agreement, but only if that requirement is also generally imposed upon similarly situated dealers.
>
> b. The dealer has made a material misrepresentation or falsification of any record, contract, report, or other document which the dealer has submitted to the supplier.
>
> c. The dealer transfers an interest in the dealership; a person with a substantial interest in the ownership or control of the dealership withdraws from the dealership, including an individual proprietor, partner, major shareholder, or manager; or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this paragraph.
>
> d. The dealer has filed a voluntary petition in bankruptcy.
>
> e. An involuntary petition in bankruptcy has been filed against the dealership and has not been discharged within thirty days after the filing.
>
> f. The dealership is subject to a closeout or sale of a substantial part of the dealership equipment or assets related to the equipment.
>
> g. A dissolution or liquidation of dealership assets has commenced.
>
> h. The dealer's principal place of business is relocated, unless the supplier consents to the change in location.

i. The dealer has defaulted under a security agreement, including but not limited to a chattel mortgage, between the dealer and the supplier or any subsidiary or affiliate of the supplier.

j. A guarantee of the dealer's present or future obligations to the supplier is revoked or discontinued.

k. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned business operations.

l. The dealer has pleaded guilty to or has been convicted of a felony.

m. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare, including but not limited to, misleading advertising, failing to provide reasonable service or replacement parts, or failing to honor warranty obligations.

n. The dealer consistently fails to comply with applicable state licensing requirements relating to the products and services represented on behalf of the supplier.

o. The dealer has inadequately represented the manufacturer's product relating to sales when compared to similarly situated dealers.

Id. at § 322F.1(7).

Written notice of termination must specify each deficiency constituting good cause for the action. Iowa Code § 322F.2(1)(b). The notice must also state that the dealer has sixty days to cure a specified deficiency. *Id*. If the deficiency is cured within sixty days from the date that the notice is delivered, the notice is void. *Id*. If the deficiency is based on a dealer's inadequate representation of a manufacturer's product relating to sales, the notice must state that the dealer has eighteen months to cure the deficiency. *Id*.

B. Repurchase

Whenever a dealership agreement is terminated by cancellation or nonrenewal, the supplier must repurchase equipment and parts in the dealer's inventory and must repurchase special tools and computer hardware or software required for the dealership. Iowa Code § 322F.3(1). The repurchase provision applies to all new equipment purchased by the dealership from the supplier within the twenty-four months preceding notification of termination and must be repurchased at one hundred percent of the net cost. *Id*. at § 322F.3(1)(a). Suppliers must repurchase all repair parts, including superseded parts, at ninety percent of the net price. *Id*. at § 322F.3(1)(b). If the supplier does not perform the handling, packing, and loading, it must reimburse the dealer five percent of the net price for handling, packing, and loading repair parts. *Id*.

If the supplier required the dealer to purchase any specific computer hardware or software as part of the dealership agreement, it must repurchase such items if purchased within the five years preceding termination at their amortized value. Iowa Code. § 322F.3(1)(c). Additionally, if the dealership agreement required the dealer to purchase any special repair tools unique to the supplier's product line, the supplier must repurchase such tools if they are in complete and resalable condition. *Id*. at § 322F.3(1)(d). For special repair tools purchased within the immediate three years, repurchase is required at seventy-five percent of the net cost and at fifty percent of the net cost for special repair tools purchased within the four to six years preceding termination. *Id*. at § 322F.3(d)(1). Equipment used in demonstrations must be repurchased at one hundred percent of the net cost provided the equipment is in new conduction and has not been abused. *Id*. at § 322F.3(1)(f). Payment for repurchased inventory must be made within ninety days of the date the supplier takes possession of the repurchased equipment. *Id*. at § 322F.3(3).

Repurchase of repair parts with limited storage life or otherwise subject to deterioration, including rubber items, gaskets, and batteries as well as parts in broken or damaged packages, single parts priced as a set of two or more, or repair parts not resalable is not required. Iowa Code § 322F.3 (4).

If a dealer or person holding a majority interest in a dealership dies or is incapacitated, the dealer's heirs may request the supplier to repurchase equipment within twelve months from the date of the dealer's death or incapacitation. Iowa Code § 322F.5.

C. Farm implement, motorcycle, snowmobile, and all-terrain vehicle franchises

Farm implement, motorcycle, snowmobile, and all-terrain vehicle franchises have separate repurchasing requirements under the statute. A farm implement is defined as "a machine designed or adapted and used exclusively for agricultural or horticultural operations or livestock raising." Iowa Code § 322D.1(4). A franchise exists when there is:

> [A] contract between two or more persons when all of the following conditions are included:
>
> a. A commercial relationship of definite duration or continuing indefinite duration is involved.
>
> b. The franchisee is granted the right to offer and sell farm implements, motorcycles, autocycles, all-terrain vehicles, snowmobiles, or related parts or attachments manufactured or distributed by the franchiser.
>
> c. The franchisee, as an independent business, constitutes a component of the franchiser's distribution system.

> d. The operation of the franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.
>
> e. The operation of the franchisee's business is substantially reliant on the franchiser for the continued supply of farm implements, motorcycles, autocycles, all-terrain vehicles, snowmobiles, or related parts or attachments.

Iowa Code § 322D.1(5).

1. Repurchase

In the event of termination of the franchise, the franchisor is required to repurchase from the franchisee:

> a. One hundred percent of the net cost of new, unused, complete farm implements, motorcycles, autocycles, all-terrain vehicles, snowmobiles, or related attachments, which were purchased from the franchiser. In addition, the franchisee shall have a right of payment for transportation charges on the farm implements, motorcycles, autocycles, all-terrain vehicles, or snowmobiles, which have been paid by the franchisee.
>
> b. Eighty-five percent of the net prices of any repair parts, including superseded parts, which were purchased from the franchiser and held by the franchisee on the date that the franchise terminated.
>
> c. Five percent of the net prices of parts resold under paragraph *"b"* for handling, packing, and loading of the parts. However, this payment shall not be due to the franchisee if the franchiser elects to perform the handling, packing, and loading.

Iowa Code § 322D.2(1).

The cost of farm implements, motorcycles, autocycles, all-terrain vehicles, snowmobiles, or related attachments and the price of repair parts must be determined by reference to the franchisor's price list or catalog in effect at the time of the franchise termination. Iowa Code § 322D.2(3). Once payment has been made, the franchisor is entitled to possession. *Id.* at § 322D.2(2).

There are several exceptions to the repurchasing rules. The statute does not require repurchase from a franchisee of:

1. A repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries.

2. A repair part which is in a broken or damaged package.

3. A single repair part which is priced as a set of two or more items.

4. A repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

5. Any inventory for which the franchisee is unable to furnish evidence of title and ownership in the franchisee that is free and clear of all claims, liens and encumbrances to the satisfaction of the franchiser.

6. Any inventory which a franchisee desires to keep, provided the franchisee has a contractual right in the franchise agreement to do so.

7. A farm implement, motorcycle, autocycle, all-terrain vehicle, or snowmobile which is not in new, unused, undamaged, or complete condition.

8. A repair part which is not in new, unused, or undamaged condition.

9. A farm implement, motorcycle, autocycle, all-terrain vehicle, or snowmobile which was purchased twenty-four months or more prior to the termination of the franchise.

10. Any inventory which was ordered by the franchisee on or after the date of notification of termination of the franchise.

11. Any inventory which was acquired by the franchisee from a source other than the franchiser with whom the franchise is being terminated.

12. A repair part not listed in the franchiser's current price list in effect on the date of notice of termination or classified as nonreturnable or obsolete by the franchiser as of the date of termination. However, this exception to the repurchase requirement applies only if the franchiser provided the franchisee with an opportunity to return the exempted part prior to notice of termination of the franchise.

Iowa Code § 322D.3.

In the event that any franchiser fails to make payment to the franchisee within sixty days after the inventory has been received by the franchiser, the franchiser is civilly liable for one hundred percent of the current net price of the inventory; transportation charges which have been paid by the franchisee; eighty-five percent of the current net price of repair

parts; five percent of the current net price of repair parts to cover handling, packing and loading, if applicable; and attorney fees incurred by the franchisee or the franchisee's heir or heirs. Iowa Code § 322D.4.

In the event of death of the franchisee, the repurchasing rights may be exercised by the heirs of the franchisee. Iowa Code § 322D.5. If the franchisee is a business organization, the rights may be exercised by the heirs of a majority stockholder of the franchisee upon the death of the majority stockholder. *Id*.

Kansas

Kansas has a statute specifically addressing outdoor power equipment dealership agreements. Kansas defines "outdoor power equipment" to include "machinery, equipment, attachments or repair parts therefor, used for industrial, construction, maintenance or utility purposes." Kan. Stat. Ann. § 16-1302. The stated purpose of the Kansas statute is to "prevent arbitrary or abusive conduct and to preserve and enhance the reasonable expectations for success in the business of distributing outdoor power equipment." *Id.* at § 16-1301. Interestingly, Kansas also has a statute specifically addressing lawn and garden equipment. *See Id*. at § 16-1401 *et seq*. The lawn and garden equipment dealership statute is notably similar to § 16-1301 *et seq*., but is not summarized herein and should be consulted separately for determining its applicability versus § 16-1301 *et seq*. Finally, Kansas also has separate statutes addressing dealership agreements relating to farm implements, machinery, attachments or repair parts and farm equipment. *See* Kan. Stat. Ann. § 16-1001 *et seq*. and § 16-1201 *et seq*.

A. Termination

Kansas requires good cause for a supplier to terminate, cancel, or fail to renew an outdoor power equipment dealership agreement. Kan. Stat. Ann. § 16-1306. "Good cause" is defined as the "failure by a retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract if such requirements are not different from those requirements imposed on similarly situated dealers either by their terms or in the manner of their enforcement." *Id*. Further, the statute states that good cause exists, and no notice and right to cure requirement apply, whenever:

> (a) The retailer has transferred a controlling interest in the retailer business without the supplier's consent;
>
> (b) the retailer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the date of filing, or there has been a closeout or sale of a substantial part of the retailer's assets related to the retailer's business or there has been a commencement or dissolution or liquidation of the retailer's business;
>
> (c) there has been a change, without the prior written approval of the supplier, in the location of retailer's principal place of business if such approval is required under the retailer's agreement with the supplier;
>
> (d) the retailer has defaulted under any reasonable and essential term of a chattel mortgage or other security agreement between the retailer and supplier, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the supplier;

(e) the retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned such retailer's business, except for reasonable and customary closures of business;

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

(g) the retailer has engaged in conduct which is injurious or detrimental to the retailer's customers or the public welfare; or

(h) following receipt of written notices of the supplier's requirements and of written notices of the supplier's determination of the retailer's initial and persisting failures to meet the supplier's requirements, the retailer has consistently failed to meet the supplier's requirements for reasonable market penetration based on the supplier's experience in other identified and comparable market areas.

Id.

The statute requires at least a ninety day notice of termination, cancellation, or nonrenewal. Kan. Stat. Ann. § 16-1307(a). The notice must state all the reasons constituting good cause, and must provide that the dealer has sixty days to cure any claimed deficiency. *Id*. If the deficiency is cured within sixty days, the notice is void. *Id*.

B. Repurchase

Whenever either the retailer or supplier terminates, cancels, fails to renew, or substantially discontinues a dealer contract, the supplier must repurchase inventory pursuant to the guidelines articulated in the statute, unless the retailer opts to keep the inventory. Kan. Stat. Ann. § 16-1303(a). The statute states that suppliers must repurchase inventory in the amount of:

- A sum equal to 100% of the net cost of all new, unused, undamaged and complete outdoor power equipment, including transportation charges which have been paid by such retailer, and 95% of the current net prices of new, unused and undamaged repair parts which had previously been purchased from such supplier preceding the date of notification of the termination, and held by such retailer on the date of the cancellation or discontinuance of such contract.

- The supplier also shall pay such retailer a sum equal to 5% of the current net price of all parts returned for the handling, packing and loading of such parts for return to the supplier, except that such 5% shall not be paid or credited to the retailer if the supplier elects to perform the handling, packing, loading and transportation of the parts itself.

- Upon the payment of such sum, the title and right of possession of such outdoor power equipment and repair parts and other equipment shall then pass to the supplier making such payment, and such supplier shall then be entitled to the possession of such outdoor power equipment and repair parts.

- All payments required to be made under the provisions of this section must be made within 60 days after the return of the outdoor power equipment, repair parts or other equipment.

- After 60 days, all payments or allowances shall include interest calculated from the date of return at the rate prescribed in K.S.A. 16-1204, and amendments thereto.

Id.

The Kansas statute does not require the repurchase from a retailer of any of the following:

(a) repair part which is in a broken or damaged package;

(b) single repair part which is priced as a set of two or more items;

(c) repair part which, because of its condition, is not resalable as a new part;

(d) inventory for which the retailer is unable to furnish evidence, satisfactory to the supplier, of title, free and clear of all claims, liens and encumbrances;

(e) inventory which the retailer desires to keep, and for which the retailer has a contractual right to do so;

(f) machines, equipment, and attachments which are not in new, unused, undamaged, or complete condition;

(g) repair parts which are not in new, unused, or undamaged condition;

(h) machines, equipment or attachments which were purchased 24 months or more prior to notice of termination of the contract;

(i) inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(j) inventory which was acquired by the retailer from any source other than the supplier or transferee of such supplier, unless such inventory was ordered from, invoiced to the retailer by or financed to the retailer by the supplier or transferee of such supplier; or

(k) part that has been removed from an engine or short block or piece of equipment or any part purchased separately that has been mounted or installed by the retailer on an engine or on equipment.

Kan. Stat. Ann. § 16-1304.

The Kansas statute imposes civil liabilities on suppliers who fail or refuse to pay for items returned for repurchase as required by the statute. Kan. Stat. Ann. § 16-1305. Civil liabilities are imposed in the amount of:

> 100% of the net cost of such machinery, plus transportation charges which have been paid by the retailer; and for 100% of the current net price of the repair parts, plus 5% for handling, packing and loading plus freight charges which have been paid by the retailer.

Id. The statute states that it is the supplier's burden to establish that any item is excepted from the repurchase requirements. *Id*.

C. Warranties

In a separate Kansas statute which includes "outdoor power equipment" in its definition of "equipment," Kansas requires that "any warranty repair work performed for a consumer by a dealer under the provisions of a manufacturer's express warranty, shall require the manufacturer to reimburse the dealer at an hourly labor rate which is the same as the hourly labor rate the dealer currently charges consumers for nonwarranty repair work." Kan. Stat. Ann. § 16-120(b). However, the statute does not apply to manufacturers that provide for compensation to a dealer for warranty labor costs either as (1) "a discount in the pricing of the equipment to the dealer" or, (2) "a lump sum payment to the dealer" as long as the payment is not less than 5% of the suggested retail price of the equipment. *Id*. at § 16-120(d).

D. Farm equipment and dealership agreements

Kansas has two statutes that cover dealership agreements related to farm implements, machinery, attachments and repair parts and also to farm equipment. *See* Kan. Stat. Ann. § 16-1001 *et seq*. and § 16-1201 *et seq*. Farm equipment is defined in the latter statute as "tractors, trailers, combines, tillage implements, bailers and other equipment, including attachments and repair parts therefor, used in planting, cultivating, irrigation, harvesting and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway." Kan. Stat. Ann. § 16-1202(a).

1. Repurchase of farm implements, machinery, attachments and repair parts

Wholesalers, manufacturers and distributors engaged in a franchise agreement with a dealer or retailer that requires them to maintain a stock of farm implements, machinery, attachments and repair parts must repurchase such parts if they terminate or cancel the franchise agreement. Kan. Stat. Ann. § 16-1002 (a). In such circumstances, the wholesaler, manufacturer or distributor must repurchase the items or credit the retailer's account unless the retailer desires to keep the merchandise. *Id*.

Payment must equal 100% of the net cost of all new, unused, undamaged, complete farm implements, machinery and attachments and 95% of the current net prices on new, unused, undamaged repair parts, including superseded parts, which implements, machinery, attachments and parts had previously been purchased from the wholesaler, manufacturer, distributor, and held by such retailer on the date of the cancellation or discontinuance of such contract. Kan. Stat. Ann. § 16-1002 (a). The wholesaler, manufacturer or distributor must also pay the retailer a sum equal to 5% of the current net price of all parts returned for the handling, packing and loading of such parts for return to the wholesaler, manufacturer or distributor, except that such 5% shall not be paid or credited to the retailer if the wholesaler, manufacturer or distributor elects to perform the handling, packing, loading and transportation of the parts itself. *Id*.

Upon the payment or allowance of credit to the retailer's account of the sum required, the title to such farm implements, machinery, attachments and repair parts passes to the manufacturer, wholesaler or distributor making they payment. Kan. Stat. Ann. § 16-1002 (a). They are then entitled to possession. *Id*. All payments or allowances of credit due to retailers must be paid or credited within 60 days after the return of implements, machinery, attachments or repair parts. After 60 days, all payments or allowances accrue interest. *Id*.

Notwithstanding the above requirements, repurchase is not required for:

(1) Any repair part which is in a broken or damaged package;

(2) any single repair part which is priced as a set of two or more items;

(3) any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(4) any farm implements, machinery, attachments or repair parts for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of clear title, free and clear of all claims, liens and encumbrances;

(5) any farm implements, machinery, attachments or repair parts which the retailer desires to keep, provided the retailer has a contractual right to do so;

(6) any farm implements, machinery and attachments which are not current models or which are not in new, unused, undamaged, complete condition;

(7) any repair parts which are not in new, unused, undamaged condition;

(8) any farm implements, machinery or attachments which were purchased prior to the beginning of the 24-month period immediately preceding the date of notification of termination;

(9) any farm implements, machinery, attachments or repair parts which were ordered by retailer on or after the date of notification of termination; or

(10) any farm implements, machinery, attachments or repair parts which were acquired by the retailer from any source other than the wholesaler, manufacturer, distributor or transferee of such wholesaler, manufacturer or distributor, unless such farm implements, machinery, attachments or repair parts were ordered from, invoiced to the retailer by or financed to the retailer by the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor.

Kan. Stat. Ann. § 16-1003.

In the event that any manufacturer, wholesaler or distributor of farm implements, machinery, attachments or repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler or distributor, fails or refuses to make payment, such manufacturer, wholesaler or distributor shall be liable in a civil action to be brought by such retailer for the actual costs of the action, including attorney, paralegal and expert witness fees; for 100% of the net cost of such farm implements, machinery and attachments and 100% of the current net price of repair parts, plus 5% for handling, packing and loading plus freight charges which have been paid by the retailer. Kan. Stat. Ann. § 16-1004.

In the event of the death of the retail dealer or majority stockholder, the wholesaler, distributor or manufacturer who supplied such merchandise must repurchase from the heir or heirs of such retail dealer or majority stockholder the merchandise under the same terms and conditions as if the wholesaler, manufacturer or distributor had terminated the contract. Kan. Stat. Ann. § 16-1005.

2. Termination of farm equipment dealerships

No farm equipment manufacturer, directly or through any officer, agent or employee may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" is defined as the failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, provided

such requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause exists whenever:

> (a) The farm equipment dealer has transferred an interest in the farm equipment dealership without the manufacturer's consent, or there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or there has been a substantial reduction in interest of a partner or major stockholder without the consent of the manufacturer;
>
> (b) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement of dissolution or liquidation of the dealer;
>
> (c) there has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;
>
> (d) the farm equipment dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future obligations to the farm equipment manufacturer;
>
> (e) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned its business;
>
> (f) the farm equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer;
>
> (g) the dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare;
>
> (h) the farm equipment dealer has consistently failed to meet the manufacturer's requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas.

Kan. Stat. Ann. § 16-1203.

A farm equipment manufacturer must provide a farm equipment dealer at least ninety-days' prior written notice of termination, cancellation or nonrenewal of the dealership agreement. Kan. Stat. Ann. § 16-1204. The notice must state all reasons constituting good cause for termination, cancellation or nonrenewal and must also provide the dealer with 60 days in which to cure any claimed deficiency. *Id*. If the deficiency is

rectified within 60 days the notice shall be void. The notice and right to cure provisions do not apply, however, if the reason for termination, cancellation or nonrenewal is for any reason set forth in subsections (a) through (h) in Kan. Stat. Ann. § 16-1203, above. *Id*.

Kentucky

Kentucky does not expressly include "outdoor power equipment" in its statute regulating the retail sales of farm equipment, but it does include "consumer products" in its definition of "inventory." Ky. Rev. Stat. Ann. § 365.800(3). The statute defines "consumer products" as "machines designed for or adapted and used for horticulture, floriculture, landscaping, grounds maintenance, or turf maintenance, including but not limited to lawnmowers, rototillers, trimmers, blowers, and other equipment used in both residential and commercial lawn, gardening, or turf maintenance, installation, or other applications." *Id*. at § 365.800(5). "Supplier" is defined as "any wholesaler, manufacturer, or distributor of inventory, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, or any receiver, assignee, or trustee of the original wholesaler, manufacturer, distributor, or corporation." *Id*. at § 365.800(7).

A. Termination

Kentucky does not allow suppliers to terminate or substantially change the competitive circumstances of a retail agreement contract without good cause. Ky. Rev. Stat. Ann. § 365.831(1). The statute defines "good cause" as the "failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement contract if the requirements are not different from those imposed on other retailers similarly situated in this state." *Id*. Further, the statute states that good cause exists, and that no notice is required, if:

> (a) There has been a closeout or sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;
>
> (b) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;
>
> (c) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;
>
> (d) The retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;
>
> (e) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and supplier; or
>
> (f) The retailer 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 an individual proprietor, partner, or major shareholder in the dealership.

Id.

Good cause does not exist if the supplier consents to an action described in subsection (1), above. Such consent exists if the retail agreement contract does not provide the supplier with a right to terminate or substantially change the competitive circumstances of the contract as a result of such action, or the supplier otherwise consents to such action. Ky. Rev. Stat. Ann. § 365.831(2).

The statute prohibits a supplier's termination or substantial change in the competitive circumstances of a retail agreement contract based on high unemployment in the dealership market area, a labor dispute, the results of a natural disaster, including a sustained drought, or other circumstances beyond the retailer's control. Ky. Rev. Stat. Ann. § 365.831(3).

Except as provided in subsections (a) through (f) above, the Kentucky statute requires suppliers to provide retailers with at least ninety days' written notice of termination of a retail agreement contract. Ky. Rev. Stat. Ann. § 365.831(4). The notice must also contain a sixty day written notice to cure the deficiency. *Id*. The notice must state all reasons constituting good cause for termination. *Id*. If the termination is due to lack of market penetration, a reasonable period of time, no less than one year, must have existed where the supplier worked with the retailer to gain the desired market share. *Id*.

B. Repurchase

The Kentucky statute requires suppliers to repurchase inventory from retailers with whom they have entered into a written or unwritten retailer agreement contract if the contract is terminated, unless the retailer desires to keep the inventory. Ky. Rev. Stat. Ann. § 365.805. Repurchase of all inventory previously purchased from the supplier and held by the retailer on the date of termination is required by the statute. *Id*. at § 365.810(1). Suppliers must pay one hundred percent of the net cost, plus any freight charges paid, of all new, unsold, undamaged, and complete consumer products and any attachments for the equipment. *Id*. Repurchase of all new, unused, and undamaged repair parts is required at one hundred percent of the current net price. *Id*. Suppliers must also repurchase any inventory used in demonstrations at its agreed depreciated value, if the equipment is in like-new condition and has not been damaged. *Id*.

Additionally, suppliers must pay retailers five percent of the current net price on all new, unused, and undamaged repair parts or superseded parts returned to cover the cost of handling, packing, and loading if the supplier does not perform these services. Ky. Rev. Stat. Ann. § 365.810(2). Suppliers must repurchase, at its amortized value, any specific data processing hardware and software and telecommunications equipment that the

supplier required the retailer to purchase within five years of the termination of the retail agreement contract. *Id*. at § 365.810(3). Further, suppliers must repurchase all specialized repair tools purchased within three years of the date of termination for seventy five percent of the net cost, and at fifty percent of the net cost if they were purchased four to six years before the date of termination of the retail agreement if: (1) the supplier required the purchase, (2) the retailer held the tools on the date of the termination of the retail agreement, (3) the tools were unique to the supplier's product line, and (4) the tools were in complete and resalable condition. *Id*.

The statute requires suppliers to repurchase, at its amortized value, any specific signage incorporating the supplier's name, logo, tradename, trademark, or other information identifying the supplier or the products manufactured or distributed by the supplier which the supplier expressly required the retailer to purchase in connection with the retail agreement contract. Ky. Rev. Stat. Ann. § 365.810(4). If the supplier requires the retailer's employees to participate in training programs, then the supplier must reimburse the retailer for any out-of-pocket expenses incurred by the retailer if the training took place within one year of the termination. *Id*. at § 365.810(5). All trade fixtures and other improvements to the business premises of the retailer must be repurchased by the supplier at their amortized value. *Id*. at § 365.810(6).

The following items are not required by the Kentucky statute to be repurchased:

(1) Any repair part or superseded part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or batteries;

(2) Any repair part or superseded part which is in a broken or damaged package;

(3) Any single repair part or superseded part which is priced as a set of two (2) or more items;

(4) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens, and encumbrances;

(5) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(6) Any inventory which is not in a new, unused, and undamaged condition, except that inventory used in demonstrations or leased, as provided in KRS 365.810, shall be considered new and unused;

(7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract; or

(8) Any inventory which was acquired by the retailer from any source other than the supplier.

Ky. Rev. Stat. Ann. § 365.820.

If a retailer, or majority owner of the entity operating as a retailer, dies the supplier must repurchase inventory as if the agreement had been terminated unless the retailer's heirs choose to keep the inventory. Ky. Rev. Stat. Ann. § 365.830(1). The heirs have one year from the retailer's death to exercise this option. *Id*.

The statute imposes civil liability on suppliers who fail or refuse to repurchase any inventory as required by the statute within sixty days after the inventory has been shipped. Ky. Rev. Stat. Ann. § 365.825. The liability imposed by the statute is in the amount of one hundred percent of the current net price of the repair parts and superseded parts inventory plus five percent for handling, packing and loading, if applicable. *Id*. Further, liability for one hundred percent of the net cost of all other inventory plus any freight, the retailer's attorneys' fees, court costs, and interest is also imposed. *Id*.

C. Warranties

Kentucky requires suppliers to approve or disapprove warranty claims within thirty days of receipt by the supplier. Ky. Rev. Stat. Ann. § 365.833(1). Payment on approved claims must be made within thirty days of their approval. *Id*. Suppliers must notify retailers of disapproved claims within thirty days and state the specific grounds upon which the disapproval is based. *Id*. Claims not expressly disapproved within thirty days are deemed approved. *Id*.

Warranty work must be compensated in accordance with the retailer's established customer hourly retail labor rate, which must have previously been made known to the supplier. Ky. Rev. Stat. Ann. § 365.833(3). Suppliers must reimburse retailers for all parts used in warranty work at the retailer's net price plus a minimum of fifteen percent for the retailer's reasonable costs of doing business. *Id*. at § 365.833(5). Suppliers may adjust for errors discovered during an audit. *Id*. at § 365.833(6). Retailers may accept the manufacturer's reimbursement terms and conditions in lieu of the other provisions provided by the statute. *Id*. at § 365.833(7).

Louisiana

Louisiana regulates relationships between agents and dealers of farm equipment, construction equipment, forestry equipment, heavy industrial equipment, material handling equipment, utility equipment, and lawn and garden equipment. La. Rev. Stat. Ann. § 51:481(B). The statute states that these categories of equipment include "every vehicle designed or adapted and used exclusively for agricultural, construction, forestry, industrial material handling, utility, or lawn and garden operations." *Id*. at § 51:481(B)(5). "Dealer" is defined as "any farm dealer, heavy industrial equipment dealer, construction equipment dealer, forestry equipment dealer, material handling equipment dealer, utility equipment dealer, engines equipment dealer, lawn and garden equipment dealer or retail equipment distributor dealer." *Id*. at § 51:481(B)(3). The statute defines "agent" as "any manufacturer, wholesaler or wholesale distributor, any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original equipment manufacturer, wholesaler or distributor." *Id*. at § 51:481(B)(1).

A. Termination

Louisiana prohibits the termination, cancellation, failure to renew, or substantial change in the competitive circumstances of a dealership agreement without good cause. La. Rev. Stat. Ann. § 51:482(A)(1). "Good cause" is defined as the "failure by a dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership contract or agreement, if such requirements are not different from those imposed on other dealers similarly situated, either by its terms or the manner of enforcements." *Id*. at § 51:482(A)(3). The statute states that "good cause" exists whenever:

> (1) An individual proprietor, partner, or major shareholder of the dealership has withdrawn.
>
> (2) There has been a substantial reduction in interest of a substantial partner or major stockholder.
>
> (3) The dealer has filed or had filed against it a petition in bankruptcy that has not been discharged within sixty days after the filing, has sold a substantial part of the dealer's assets related to the equipment business, or has commenced dissolution or liquidation.
>
> (4) The dealer has changed its principal place of business without prior approval of the agent, which shall not be unreasonably withheld.
>
> (5) Except as due to force majeure, the equipment dealer has failed to operate in the normal course of business for fourteen days.

(6) The dealer has pleaded guilty to or has been convicted of a felony substantially affecting the relationship between the dealer and the agent.

(7) The dealer has engaged in conduct which is substantially injurious or detrimental to the dealer's customers or to the public.

(8) The equipment dealer has substantially defaulted under chattel mortgage or other security agreement between the dealer and the agent, or there has been a revocation or discontinuance of a guarantee of a present or future obligation to the agent.

(9) After receiving at least twelve months' notice from the agent of its specific and achievable requirements for reasonable market penetration based on the performance standards that are applied uniformly to similarly situated dealers, , the dealer has consistently failed to use commercially reasonable efforts to meet the agent's reasonable market penetration requirements, and the agent can demonstrate that the dealer's failure is a result of the dealer's sole efforts or lack of efforts in its markets and not a result of the agent's efforts or lack of efforts in the market.

Id. at § 51:482(B).

Agents must provide at least ninety days' written notice of termination, cancellation, or nonrenewal of a dealership agreement to the dealer. La. Rev. Stat. Ann. § 51:482(C). The notice must state all reasons constituting good cause for the action and must provide that the dealer has sixty days to cure any claimed deficiency, specifying the action that must be taken in order to cure the deficiency. *Id*. If the deficiency is rectified within sixty days, the notice is void. *Id*. Notice and right to cure is not required if the reason for termination, cancellation, or nonrenewal is a violation of subsections (1) through (7) listed above. *Id*.

B. Repurchase

Repurchase of all new, unused, and complete equipment is required under Louisiana law upon the cancellation or discontinuance of a dealership contract. La. Rev. Stat. Ann. § 51:484. Repurchase of such items is required at one hundred percent of the net cost and only required for those items purchased within the thirty-six months immediately preceding cancellation or discontinuance of the dealership contract. *Id*. Agents are required to reimburse dealers for transportation charges and excise taxes paid by the dealer. *Id*. Dealers may, upon their election, keep the equipment if they have the contractual right to do so. *Id*. The statute considers equipment used for demonstration with less than three hundred hours' use as new equipment. *Id*.

Louisiana also requires the repurchase of repair parts upon the cancellation or discontinuance of a dealership contract. La. Rev. Stat. Ann. § 51:485(A). This repurchase requirement applies only to repair parts previously purchased by the dealer from the agent

and includes superseded parts listed in the current price lists or catalogs used by the agent on the date of cancellation or discontinuance of the contract. *Id*. Additionally, agents must repurchase all specialized equipment the agent required the dealer to purchase, at fifty percent of the original price the dealer paid. *Id*.

Repurchase of repair parts is not required when a dealer fails to return the part to the agent after being offered a reasonable opportunity to do so. La. Rev. Stat. Ann. § 51:484(B). Likewise, repurchase of repair parts with a limited storage life or which are otherwise subject to deterioration, such as rubber items, gaskets, single repair parts priced as a set of two or more, and repair parts which because of their condition are not resalable as new parts are not required to be repurchased. *Id*. Dealers are not entitled to any payment or credit for items submitted for repurchase until they have demonstrated that the products are free and clear of all claims, liens, and encumbrances. *Id*.

Agents must reimburse dealers for handling costs for all parts returned for repurchase equal to five percent of the current net price. La. Rev. Stat. § 51:490(A). Agents may avoid this charge by performing the inventorying, packing, loading, and transportation of the parts themselves. *Id*. The dealer or agent must furnish a representative to inspect all parts and certify their acceptability as they are being packed for shipment. *Id*. at § 51:490(B). Failure by the dealer to appoint a representative within 45 days results in a parish sheriff's appointment to serve as the agent's representative, at the agent's cost. *Id*.

Upon the death of the dealer or the majority stockholder in a corporation operating a retail dealership, the heirs of the dealer or stockholder have one year to exercise their option to require the agent to repurchase equipment and repair parts. La. Rev. Stat. Ann. § 51:488.

Agents that fail or refuse to pay for items shipped to them for repurchase are civilly liable for one hundred percent of the net cost of equipment, implements, machinery and attachments. La. Rev. Stat. Ann. § 51:489(1). In addition, the civil liability imposed by the statute for failure or refusal to repurchase includes transportation costs paid by the dealer, one hundred percent of the current net price of repair parts plus transportation cost, and interest, accruing from sixty days after the shipment of returned items. *Id*. at § 51:489(2)-(4).

C. Warranty Claims

Warranty claims submitted to a supplier by a dealer for payment under a warranty agreement must be approved or disapproved within 30 days of receipt by the supplier. All claims for payment must be paid within thirty days of their approval. When a claim is disapproved, the supplier must notify the dealer within thirty days stating the specific grounds upon which the disapproval is based. If a claim is not specifically disapproved within thirty days of receipt, it shall be deemed approved and payment by the supplier must be made within thirty days. § 51:501(A).

Maine

Maine does not explicitly include outdoor power equipment in its farm machinery dealership statute, but defines "dealer" as "a person, corporation or partnership primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts." Me. Rev. Stat. Ann. tit. 10 § 1285(2). "Inventory" is defined as "farm, forestry, utility or industrial equipment, construction equipment, implements, machinery, yard and garden equipment, attachments or repair parts." *Id*. at § 1285(4). The statute defines "supplier" as "a wholesaler, manufacturer or distributor of inventory as defined in this chapter who enters into a dealer agreement with a dealer." *Id*. at § 1285(6). A separate section of the statute covers franchise law for power equipment, machinery and appliances. *See* Me. Rev. Stat. Ann. tit. 10 § 1361 *et seq*.

A. Termination

Maine requires a supplier to notify a dealer of termination no less than one-hundred twenty days prior to the effective date of the termination. Maine Rev. Stat. Ann. tit. 10 § 1287(1). However, suppliers may immediately terminate the agreement at any time upon the occurrence of any of the following events:

> A. The filing of a petition for bankruptcy or for receivership either by or against the dealer;
>
> B. The making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;
>
> C. Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
>
> D. [Intentionally left blank]
>
> E. The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;
>
> F. A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;
>
> G. Withdrawal of an individual proprietor, partner or major shareholder or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier; or
>
> H. Breach by the dealer of a written obligation contained in the agreement.

Id. Dealers who intend to terminate a dealer agreement with their supplier must notify the supplier of that intent no less than one-hundred twenty days prior to the effective date of the termination, unless there is an agreement to the contrary. *Id*. at § 1287(2). Further, all notification required by the statute must be in writing and must be made by certified mail or personal delivery and must contain:

A. A statement of intention to terminate the dealer agreement;

B. A statement of the reasons for the termination; and

C. The date on which the termination is effective.

Id. at § 1287(3).

B. Repurchase

Maine requires suppliers to repurchase inventory from dealers that have entered into a dealer agreement that requires maintaining an inventory when the agreement is terminated by either party. Maine Rev. Stat. Ann. tit. 10 § 1288(1). The request for repurchase must be made by the dealer in writing within thirty days of the termination. *Id*. Repurchase under the statute is not required if:

A. [Intentionally left blank]

B. The dealer has made an intentional and material misrepresentation as to the dealer's financial status;

C. The dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier; or

D. The dealer has filed a voluntary petition in bankruptcy.

Id. Repurchase upon the dealer or majority stockholder of a dealer's death is required at the option of the heir or representative of the dealer or majority stockholder as if the agreement had been terminated. *Id*. at § 1288(2). The heir or representative of the dealer must exercise this option to require repurchase within one year from the date of the death of the dealer or majority stockholder. *Id*.

The terms of Maine's requirements for the repurchase of inventory require the supplier to repurchase all inventory previously purchased from the supplier in the dealer's possession on the date of the termination of the dealer agreement. Maine Rev. Stat. Ann. tit. 10 § 1289(1). The statute allows a supplier to verify the eligibility of any item for repurchase by authorizing a supplier to examine any books or records of a dealer requesting repurchase of inventory within ninety days from the receipt of the request. *Id*. Suppliers

must pay "one hundred percent of the net cost of all new and undamaged and complete farm, utility, forestry, industrial and construction equipment, implements, machinery, yard and garden equipment and attachments purchased within the past 36 months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location." *Id*. at § 1289(2). Repair parts must be repurchased at ninety percent of the current net prices of all new and undamaged repair parts. *Id*. All new and undamaged superseded repair parts must be repurchased at eighty-five percent of the current net price. *Id*.

In Maine, the party that initiates the termination of the dealer agreement must pay the cost of the return, handling, packing and loading of all inventory returned to the supplier for repurchase. Maine Rev. Stat. Ann. tit. 10 § 1289(3). Payment to the dealer for repurchased inventory must be made by the supplier no later than 45 days after receipt of the inventory. *Id*. at § 1289(4).

Maine does not require the repurchase of the following:

A. A repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries, but excluding industrial "press on" or industrial pneumatic tires;

B. A single repair part normally priced and sold in a set of 2 or more items;

C. A repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

D. [Intentionally left blank]

E. Any inventory that the dealer elects to retain;

F. Any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier; or

G. Any inventory that was acquired by the dealer from a source other than the supplier.

Maine Rev. Stat. Ann. tit. 10 § 1290.

C. Warranties

Maine requires suppliers to pay any warranty claim made by a dealer with whom it has entered into an agreement that provides consumer warranties, within thirty days after receipt and approval of the claim. Maine Rev. Stat. Ann. tit. 10 § 1293(1). Suppliers must either approve or disapprove warranty claims within thirty days of their receipt. *Id*. If any

claim is not specifically disapproved in writing within thirty days after its receipt, it will be deemed approved and payment must be made within thirty days. *Id*.

Dealers are entitled to compensation for no less than the reasonable and customary amount of time required to perform warranty work. Maine Rev. Stat. Ann. tit. 10 § 1293(1)(A). Before filing a warranty claim, a dealer must notify the supplier of its hourly retail labor rate. *Id*. Suppliers must compensate dealers for parts used in warranty work at no less than the dealer's costs for the parts plus twenty percent or the supplier's suggested retail price for such parts, whichever is greater, plus all freight and handling charges, in order to compensate for the reasonable cost of doing business. *Id*. at § 1293(1)(B). For warranty work provided on behalf of the supplier on a product sold by a nonservicing dealer, the supplier must compensate the dealer for the parts used at an amount no less than the supplier's suggested list price or the dealer's cost plus thirty percent, whichever is greater, in addition to freight and handling charges for such parts. *Id*. Further, Maine's statute addressing warranties requires the supplier to indemnify dealers and hold them harmless against any judgments for damages arising from breach of warranty or rescission of the sale by the supplier. *Id*. at § 1293(2).

D. Franchise law for power equipment, machinery and appliances

A separate section of the statute deals specifically with franchise law for power equipment, machinery and appliances. Maine Rev. Stat. Ann. tit. 10 § 1361 *et seq*. A franchise is defined by the statute as "an oral or written arrangement for a definite or indefinite period pursuant to which a manufacturer grants to a dealer or distributor of goods a license to use a trade name, trademark, service mark or related characteristic and in which there is a community of interest in the marketing of goods and related services at wholesale, retail, by leasing or otherwise." *Id*. at § 1361(3).

1. Termination

The statute prohibits terminating or failing to renew a franchisee without good cause. The manufacturer has good cause for a termination, cancellation, nonrenewal or noncontinuance as follows:

> 1) Failure by the distributor or dealer to comply with a provision of the franchise agreement that is reasonable and of material significance to the franchise relationship when the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days before the date on which written notification is given pursuant to section 1366 is good cause.
>
> 2) If the failure by the distributor or dealer, as set forth in subparagraph (1), relates to the performance by the distributor or dealer in sales or service, then good cause is the failure of the distributor or dealer to carry out effectively the performance provisions of the franchise when:

a) The distributor or dealer was notified by the manufacturer in writing of that failure, the notification stated that notice was provided of failure of performance pursuant to this section and the distributor or dealer was given a reasonable opportunity for a period of not less than 6 months to make good-faith efforts to carry out the performance provisions;

b) The failure continued within the period that began not more than 180 days before the date on which notification of termination, cancellation or nonrenewal was given pursuant to section 1366; and

c) The distributor or dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to the distributor or dealer.

3) There is good cause when the manufacturer and the dealer or distributor agree not to renew the franchise.

4) There is good cause when the manufacturer discontinues production or distribution of the franchise goods.

Maine Rev. Stat. Ann. tit. 10 § 1363(3)(c).

All notices of termination or nonrenewal must:

1. Be sent by registered, certified or other receipted mail, delivered by telegram or personally delivered to the distributor or dealer; and

2. Contain a statement of intent to terminate or not renew the franchise together with the reasons for termination or nonrenewal and the effective date of the termination, nonrenewal or expiration.

Maine Rev. Stat. Ann. tit. 10 § 1366.

2. Warranties

The statute requires that a manufacturer honor, in a timely fashion, an obligation to dealers or distributors to replace goods, reimburse or pay costs and expenses or provide services arising as a result of a warranty, franchise agreement or other applicable agreement. Maine Rev. Stat. Ann. tit. 10 § 1367.

Maryland

Maryland explicitly regulates the relationships between dealers and suppliers of outdoor power equipment. Md. Code Ann. Comm. Law § 19-101. Maryland's statute defines "dealer" as "a person engaged in the business of selling at retail…outdoor power equipment… or repair parts." *Id*. at § 19-101(e)(1). "Supplier" is defined as:

> (1) A wholesaler, manufacturer, or distributor who enters into a contract with a dealer; or
>
> (2) A purchaser of assets or stock of a surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a trustee of the original manufacturer, wholesaler, or distributor who enters into a contract with a dealer.

Id. at § 19-101(l). Additionally, the statute explicitly includes "outdoor power equipment" in its definition of "inventory." *Id*. at § 19-101(h)(1).

A. Termination

Maryland prohibits the termination, cancellation, failure to renew, or substantial change of the competitive circumstances of a contract by suppliers without good cause. Maryland Code Ann. Comm. Law § 19-103(a). "Good cause" is defined as the "failure by a dealer to comply with requirements imposed on the dealer by a contract if the requirements are not different from requirements imposed on other dealers similarly situated in the State." *Id*. at § 19-101(g). The statute states that good cause exists in any of the following circumstances:

> (1) The filing of a petition against the dealer to commence:
> (i) A receivership proceeding; or
> (ii) A bankruptcy proceeding;
>
> (2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;
>
> (3) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier or the dealer revokes or discontinues a guarantee of a present or future obligation of the dealer to the supplier;
>
> (4) The closeout or sale of a substantial part of the business of a dealer related to the handling of the products of the supplier;
>
> (5) The commencement of procedures to dissolve or liquidate the dealer if the dealer is a partnership or corporation;

(6) A change, without the prior written approval of the supplier, that shall not be unreasonably withheld, in the location of the principal place of business of the dealer or additional locations set forth in the agreement;

(7) The withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier;

(8) The revocation or discontinuance of any guarantee of the present or future obligations of the dealer to the supplier;

(9) The dealer fails to operate in the normal course of business for 7 consecutive business days or otherwise abandons the business;

(10) The guilty plea or conviction of a felony of a dealer affecting the relationship between the dealer and supplier; or

(11) 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.

Id. at § 19-102.

Notice or right to cure is required pursuant to the following terms:

(1) Except as provided in paragraph (2) of this subsection, a supplier who terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract with good cause is not required to provide any notice or the right to cure a deficiency to a dealer.

(2) If a supplier terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract based upon the dealer's failure to capture the share of the market required in the contract and the supplier has worked with the dealer for a minimum of 12 months to gain the desired market share, the supplier shall provide a dealer with at least 90 days' written notice of the termination of the agreement and a 60 day right to cure.

Maryland Code Ann. Comm. Law § 19-103(b).

Dealers who terminate a contract with their suppliers must notify the supplier of the termination within ninety days prior to the effective date of the termination. Maryland Code Ann. Comm. Law § 19-103(c).

Any notice related to termination must:

(1) Be in writing;

(2) Contain:
(i) A statement of intention to terminate the contract;
(ii) A statement of the reasons for the termination; and
(iii) The date on which the termination takes effect; and

(3) Be delivered to the supplier or dealer by:
(i) Certified mail; or
(ii) Personal delivery.

Maryland Code Ann. Comm. Law § 19-103(d).

B. Repurchase

The Maryland statute states that "whenever a dealer enters into a contract in which the dealer agrees to maintain inventory and the contract is terminated by either party, the supplier shall repurchase the dealer's inventory" under the terms of the statute, unless the dealer chooses to keep the inventory. Maryland Code Ann. Comm. Law § 19-201(a)(1). In addition, Maryland requires suppliers to repurchase inventory from a dealer upon the death or incompetence of a dealer, or the majority stockholder of a dealer if the dealer is a corporation, if the dealer's heirs or guardian request the repurchase of inventory. *Id*. at § 19-202(e). The dealer's heirs or guardian must exercise this option within one year of the dealer's death. *Id*. at 19-202(e)(2).

Within ninety days after termination, suppliers must repurchase all inventory previously purchased from the supplier that remains unsold on the date of termination. Maryland Code Ann. Comm. Law § 19-202(a). Suppliers must pay one hundred percent of the current net price of all new, unused, unsold, undamaged, and complete outdoor power equipment and attachments. *Id*. at 19-202(b)(1)(i). All new, unused, and undamaged repair parts must be repurchased at ninety percent of the current net price, including superseded parts. *Id*. at 19-202(b)(1)(ii). Specialized repair tools purchased in the previous three years must be repurchased at seventy-five percent of the net cost and at fifty percent of the net cost for specialized repair tools purchased in the previous four through six years, if the specialized repair tools are unique to the supplier's product line and are in complete and resalable condition. *Id*. at 19-202(b)(1)(iii). Outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration, must be repurchased at an agreed depreciated value. *Id*. at 19-202(b)(1)(iv). Further, any specific data processing hardware, software, and telecommunications equipment that the supplier required the dealer to purchase in the previous five years must be repurchased at its amortized value. *Id*. at 19-202(b)(1)(v).

Upon repurchase, suppliers must also pay for the cost of shipping between the dealer's location, and ten percent of the current net price of all new, unused, and undamaged repair parts returned, in order to cover the cost of handling, packing, and loading of such parts. Maryland Code Ann. Comm. Law § 19-202(b)(2). Full payment for the repurchase amount must be paid by the supplier no later than thirty days after receipt of the inventory. *Id*. at § 19-202(c)(1).

Maryland's repurchase statute does not require the repurchase of the following:

> (1) A repair part with a limited storage life or otherwise subject to deterioration, such as a gasket or battery, except for industrial "press on" industrial pneumatic tires;
>
> (2) A single repair part that is priced as a set of two or more items;
>
> (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning;
>
> (4) A repair part that is not in new, unused, and undamaged condition;
>
> (5) An item of inventory for which a dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier;
>
> (6) Any inventory that the dealer chooses to retain;
>
> (7) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of a franchise agreement;
>
> (8) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, or attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that equipment that is used in demonstrations or leased under § 19-202 of this title shall be considered new and unused;
>
> (9) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, or attachments that were purchased more than 36 months before notice of termination of the contract; or
>
> (10) Any inventory that was acquired by the dealer from a source other than the supplier.

Maryland Code Ann. Comm. Law § 19-203.

The failure or refusal to repurchase in accordance with the statute results in civil liability for the supplier of one hundred percent of the current net price of the inventory,

the freight costs paid by the dealer, the dealer's attorneys' fees and court costs, plus interest on the current net price computed from the ninety-first day after termination. Maryland Code Ann. Comm. Law § 19-302.

C. Warranties

Maryland requires suppliers to pay warranty claims from dealers with whom the supplier has entered into a contract, within thirty days after approval of the claim. Maryland Code Ann. Comm. Law § 19-205(a)(1). Suppliers must approve or disapprove warranty claims within thirty days after their receipt. *Id*. at § 19-205(a)(2). If a claim is disapproved, the supplier must notify the dealer within thirty days stating the specific grounds on which the claim was disapproved. *Id*. at § 19-205(a)(3). Claims not specifically disapproved in writing within thirty days of their receipt are deemed approved, and payment must follow within thirty days. *Id*. at § 19-205(a)(4). Claims for warranty work submitted after termination, if the work was performed before termination, must be accepted or rejected within 30 days of receipt of the claim. *Id*. at § 19-205 (c). Any claim not paid within the time allowed under this section will incur interest at the maximum lawful interest rate. *Id*. at § 19-205(d).

If a supplier and dealer have entered into a contract, the supplier must indemnify and hold harmless the dealer against "any judgment for damages or a settlement agreed to by the supplier, including court costs and reasonable attorney's fees, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control." Maryland Code Ann. Comm. Law § 19-205 (b).

The cost of warranty work is addressed by the following:

> (1) Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions.
>
> (2) The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate.
>
> (3) The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

Maryland Code Ann. Comm. Law § 19-205 (e).

The price of parts used in performing warranty work shall be paid by the supplier in the amount of the net price for the parts, plus a minimum of fifteen percent. Maryland

Code Ann. Comm. Law § 19-205(g). Suppliers may adjust payment on warranty claims for errors discovered during an audit. *Id*. at § 19-205(h).

Massachusetts

Massachusetts regulates the equipment dealer and supplier relationship but does not explicitly mention "outdoor power equipment," and instead includes "yard and garden equipment" among other regulated equipment. Mass. Gen. Laws ch. 93G § 1. The statute defines "dealer" as "a person, corporation or partnership primarily engaged in the business of retail sales of…yard and garden equipment, attachments, accessories and repair parts." *Id*. "Supplier" is defined as "a wholesaler, manufacturer, or distributor of inventory who enters into a dealer agreement with a dealer." *Id*. "Inventory" is defined as including "yard and garden equipment, attachments or repair parts" as well as other types of equipment, but does not include "heavy construction equipment." *Id*.

A. Termination

Massachusetts requires suppliers to notify dealers no less than one hundred and twenty days prior to the effective date of their termination. Mass. Gen. Laws ch. 93G § 2(a). The statute prohibits termination, cancellation, or failure to renew a dealer agreement without cause. *Id*. Cause is defined as the "failure by an equipment dealer to comply with requirements imposed upon the equipment dealer by the dealer agreement; provided however, that the requirements are not substantially different from those requirements imposed upon other similarly situated dealers in the commonwealth." *Id*.

The statute permits suppliers to immediately terminate an agreement at any time upon the occurrence of any of the following events:

> (1) the filing of a petition for bankruptcy or for receivership either by or against the dealer;
>
> (2) the making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;
>
> (3) any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
>
> (4) the commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;
>
> (5) a change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;
>
> (6) withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership, or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier.

Mass. Gen. Laws ch. 93G § 2(b).

Dealers who intend to terminate a dealer agreement must notify their suppliers no less than one hundred and twenty days prior to the effective date of the termination, unless there is an agreement to the contrary. Mass. Gen. Laws ch. 93G § 2(c). All notifications required under § 2 must contain:

> (1) a statement of intention to terminate the dealer agreement;
>
> (2) a statement of the reasons for the termination; and
>
> (3) the date on which the termination shall be effective.

Id. at § 2(d).

B. Repurchase

In instances where a dealer enters into a dealer agreement under which the dealer agrees to maintain an inventory, and the agreement is terminated by either party, the supplier, upon the dealer's written request filed within thirty days of termination, must repurchase the dealer's inventory pursuant to the statute. Mass. Gen. Laws ch. 93G § 3(a). Repurchase is not required under the statute if:

> (1) the dealer has made an intentional and material misrepresentation as to the dealer's financial status;
>
> (2) the dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier; or
>
> (3) the dealer has filed a voluntary petition in bankruptcy.

Id. In addition, if a dealer or the majority stockholder of a dealer, or if the dealer is a corporation, dies or becomes incompetent, the supplier must repurchase the dealer's inventory upon the request of the dealer's heirs or guardian. *Id*. at § 3(b). The dealer's heirs or guardian have six months from the date of the dealer's death to exercise this option. *Id*.

Suppliers who have received written requests for repurchase are entitled by the statute to examine the dealers' books and records within ninety days after receiving the request to verify the eligibility of any item for repurchase. Mass. Gen. Laws ch. 93G § 4(a). Under the statute's repurchase terms, suppliers must pay dealers:

> (1) One hundred per cent of the net cost of all new and undamaged and complete farm and utility tractors, forestry equipment, light industrial equipment, farm implements, farm machinery, yard and garden equipment, purchased within the

past thirty-six months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location;

(2) ninety per cent of the current net prices of all new and undamaged repair parts;

(3) eighty-five per cent of the current net price of all new and undamaged superseded repair parts;

(4) eighty-five per cent of the latest available published net price of all new and undamaged non-current repair parts;

(5) either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the equipment dealer to acquire or purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment required and approved by the supplier to communicate with the supplier; and

(6) repurchase at seventy-five per cent of the net cost specialized repair tools, signage, books and supplies previously purchased, pursuant to requirements of the supplier and held by the equipment dealer on the date of termination. Specialized repair tools must be unique to the supplier product line and must be complete and in usable condition.

(7) repurchase at average as-is value shown in current industry guides dealer-owned rental fleet financed by the supplier or its finance subsidiary.

(c) The party that initiated the termination of the dealer agreement shall pay the cost of the return, handling, packing and loading of such inventory.

(d) Payment to the dealer required under this section shall be made by the supplier not later than forty-five days after receipt of the inventory by the supplier. A penalty shall be assessed in the amount of two per cent per day of any outstanding balance over the required forty-five days. The supplier shall be entitled to apply any payment required under this section to be made to the dealer, as a set-off against any amount owed by the dealer to the supplier.

Id. at § 4(b)-(d).

The Massachusetts statute exempts the following items from repurchase:

(1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries;

(2) a single repair part normally priced and sold in a set of two or more items;

(3) a repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

(4) any inventory that the dealer elects to retain;

(5) any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier;

(6) any inventory that was acquired by the dealer from a source other than the supplier.

Mass. Gen. Laws ch. 93G § 5.

C. Warranties

Massachusetts requires suppliers who have entered into agreements with dealers providing consumer warranties, to pay any warranty claim made for warranty parts and service within thirty days after receiving and approving the claim. Mass. Gen. Laws ch. 93G § 8. Suppliers must disapprove or approve warranty claims within thirty days of receiving a claim. *Id*. Claims not specifically disapproved in writing within thirty days of receipt are deemed to be approved, and payment must be made by the supplier within thirty days. *Id*.

Michigan

Michigan does not explicitly regulate outdoor power equipment, but instead includes "machines designed for or adapted and used for agriculture, horticulture, livestock raising, forestry, grounds maintenance, lawn and garden, construction, materials handling, and earth moving" in its definition of "equipment." Mich. Comp. Laws § 445.1452(d). The statute defines "dealer" as "a person engaged in the business of the retail sale of farm tractors and equipment, utility tractors and equipment, or the attachments to or repair parts for that equipment." *Id*. at § 445.1452(c). Further, "dealer" includes "retail dealers, wholesalers, and distributors that obtain inventory from another person for resale." *Id*. "Supplier" is defined as:

> [A] manufacturer, wholesaler, or distributor of farm and utility tractors and farm and utility equipment, or the attachments to or repair parts for that equipment. Supplier includes any component member of a controlled group of corporations of which a supplier is a component member, or a successor in interest of a supplier, including any person who or which acquires more than 25% of the assets, stock, good will, or trade name of a supplier, any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of a supplier.

Id. at § 445.1452(i). "Inventory" is defined as "farm tractors, utility tractors, equipment, and accessories for attachments to and repair parts for those tractors and that equipment." *Id*. at § 445.1452(f).

A. Termination

Michigan prohibits the termination, cancellation, failure to renew, or substantial change in the competitive circumstances of an agreement without good cause. Mich. Comp. Laws § 445.1457a(1). Suppliers must provide dealers with written notice at least ninety days before termination, cancellation, nonrenewal, or a substantial change in competitive circumstances. *Id*. The notice must state all the reasons or deficiencies for the action, and the dealer has ninety days to submit a plan to correct the stated reasons or deficiencies "that is acceptable to the supplier or to correct the stated reasons or deficiencies." *Id*. If a plan to rectify is submitted or the deficiency is rectified within ninety days, the notice is void. *Id*. at § 445.1457a(2). The failure by a dealer to comply with the requirements imposed by the supplier's agreement is cause for termination. *Id*. at § 445.1457a(1).

The notice provisions of § 445.1457a do not apply if the reason for termination, cancellation, or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or material misrepresentation and falsification of records. Mich. Comp. Laws § 445.1457a(3). The statute states that if the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is the nonpayment of amounts due under the agreement, the dealer is entitled to a written notice of default and has ten days to remedy the default. *Id*.

B. Repurchase

Michigan requires suppliers to repurchase inventory from dealers that have entered into an agreement with a supplier where the agreement is subsequently terminated, unless the dealer chooses to keep the inventory and is contractually entitled to do so, pursuant to the terms of the statute. Mich. Comp. Laws § 445.1453. Upon the death of a dealer or the majority stockholder of a dealer if the dealer is a corporation or partnership, the supplier is required to repurchase the inventory from the surviving heirs as if the contract had been terminated. *Id*. § 445.1458(1). The dealer's heirs must request repurchase within two hundred days after the death of the dealer or majority stockholder. *Id*. at § 445.1458(2). Repurchase of inventory in Michigan is required under the following terms:

> 1) The supplier shall pay 100% of the net cost of all undamaged and complete tractors, equipment, and attachments, which were purchased within 30 months of the termination of the agreement, less an allowance for usage for demonstration or usage for rental, provided the dealer's demonstration and rental programs are not in conflict with the supplier's agreement or written policies, and 90% of the current net price of all new, unused, and undamaged repair parts. The supplier shall pay the dealer 5% of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The supplier may perform the handling, packing, and loading in lieu of paying the 5% for services.
>
> (2) The supplier shall purchase or repurchase, at the dealer's book value net of depreciation on the date of termination, all dealer supplies, except that:
>
> > (a) No electronic device more than 5 years old is required to be purchased.
> >
> > (b) The supplier shall assume the dealer's lease obligations with respect to any dealer supplies that are leased.
> >
> > (c) The supplier shall pay the dealer at least 75% of the supplier's net price last published for any new dealer supplies purchased from the supplier.
> >
> > (d) No specialized repair tool that is not complete and in usage condition is required to be purchased.
>
> (3) Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.
>
> (4) The supplier may subtract from the sums due under subsection (1) or (2) the amount of debts owed by the dealer to the supplier.
>
> (5) With or without the prior consent or authorization of a supplier, a dealer may ship all inventory suitable for repurchase to the supplier, not less than 60 days after the supplier has notified the dealer, or the dealer has notified the supplier by

certified mail, that the agreement between them has been terminated. The supplier shall inspect a dealer's inventory within 30 days of termination of the agreement and designate portions of that inventory to be not returnable under this act. However, such a designation received by the dealer more than 30 days after the termination is not effective.

(6) Not more than 90 days from the termination of the agreement, the dealer may ship inventory to any location from which inventory of like kind has been shipped to the dealer in the 12 months preceding the shipment, or if no shipment of such type of inventory has occurred in that time period, to any place of business maintained by the supplier. Freight to such destination shall be paid by the dealer. The supplier shall accept a shipment made pursuant to this subsection.

(7) If a properly shipped shipment is undeliverable, or not accepted by the supplier, the dealer may order the inventory returned, may order it stored for the supplier's account, or may order it liquidated or abandoned by the carrier. All risk of loss to properly shipped but undeliverable or unaccepted goods is the supplier's, including, but not limited to, losses from exposure, liquidation, abandonment, or theft. A supplier's acceptance of a shipment does not constitute an admission that the inventory inspected by the supplier before shipment pursuant to subsection (5) and declared not returnable must be repurchased, but that all properly shipped inventory that is not deliverable or not accepted is considered to have been properly submitted for repurchase, and the supplier is liable to pay the repurchase amount for that inventory.

(8) Instead of the return of the inventory to the supplier under the terms of subsection (7), a dealer may notify a supplier by certified mail that the dealer has inventory that the dealer intends to return. The notice of the dealer's intention to return shall be in writing, sworn to before a notary public as to the accuracy of the listing of inventory and the suitability of the items for repurchase. The notice shall include the name and business address of the person or business who has possession and custody of the inventory and the location where the inventory may be inspected and the list of inventory may be verified. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the machinery and parts to the supplier. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf regarding the activities described in this subsection. The escrow agent shall be a person or business that is independent of the dealership, dealer principal, or any employees of the dealership or supplier.

(9) The supplier has 30 days from the date of the mailing of the notice described in subsection (8) in which to inspect the inventory and verify the accuracy of the dealer's list. The supplier shall, within 10 days after inspection, do 1 of the following:

(a) Pay the escrow agent.

(b) Give evidence that a credit to the account of the dealer has been made if the dealer has outstanding sums due the supplier.

(c) Send to the escrow agent a credit list and shipping labels for the return of the inventory to the supplier that are acceptable as returns.

(10) If the supplier sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with subsection (9) for the acceptable returns shall accompany the credit list. Upon receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to the inventory acceptable as returns passes to the supplier making the payment or allowing the credit and the supplier is entitled to keep the inventory. The escrow agent shall ship or cause to be shipped the inventory acceptable as returns to the supplier unless the supplier elects to personally perform the inventorying, packing, and loading.

(11) When the inventory has been received by the supplier, notice of the receipt of the inventory shall be sent by certified mail to the escrow agent who shall then disburse 90% of the payment he or she has received, less its actual expenses and a reasonable fee for his or her services, to the dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until he or she is notified that an agreement has been reached as to the nonreturnables, after which the escrow agent shall disburse the remaining funds and dispose of any remaining inventory as provided in the settlement.

Id. at § 445.1454.

Michigan does not require the repurchase of the following:

(a) Any perishable repair part included in a list of parts with shelf lives published by the supplier and provided to the dealer before termination, the shelf life of which has elapsed before the termination, or which shows evidence of deterioration.

(b) Any single repair part that is priced as, or is only sold as, a set of 2 or more items.

(c) Any repair part that, because of its condition, is not resalable as a new part.

(d) Any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of title free and clear of all claims, liens, and encumbrances.

(e) Any inventory that the dealer chooses to keep and has a contractual right to keep.

(f) Any farm tractors and equipment, utility tractors and equipment, and equipment, or attachments that are not in new, unused, undamaged, complete, and salable condition. This subdivision does not apply to those resalable items described in section 4(1) that were used for demonstration or rental.

(g) Any farm tractors and equipment, utility tractors and equipment, or attachments purchased 30 or more months prior to notice of termination of the contract.

(h) Any inventory that was ordered by the dealer on or after the date of notification of termination of the contract.

(i) Any inventory that was acquired by the dealer from any source other than the supplier.

Mich. Comp. Laws § 445.1456.

In Michigan, a supplier's failure or refusal to pay for repurchased inventory within ninety days after receipt by the supplier results in civil liability. Mich. Comp. Laws § 445.1457(1). Civil liability is imposed in the amount of one hundred percent of the net cost of all equipment and attachments returned or the current net price of all repair parts returned plus any freight charges paid by the dealer as well as interest on the current net price calculated from the sixty-first day after receipt of the inventory. *Id*.

C. Warranties

Michigan regulates the payment of a dealer's warranty claims under the following terms:

(12) Whenever an agreement provides for a dealer to service consumer warranties by repairing, returning, or replacing inventory, the supplier shall pay any warranty claim made by or through the dealer for warranty parts or service within 90 days after the notice of termination of the agreement. If a claim is not specifically disapproved in writing during the 90-day period after notice of termination of an agreement, stating in detail the reasons for the disapproval, the claim shall be considered approved and the supplier shall pay the dealer for all parts and service applied to the servicing of the warranty claim.

(13) If a warranty claim is approved or considered approved under subsection (12) but repairs are not made, the supplier is not obligated to pay the dealer. However, the supplier shall accept for return by the dealer any inventory purchased, received, or set aside by the dealer for servicing of the claim unless, while in the possession of the dealer, the inventory has ceased to be in appropriate condition for return.

(14) Inventory in possession of a supplier and identified to a warranty claim made by or through a dealer on the date of the notice of termination of the agreement may be shipped by the supplier, at the dealer's option, provided that if the dealer directs the supplier to ship the inventory after notice of termination of the agreement, that inventory shall not be returnable.

Mich. Comp. Laws § 445.1454(12)-(14).

Minnesota

Minnesota explicitly includes "outdoor power equipment" in its statute regulating the obligation to repurchase equipment. Minn. Stat. § 325E.06. Peculiarly enough, however, Minnesota does not include "outdoor power equipment" in its definition of "farm equipment." *Id*. at § 325E.061(2). The Minnesota statute does explicitly state that "outdoor power equipment" does not include "motorcycles, boats, personal watercraft, snowmobiles, or all-terrain vehicles designed for recreation." *Id*. at § 325E.06(6)(b). A separate section of the statute addresses heavy and utility equipment. *See* Minn. Stat. § 325E.068.

A. Termination

Minnesota requires good cause to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealership agreement. Minn. Stat. § 325E.062(1). "Good cause" is defined as the "failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms." *Id*. Additionally, the statute states that good cause exists whenever:

> (1) without the consent of the farm equipment manufacturer who shall not withhold consent unreasonably, (a) the farm equipment dealer has transferred an interest in the farm equipment dealership, or (b) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (c) there has been a substantial reduction in interest of a partner or major stockholder;
>
> (2) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement of dissolution or liquidation of the dealer;
>
> (3) there has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement;
>
> (4) the farm equipment dealer has defaulted under a chattel mortgage or other security agreement between the dealer and the farm equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the farm equipment manufacturer;
>
> (5) the farm equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;

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

(7) the dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare; or

(8) the farm equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Id.

The Minnesota statute requires manufacturers to provide 90 days' prior written notice to dealers before termination, cancellation, or nonrenewal of a dealership agreement. Minn. Stat. § 325E.062(2). The notice must:

state all reasons constituting good cause for the action and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice is void. The notice and right to cure provisions under this section do not apply if the reason for termination, cancellation, or nonrenewal is for any reason set forth in subdivision 1, clauses (1) to (7).

Id.

B. Repurchase

Under the Minnesota statute, whenever a person, firm, or corporation is engaged in the business of selling and retailing numerous types of equipment, including outdoor power equipment, and an agreement with the manufacturer, wholesaler, or distributor of such equipment to maintain stock of the equipment is terminated, the manufacturer, wholesaler, or distributor is obligated to repurchase stock. Minn. Stat. § 325E.06(1). Unless the retailer opts to keep the equipment, and has a contractual right to do so, the manufacturer, wholesaler, or distributor must repurchase the unused and complete outdoor power equipment, and attachments, in new condition purchased within the twenty-four months preceding notification by either party of intent to terminate the contract, at one hundred percent of the net cost. *Id*. In addition, manufacturers, wholesalers, and distributors of outdoor power equipment must pay for transportation charges and reasonable assembly charges paid by the retailer. *Id*.

The terms of repurchase are regulated pursuant to the following requirements:

(a) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the wholesaler, manufacturer, or

distributor or its predecessor on the date of the termination, cancellation, or discontinuance of the contract;

(b) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the retailer has an invoice which parts had previously been purchased by the retailer from the wholesaler, manufacturer, or distributor and are held by the retailer on the date of the termination, cancellation, or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer, or distributor;

(c) 50 percent of the most recently published price of all other parts provided the price list or catalog is not more than ten years old as of the date of the cancellation or discontinuance of the contract;

(d) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(e) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor, except that specialized repair tools and signage that has never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor the specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

Minn. Stat. § 325E.06(1)(a)-(e).

In addition, wholesalers, manufacturers, and distributors must pay retailers five percent of the prices required to be paid for repurchased items for all parts, data processing and communications hardware and software, specialized repair tools and signage returned for the handling, packaging, and loading of such items. Minn. Stat. § 325E.06(1)(e). Payment for repurchased items must be made no later than sixty days from the date the equipment and parts are returned to the manufacturer, wholesaler, or distributor. *Id*. If not paid within sixty days, interest begins to accrue, which is calculated from the date of termination of the contract. *Id*. Dealers must notify manufacturers, wholesalers, and distributors in writing that they intend to return equipment and/or parts. *Id*. The notice must

be sent by certified mail and state the name and the business address of the person or business who has possession of the equipment and/or parts and constitutes the appointment of an escrow agent to act on the retailer's behalf. *Id*. Within thirty days of receiving written notice, the manufacturer, wholesaler, or distributor may inspect the equipment and/or parts and verify the accuracy of the dealer's list. *Id*. Within ten days of inspection, the manufacturer, wholesaler, or distributor must pay the escrow agent for the repurchased items. *Id*. at § 325E.06(1)(e)(1).

Upon the death of the dealer or majority stockholder of the dealership, the manufacturer, wholesaler or distributor must repurchase the equipment and parts if requested by the dealer's heirs. Minn. Stat. § 325E.06(3). Repurchase in the event of death is required pursuant to the terms of the statute listed above. *Id*.

Failure to pay the required repurchase amounts results in civil liability for the manufacturer, wholesaler, or distributor in the amount of one hundred percent of the net cost of the equipment, plus transportation charges, ninety-five percent of the net price of repair parts, fifty percent of the price of all other parts, and five percent for handling, packing and loading. Minn. Stat. § 325E.06(4).

The statute does not require the repurchase of:

> [R]epair parts where the retailer previously has failed to return the part to the wholesaler, manufacturer, or distributor after being offered a reasonable opportunity to return the repair part at a price not less than ninety-five percent of the net price as listed in the then current price list or catalog, one hundred percent of the invoiced price, and fifty percent of the most recent published price.

Minn. Stat. § 325E.06(5). Further, repurchase is not required for repair parts which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years. *Id*. Additionally, repair parts which have lost required traceability for quality assurance requirements and repair parts that were marketed as nonreturnable or future nonreturnable when the retailer ordered them are not required to be repurchased. *Id*.

C. Warranties

The Minnesota statutory provision addressing warranties does not explicitly state that it applies to "outdoor power equipment" or any equivalent. Minn. Stat. § 325E.0631. The relevant statutory provision addresses warranty claims submitted by dealers of farm equipment, a term which the statute defines as "equipment and parts for equipment including, but not limited to, tractors, trailers, combines, tillage implements, balers, skid steer loaders, attachments and repair parts for them, and other equipment including attachments and repair parts, used in the planting, cultivating, irrigation, harvesting, and

marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway." *Id.* at 325E.061(2).

Under the Minnesota statute, warranty claims must be approved or disapproved within 30 days of receipt by the farm equipment manufacturer. Minn. Stat. § 325E.0631(2). Unless the farm equipment dealer agrees to a later date, approved claims for payment must be paid within 30 days of their approval. *Id.* When a claim is disapproved, the farm equipment manufacturer must notify the dealer within the 30-day period stating the specific grounds on which the disapproval is based. *Id.* Any claim not specifically disapproved within 30 days of receipt is deemed approved and must be paid within 30 days. *Id.* If, after termination of a contract, a dealer submits a warranty claim for warranty work performed before the effective date of the termination, the farm equipment manufacturer shall approve or disapprove the claim within 30 days of receipt. *Id.* at 325E.0631(3).

Warranty work performed by the dealer must 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, which the dealer shall communicate to the farm equipment manufacturer before performing the warranty work. Minn. Stat. § 325E.0631(4). Additionally, all parts used by the dealer in performing warranty work must be paid to the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of 15 percent to reimburse the dealer for reasonable costs of doing business in performing warranty service on the farm equipment manufacturer's behalf, including but not limited to freight and handling costs. *Id.* at § 325E.0631(6).

The farm equipment manufacturer may adjust for errors discovered during audit, and if necessary, to adjust claims paid in error. Minn. Stat. § 325E.0631(7).

A dealer may choose to accept alternate reimbursement terms and conditions in lieu of certain statutory requirements, provided there is a written dealer agreement between the farm equipment manufacturer and the dealer providing for compensation to the dealer for warranty labor costs either as: (1) a discount in the pricing of the equipment to the dealer; or (2) a lump-sum payment to the dealer. Minn. Stat. § 325E.0631(8).The discount or lump sum must be no less than five percent of the suggested retail price of the equipment. *Id.*

D. Heavy and utility equipment

A separate portion of the Minnesota statute regulates heavy and utility equipment manufacturers and dealers. The statute defines "heavy equipment" as:

> (1) excavators, crawler tractors, wheel loaders, compactors, pavers, backhoes, hydraulic hammers, cranes, fork lifts, compressors, generators, attachments and repair parts for them, and other equipment, including attachments and repair parts, used in all types of construction of buildings, highways, airports, dams, or other

earthen structures or in moving, stock piling, or distribution of materials used in such construction;

(2) trucks and truck parts; or

(3) equipment used for, or adapted for use in, mining or forestry applications.

Minn. Stat. § 325E.068(2).

1. Termination

Manufacturers may not cancel or fail to renew a dealer without good cause. Minn. Stat. § 325E.0681(1). "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, if the requirements are not different from those requirements imposed on other similarly situated dealers by their terms. *Id.* In addition, good cause exists whenever:

(a) Without the consent of the equipment manufacturer who shall not withhold consent unreasonably, (1) the equipment dealer has transferred an interest in the equipment dealership, (2) there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or (3) there has been a substantial reduction in interest of a partner or major stockholder.

(b) The equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it that has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of dissolution or liquidation of the dealer.

(c) There has been a change, without the prior written approval of the manufacturer, in the location of the dealer's principal place of business under the dealership agreement.

(d) The equipment dealer has defaulted under a security agreement between the dealer and the equipment manufacturer, or there has been a revocation or discontinuance of a guarantee of the dealer's present or future obligations to the equipment manufacturer.

(e) The equipment dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business.

(f) The equipment dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and manufacturer.

(g) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare.

(h) The equipment dealer, after receiving notice from the manufacturer of its requirements for reasonable market penetration based on the manufacturer's experience in other comparable marketing areas, consistently fails to meet the manufacturer's market penetration requirements.

Id.

An equipment manufacturer must provide an equipment dealer at least 90 days' prior written notice of termination, cancellation, or nonrenewal of the dealership agreement, and the notice must state all reasons constituting good cause for the action. Minn. Stat. § 325E.0681(2). It must also provide that the dealer has until expiration of the notice period in which to cure a claimed deficiency, unless the reason for termination is one of those listed in clauses (a) through (g) above. If the deficiency is rectified within the notice period and it is for a reason where cure time is required, the notice is void. *Id.*

2. Repurchase

If a dealership agreement is terminated, cancelled, or discontinued, the equipment manufacturer must pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent of the net cost of all unused heavy and utility equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. Minn. Stat. § 325E.0681(3). This amount must include transportation and reasonable assembly charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right. *Id.*

The rules are different for repair parts. The statute requires that:

(a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 95 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held

by the dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date;

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement;

(4) net cost less 20 percent per year depreciation for five years following purchase of all data processing and communications hardware and software the retailer purchased from the wholesaler, manufacturer, or distributor, or an approved vendor of the wholesaler, manufacturer, or distributor, to meet the minimum requirements for the hardware and software as set forth by the wholesaler, manufacturer, or distributor; and

(5) an amount equal to 75 percent of the net cost to the retailer of specialized repair tools, including computerized diagnostic hardware and software, and signage purchased by the retailer pursuant to the requirements of the wholesaler, manufacturer, or distributor. Specialized repair tools or signage that have never been used must be repurchased at 100 percent of the retailer's cost. Specialized repair tools must be unique to the wholesaler's, manufacturer's, or distributor's product line, specifically required by the wholesaler, manufacturer, or distributor, and must be in complete and usable condition. The wholesaler, manufacturer, or distributor may require by contract or agreement that the retailer resell to the wholesaler, manufacturer, or distributor such specialized repair tools and signage for the amounts established in this section or the amount specified in the dealer agreement or contract or fair market value, whichever is greater.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account, if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts, data processing and communications hardware and software, and specialized repair tools and signage returned for the handling, packing, and loading of the parts, data processing and communications hardware and software, and specialized repair tools and signage back to the manufacturer unless the manufacturer elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the heavy and utility equipment passes to the manufacturer. However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Minn. Stat. § 325E.0681(4).

If payment for any of the repurchased items is made later than 60 days from the date the heavy and utility equipment is received by the manufacturer, interest will accrue

at the maximum rate allowed by law from the date the agreement was terminated, cancelled, or discontinued until the date payment is received by the dealer. Minn. Stat. § 325E.0681(5).

In lieu of returning the heavy and utility equipment to the manufacturer, the dealer may advise the manufacturer that the dealer has heavy and utility equipment that the dealer intends to return. Minn. Stat. § 325E.0681(6). The dealer's intent must be made in writing, be notarized, and include a statement that the equipment is in usable condition. *Id.* It must also include the business addresses for the parties involved. *Id.* The notice constitutes the appointment of the escrow agent to act on the dealer's behalf. *See id*. In such cases, the manufacturer has 30 days from the date of the mailing of the notice in which to inspect the heavy and utility equipment and verify the accuracy of the dealer's list. *Id.* at § 325E.0681(7). The manufacturer must then within ten days after inspection pay the escrow agent, give evidence that a credit to the account of the dealer has been made if the dealer has an outstanding amount due the manufacturer or send to the escrow agent a "dummy credit list" and shipping labels for the return of the heavy and utility equipment to the manufacturer that are acceptable as returns. *Id*.

The statute does not require repurchasing when the dealer has refused to return an item after having been offered the payment for it required by statute. Minn. Stat. § 325E.0681(12). Other exceptions to the repurchasing rule include repair parts that have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets, and batteries, unless those items have been purchased from the wholesaler, manufacturer, or distributor within the past two years; repair parts which because of their condition are not resalable as new parts without reconditioning; repair parts which have lost required traceability for quality assurance requirements; and repair parts that were marked nonreturnable or future nonreturnable when the retailer ordered them. *Id*.

In the event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. Minn. Stat. § 325E.0681(10). In the event the heir or heirs do not agree to continue to operate the dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer. *Id*.

Mississippi

Mississippi explicitly includes outdoor power equipment in its statute regulating the contractual relationships between retailers and suppliers of outdoor power equipment. The statute defines "retailer" as "any person, firm or corporation engaged in the business of selling and retailing…outdoor power equipment, attachments and repair parts." Miss. Stat. § 75-77-1(c). The statute defines "supplier" as "any manufacturer, wholesaler, wholesale distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler or distributor." *Id*. at § 75-77-1(e).

A. Termination

Mississippi prohibits the termination, cancellation, failure to renew, or substantial change in the competitive circumstances of retail agreements by suppliers without good cause. Miss. Stat. § 75-77-2(1). "Good cause" is defined as the "failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement if such requirements are not different from those imposed on other retailers similarly situated in this state." *Id*. The statute then states that good cause exists whenever:

> (a) There has been a closeout on sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;
>
> (b) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;
>
> (c) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;
>
> (d) The equipment retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;
>
> (e) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the supplier;
>
> (f) The retailer 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. However, good cause does not exist if the supplier consents to an action described in this subsection.

Id.

The supplier must, except as otherwise described above, provide a retailer with at least ninety days' written notice of termination, cancellation, or nonrenewal of the retail agreement. Miss. Stat. § 75-77-2(2). Further, the statute provides the dealer with a sixty day right-to-cure period. *Id*. If the deficiency is cured within the allotted time, the notice is void. *Id*. In cases where cancellation occurs due to lack of market penetration, the statute requires a reasonable period of time to have existed where the supplier worked with the dealer to gain the desired market share. *Id*. The written notice must state all reasons constituting good cause for the supplier's action. *Id*. The notice is not required if the reason for termination, cancellation, or nonrenewal is a violation under the provisions of § 75-77-2(1) articulated above. *Id*.

B. Repurchase

Suppliers that have entered into contracts with retailers that require retailers to maintain an inventory, upon the retailer's option, must repurchase inventory upon termination. Miss. Stat. § 75-77-3. All new, unsold, undamaged and complete outdoor power equipment in inventory previously purchased from the supplier must be repurchased at one hundred percent of the current net price. *Id*. at § 75-77-5. All new, unused and undamaged and superseded repair parts must be repurchased at ninety percent of the current net price. *Id*. Unless they perform it themselves, suppliers must also pay retailers ten percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. *Id*.

In addition, suppliers must repurchase any specific data processing hardware, software, and telecommunications equipment that they required the dealer to purchase within the past five years, at its amortized value. *Id*. Specialized repair tools purchased by the dealer in the previous three years must be repurchased at seventy-five percent of the net cost, and at fifty percent for specialized repair tools purchased in the previous four to six years. *Id*. Such specialized repair tools must be unique to the supplier's product line and must be in complete and resalable condition. *Id*. Any outdoor power equipment used in demonstrations or leased primarily for demonstration, are subject to repurchase at their agreed depreciated value, provided the equipment is in new condition and has not been abused. *Id*.

Repurchase of the following is not required:

(a) Any repair part which, because of its condition, is not resalable as a new part;

(b) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(c) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles and attachments which are not current models or which are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased as provided in Section 75-77-5 shall be considered new and unused;

(d) Any repair parts which are not in new, unused, undamaged condition;

(e) Any farm implements, machinery, utility and industrial equipment, outdoor power equipment, all-terrain vehicles, off-road utility vehicles or attachments which were purchased more than thirty-six (36) months prior to notice of termination of the contract;

(f) Any inventory which was ordered by the retailer on or after the date of termination of the contract.

Miss. Stat. § 75-77-9.

In the event of a retailer's death, the supplier must, at the option of the retailer's heirs, repurchase inventory from the heirs as if the retailer agreement was terminated. Miss. Stat. § 75-77-13. The heirs have one year from the date of the death of the retailer to exercise this option. *Id*.

Failure or refusal to repurchase and pay the retailer for any inventory required to be repurchased results in civil liability for the supplier within sixty days after the shipment of inventory for repurchase. Miss. Stat. § 75-77-11. In such a situation suppliers are liable for one hundred percent of the current net price of the inventory, plus any freight charges, the retailer's attorneys' fees, court costs, and interest on the current net price computed from the sixty-first day after shipment. *Id*.

C. Warranties

All claims filed for payment on work performed under a supplier's warranty must be either approved or disapproved within thirty days after the supplier's receipt of the claim. Miss. Stat. § 75-77-6(a). Any claim not approved or disapproved within thirty days is deemed approved and payment is due within thirty days. *Id*. Suppliers must notify retailers within thirty days stating the specific grounds for the disapproval. *Id*. In the case of termination of a retailer agreement, if a retailer submits a claim for work performed before termination, suppliers must accept or reject the claim within thirty days of receipt. *Id*. at § 75-77-6(b). Suppliers must compensate retailers for warranty work in accordance with the customary and reasonable amount of time required to complete the work at an hourly rate which must previously be made known to the supplier. *Id*. at § 75-77-6(c). All parts used by retailers in warranty work must be paid for by the supplier at the retailer's net price, plus a minimum of fifteen percent to reimburse the retailer for the reasonable

cost of doing business. *Id*. at § 75-77-6(e). Further, suppliers may adjust for any errors discovered during an audit. *Id*. at § 75-77-6(f).

Missouri

Missouri expressly regulates the relationships between retailers and wholesalers, manufacturers, and distributors of outdoor power equipment. *See* Mo. Rev. Stat. § 407.850. The statute defines "retailer" as "any person, firm or corporation engaged in the business of selling, repairing and retailing…(c) outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance." *Id*. at § 407.850(5)(c). "Inventory" is defined as "equipment, implements, machinery, attachments and repair parts." *Id*. at § 407.850(3).

A. Termination

The Missouri statute prohibits manufacturers, wholesalers, or distributors of outdoor power equipment from terminating, cancelling, or failing to renew their contracts with retailers, without good cause. Mo. Rev. Stat. § 407.895. The statute defines "good cause" as the "failure by the retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract if such requirements are not different from those requirements imposed on other similarly situated retailers either by their terms or in the manner of their enforcement." *Id*. In addition, the statute expressly states that good cause exists whenever:

> (1) The retailer has transferred an interest in the retailer business without the manufacturer's, wholesaler's or distributor's written consent, or there has been a withdrawal from the retailer's business of an individual proprietor, partner, major shareholder, or the manager of the retailer's business, or there has been a substantial reduction in interest of a partner or major stockholder without the written consent of the manufacturer, wholesaler, or distributor;
>
> (2) The retailer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, or there has been a closeout or sale of a substantial part of the retailer's assets related to the retailer's business or there has been a commencement or dissolution or liquidation of the retailer's business;
>
> (3) There has been a change, without the prior written approval of the manufacturer, wholesaler, or distributor, in the location of the retailer's principal place of business under the retailer's agreement with the manufacturer, wholesaler, or distributor;
>
> (4) The retailer has defaulted under any chattel mortgage or other security agreement between the retailer and the manufacturer, wholesaler, or distributor, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the manufacturer, wholesaler, or distributor;

(5) The retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned his business, except for reasonable and customary closures of business;

(6) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the manufacturer, wholesaler, or distributor;

(7) The retailer has engaged in conduct which is injurious or detrimental to the retailer's customers or the public welfare;

(8) The retailer has consistently failed to meet the manufacturer's, wholesaler's or distributor's requirements for reasonable market penetration based on the manufacturer's, wholesaler's, or distributor's experience in other comparable marketing areas.

Id.

B. Repurchase

The repurchase provisions of the Missouri statute are not explicit on whether or not outdoor power equipment must be repurchased. Mo. Rev. Stat. § 407.855 provides that a dealer is entitled to "repurchase of farm machinery inventory on termination of dealership…." *Id*. The section does not state whether outdoor power equipment is required to be repurchased, and the term "farm machinery" is not defined. *Id*. Given the statute's very close resemblance to numerous other state statutes that do explicitly require the repurchase of outdoor power equipment and the fact that outdoor power equipment is included in § 407.850, it is likely that repurchase of outdoor power equipment is required.

The repurchase of outdoor power equipment is likely required in all instances that require the repurchase of farm machinery. That is, repurchase is required whenever the contract between the retailer and manufacturer is terminated by the manufacturer, upon the retailer's retirement at age sixty-two, or upon the retailer's death. Mo. Rev. Stat. § 407.855. All payments to retailers are due within sixty days after the return of the implements, machinery, attachments or repair parts. *Id*.

Repurchase of inventory is required for that inventory previously purchased from the manufacturer and held by the retailer at the date of termination of the contract. Mo. Rev. Stat. § 407.860. Manufacturers must pay one hundred percent of the net cost of all new, unsold, undamaged and complete equipment, implements, machinery, and attachments. *Id*. All new, unused and undamaged repair parts must be repurchased at ninety-five percent of the current net price. *Id*. Retailers must pay the initial cost of transportation, but manufacturers must reimburse retailers five percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading if they do not handle it themselves. *Id*.

When a retailer dies, the retailer's heirs may request the repurchase of all inventory as if the manufacturer had terminated the contract. Mo. Rev. Stat. § 407.880. The heirs have one year from the date of the retailer's death to exercise this option. *Id.*

The following inventory is not required to be repurchased:

> (1) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
>
> (2) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;
>
> (3) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;
>
> (4) Any equipment, implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;
>
> (5) Any repair parts which are not in new, unused, or undamaged condition;
>
> (6) Any equipment, implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;
>
> (7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;
>
> (8) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor unless such inventory was acquired from any source authorized or arranged by the manufacturer.

Mo. Rev. Stat. § 407.870.

Manufacturers that refuse or fail to repurchase inventory as required by the statute face civil liability. Mo. Rev. Stat. § 407.875. The civil liability imposed is for one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorneys' fees, and court costs. *Id.*

C. Warranties

Missouri law provides that retailers who sell outdoor power equipment, and who do warranty repair work under a manufacturer's express warranty, are entitled to reimbursement by the manufacturer. Mo. Rev. Stat. § 407.857. Manufacturers must

reimburse retailers for warranty work at an hourly rate that is the same, or greater than, the hourly labor rate the retailer charges consumers for nonwarranty work. *Id*.

Montana

The Montana statute is silent on whether or not "outdoor power equipment" is included in its regulation of dealer and manufacturer contractual relations. Mont. Code Ann. § 30-11-701. However, the Montana code does include a very broad definition of "inventory" which includes "farm implements, machinery, attachments, and repair parts." *Id*. at § 30-11-701(4)(a). "Retailer" is defined as "any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public." *Id*. at § 30-11-701(7). The statute defines "wholesaler" as "any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers." *Id*. at § 30-11-701(8). Manufacturers and retailers of construction equipment are governed under a separate section of the statute. *See* Mont. Code Ann. § 30-11-801.

A. Termination

The Montana statute does not explicitly state whether "outdoor power equipment" is included in its provisions regulating the termination of farm implement dealership agreements. However, it is worth noting that, except in certain circumstances, a dealership grantor must provide at least ninety days' written notice by certified mail of the termination, cancellation, nonrenewal, or substantial change in competitive circumstances. Mont. Code Ann. § 30-11-803(1). The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide the dealer with sixty days to cure any claimed deficiency. *Id*. If the deficiency is cured, the notice is void. *Id*.

If the termination, cancellation, nonrenewal, or substantial change in competitive circumstances is for nonpayment under the agreement, the dealer is entitled to ten days prior written notice by mail. Mont. Code Ann. § 30-11-803(2). If no payment is received in ten days, the notice is effective. *Id*. The provisions of § 30-11-803 do not apply if the dealer is insolvent. *Id*. at § 30-11-803(3).

B. Repurchase

Montana requires wholesalers, manufacturers, and distributors to repurchase inventory from a retailer if either party cancels a written *dealership* contract in an amount equal to:

> (a) 100% of the net cost of all new, unused, undamaged, and complete inventory items held by the dealer at the time of cancellation, plus cost of freight to return the inventory; and
>
> (b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as

provided by the manufacturer or distributor and held by the dealer at the time of cancellation, plus cost of freight to return the repair parts.

Mont. Code Ann. § 30-11-702(1). If a wholesaler enters into a written *distribution* contract and either the wholesaler, manufacturer, or distributor cancels the contract, the manufacturer or distributor shall, at the wholesaler's request, pay to the wholesaler an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the wholesaler at the time of cancellation; and

(b) 100% of the current net price of each repair part carried on the most recent price list or catalog or the last catalog or price list in which the repair part was listed as provided by the manufacturer or distributor and held by the wholesaler at the time of cancellation.

Id. at § 30-11-702(2). The statute requires that payment must be made within sixty days of the return of the inventory. *Id*. at § 30-11-702(3).

The following inventory is not subject to Montana's repurchase requirements:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if the retailer has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

Mont. Code Ann. § 30-11-703.

Upon the termination, cancellation, nonrenewal, or refusal to continue a dealership contract, Montana requires wholesalers, manufacturers, or distributors to pay the retailer:

(1) the original cost, adjusted for the remaining useful life, of each sign owned by the retailer that bears a common name, trade name, or trademark of the wholesaler, manufacturer, or distributor, if the acquisition of the sign was recommended or required by the wholesaler, manufacturer, or distributor;

(2) (a) the original cost, adjusted for the remaining useful life, of all special equipment and special tools purchased or leased by the retailer that were acquired from the wholesaler, manufacturer, or distributor or sources approved by the wholesaler, manufacturer, or distributor and that were recommended or required by the wholesaler, manufacturer, or distributor; or
(b) if the special equipment has a service agreement or the special tools are leased by the retailer, the amounts that are required to terminate the service agreement or the lease under the terms of the service or lease agreement; and

(3) the cost of transporting, handling, packing, and loading the signs, special equipment, and special tools.

Mont. Code Ann. § 30-11-705.

If the retailer, wholesaler, or majority stockholder in a corporation operating as a retailer or wholesaler dies, Montana requires the wholesaler, manufacturer, or distributor to repurchase the inventory as prescribed in Mont. Code Ann. § 30-11-702, above. Mont. Code Ann. § 30-11-704. However, the heirs of the retailer, wholesaler, or majority stockholder may opt to continue to operate the dealership and no repurchase is required in such a situation. *Id*.

The Montana statute imposes civil liability on manufacturers, wholesalers, and distributors who fail to repurchase inventory as required by the statute. Mont. Code Ann. § 30-11-712. The liability is imposed in the amount of one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer or wholesaler, attorneys' fees, and court costs. *Id*.

C. Construction equipment dealership agreements

A separate portion of the Montana statute addresses construction equipment dealership agreements. It defines "construction equipment" as any vehicle, machine, or attachment designed or adapted and used in construction, heavy construction, highway construction, and remodeling work. Mont. Code Ann. § 30-11-901(2).

1. Termination

The statute prohibits a grantor from either directly or indirectly terminating, cancelling, failing to renew, or substantially changing the competitive circumstances of a dealership agreement without good cause. Mont. Code Ann. § 30-11-902. The burden of proving good cause is on the grantor. *Id.* "Good cause" is defined as:

> (i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or
>
> (ii) bad faith by the dealer in carrying out the terms of the dealership.

Id. at § 30-11-901(8)(a).

A grantor must provide a dealer at least 90 days' prior written notice by certified mail of termination, cancellation, nonrenewal, or substantial change in competitive circumstances. Mont. Code Ann. § 30-11-903(1). The notice must state all the reasons for termination, cancellation, nonrenewal, or substantial change in competitive circumstances and must provide that the dealer has 60 days from receipt of the notice in which to rectify any claimed deficiency, unless the reason for termination is insolvency or an assignment for the benefit of creditors or bankruptcy. *Id.* at §§ 30-11-903(1), (3). If the deficiency is rectified within 60 days, the notice is void. If the reason for termination, cancellation, nonrenewal, or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer is entitled to 10 days' prior written notice by certified mail. *Id.* at § 30-11-903(2). If the dealer does not remedy the default within 10 days after receipt of the notice, the notice is effective according to its terms. *Id.*

Nebraska

Though Nebraska does not expressly include "outdoor power equipment" in its equipment dealer laws, its "Equipment Business Regulation Act" articulates a broad definition of "equipment" that includes "any machine designed for or adapted and used for agricultural, horticultural, livestock, grazing, forestry, or industrial purposes." Neb. Rev. Stat. § 87-703(5). "Dealer" is defined as "an individual, partnership, limited liability company, corporation, as form of business enterprise primarily engaged in the retail sale and service of equipment in this state pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of equipment and related services." *Id*. at § 87-703(3). The statute defines "supplier" as "the manufacturer, wholesaler, or distributor of the equipment to be sold by a dealer." *Id*. at § 87-703(6). Nebraska has a separate statute specific to retail farm instruments. *See* Neb. Rev. Stat. § 69-1501.

A. Termination

The Nebraska statute states that a supplier has good cause to terminate, cancel, or not renew a dealer agreement when a dealer:

> (a) Has transferred a controlling interest in the dealership without the supplier's consent;
>
> (b) Has made a material misrepresentation to the supplier;
>
> (c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within sixty days after the filing, is in default under a security agreement in effect with the supplier, or is insolvent or in receivership;
>
> (d) Has been convicted of a crime punishable by a term of imprisonment for one year or more;
>
> (e) Has failed to operate in the normal course of business for seven consecutive business days or has terminated business;
>
> (f) Has relocated its place of business without the supplier's consent;
>
> (g) Has consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;
>
> (h) Has inadequately represented the supplier over a measured period causing lack of performance in sales or service or warranty areas and has failed to achieve market

penetration at levels consistent with similarly situated dealerships based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or has failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for the supplier and on the supplier's behalf; or

(k) Has consistently failed to substantially comply with essential and reasonable requirements imposed by the dealer agreement, but only if that requirement is also generally imposed upon similarly situated dealers in Nebraska.

Neb. Rev. Stat. § 87-705(1). Except when good cause exists as described in subsections (a) through (f) above, suppliers must provide ninety days' written notice of their intention to terminate, cancel, or not renew a dealer agreement. *Id.* at § 87-705(2). The notice must state all reasons constituting good cause, and must provide that the dealer has sixty days from receipt of the notice in which to cure any claimed deficiency, except that the dealer shall have one year from receipt of the notice to cure a deficiency described in subsection (h) listed above. *Id*.

Further, suppliers are prohibited from terminating, cancelling, failing to renew, or substantially changing the competitive circumstances of a dealer "due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession." Neb. Rev. Stat. § 87-704(4).

B. Repurchase

The Act has rules requiring repurchase of unsold repair parts throughout the life of the contract and separate rules governing repurchase of items at the time of termination of a business. Because the rules are detailed, they have been printed here in their entirety.

Neb. Rev. Stat. § 87-706. Repair parts; returns; duties of supplier

(1) A supplier shall provide for the availability of repair parts throughout the reasonable useful life of any equipment sold.

(2) A supplier shall at least annually provide dealers an opportunity to return surplus repair parts for credit without restrictions as follows:

(a) (i) The supplier may notify the dealers of a surplus parts return program for a time period of at least sixty days in duration during which dealers may submit a list of their surplus parts and return the parts to the supplier; or

(ii) If twelve months have elapsed and the supplier has not notified a dealer of a surplus parts return program, the dealer may submit to the supplier a request to return surplus parts and the supplier shall allow the dealer to return the parts within thirty days after receipt of the request;

(b) Subject to the other provisions of this section, a supplier shall allow a dealer to return parts with a dollar value equal to at least six percent of the total dollar value of parts purchased by the dealer from the supplier or the supplier's predecessor in interest during the twelve-month period immediately preceding either the notification to the dealer of the supplier's surplus parts return program or the month the dealer's return request is made, whichever is applicable. A dealer may elect to return a dollar value of parts equal to less than six percent of such total dollar value of parts purchased;

(c) An obsolete or superseded part may not be returned, except that any part listed in the supplier's current list of returnable parts and any superseded part that has not been the subject of a surplus parts return program as of the date of notification to the dealer by the supplier of the current surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, shall be eligible for return;

(d) To be eligible for return, parts must be in new and unused condition and must have been purchased by the dealer from the supplier to whom they are returned or the supplier's predecessor in interest;

(e) The supplier shall allow credit for a returned part of at least eighty-five percent of the current price of the part as listed in the supplier's effective price list or catalog at the date of the notification to the dealer by the supplier of the surplus parts return program or the date of the dealer's request to return surplus parts, whichever is applicable, or, if there is no effective price list or catalog, in the supplier's invoices;

(f) The supplier shall issue credit to the dealer within ninety days after receipt of the parts returned by the dealer;

(g) The dealer shall be presumed to have purchased the returned parts from the supplier or the supplier's predecessor in interest, and the burden shall be on the supplier to prove otherwise;

(h) The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of parts which provides the dealer with greater protection;

(i) Nothing in this section shall be construed to affect the existence or

enforcement of a security interest which any person may have in the parts of the dealer; and

(j) Nothing in this section shall preclude a credit for returned parts which is greater than the total amount authorized by this section.

(3) The annual parts return provided for in subsection (2) of this section may be waived by a dealer. If a majority of dealers from a single supplier choose to waive the provisions of such subsection, the supplier shall be exempt from such subsection.

§ 87-707. Termination of dealer agreement; supplier and dealer; rights and duties; liability

(1) Whenever any dealer enters into a dealer agreement with a supplier in which the dealer agrees to maintain an inventory of equipment, attachments, or repair parts and the dealer agreement is subsequently terminated, the supplier shall:

(a) Repurchase the inventory by:

(i) Paying one hundred percent of the net cost of all new, undamaged, and complete equipment which was purchased from the supplier no more than twenty-four months prior to the date of termination and which is resalable;

(ii) Paying eighty-five percent of the current price of all new, unused, and undamaged attachments and repair parts, including superseded repair parts, which are listed in the price lists or catalogs in use by the supplier on the date of termination; and

(iii) Either (A) paying five percent of the current price on all new, unused, and undamaged attachments and repair parts returned to cover the cost of handling, packing, and loading the attachments and repair parts or (B) performing the handling, packing, and loading; and

(b) Repurchase at fair market value specialized repair tools purchased by the dealer pursuant to requirements of the supplier from the supplier or an approved vendor of the supplier within three years prior to the date of termination and held by the dealer on the date of termination.

(2) For purposes of this section:

(a) Current price shall mean the price for the attachments, repair parts, or tools listed in the supplier's effective price list or catalog or, if there is no effective price list or catalog, in the supplier's invoices; and

(b) Net cost shall mean the price the dealer paid to the supplier for the equipment less all discounts previously allowed by the supplier to the dealer.

(3) Upon payment of the repurchase amount to the dealer, the title and right to possession of the inventory or tools shall transfer to the supplier. Notwithstanding the requirements of article 9, Uniform Commercial Code, on filing notice of a security interest, the dealer shall have a continuing security interest in the inventory or tools until payment by the supplier and shall be treated the same as if the dealer still had possession of the inventory or tools.

(4) This section shall not require the supplier to repurchase from the dealer:

(a) Any repair part or attachment which has a limited storage life or is otherwise subject to deterioration;

(b) Any repair part or attachment which is priced as a set of two or more items if the set is incomplete;

(c) Any repair part or attachment which because of its condition is not resalable as a new part or attachment without repairing or reconditioning;

(d) Any repair part or attachment which is not in new, unused, and undamaged condition;

(e) Any equipment which is not in new, unused, undamaged, and complete condition;

(f) Any inventory for which the dealer is unable to furnish evidence, reasonably satisfactory to the supplier, of good title free and clear of all claims, liens, and encumbrances;

(g) Any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or

(h) Any inventory which was acquired by the dealer from any source other than the supplier or the supplier's predecessor in interest.

(5) If any supplier fails or refuses to repurchase any inventory or specialized repair tools subject to this section within ninety days after the date the supplier takes possession, the supplier shall be civilly liable for (a) one hundred percent of the net cost of the equipment and of the current price of the attachments, repair parts, and tools, (b) any freight charges paid by the dealer, and (c) all costs of financing such repurchase, including court costs and reasonable attorney's fees.

(6) Nothing in this section shall be construed to affect the existence or enforcement of a security interest which any person may have in the inventory or tools of the dealer.

In the event of the death or incapacity of a dealer or the majority stockholder of a corporation operating as a dealer, at the option of the heirs the supplier must repurchase the inventory and specialized repair tools from the estate as if the supplier had terminated the dealer agreement. Neb. Rev. Stat. § 87-708(1). The heirs or personal representative shall have twelve months from the date of the death of the dealer or majority stockholder to exercise the option. *Id*.

C. Retail Farm Implements Act

Nebraska has a statute specific to retail farm instruments. *See* Neb. Rev. Stat. § 69-1501. It does not, however, define "retail farm instruments," so industry standards and trade usage should be used in determining what it likely encompasses.

1. Repurchase

In the event of termination, the wholesaler, manufacturer or distributor is required to repurchase items whenever the retail dealer has entered into a written contract with a distributor to maintain a stock of parts or complete or whole machines or attachments. Neb. Rev. Stat. § 69-1501. The statute requires that the distributor pay according to the following guidelines:

- Unless the retailer desires to keep such merchandise, a sum equal to one hundred percent of the net cost of all new unused complete farm implements, machinery, and attachments, including transportation charges which have been paid by such retailer.

- Eighty-five percent of the current net prices on repair parts, including superseded parts, listed in a current price list or catalog which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract.

- The wholesaler, manufacturer, or distributor must also pay the retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return to the wholesaler, manufacturer, or distributor.

Id. The percentage prices must be based on those listed in the manufacturer's, wholesaler's or distributor's price lists or catalogs in effect at the time such contract is cancelled or discontinued. *Id*. at § 69-1502.

Payment is due within sixty days of receipt by the wholesaler, manufacturer, or distributor of such farm implements, machinery, or attachments or repair parts. Neb. Rev. Stat. § 69-1501. An interest rate of fourteen percent per year is assessed on late payments. *Id.* Upon payment, the title to the farm implements, farm machinery, and repair parts passes to the manufacturer, wholesaler, or distributor and they are entitled to possession. *Id*.

In the event of the death of the retail dealer or majority stockholder, the wholesaler, distributor, or manufacturer who supplied such merchandise must repurchase from the heir or heirs in the same manner as if the contract had been terminated, unless such heir or heirs agree to continue to operate the retail dealership. Neb. Rev. Stat. § 69-1504.

Nevada

Nevada's statute regulating dealers of farm equipment does not explicitly include "outdoor power equipment," and instead includes a definition of "inventory" that may or may not encompass certain types of outdoor power equipment. Nev. Rev. Stat. §§ 597.112 *et seq*. The statute defines "inventory" as "farm equipment or any attachments or repair parts for that farm equipment." *Id*. at § 597.113. The statute does not contain a definition of "farm equipment." "Dealer" is defined as "any person who engages in the business of selling inventory." *Id*. at § 597.1123. "Supplier" is defined as:

> 1. A manufacturer, wholesaler or wholesale distributor of new inventory;
>
> 2. A purchaser of the assets or shares of a surviving corporation resulting from a merger or liquidation of a supplier; or
>
> 3. A receiver, assignee or trustee of such a manufacturer, wholesaler or wholesale distributor.

Id. at § 597.114.

A. Termination

Nevada prohibits suppliers from terminating, failing to renew, or substantially changing the terms of a dealer agreement without "good cause." Nev. Rev. Stat. § 597.1143(1). Except in certain situations articulated by the statute, a supplier "may terminate or refuse to renew a dealer agreement for good cause if the supplier provides to the dealer a written notice setting forth the reasons for the termination or nonrenewal of the dealer agreement at least 180 days before the termination or nonrenewal of the dealer agreement." *Id*. at § 597.1143(2). Suppliers must include in the written notice an explanation of the deficiencies and the manner in which those deficiencies must be corrected. *Id*. at § 597.1143(3). If the deficiencies are corrected by the dealer within sixty days, the termination notice is void. *Id*. Suppliers may not terminate or refuse to renew a dealer agreement "based solely on the failure of the dealer to comply with the requirements of the dealer agreement concerning the share of the market the dealer was required to obtain unless the supplier has, for not less than 1 year, provided assistance to the dealer in the dealer's effort to obtain the required share of the market." *Id*. at § 597.1143(4).

The statute defines "good cause" as existing when:

> (a) A dealer fails to comply with the terms of a dealer agreement, if the terms are not substantially different from the terms required for other dealers in this state or any other state;
>
> (b) A closeout or sale of a substantial part of the business assets of a dealer or a commencement of the dissolution or liquidation of the business assets of the dealer;

(c) A dealer changes its principal place of business or adds other places of business without the prior approval of the supplier, which may not be unreasonably withheld;

(d) A dealer substantially defaults under a chattel mortgage or other security agreement between the dealer and the supplier;

(e) A guarantee of a present or future obligation of a dealer to the supplier is revoked or discontinued;

(f) A dealer fails to operate in the normal course of business for at least 7 consecutive days;

(g) A dealer abandons the dealership;

(h) A dealer pleads guilty to or is convicted of a felony affecting the business relationship between the dealer and supplier; or

(i) A dealer transfers a financial interest in the dealership, a person who has a substantial financial interest in the ownership or control of the dealership dies or withdraws from the dealership, or the financial interest of a partner or major shareholder in the dealership is substantially reduced.

Nev. Rev. Stat. § 597.1143(6). No notice is required if the supplier terminates or refuses to renew a dealer agreement for any reason set forth in subsections (b) through (i) above. *Id*. at § 597.1143(5).

B. Repurchase

Nevada requires suppliers to repurchase inventory upon the termination of a dealer agreement. Nev. Rev. Stat. § 597.1153(1). Suppliers repurchasing inventory must pay dealers:

(1) One hundred percent of the net price of all new and undamaged inventory; and

(2) Ninety-five percent of the net price of new and undamaged superseded repair parts.

Id. at § 597.1153(2)(a). In addition, suppliers must pay dealers "an amount equal to 5 percent of the net price of all new and undamaged repair parts returned to the supplier to cover the cost incurred by the dealer for handling, packing and shipping the superseded repair parts to the supplier. *Id*. at § 597.1153(2)(b). If the supplier handles, packs and ships the superseded repair parts, the dealer is not entitled to receive any money for those services which the supplier performed." *Id*. Further, the statute requires dealers to:

(c) Purchase, at its depreciated value, any computers, software or telecommunications equipment that the supplier required the dealer to purchase within the previous 5 years.

(d) Repurchase, at 75 percent of the net cost, any specialized repair tools purchased if those tools are:

(1) Included in the tool catalog of the supplier;
(2) Purchased in accordance with the requirements of the supplier;
(3) Held by the dealer on the date of the termination of the dealer agreement; and
(4) Complete and in resalable condition.

(e) Repurchase any inventory which is owned by the supplier and leased, rented or used in demonstrations by the dealer if the supplier receives an allowance based on the use of such inventory. Inventory which is used in demonstrations for not more than a total of 50 hours shall be deemed new inventory. Inventory which is used in demonstrations for more than 50 hours and purchased from the supplier less than 36 months before the termination of the dealer's agreement must be repurchased at its depreciated value, as determined by the supplier and dealer.

Id. at § 597.1153(2)(c)-(e).

Nevada does not require suppliers to repurchase the following:

1. Any repair part which is not in new and undamaged condition or, because of its condition, is not resalable as a new part;

2. Any inventory which the dealer retains pursuant to subsection 3 of NRS 597.1153;

3. Any inventory which is not in new, undamaged and complete condition;

4. Any inventory which was ordered by the dealer on or after the date of the termination of the dealer agreement; or

5. Any inventory which was purchased more than 36 months before the notice of the termination of the dealer agreement is provided.

Nev. Rev. Stat. § 597.116.

If a supplier fails or refuses to repurchase or pay a dealer for inventory required to be repurchased, the statute imposes civil liability for:

1. An amount equal to 100 percent of the net price of the inventory;

2. Any shipping charges paid by the dealer;

3. Attorney's fees and court costs; and

4. An amount equal to the interest on the amount of the net price calculated at the legal rate of interest from the 61st day after the date of the shipment of the inventory to the supplier.

Nev. Rev. Stat. § 597.1163.

If a dealer, or the majority shareholder of a corporation which operates as a dealer, dies, the Nevada statute requires suppliers to repurchase inventory as if the dealer had been terminated. Nev. Rev. Stat. § 597.1167(1). The dealer's heirs may decide to keep the inventory, and have one year after the dealer's death to exercise this option. *Id*. at § 597.1167.

C. Warranties

Nevada requires suppliers who authorize dealers to perform warranty work to reimburse those dealers who submit claims for warranty work. Nev. Rev. Stat. § 597.1177(2). Dealers may submit claims for warranty work:

(a) During the period the dealer agreement is in effect; or

(b) After the termination of a dealer agreement if the warranty claim concerns work performed under a warranty during the period the dealer agreement was in effect.

Id. Warranty claims must be paid within thirty days after their approval. *Id*. at § 597.1177(3). Claims must be either approved or disapproved within thirty days after their receipt. *Id*. If a claim is disapproved, the supplier must send the dealer a written notice setting forth the reasons for disapproval of the claim within thirty days. *Id*. Warranties not disapproved within thirty days are deemed approved. *Id*.

The statute dictates that the amount of a warranty claim must not be less than the amount equal to the sum of:

(a) The reasonable and customary time required by the dealer to complete the work, including diagnostic time, expressed in hours and fractions of hours, multiplied by the dealer's hourly retail rate for labor;

(b) The dealer's net price for any repair parts replaced, plus 20 percent of the net price for those parts; and

> (c) If a warranty claim concerns repair work for any equipment which is performed by the dealer in accordance with a safety or modification order issued by a supplier, the costs incurred by the dealer to transport to the dealer's place of business for repair any equipment which is within the dealer's service area and subject to a safety or modification order.

Nev. Rev. Stat. § 597.1177(4). After the warranty claim has been paid by the supplier, the suppler may not charge back, set off, or otherwise attempt to recover from a dealer any amount of the warranty claim unless:

> (a) The warranty claim is fraudulent;
>
> (b) The work was not performed properly or was not necessary to comply with the requirements of the warranty; or
>
> (c) The dealer did not provide the records for the warranty claim as required by the agreement for work performed under the warranty.

Id. at § 597.1177(5).

The statute allows suppliers to audit a dealer's records one year after a warranty claim is submitted, unless a warranty claim is fraudulent. Nev. Rev. Stat. § 597.1177(7). The statute's warranty provision does not apply to a written dealer agreement which provides compensation to a dealer for any labor required to be performed under a warranty before the labor is performed if the compensation is based on:

> (a) A reduction of the price of the equipment sold to the dealer; or
>
> (b) A lump-sum payment of not less than 5 percent of the suggested retail price of the equipment.

Id. at § 597.1177(8).

New Hampshire

New Hampshire has an expansive definition of the term "motor vehicle." *See* N.H. Rev. Stat. Ann. § 357-C:1(I). A "motor vehicle" means every self-propelled vehicle manufactured and designed primarily for use and operation on the public highways and required to be registered and titled under the laws of New Hampshire. *Id.* Further, "[m]otor vehicle shall include equipment if sold by a motor vehicle dealer primarily engaged in the business of retail sales of equipment." *Id.* "Equipment" means farm and utility tractors, forestry equipment, industrial equipment, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts. *Id.*

The statute also differentiates between "motor vehicle dealers," "new motor vehicle dealers," and "single line equipment dealers":

> (a) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his or her own account or on behalf of another, either as his or her primary business or incidental thereto. "Motor vehicle dealer" also means a person granted the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributer to perform service only on fleet, government, or rental vehicles. However, "motor vehicle dealer" shall not include:
>
> > (1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or
> >
> > (2) Public officers while performing their duties as such officers.
>
> (b) "New motor vehicle dealer" means a motor vehicle dealer who holds a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale, service, or both, of its new motor vehicles, but does not include any person who has an agreement with a manufacturer or distributer to perform service only on fleet, government, or rental vehicles.
>
> (c) The term "motor vehicle dealer" shall not include a single line equipment dealer. "Single line equipment dealer" means a person, partnership, or corporation who is primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial and construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts, and who:
>
> > (1) Has purchased 75 percent or more of the dealer's total new product inventory from a single supplier; and

(2) Has a total annual average sales volume for the previous 3 years in excess of $100,000,000 for the relevant market area for which the dealer is responsible.

N.H. Rev. Stat. Ann. § 357-C:1(VIII).

The statute defines "manufacturer" as "any person who manufactures or assembles new motor vehicles or any partnership, firm, association, joint venture, corporation or trust which is controlled by the manufacturer." N.H. Rev. Stat. Ann. § 357-C:1(II). "Manufacturer" also means a "distributor, distributor branch, factory, factory branch, and franchisor," which are all defined in the statute. *Id*. *See* N.H. Rev. Stat. Ann. §§ 357-C:1(III)-(VII).

A. Termination

The New Hampshire statute provides that a manufacturer, distributor, or branch or division bears the burden of proof for showing that it has acted in good faith, that all notice requirements have been satisfied, and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance. N.H. Rev. Stat. Ann. § 357-C:7(IV).

The statute provides that:

[n]otwithstanding the terms, provisions, or conditions of any agreement or franchise, and notwithstanding the terms or provision to any waiver, no manufacturer, distributor, or branch or division thereof shall cancel, terminate, fail to renew, or refuse to continue any franchise relationship with a new motor vehicle dealer unless:

(a) The manufacturer, distributor, or branch or division thereof has satisfied the notice requirement of paragraph V;

(b) The manufacturer, distributor, or branch or division thereof has acted in good faith;

(c) The manufacturer, distributor, or branch or division thereof has good cause for the cancellation, termination, nonrenewal, or noncontinuance; and

(d)

(1) The New Hampshire motor vehicle industry board finds after a hearing and after ruling on any motion to reconsider that is timely filed in accordance with RSA 357-C:12, VII, that there is good cause

> for cancellation, termination, failure to renew, or refusal to continue any franchise relationship. The new motor vehicle dealer may file a protest with the board within 45 days after receiving the 90-day notice. A copy of the protest shall be served by the new motor vehicle dealer on the manufacturer, distributor, or branch or division thereof. When a protest is filed under this section, the franchise agreement shall remain in full force and effect and the franchisee shall retain all rights and remedies pursuant to the terms and conditions of such franchise agreement, including, but not limited to, the right to sell or transfer such franchisee's ownership interest prior to a final determination by the board and any appeal; or
>
> (2) The manufacturer, distributor, or branch or division thereof has received the written consent of the new motor vehicle dealer; or
>
> (3) The appropriate period for filing a protest has expired.

N.H. Rev. Stat. Ann. § 357-C:7(I).

Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, good cause exists for the purposes of a termination, cancellation, nonrenewal, or noncontinuance when:

> (a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship; provided that compliance on the part of the new motor vehicle dealer is reasonably possible; and that the manufacturer, distributor, or branch or division thereof first acquired actual or constructive knowledge of such failure not more than 180 days prior to the date on which notification is given pursuant to paragraph V.
>
> (b) If the failure by the new motor vehicle dealer, in subparagraph (a), relates to his or her performance in sales or service, then good cause, as used in subparagraph I(c), shall be defined as the failure of the new motor vehicle dealer to effectively carry out the performance provisions of the franchise if:
>
> > (1) The new motor vehicle dealer was apprised by the manufacturer, distributor, or branch or division thereof in writing of such failure, the notification stated that notice was provided of failure of performance pursuant to this law, and the new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to correct his or her failures;
> >
> > (2)

(A) Except with regard to OHRV and snowmobile dealers, such failure thereafter continued within the period which began not more than 180 days before the date notification of termination, cancellation, or nonrenewal was given pursuant to paragraph V; and

(B) With regard to OHRV and snowmobile dealers, such failure thereafter continued within the period which began not more than 365 days before the date notification of termination, cancellation, or nonrenewal was given pursuant to paragraph V; and

(3) The new motor vehicle dealer has not substantially complied with reasonable performance criteria established by the manufacturer, distributor, or branch or division thereof and communicated to the dealer. Among those factors determining performance criteria shall be the relevancy of the sales of the manufacturer, distributor, or branch or division thereof within the state and the particular market area.

(c) For the purposes of this paragraph, good cause for terminating, canceling, or failing to renew a franchise shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon the franchisee by the franchise, as set forth in subparagraphs II(a) and (b).

N.H. Rev. Stat. Ann. § 357-C:7(II).

Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, the following does not constitute good cause for the termination, cancellation, nonrenewal, or noncontinuance of a franchise:

(a) The change of ownership of the new motor vehicle dealer's dealership, excluding any change in ownership which would have the effect of the sale of the franchise without the reasonable consent of the manufacturer, distributor, or branch or division thereof;

(b) The fact that the new motor vehicle dealer refused to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer;

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a license for the sale of another make or line of new motor vehicle, or that the new motor vehicle dealer has established another make or line of new motor vehicle in the same dealership facilities as those of the manufacturer, distributor, or branch or division thereof; provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial

compliance with any reasonable facilities' requirements of the manufacturer, distributor, or branch or division thereof;

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter. The manufacturer, distributor, or branch or division thereof shall give effect to such change in ownership unless, if licensing is required by the state, the transfer of the new motor vehicle dealer's license is denied or the new owner is unable to license as the case may be; and

(e) The fact that the new motor vehicle dealer's dealership does not substantially meet the reasonable capitalization requirements of the manufacturer, distributor, branch, or division.

N.H. Rev. Stat. Ann. § 357-C:7(III).

The notice requirements of the statute provide that:

(a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer, distributor, or branch or division thereof shall furnish notification of such action to the new motor vehicle dealer and the board in the manner described in subparagraph (b) not less than 90 days prior to the effective date of such termination, cancellation, or nonrenewal, except that the notice required of a controlled financing company of a manufacturer, distributor, or branch or division thereof shall be that period set forth in its contract with the dealer.

(b) Notification under this paragraph shall be in writing; shall be by certified mail, or personally delivered to the new motor vehicle dealer; and shall contain:

(1) A statement of intention to terminate the franchise, cancel the franchise, or not to renew the franchise; and

(2) A statement of the reasons for the termination, cancellation, or nonrenewal; and

(3) The date on which such termination, cancellation, or nonrenewal takes effect.

(c) Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of:

(1) Any change in ownership, operation, or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate

stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise;

(2) The termination, suspension, or cessation of a part or all of the business operations of the manufacturer; or

(3) Discontinuance of the sale of the product line make or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

N.H. Rev. Stat. Ann. § 357-C:7(V).

B. Repurchase

The New Hampshire statute provides that within 90 days of the termination, cancellation, or nonrenewal of a motor vehicle franchise as provided for in this section, or the termination, cancellation, or nonrenewal of a motor vehicle franchise by the motor vehicle franchisee, the motor vehicle franchisor must pay to the motor vehicle dealer:

(a) The dealer cost plus any charges by the manufacturer, distributor, or branch or division thereof for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer, distributor, or representative, for new, unsold, undamaged and complete motor vehicles in the dealer's inventory that have original invoices bearing original dates within 24 months prior to the effective date of termination with less than 750 miles on the odometer, and insurance costs, and floor plan costs from the effective date of the termination to the date that the vehicles are removed from dealership or the date the floor plan finance company is paid, whichever occurs last. Vehicles with a gross vehicle weight rating over 14,000 shall be exempt from the 750 mile limitation. Motorcycles shall be subject to a 350 mile limitation. All vehicles shall have been acquired from the manufacturer or another same line make vehicle dealer in the ordinary course of business. Equipment shall be subject to a 36-month limitation. Payment for farm and utility tractors, forestry equipment, industrial, construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories and repair parts shall include all items attached to the original equipment by the dealer or the manufacturer other than items that are not related to the performance of the function the equipment is designed to provide.

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog, was purchased from the manufacturer or distributor or from a subsidiary or affiliated company or authorized vendor, and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used. Any part or accessory that is available to be purchased from

the manufacturer on the date the notice of termination issued shall be considered to be included in the current parts catalog.

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark, trade name, or commercial symbol used or claimed by the manufacturer, distributor, or branch or division thereof if such sign was purchased from or at the request of the manufacturer, distributor, or branch or division thereof.

(d) At the dealer's option, the fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment by the manufacturer, distributor, or branch or division thereof and purchased from or at the request of the manufacturer or distributor, if the tools and equipment are in usable and good condition, normal wear and tear excepted.

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase by the manufacturer, distributor, or branch or division thereof.

(f) The amount remaining to be paid on any equipment or service contracts required by or leased from the manufacturer or a subsidiary or company affiliated with the manufacturer.

(g) If the dealer leases the dealership facilities, then the manufacturer, distributor, or branch or division thereof shall be liable for 2 year's payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer, distributor, or branch or division thereof shall be liable for the equivalent of 2 years payment of gross rent. This subparagraph shall only apply when the termination, cancellation, or nonrenewed line was pursuant to RSA 357-C:7, V(c)(3) or was with good cause, other than good cause related to a conviction and imprisonment for a felony involving moral turpitude that is substantially related to the qualifications, function, or duties of a franchisee. Gross rent is the monthly rent plus the monthly cost of insurance and taxes. Such reasonable rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are: (i) used solely for performance in accordance with the franchise, and (ii) not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operations of more than one franchise, the gross rent compensation shall be adjusted based on the planning volume and facility requirements of the manufacturers, distributors, or branch or division thereof.

N.H. Rev. Stat. Ann. § 357-C:7(VI).

The statute also provides additional payment terms in circumstances in which termination, cancellation, or nonrenewal is premised upon a change in ownership,

operation or control at the manufacturer; termination suspension or cessation of all or part of the business operation at the manufacturer; or discontinuance of the sale of the product line make or a change in distribution system by the manufacturer. In such situations:

> (a)
>
> > (1) … [T]he manufacturer shall be liable to the dealer for an amount at least equivalent to the fair market value of the motor vehicle franchise on:
> >
> > > (A) The date immediately preceding the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or
> > > (B) The day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.
> >
> > (2) Payment is due within 90 days of the effective date of the termination, cancellation, or nonrenewal.
>
> (b) The manufacturer shall authorize the franchisee, or upon the franchisee's termination another authorized franchise dealership of the manufacturer in the area, to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor, for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal and shall continue to reimburse the franchisee for warranty parts and service in an amount and on terms no less favorable than those in effect prior to the termination, cancellation, or nonrenewal and in accordance with paragraph V.
>
> (c) At the dealer's option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the dealer under this subparagraph if the franchisor, or another motor vehicle franchisor pursuant to an agreement with the franchisor, offers the franchisee a replacement motor vehicle franchise with terms substantially similar to that offered to other same line make dealers.

N.H. Rev. Stat. Ann. § 357-C:7(VII).

Additionally, within 90 days of a termination or nonrenewal, with good cause and in good faith, the manufacturer or distributor of any franchise, or any branch or division thereof, and notwithstanding any terms therein to the contrary, the manufacturer, distributor, or branch or division thereof must pay to the new motor vehicle dealer the amount remaining to be paid on any leases of computer hardware or software that is used to manage and report data to the manufacturer or distributor for financial reporting requirements and the amount remaining to be paid on any manufacturer or distributor

required equipment leases or service contracts, including but not limited to computer hardware and software leases. N.H. Rev. Stat. Ann. § 357-C:7(VIII).

The payments required by paragraphs VI, VII, and VIII, above, and any other money owed the franchisee, must be made within 90 days of the effective date of the termination. N.H. Rev. Stat. Ann. § 357-C:7(IX). Additionally, the manufacturer must pay the franchisee an additional 5 percent per month of the amount due for any payment not made within 90 days of the effective date of the termination. *Id.*

In the event of death or incapacitation of a new motor vehicle dealer:

I. Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided the designated family member gives the manufacturer, distributor, factory branch or factory representative or importer of new motor vehicles written notice of his intention to succeed to the dealership within 120 days of the dealer's death or incapacity, and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, factory representative, distributor or importer. The manufacturer, distributor, factory branch or factory representative or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

II. If a manufacturer, distributor, factory branch, or factory representative or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated new motor vehicle dealer under the existing franchise agreement, the manufacturer, distributor, factory branch, or factory representative or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve notice upon the designated family member of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 90 days from the date such notice is served. The required notice shall state the specific grounds for refusal to honor the succession. If notice of refusal and discontinuance is not timely served upon the family member, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by this chapter.

III. This chapter shall not preclude a new motor vehicle dealer from designating any person as his successor by written instrument filed with the manufacturer, distributor, factory branch, factory representative or importer.

N.H. Rev. Stat. Ann. § 357-C:8.

C. Warranties

The New Hampshire statute provides that:

I. Every manufacturer, distributor, or branch or division thereof shall fulfill the terms of any express or implied warranty it makes concerning the sale of a new motor vehicle to the public or ultimate purchaser of the line make which is the subject of a contract or franchise agreement. If it is determined by the court in an action at law that the manufacturer has violated its express or implied warranty, the court shall add to any award or relief granted an additional award for reasonable attorney's fees and other necessary expenses for maintaining the litigation.

II. If any franchisor shall require or permit franchisees to perform services or provide parts in satisfaction of a warranty issued by the franchisor:

> (a) The franchisor shall specify in writing to each of its new motor vehicle dealers in this state, the dealers' obligations for warranty service on its products, shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid such dealer for parts, work and service in connection with warranty services, and the time allowance for the performance of such work and service. Warranty service on trucks and equipment, except for those sold by a single line equipment dealer, shall include the cost, including labor, to transport a motor vehicle under warranty in order to perform the warranty work and to return the motor vehicle to the customer, or, if transporting the trucks and equipment to the dealership is not mechanically or financially feasible, to travel to and return from the locations of the motor vehicle if the warranty repairs are performed at the location of the motor vehicle; provided that reimbursement for travel time shall not exceed 4 hours.
>
> (b)
>
> > (1) In no event shall a schedule of compensation for parts, work, and service in connection with warranty services fail to include reasonable compensation for diagnostic work, as well as parts, repair service and labor under the warranty or maintenance plan, extended warranty, certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall any manufacturer, component manufacturer, or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for non-warranty work of like

kind. In accordance with RSA 382-A:2-329, the manufacturer shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty and computed under this subparagraph. No claim which has been approved and paid by the manufacturer or distributor may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate that the claim was in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose. A manufacturer or distributor shall not deny a claim solely based on a dealer's incidental failure to comply with a specific claim processing requirement, or a clerical error, or other administrative technicality.

(A) The obligations imposed on motor vehicle franchisors by this section shall apply to any parent, subsidiary, affiliate, or agent of the motor vehicle franchisor if a warranty or service or repair plan is issued by that person instead of or in addition to one issued by the motor vehicle franchisor.

(B)

(i) In determining the rate and price customarily charged by the motor vehicle dealer to the public for parts, the compensation may be an agreed percentage markup over the dealer's cost under a writing separate and distinct from the franchise agreement signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's written request to be compensated under this section, compensation for parts shall be calculated by utilizing the method described in this paragraph.

(ii) If the dealer and the manufacturer are unable to agree to a percentage markup as provided by subparagraph (i), the retail rate customarily charged by the dealer for parts that the manufacturer is obligated to pay pursuant to RSA 382-A:2-329, shall be established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty or customer-paid service repair orders or 90 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, each of

which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The retail rate so declared must be reasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. The declared retail rate shall go into effect 30 days following the date on which the dealer submitted to the manufacturer or distributor the required number of nonwarranty or customer-paid service repair orders (hereafter referred to as the "submission date") subject to audit of the submitted nonwarranty or customer-paid service repair orders by the manufacturer or distributor and a rebuttal of the declared retail rate. If the manufacturer or distributor wishes to rebut the declared retail rate it must so inform the dealer not later than 30 days after the submission date and propose an adjustment of the average percentage markup based on the rebuttal not later than 60 days after the submission date. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest at the motor vehicle industry board not later than 90 days after the submission date. In the event a protest is filed, the manufacturer has the burden of proof to establish that the dealer's submission is unreasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.

(iii) In calculating the retail rate customarily charged by the dealer for parts, the following work shall not be included in the calculation: routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course

of repairs; items that do not have an individual part number such as some nuts, bolts, fasteners and similar items; tires; vehicle reconditioning; parts covered by subparagraph (v); repairs for manufacturer special events and manufacturer discounted service campaigns; parts sold at wholesale or parts used in repairs of government agencies' repairs for which volume discounts have been negotiated by the manufacturer; promotional discounts on behalf of the manufacturer, internal billings, regardless of whether the billing is on an in-stock vehicle; and goodwill or policy adjustments.

(iv) A manufacturer or distributor shall not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not declare an average percentage markup or average labor rate more than once in a calendar year. A manufacturer or distributor may perform annual audits to verify that a dealer's effective rates have not decreased and if they have may reduce the warranty reimbursement rate prospectively. Such audits shall not be performed more than once per calendar year at any dealer. The audit performed by the manufacturer shall be in accordance with the method to calculate the retail rate customarily charged by the dealer for parts as set out in subparagraph (ii) above and subject to the limitations in subparagraph (iii). If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest at the motor vehicle industry board not later than 90 days after the manufacturer states the intended new retail rate as the result of the manufacturer's audit. In the event a protest is filed, the manufacturer has the burden of proof to establish that the proposed retail rate was calculated accurately and in accordance with this subparagraph. The proposed retail rate shall not be effective until the motor vehicle industry board issues a final order approving the proposed rate. If as the result of the audit performed in accordance with

subparagraph (ii) the calculation shows that the dealer's average percentage markup is greater than the average percentage markup currently being used for the dealer's retail rate reimbursement, the dealer's average percentage markup shall be increased to the extent of the result of the audit. Any rate that is adjusted as a result of an audit performed in accordance with this subparagraph shall not be adjusted again until a period of 6 months from the effective date of the change has lapsed.

(v) If a motor vehicle franchisor or component manufacturer supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor.

(1) The requirements of this subparagraph shall not apply to entire engine assemblies, entire transmission assemblies, in-floor heating systems, and rear-drive axles ("assemblies"). In the case of assemblies, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the assembly if the assembly had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee.

(2) The requirements of this subparagraph shall not apply to household appliances, furnishings, and generators of a motor home ("household items"). In the case of household items valued under $600, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the

household item if the household item had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee. For household items in excess of $600, the markup would be capped as if the part were $600. The motor vehicle franchisor shall also reimburse the franchisee for any freight costs incurred to return the removed parts.

(vi) A manufacturer or distributor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section.

(2) In no event shall a manufacturer or component manufacturer fail to pay a dealer reasonable compensation for parts or components, including assemblies, used in warranty or recall repairs.

(3) The wholesale price on which a dealer's markup reimbursement is based for any parts used in a recall, service campaign, or other similar program, shall not be less than the highest wholesale price listed in the manufacturer's or distributor's wholesale price catalogue within 6 months prior to the start of the recall, service campaign, or other similar program. If the manufacturer or distributor does not have a wholesale price catalogue, or if the part is not listed in a wholesale price catalogue, the wholesale price on which a dealer's markup reimbursement is based in a recall, service campaign, or other similar program shall be the average price charged to dealers of similar line makes in the state for the part during 6 months prior to the start of the recall, service campaign, or other similar program. In no event shall a dealer receive less than the dealer's actual cost for that part, plus the markup as calculated pursuant to this subparagraph.

(c) No new motor vehicle manufacturer shall fail to perform any warranty obligations, including tires, whether or not such tires placed on the new motor vehicle by the manufacturer are excluded under the motor vehicle manufacturer's warranty; fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects; or fail to compensate any of the new motor vehicle dealers in this state for repairs effected by such recall.

(d)

(1) All claims made by new motor vehicle dealers pursuant to this section for labor and parts shall be paid within 30 days following their approval. All such claims shall be either approved and paid or disapproved within 30

days after their receipt, and any claim not specifically disapproved in writing within such period shall be deemed approved. Notice of rejection of any claim shall be accompanied by a specific statement of the grounds on which the rejection is based.

(2) A manufacturer, distributor, branch, or division shall retain the right to audit warranty claims for a period of 9 months after the date on which the claim is paid and charge back any amounts paid on claims that are false or unsubstantiated.

(3) A manufacturer, distributor, branch, or division shall retain the right to audit all incentive and reimbursement programs for a period of 9 months after the date on which the claim is paid or 9 months from the end of a program that does not exceed one year, whichever is later, and charge back any amounts paid on claims that are false or unsubstantiated.

(4) Any new motor vehicle dealer who is audited by a manufacturer, distributor, branch, or division shall have the right to be present or represented by counsel or other designated representative.

(5) Any chargeback resulting from any audit shall not be made until a final order is issued by the New Hampshire motor vehicle industry board if a protest to the proposed chargeback is filed within 30 days of the notification of the final amount claimed by the manufacturer, distributor, branch, or division to be due after exhausting any procedure established by the manufacturer, distributor, branch, or division to contest the chargeback, other than arbitration. If the chargeback is affirmed by a final order of the board, the dealer shall be liable for interest on the amount set forth in the order at a rate of the prime rate effective on the date of the order plus one percent per annum from the date of the filing of the protest. In the absence of fraud, the board may order, based on the equities and circumstances of the parties, that the chargeback plus applicable interest be paid in installments not exceeding 12 months. If the board finds that a warranty chargeback is the result of a fraudulent warranty claim, no installment payments shall be allowed by the board.

(6) A manufacturer, distributor, branch, or division shall retain the right to charge back a fraudulent warranty claim, subject to any limitation period established in the franchise agreement but in no event longer than the limitation period provided in RSA 508:4, I. The applicable limitation period shall commence on the date a fraudulent warranty claim is paid.

(7) If the franchise agreement between a manufacturer, distributor, branch, or division is terminated for any reason, any audit pursuant to this section

shall be completed no later than 30 days after the effective date of the termination.

(8) Notwithstanding the terms of any franchise or agreement, a manufacturer, distributor, branch, or division shall not take or threaten to take any adverse action against a motor vehicle dealer, including charge backs, reducing vehicle allocations, or terminating or threatening to terminate a franchise or agreement because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country, unless the motor vehicle dealer knew or reasonably should have known that the customer intended to export the vehicle. There shall be a presumption that the motor vehicle dealer did not know or could not have reasonably known if the vehicle is titled or registered in any state in this country.

(e) The franchisor shall not in any way restrict the nature or extent of services to be rendered or parts to be provided so that such restriction prevents the franchisee from satisfying a warranty in a workmanlike manner with all required or necessary parts.

III.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a new motor vehicle dealer shall be solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser.

(b) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a manufacturer shall be liable for all damages to motor vehicles before delivery to a carrier or transporter.

(c) A new motor vehicle dealer shall be liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier; in all other instances, the manufacturer shall be liable for carrier-related new motor vehicle damage.

(d) On any new motor vehicle, any uncorrected damage or any corrected damage exceeding 6 percent of the manufacturer's suggested retail price, as defined in 15 U.S.C.A. sections 1231–33, as measured by retail repair costs, shall be disclosed in writing by the manufacturer or distributor to the dealer and shall be disclosed in writing by the dealer to the ultimate purchaser prior to delivery. Damage to glass, tires, and bumpers shall be excluded from the calculation required in this subparagraph when replaced by identical manufacturer's original equipment.

(e) Repaired damage to a customer-ordered new motor vehicle less than the amount requiring disclosure in subparagraph (d) shall not constitute grounds for revocation of the customer order. The customer's right of revocation shall cease upon his acceptance of delivery of the vehicle, provided disclosure is made prior to delivery.

(f) If damage to a vehicle exceeds the amount requiring disclosure in subparagraph (d) at either the time the new motor vehicle is accepted by the new motor vehicle dealer, or whenever the risk of loss is shifted to the dealer, whichever occurs first, then the dealer may reject the vehicle within a reasonable time.

(g) If a new motor vehicle dealer determines the method of transportation, as defined in subparagraph (c), then the risk of loss during transit shall pass to the dealer upon delivery of the vehicle to the carrier. In every other instance, the risk of loss shall remain with the manufacturer until such time as the new motor vehicle dealer accepts the vehicle from the carrier.

IV.

(a) A franchisor shall indemnify its franchisees from any and all reasonable claims, losses, damages, and costs, including attorney's fees resulting from or related to complaints, claims or suits against the franchisee by third parties, including but not limited to those based upon strict liability, negligence, misrepresentation, warranty and revocation of acceptance or rescission, where an action alleges fault due to: (1) the manufacture, assembly, or design of the vehicle, parts, or accessories, or the selection or combination of parts or components; (2) service systems, procedures or methods required, recommended or suggested to the franchisee by the franchisor; or (3) damage to the vehicle in transit to the franchisee where the carrier is designated by the manufacturer.

(b) The franchisor shall not be liable to the franchisee by virtue of this section for any claims, losses, costs or damages arising as a result of negligence or willful malfeasance by the franchisee in its performance of delivery, preparation, or warranty obligations required by the franchisor, or other services performed; provided, however, that the franchisor shall be liable for damages arising from or in connection with any services rendered by a franchisee in accordance with any service, system, procedure or method suggested or required by the franchisor.

(c) In any action where there are both allegations for which the franchisor is required to indemnify the franchisee and claims of negligence in the performance of services by the franchisee, the percentage of fault of each shall be determined and the franchisor's duty to indemnify the franchisee

against all damages and expenses, including attorney's fees, shall be limited to that percentage of fault found to be of the type set forth in subparagraph (a).

N.H. Rev. Stat. Ann. § 357-C:5.

New Jersey

While there are no New Jersey statutes covering outdoor power equipment or other equipment in this context, franchisors need to be aware of the New Jersey Franchise Practices Act's requirements regarding termination. "Franchise" is defined as "a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise." N.J. Rev. Stat. Ann. § 56:10-3(a).

A. Termination

It is a violation of the statute for a franchisor to terminate, cancel or fail to renew a franchise without good cause. N.J. Rev. Stat. Ann. § 56:10-5. The statute limits good cause to failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise. *Id*.

It is also a violation of the statute for any franchisor to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least 60 days in advance of such termination, cancellation, or failure to renew. N.J. Rev. Stat. Ann. § 56:10-5. There are two exceptions to the 60 day requirement: (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship, in which event the aforementioned written notice may be given 15 days in advance of such termination, cancellation, or failure to renew; and (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, in which event the aforementioned termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of same at any time following the aforementioned conviction. *Id*.

B. Warranty requirements specific to motor vehicle franchises

Section 56:10-15 of the New Jersey Franchise Practices Act covers reimbursement for services or parts under warranty or law. It is a complex statute better suited towards reading in its entirety. It is therefore reprinted as follows:

> If any motor vehicle franchise shall require or permit motor vehicle franchisees to perform services or provide parts in satisfaction of a warranty issued by the motor vehicle franchisor:
>
> a. The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, in an amount equal to the prevailing retail price charged by such motor vehicle franchisee for such services and parts in circumstances where such services are rendered or such parts

supplied other than pursuant to warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchisor for identical merchandise or services in the geographic area in which the motor vehicle franchisee is engaged in business.

b. The motor vehicle franchisor shall not by agreement, by restrictions upon reimbursement, or otherwise, restrict the nature and extent of services to be rendered or parts to be provided so that such restriction prevents the motor vehicle franchisee from satisfying the warranty by rendering services in a good and workmanlike manner and providing parts which are required in accordance with generally accepted standards. Any such restriction shall constitute a prohibited practice hereunder.

c. The motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection a. of this section, without deduction, for services performed on, and parts supplied for, a motor vehicle by the motor vehicle franchisee in good faith and in accordance with generally accepted standards, notwithstanding any requirement that the motor vehicle franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 *et seq*.).

d. For the purposes of this section, the "prevailing retail price" charged by:

(1) a motor vehicle franchisee for parts means the price paid by the motor vehicle franchisee for those parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchisor and sold at retail. The motor vehicle franchisee may establish average percentage markup under this section by submitting to the motor vehicle franchisor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration subject to audit of the submitted repair orders by the motor vehicle franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, parts covered by subsection e. of this section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchisor shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor

vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year.

e. If a motor vehicle franchisor supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor. The requirements of this section shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the assembly if the assembly had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee.

f. The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and services rendered under a warranty within 30 days after approval of a claim for reimbursement. All claims for reimbursement shall be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee shall be notified in writing of the grounds for the disapproval. No claim that has been approved and paid shall be charged back to the motor vehicle franchisee unless it can be shown that the claim was false or fraudulent, that the services were not properly performed, that the parts or services were unnecessary to correct the defective condition, or that the motor vehicle franchisee failed to reasonably substantiate the claim in accordance with reasonable written requirements of the motor vehicle franchisor, provided that the motor vehicle franchisee had been notified of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose. A motor vehicle franchisor shall not audit a claim after the expiration of two years following the payment of the claim unless the motor vehicle franchisor has reasonable grounds to believe that the claim was fraudulent.

g. The obligations imposed on motor vehicle franchisors by this section shall apply to any parent, subsidiary, affiliate or agent of the motor vehicle franchisor, any person under common ownership or control, any employee of the motor vehicle franchisor and any person holding 1% or more of the shares of any class of securities or other ownership interest in the motor vehicle franchisor, if a warranty or service or repair plan is issued by that person instead of or in addition to one issued by the motor vehicle franchisor.

h. The provisions of this section shall also apply to franchisor administered service and repair plans:

(1) if the motor vehicle franchisee offers for sale only the franchisor administered service or repair plan; or

(2) if the motor vehicle franchisee is paid its prevailing retail price for all service or repair plans the motor vehicle franchisee offers for sale to purchasers of new motor vehicles; or

(3) for the first 36,000 miles of coverage under the franchisor administered service or repair plan, if the warranty offered by the motor vehicle franchisor on the motor vehicle provides coverage for less than 36,000 miles; or

(4) for motor vehicles covered by a franchisor administered service or repair plan, if the motor vehicle franchisee does not offer for sale the franchisor administered service or repair plan.

N.J. Stat. Ann. § 56:10-15.

New Mexico

New Mexico does not expressly include "outdoor power equipment" in its Franchise Termination Act, but does include a broad definition of "inventory" that may encompass some outdoor power equipment. N.M. Stat. § 57-23-2. The statute defines "inventory" as "new or unused farm tractors, farm implements, utility tractors, industrial tractors, attachments and repair parts that are provided by a supplier to a dealer under a franchise agreement and that were purchased within thirty-six months of the termination of the franchise or were listed in the supplier's current sales manual at the time of termination." *Id*. § 57-23-2(E). "Dealer" is defined as "a person in the business of the retail sale of farm tractors, farm implements or the attachments to or repair parts for farm tractors or farm implements." *Id*. at § 57-23-2(C). "Supplier" is defined as "a manufacturer, wholesaler or distributor of farm tractors, farm implements, utility tractors or industrial tractors or the attachments to or repair parts for that equipment." *Id*. at § 57-23-2(F).

A. Repurchase

New Mexico requires repurchase of inventory pursuant to the following terms:

A. If on termination of a franchise, the dealer delivers to the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of termination, the supplier shall pay to the dealer:

> (1) the dealer cost of the new, unsold, undamaged and complete farm tractors, farm implements, utility tractors, industrial tractors and attachments returned by the dealer;
>
> (2) an amount equal to ninety percent of the current price of new, undamaged repair parts returned by the dealer; and
>
> (3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph.

B. The supplier may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the supplier. The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier.

C. The supplier shall pay the amount due under this section before the sixty-first day after the day that the supplier receives inventory from the dealer and after the dealer has furnished proof that the inventory was purchased from the supplier.

D. On payment of the amount due under this section, title to the inventory is transferred to the supplier.

N.M. Stat. § 57-23-3.

The New Mexico statute does not require the repurchase of the following:

A. inventory:

(1) that the dealer orders after the dealer receives notice of the termination of the franchise from the supplier; or

(2) for which the dealer cannot furnish evidence of clear title that is satisfactory to the supplier; or

B. a repair part that:

(1) has a limited storage life;

(2) is in a broken or damaged package;

(3) is usually sold as part of a set, if the part is separated from the set; or

(4) cannot be sold without reconditioning or repackaging.

N.M. Stat. § 57-23-4.

The statute imposes liability for failing to pay for repurchased inventory or for late payment. N.M. Stat. § 57-23-6. The statute imposes liability for:

A. the greater of the dealer cost or current price of the inventory;

B. the expenses incurred by the dealer in returning the inventory to the supplier;

C. interest on the greater of the dealer cost or current price of the inventory, at the rate applicable to a judgment of a court of this state, for the period beginning on the sixty-first day after the day the supplier received the inventory;

D. reasonable attorney's fees; and

E. costs.

Id.

B. Warranties

The statute regulates warranty claims pursuant to the following:

> If after the termination of a franchise, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination, the supplier shall accept or reject the claim not later than the forty-fifth day after the day that the supplier receives the claim. A claim not rejected before the deadline shall be deemed accepted. The supplier shall pay an accepted claim not later than the sixtieth day after the day that the supplier receives the claim.

N.M. Stat. § 57-23-5.

New York

New York does not expressly regulate suppliers and dealers of "outdoor power equipment," but regulates dealer agreements for the sale of farm equipment. N.Y. Gen. Bus. Law § 696-a. "Equipment" is defined as "vehicles and machinery and the accessories and parts thereto which are designed to be used for farm and agricultural purposes, lawn, garden, golf course, landscaping or grounds and maintenance/utility activities, provided however that self-propelled vehicles primarily for the transportation of persons or property on a street or highway are specifically excluded." *Id*. at § 696-a(3). The statute's seemingly broad definition of "equipment" may encompass some outdoor power equipment. "Dealer" is defined as "any person selling or agreeing to sell primarily equipment under an agreement with a supplier." *Id*. at § 696-a(2).

A. Termination

The New York statute requires suppliers to give dealers ninety days' written notice of the suppliers' intent to terminate, cancel, or not renew the dealer agreement. N.Y. Gen. Bus. Law § 696-c(1). The exceptions to this notice requirement are termination with cause when the dealer has:

> (a) transferred a controlling ownership interest in the dealership without the supplier's consent;
>
> (b) made a material misrepresentation in applying for the dealer agreement;
>
> (c) filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;
>
> (d) been convicted of a crime, punishable for a term of imprisonment for one year or more;
>
> (e) failed to operate in the normal course of business for ten consecutive business days or has terminated said business;
>
> (f) significantly relocated the dealer's place of business without supplier's consent;

Id. at § 696-c (2). Notice is required, but termination is with cause, when the dealer has:

> (g) consistently engaged in business practices which are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, failure to provide service and replacement parts or perform warranty obligations;

(h) inadequately represented supplier over a measured period causing lack of performance in sales, service or warranty areas and failed to achieve market penetration at levels consistent with similarly located dealerships based on available recorded information compiled by industry associations regarded as the authorities in this area both in local and national standards;

(i) consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the dealer agreement;

(j) consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf;

(k) consistently failed to comply with the terms of the dealership agreement.

Id.

The statute states that no supplier:

shall base its decision to terminate, cancel or not to renew a dealer agreement on any of the paragraphs of subdivision two of this section except paragraph (a), (b), (c), (d), (e) or (f) thereof unless such supplier can demonstrate, through written documentation, the alleged misconduct and/or lack of performance by the dealer, and furthermore, such supplier shall also show that the reason for the decision to terminate, cancel or not to renew the dealer agreement was in no way caused by such supplier.

N.Y. Gen. Bus. Law § 696-c(3).

B. Repurchase

The New York statute requires suppliers to provide to their dealers, on an annual basis, an opportunity to return a portion of their surplus inventory for credit. N.Y. Gen. Bus. Law § 696-e(2). The detailed surplus procedure must be administered under § 696-e. Repurchase of equipment by a supplier upon termination is required when a dealer agrees to maintain an inventory of equipment or repair parts and the dealer agreement is subsequently terminated. *Id*. at § 696-f(1). Dealers, however, may keep the inventory if they choose to do so. *Id*. Repurchase is required pursuant to the following terms:

The supplier shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete equipment which is resalable, less a reasonable allowance for depreciation due to usage by the dealer and deterioration directly attributable to weather conditions at the dealer's location and less all programs and discounts previously allowed thereon and eighty-five percent of the current net price of all new, unused, undamaged repair parts and accessories which are listed

in the supplier's effective price list or catalogue less all programs and discounts previously allowed thereon by the supplier to the dealer. The supplier shall also pay the dealer six percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The supplier shall have the option of performing the handling, packing and loading or paying one hundred percent of the current net price of parts in lieu of paying the six percent sum imposed herein for these services and in this case the dealer shall make available to the supplier, at the dealer's address or at the places at which it is located, all equipment previously purchased by the dealer, after receipt by the dealer of the full repurchase amount.

Id. at § 696-f(2).

The New York statute does not require repurchase of the following:

(a) any repair part which has a limited storage life or is otherwise subject to deterioration;

(b) any single repair part which is priced as a set of two or more items;

(c) any repair part which because of its condition is not resalable as a new part without repairing or reconditioning;

(d) any inventory for which the dealer is unable to furnish evidence reasonably satisfactory to the supplier, of good title, free and clear of all claims, liens and encumbrances;

(e) any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;

(f) any equipment which is not in new, unused, undamaged, and complete condition;

(g) any equipment which has been used by the dealer or has deteriorated because of weather conditions at the dealer's location unless the supplier receives a reasonable allowance for such usage or deterioration;

(h) any repair parts which are not in new, unused, undamaged condition;

(i) any inventory which was ordered by the dealer on or after the date of receipt of the notification of termination of the dealer agreement; or

(j) any inventory which was acquired by the dealer from any source other than the supplier.

N.Y. Gen. Bus. Law § 696-f(4).

If a dealer, or majority stockholder of a corporation operating as a dealer, dies or becomes incapacitated, the supplier must, at the option of the dealer's heirs, repurchase the inventory as if the dealer were terminated. N.Y. Gen. Bus. Law § 696-g(1). The dealer's heirs have nine months from the date of the dealer's death to exercise this option. *Id*. If a supplier fails or refuses to repurchase any inventory as required by the statute within sixty days after termination, the statute imposes civil liability for one hundred fifteen percent of the current net price of the inventory plus any freight charges paid by the dealer, plus all costs of financing the repurchase, including court costs and attorneys' fees. *Id*. at § 696-f(5).

C. Warranties

New York requires suppliers to provide a "fair and reasonable warranty agreement on any new equipment" sold and to "fairly compensate each of its dealers for labor and parts used in fulfilling such warranty agreement." N.Y. Gen. Bus. Law § 696-h(1). All warranty claims must be either approved or disapproved within thirty days. *Id*. For disapproved claims, suppliers must provide dealers with written notice of their disapproval which must state the specific grounds upon which the disapproval is based. *Id*. Dealers must be compensated at their established hourly rate, and must notify suppliers of that rate before submitting warranty claims. *Id*. at § 696-h(2). For parts, suppliers must reimburse dealers for the dealer's cost, all freight and handling, plus fifteen percent to compensate for the dealer's reasonable costs of doing business. *Id*.

North Carolina

North Carolina explicitly includes "outdoor power equipment" in its statute regulating farm machinery agreements. N.C. Gen. Stat. § 66-180. The statute defines "dealer" as "a person engaged in the business of selling at retail farm, construction, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts." *Id*. at § 66-180(4). "Supplier" is defined as "a wholesaler, manufacturer, distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into an agreement with a dealer." *Id*. at § 66-180(9). Further, the statute includes "outdoor power equipment" in its definition of "inventory." *Id*. at § 66-180(7).

A. Termination

North Carolina requires suppliers who terminate, cancel, fail to renew, or substantially change the competitive circumstances of a retail agreement with a dealer without good cause to notify the dealer no less than ninety days before the effective date of the termination. N.C. Gen. Stat. § 66-182(a). In such a case, suppliers must provide dealers with a sixty day right to cure the deficiency. *Id*. If the deficiency is cured within that time, the notice is deemed void. *Id*. If the cancellation is enacted due to market penetration, a reasonable period of time must have existed where the supplier worked with the dealer to gain the desired market share. *Id*. If any good cause exists for termination, the notice must state that reason. *Id*. Notice under the statute must be in writing and must be by certified mail or personal delivery. *Id.* at § 66-182(c). The notice must contain:

(1) A statement of intention to terminate the dealership.

(2) A statement of the reasons for the termination.

(3) The date on which the termination takes effect.

Id.

The statute defines "good cause" as the "failure by a dealer to comply with requirements imposed upon the dealer by the agreement if the requirements are not different from those imposed on other dealers similarly situated in this State." N.C. Gen. Stat. § 66-180(6). The statute specifically states that good cause exists in any of the following circumstances:

a. A petition under bankruptcy or receivership law has been filed against the dealer.

b. The dealer has made an intentional misrepresentation with the intent to defraud supplier.

c. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier or a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier.

d. Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, which shall not be unreasonably withheld, in the location of the dealer's principal place of business or additional locations set forth in the agreement.

e. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.

f. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

g. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned the business.

h. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier.

i. 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.

Id. Suppliers who terminate or otherwise fail to renew or substantially change the competitive circumstances of an agreement with a dealer for good cause are not required to notify the dealer of the termination or to provide a right-to-cure deficiency. *Id*. at § 66-182(a1).

B. Repurchase

The North Carolina statute requires suppliers to repurchase inventory from dealers when the dealer has entered into an agreement to maintain an inventory, and the agreement is terminated by either party. N.C. Gen. Stat. § 66-183(a). The dealer may keep the inventory if it chooses to do so. *Id*. If the dealer or majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, suppliers must repurchase inventory as if the agreement had been terminated if the heirs or personal representative of the dealer requests repurchase. *Id*. at § 66-183(b). The heirs or personal representative of the dealer have one year from the date of death of the dealer to exercise this option. *Id*.

Suppliers must repurchase all unsold inventory previously purchased from the supplier within ninety days after termination of the agreement. N.C. Gen. Stat. § 66-184(a). Suppliers must pay:

> (1) One hundred percent (100%) of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments.
>
> (2) Ninety percent (90%) of the current net price of all new, unused, and undamaged repair and superseded parts.
>
> (3) Seventy-five percent (75%) of the net cost of all specialized repair tools purchased in the previous three years and fifty percent (50%) of the net cost of all specialized repair tools purchased in the previous four through six years pursuant to the requirements of the supplier and held by the dealer on the date of termination. Such specialized repair tools shall be unique to the supplier's product line and shall be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this section at its agreed depreciated value, provided the equipment is in new condition and has not been damaged.
>
> (4) At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past five years.

Id. at § 66-184(b). In addition, suppliers who do not perform the handling, packing, and loading themselves must pay the cost of shipping and ten percent of the current net price of all new, unused, undamaged repair parts returned. *Id*. at § 66-184(d).

> The following is not required for repurchase:
>
> (1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic tires.
>
> (2) A single repair part that is priced as a set of two or more items.
>
> (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.
>
> (3a) Any repair part that is not in new, unused, undamaged condition.

(4) An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier.

(5) Any inventory that the dealer chooses to keep.

(6) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the agreement.

(6a) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased, as provided in G.S. 66-184, shall be considered new and unused.

(6b) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that were purchased more than 36 months prior to notice of termination of the agreement.

(7) Any inventory that was acquired by the dealer from a source other than the supplier.

N.C. Gen. Stat. § 66-185.

The failure or refusal to repurchase any inventory under the statute results in civil liability in the amount of one hundred percent of the current net price of the inventory, any freight charges paid by the dealer, the dealer's reasonable attorneys' fees and court costs, and interest on the current net price of the inventory computed from the ninety-first day after termination of the dealer agreement. N.C. Gen. Stat. § 66-188(a).

C. Warranties

In situations where a supplier and a dealer have entered into an agreement, North Carolina requires suppliers to pay any warranty claims made by the dealer for warranty parts or service within thirty days after its approval. N.C. Gen. Stat. § 66-187(a). The approval or disapproval of warranty claims must be made within thirty days of their receipt. *Id*. Dealers must be notified within thirty days of any disapproval stating the specific grounds upon which the disapproval is based. *Id.* Any claims not specifically disapproved or approved within thirty days are deemed approved. *Id*.

Suppliers must indemnify and hold harmless any dealer with whom it has entered into a dealer agreement for any judgment for damages or any settlement agreed to by the supplier, including court costs and reasonable attorneys' fees. N.C. Gen. Stat. § 66-187(b). This indemnity provision applies to any costs arising out of any complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture,

assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control. *Id*. Warranty claims submitted after termination for work performed before termination must be accepted or rejected within thirty days. *Id*. at § 66-187(c).

If payment on warranty claims is not made within the time allotted, interest shall accrue at the maximum lawful interest rate. N.C. Gen. Stat. § 66-187(d). Further, warranty work is regulated under the following terms:

- Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof. The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

- Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer shall neither be included nor required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.

- The dealer shall be paid for all parts used by the dealer in performing warranty work. Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of fifteen percent (15%).

- The manufacturer, wholesaler, or distributor has a right to adjust compensation for errors discovered during an audit and, if necessary, to adjust claims paid in error.

- The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.

Id. at § 66-187(e)-(i).

North Dakota

North Dakota regulates contractual relations between retailers and wholesalers, manufacturers, and distributors of "lawn and garden equipment." N.D. Cent. Code § 51-07-01.

A. Termination

North Dakota prohibits the termination, cancellation, or failure to renew a contract with a retailer without good cause. N.D. Cent. Code § 51-07-01.1(1). The statute limits good cause for terminating, cancelling, or failing to renew a contract to the "failure by the retailer to substantially comply with those essential and reasonable requirements imposed by the contract between the parties if the requirements are not different from those requirements imposed on other similarly situated retailers." *Id*. at § 51-07-01.1(2). Under the statute, the determination for the termination, cancellation, or failure to renew must be made in good faith. *Id*. A separate section of the statute governs the termination of heavy construction equipment franchises. *See* N.D. Cent. Code § 51-20.1-01

B. Repurchase

North Dakota requires repurchase in instances where retailers have entered into contracts with manufacturers, wholesalers, or distributors under which the retailers agree to maintain a stock of the merchandise, and any party desires to terminate, cancel, or discontinue the contract. N.D. Cent. Code § 51-07-01(1). Repurchase is required in the amount of:

> a. One hundred percent of the net cost of all current unused complete farm implements, machinery, and attachments; lawn and garden equipment; and automobiles, trucks, and semitrailers.
>
> b. One hundred percent of the actual merchandise and tool transportation charges that have been paid by the dealer.
>
> c. Ninety percent of the net prices on parts, including superseded parts, as shown in the manufacturer's wholesaler's, or distributor's current price lists or catalogs in effect at the time the contract is canceled, discontinued, or not renewed. These parts must have previously been purchased from the wholesaler, manufacturer, or distributor, and must have been either held by the retailer on the date of the cancellation of, discontinuance of, or failure to renew the contract or received by the retailer from the wholesaler, manufacturer, or distributor after the date of the cancellation, discontinuance, or failure to renew.
>
> d. Fifty percent of the net cost of all complete specialized tools for the covered merchandise.

e. Five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor.

Id.

C. Heavy construction equipment franchise termination

North Dakota governs the termination of heavy construction equipment franchises via a separate section of the statute. *See* N.D. Cent. Code § 51-20.1-01. It defines "heavy construction equipment" as "self-propelled or pull-type construction machinery, and accessories therefore, primarily used in projects requiring paving, earthmoving, or bridge, road, highway, and commercial building construction." *Id*. at § 51-20.1-01(2).

1. Termination

It is a violation of the statute to terminate, cancel, or fail to renew the contract without good cause. N.D. Cent. Code § 51-20.1-03(1). "Good cause" means that the retail dealer has failed to comply with the requirements imposed upon the retail dealer by the terms of the written contract between the retail dealer and the distributor. *Id*. at § 51-20.1-03(2). The determination by the distributor that the distributor has good cause for termination, cancellation, or nonrenewal must be made in good faith. *Id*.

2. Repurchase

In the event of termination, the distributor is required to repurchase items when the retail dealer has entered into a written contract with a distributor to maintain a stock of heavy construction equipment, repair parts, or both heavy construction equipment and repair parts. N.D. Cent. Code §51-20.1-02. The statute requires that the distributor pay according to the following guidelines:

1. A sum equal to one hundred percent of the net cost of all unused, complete heavy construction equipment.

2. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor, and were in the retail dealer's inventory on the date of cancellation or discontinuance of the contract, or were thereafter received by the retail dealer from the distributor.

3. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts.

4. Any freight charges on the equipment or repair parts paid by the retail dealer.

Id. The prices are calculated according to those shown in the distributor's price lists or catalogs in effect at the time the contract was cancelled, terminated, or not renewed. *Id*. at 51-20.1-04. After making the required payment, title passes to the distributor. *Id*. at 51-20.1-02(4).

Ohio

Ohio does not expressly include "outdoor power equipment" in its statute regulating farm machinery or construction equipment dealers and suppliers. However, Ohio includes "compact tractors" in its definition of "farm machinery" and the statute states that compact tractors include "garden and small utility tractors and riding mowers." Ohio Rev. Code § 1353.01(H)-(I). "Supplier" is defined as "a manufacturer, wholesaler, or distributor of farm machinery or construction equipment to dealers under a dealer agreement who also may require the dealer to purchase data processing hardware to satisfy the minimum requirements of the dealer agreement." *Id*. at § 1353.01(D). The statute defines "dealer" as "a person engaged in the business of the retail sale of farm machinery or construction equipment under a dealer agreement, which also may include a requirement to purchase data processing hardware." *Id*. at § 1353.01(G).

A. Termination

The Ohio statute prohibits termination, failure to renew, or the substantial alteration of the competitive circumstances of a dealer agreement without good cause. Ohio Rev. Code § 1353.06(A)(1). Circumstances that constitute good cause to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include:

> Failure by the dealer to comply with the requirements imposed on the dealer by a dealer agreement if the requirements are not materially different from those imposed on other dealers similarly situated in this state or surrounding states. In addition, circumstances that constitute good cause include those in which the dealer consistently does any of the following:
>
> (a) Engages in business practices that are detrimental to the consumer or the supplier, including engaging in misleading advertising or failing to provide service and replacement parts or to perform warranty obligations;
>
> (b) Fails to provide adequate sales, service, or parts personnel in accordance with the dealer agreement;
>
> (c) Fails to meet reasonable building and housekeeping requirements;
>
> (d) Fails to comply with applicable licensing laws with respect to any of the products and services that the dealer represents as being sold or provided by the dealer on behalf of the supplier;
>
> (e) Fails to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier of the supplier's requirements.

Ohio Rev. Code § 1353.06(A)(2).

The statute states that circumstances that do *not* constitute good cause for a supplier to terminate, fail to renew, or substantially alter the competitive circumstances of a dealer agreement include any of the following:

> (a) The dealer's refusal to purchase or accept delivery from the supplier of any inventory or other commodity or service that the dealer did not order under the terms of the dealer agreement except as required by any applicable law or unless the inventory is comprised of safety parts or accessories that are required by the supplier;
>
> (b) The sole fact that the supplier desires further penetration of the market unless the dealer consistently has failed to meet the supplier's reasonable market penetration requirements based on accurate records and after receiving notice from the supplier of the supplier's requirements;
>
> (c) Refusal by the dealer to participate at the dealer's expense in any national advertising campaign or contest.

Ohio Rev. Code § 1353.06(A)(3).

The statute requires suppliers to provide dealers with notice before terminating the dealer agreement. Ohio Rev. Stat. § 1353.06(B). The notice must be provided no fewer than one hundred eighty days prior to termination. *Id*. The notice must explain the deficiencies that have resulted in termination. *Id*. The dealer then may submit a plan for correcting the deficiencies and the supplier must take into account corrective actions taken by the dealer when deciding whether or not to terminate the dealer agreement. *Id*.

B. Repurchase

Ohio requires suppliers to repurchase inventory upon the termination of a dealer agreement. Ohio Rev. Stat. § 1353.02(A). Repurchase is required if a dealer is terminated or because of the merger or consolidation of the supplier with or into another corporation. *Id*. Repurchase is required pursuant to the following terms:

> The supplier shall pay eighty-five per cent of the current net price for all used special service tools in good condition.
>
> The supplier shall pay the average "as-is" value shown in current industry guides for each component of a rental fleet of farm machinery or construction equipment that is owned by the dealer or financed by the supplier or its finance subsidiary, provided that the component was purchased from the supplier not more than thirty months prior to the date of termination of the dealer agreement.

> The supplier shall pay the net cost for all other new, unused, and undamaged inventory, except that the supplier shall repurchase at its fair market value any data processing hardware that the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer agreement or shall assume any computer hardware lease responsibilities of the dealer when the supplier required the dealer to lease the hardware from a specific supplier.
>
> The supplier may handle, pack, and load all new, unused, and undamaged repair parts and special service tools or pay five per cent of the current net price of the parts and tools to cover the cost of handling, packing, and loading.
>
> The dealer shall pay the freight charges for shipping repurchased inventory to the supplier's nearest warehouse or to another mutually agreeable site.
>
> The supplier may furnish a representative to inspect all parts and to certify their acceptability when packed for shipment.
>
> The supplier may set off against the repurchase amount debts owed by the dealer to the supplier at the time of repurchase, except the supplier may not set off debts disputed by the dealer in good faith.

Id. at § 1353.02(B).

Payment is due within ninety days after the supplier receives the inventory. Ohio Rev. Code § 1353.02(C). If the supplier fails to pay within ninety days, the supplier must pay interest on the current net price of the inventory. *Id*.

The Ohio statute does not require suppliers to repurchase any of the following:

> (1) Any repair part that has a limited storage life or shows evidence of deterioration;
>
> (2) Any single repair part priced as, or only sold as, a part of a set of two or more items;
>
> (3) Any repair part in such condition as not to be resaleable as a new part, and repair parts in damaged or broken packages;
>
> (4) Inventory for which the dealer cannot furnish evidence, satisfactory to the supplier, of title free and clear of all claims, liens, and encumbrances;
>
> (5) Inventory that the dealer chooses to keep and has a contractual right to keep;
>
> (6) Inventory that is not in new, unused, undamaged, complete, and saleable condition;

(7) Special service tools not in good condition or not currently available on a new basis;

(8) Inventory purchased thirty or more months prior to notice of termination of the dealer agreement;

(9) Inventory ordered by the dealer on or after notice of termination of the dealer agreement;

(10) Inventory acquired by the dealer from a source other than the supplier.

Ohio Rev. Code § 1353.02(D).

The statute compels repurchase of inventory by authorizing a civil action if a supplier fails or refuses to repurchase inventory. Ohio Rev. Code § 1353.04. If a court finds in the dealer's favor, the supplier must repurchase the inventory at its current net price and must pay interest, freight charges, court costs, and attorneys' fees. *Id*.

Oklahoma

Oklahoma defines equipment as:

> a. all-terrain vehicles, utility task vehicles and recreational off-highway vehicles, in each case, regardless of how used, and
>
> b. other machinery, equipment, implements or attachments therefor,
>
> used for or in connection with the following purposes:
>
> (1) lawn, garden, golf course, landscaping or grounds maintenance,
>
> (2) planting, cultivating, irrigating, harvesting, and producing of agricultural and/or forestry products,
>
> (3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or
>
> (4) industrial, construction, maintenance, mining or utility activities or applications.

Okla. Stat. tit. 15, § 245(7). Although "outdoor power equipment" is not a part of the definition of equipment, the statute states that the Legislature declares that the "retail distribution sales and rental of . . . outdoor power . . . equipment utilizing independent dealers operating under contract with the supplier, vitally affects the general economy of this state, the public interest and the public welfare" and therefore should be regulated. *Id*. at § 15-244A.

The statute defines "supplier" as "any person engaged in the business of manufacturing, assembly or wholesale distribution of equipment or repair parts." *Id*. at § 245(21).

A. Termination

The Oklahoma statute provides that:

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

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

> 1. The dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;
>
> 2. The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the business, or there has been a commencement of dissolution or liquidation of the dealer;
>
> 3. There has been a deletion, addition or change in dealer or dealership locations without the prior written approval of the supplier;
>
> 4. The dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier; provided, however, good cause will not exist if a person revokes any guarantee in connection with or following the transfer of such person's entire ownership interest in the dealer unless the supplier requires the person to execute a new guarantee of the dealer's present or future obligations in connection with the transfer of ownership interest;
>
> 5. The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;
>
> 6**.** The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and supplier;
>
> 7. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare or the representation or reputation of the supplier's product; or
>
> 8. 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 given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

Okla. Stat. tit. 15, § 245A.1. Further:

> A. Except as otherwise provided in this section, a supplier must provide a dealer at least one hundred eighty (180) days prior written notice of termination of a dealer agreement. The notice must state all reasons constituting good cause for such termination and must state that the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice will be void. A supplier, other than a specialty agricultural equipment supplier, may not terminate a dealer agreement for the reason set forth in paragraph 8 of subsection A of Section 5 of this act unless the supplier gives the dealer notice of such action at least two (2) years before the effective date of the action. 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 full force and effect. The notice and right to cure provisions under this section shall not apply if the reason for termination is for any reason set forth in paragraphs 1 through 7 of subsection A of Section 5 of this act.

Okla. Stat. tit. 15, § 245A.2. The Oklahoma statute has separate termination requirements for single line dealers. *See* Okla. Stat. tit. 15, § 245A.3.

B. Repurchase

Whenever any dealer enters into a dealer agreement with a supplier and either the supplier or the dealer desires to terminate, or otherwise discontinue the dealer agreement, the supplier must pay to the dealer or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier, unless the dealer should desire to keep such equipment or repair parts:

> 1. A sum equal to one hundred percent (100%) of the net equipment cost of all new, unsold, undamaged equipment, less a downward adjustment for such equipment between twenty-four (24) months and thirty-six (36) months old that reflects a reasonable allowance for refurbishment and the price another dealer will pay for such equipment, one hundred percent (100%) 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 such equipment, and ninety percent (90%) of the current net parts cost on new, unsold, undamaged repair parts, that had previously been purchased from the supplier and held by the dealer on the date that the dealer agreement terminates or expires. Notwithstanding anything to the contrary contained herein, demonstrators with less than fifty (50) hours, for machines with hour meters, of use will be considered new, unsold, undamaged equipment subject to repurchase under this paragraph;
>
> 2. A sum equal to five percent (5%) of the current net parts price of all repair parts returned to compensate the dealer for the handling, packing and loading of such repair parts for return to the supplier; provided, however, the five percent (5%) will

not be paid or credited to the dealer if the supplier elects to perform the handling, packing and loading of the repair parts itself;

3. 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. Fair market value of property subject to repurchase pursuant to this paragraph will be deemed to be the acquisition cost thereof, including any shipping, handling and set-up fees, less straight line depreciation of the acquisition cost over three (3) years. 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 will be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier; or

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

Okla. Stat. tit. 15, § 246(A). All payments or allowances of credit due to dealers must be paid or credited within ninety (90) days after receipt by the supplier of property required to be repurchased. *Id.* at § 246(B). Any payments or allowances of credit due to dealers that are not paid within the ninety-day period will accrue interest at the maximum rate allowed by law. *Id.* The supplier may withhold payments due under this subsection during the period of time in which the dealer fails to comply with its contractual obligations to remove any signage indicating that the dealer is an authorized dealer of the supplier. *Id.*

If any supplier refuses to repurchase any inventory, the supplier will be civilly liable to the dealer for one hundred ten percent (110%) of the amount that would have been due for the inventory if the supplier had timely complied with this act, any freight charges paid by the dealer, interest accrued, and the dealer's actual costs of any court or arbitration proceeding, including costs for attorney fees and costs for arbitrators. Okla. Stat. tit. 15, § 246(C). Additionally, the supplier and dealer must each pay fifty percent (50%) of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this act. Okla. Stat. tit. 15, § 246(D).

The following are exempted from the repurchase requirements of the statute:

1. Any repair part which is in a broken or damaged package; provided, however, the supplier will be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to eighty-five percent (85%) 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 Seventy-five Dollars ($ 75.00) or higher;

2. Any repair part which because of its condition is not resalable 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 such inventory will be free and clear of all claims, liens and encumbrances immediately upon payment by the supplier of amounts due herein to such lien holders;

4. Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;

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

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

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

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

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

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

b. the date the dealer receives from the supplier all information.

Okla. Stat. tit. 15, § 247.

If any supplier violates any provision of this act, a dealer may bring an action against such supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including, but not limited to, damages for lost profits, together with the actual costs of the action, including the dealer's attorney and paralegal fees and costs of arbitrators, and the dealer also may be granted injunctive relief against unlawful termination. Okla. Stat. tit. 15, § 248.

C. Warranties

The Oklahoma statute provides that:

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

B. Any claim which is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty (30) days of receipt by the dealer of the supplier's notification of the disapproval.

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

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

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

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

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

a. a discount in the pricing of the equipment to the dealer, or

b. a lump sum payment to the dealer that is made to the dealer within ninety (90) days of the sale of the supplier's new equipment. The discount or lump sum must be no less than five percent (5%) of the suggested retail price of the equipment.

If the requirements of this subsection are met and alternate terms and conditions are in place, subsections A, B and C of this section do not apply and the alternate terms and conditions are enforceable. Nothing contained in this subsection shall be deemed to affect the supplier's obligation to reimburse the dealer for parts in accordance with subsection C of this section.

Okla. Stat. tit. 15, § 245A.5.

D. Single-Line Dealers

Oklahoma has separate termination requirements for single-line dealers. "Single-line dealer" means a dealer that has:

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

b. a total annual average sales volume of equipment acquired from the single-line supplier in excess of Twenty-Five Million Dollars ($ 25,000,000.00) for the five (5) calendar years immediately preceding the applicable determination date; provided, however, the Twenty-Five-Million-Dollar threshold will be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year.

Okla. Stat. tit. 15, § 245(16).

1. Termination

In regards to single-line dealer agreements:

B. No supplier may terminate a dealer agreement without good cause. *Id*. at 245A.3(B). For purposes of this section and Section 8 of this act only, "good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement if such requirements are not different from those imposed on other similarly situated dealers. In addition, good cause exists whenever:

> 1. There has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the dealer;
>
> 2. The dealer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;
>
> 3. 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;
>
> 4. The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;
>
> 5. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier; or
>
> 6. 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 in this paragraph.

C. Except as otherwise provided in this subsection, a supplier shall provide a dealer with at least ninety (90) days written notice of termination. The notice must state all reasons constituting good cause for such termination and must state that the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice will be void. Notwithstanding the foregoing, if the good cause 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 shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this paragraph shall not apply if the reason for termination is for any reason set forth in paragraphs 1 through 6 of subsection B of this section.

Okla. Stat. tit. 15, § 245A.3. If a dealer dies, the supplier has ninety days to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. *Id.* at § 245A.4.(B) If the supplier determines that the requesting family member is not acceptable, the supplier must provide the family member with a written notice of its determination with the stated reasons for nonacceptance. *Id.* An heir, personal representative or family member is not entitled to operate a dealership without the specific written consent of the supplier. *Id.*

Oregon

Oregon explicitly includes "outdoor power equipment" in its statute regulating retailer and supplier relationships. "Farm implements" is defined as:

> (a) Any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways;
>
> (b) Auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural operations;
>
> (c) Other consumer products for agricultural purposes, including lawn and garden equipment powered by an engine, supplied by the supplier to the retailer pursuant to a retailer agreement;
>
> (d) Attachments and accessories used in the planting, cultivating, irrigating, harvesting and marketing of agricultural, horticultural or livestock products; and
>
> (e) Outdoor power equipment, including, but not limited to, self-propelled equipment used to maintain lawns and gardens or used in landscape, turf or golf course maintenance.

Or. Rev. Stat. § 646A.300(8). "Supplier" is defined as:

> (a) A wholesaler, manufacturer, manufacturer's representative or distributor.
>
> (b) A successor in interest of a manufacturer, manufacturer's representative or distributor, including, but not limited to:
>
> > (A) A purchaser of assets or shares of stock;
> >
> > (B) A corporation or entity resulting from merger, liquidation or reorganization; or
> >
> > (C) A receiver or trustee.
>
> (c) The assignee of a supplier.

Id. at § 646A.300(16). The statute defines "retailer" as "any person engaged in the business of retailing farm implements, machinery or repair parts in this state." *Id*. at § 646A.300(13).

A. Termination

The Oregon statute permits a supplier to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a retailer agreement for good cause. Or. Rev. Stat. § 646A.312(2). In a case where good cause exists, the termination, cancellation, failure to renew, or substantial change in the competitive circumstances of a retailer agreement becomes effective upon notice to the retailer. *Id*. The notice must state the reasons constituting good cause. *Id*. The Oregon statute defines "good cause" as a retailer:

> (A) Failing to comply with a term of a retail agreement that is the same as a term in the supplier's agreements with similarly situated retailers, including failure to meet marketing criteria;
>
> (B) Transferring a controlling ownership interest in the retailer's business without the supplier's consent;
>
> (C) Making a material misrepresentation or falsification of a record, contract, report or other document that the retailer has submitted to the supplier;
>
> (D) Filing a voluntary petition in bankruptcy;
>
> (E) Being placed involuntarily in bankruptcy and not discharging the bankruptcy within 60 days after the filing;
>
> (F) Becoming insolvent;
>
> (G) Being placed in a receivership;
>
> (H) Pleading guilty to, being convicted of or being imprisoned for a felony;
>
> (I) Failing to operate in the normal course of business for seven consecutive business days or terminating business;
>
> (J) Relocating or establishing a new or additional place or places of business without the supplier's consent;
>
> (K) Failing to satisfy a payment obligation as it comes due and payable to the supplier;
>
> (L) Failing to promptly account to the supplier for any proceeds of the sale of farm implements or otherwise failing to hold the proceeds in trust for the benefit of the supplier;

(M) Consistently engaging in business practices that are detrimental to the consumer or supplier, including, but not limited to, excessive pricing, misleading advertising or failure to provide service and replacement parts or to perform warranty obligations;

(N) Inadequately representing the supplier, causing lack of performance in sales, service or warranty areas, and failing to achieve satisfactory market penetration at levels consistent with similarly situated retailers based on available documented information;

(O) Consistently failing to meet building and housekeeping requirements; or

(P) Consistently failing to comply with the licensing laws that apply to the supplier's products and services.

Id. at § 646A.312(1)(a).

In cases in which a supplier's basis for asserting good cause is a retailer's failure to comply with any term in the retailer agreement except for a term concerning failure to meet marketing criteria, a supplier must give a retailer ninety calendar days' written notice of its intent to terminate, cancel, fail to renew, or change the competitive circumstances of a retailer agreement. Or. Rev. Stat. § 646A.312(3)(a). The notice must state the reasons for termination and provide that the retailer has sixty calendar days to cure a claimed deficiency. *Id*. at § 646A.312(3)(b). If the retailer cures the deficiency within sixty days, the notice is void. *Id*. at § 646A.312(3)(c). If the retailer fails to cure the deficiency within sixty days, the termination becomes effective on the date specified in the notice. *Id*. at § 646A.312(3)(d).

The statute requires suppliers to give a retailer one year's written notice of the retailer's failure to meet reasonable marketing criteria. Or. Rev. Stat. § 646A.312(4)(a). The notice must state the reasonable marketing criteria that the retailer has failed to meet and provide the retailer one year to meet the criteria. *Id*. at § 646A.312(4)(b). If the retailer fails to meet the criteria within the year, the supplier may give notice of termination and termination follows in one hundred eighty days. *Id*. at § 646A.312(4)(c).

B. Repurchase

Upon the termination, cancellation, or discontinuance of a retailer agreement, Oregon requires suppliers to repurchase farm implements and repair parts from retailers. Or. Rev. Stat. § 646A.304(1). The repurchase of farm implements and repair parts is required under the following terms:

a) The payment or the credit for the unused complete farm implements and machinery in new condition shall be in a sum equal to 100 percent of the net cost of all complete farm implements and machinery that are current models and that

have been purchased by the retailer from the supplier within the 24 months immediately preceding notice of intent to cancel or discontinue the retailer agreement. The payment or credit shall include the transportation charges to the retailer and from the retailer to the supplier, if the charges have been paid by the retailer or invoiced to the retailer's account by the supplier, and a reasonable reimbursement for services performed in connection with assembly or predelivery inspection of the implements or machinery. The supplier assumes ownership of the farm implements and machinery F.O.B. the dealership.

(b) The payment or credit for equipment used for demonstration or rental and that is in new condition shall equal the depreciated value of the equipment to which the supplier and retailer have agreed.

(A) The payment or credit for repair parts shall be a sum equal to 95 percent of the current net prices of the repair parts, including superseded parts, plus the charges for transportation from the retailer to the destination designated by the supplier that the retailer paid or the supplier invoiced to the retailer's account. The supplier assumes ownership of the repair parts F.O.B. the dealership.

(B) This paragraph applies to parts purchased by the retailer from the supplier and held by the retailer on or after the date of the cancellation or discontinuance of the retailer agreement.

(C) This paragraph does not apply to repair parts that:

(i) The supplier identified as not returnable when the retailer ordered the parts.
(ii) The retailer purchased in a set of multiple parts, unless the set is complete and in resalable condition.
(iii) The retailer failed to return after being offered a reasonable opportunity to return the repair part at a price not less than 100 percent of the net price of the repair part as listed in the then current price list or catalog.
(iv) Have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets and batteries and repair parts in broken or damaged packages.
(v) Are single repair parts priced as a set of two or more items.
(vi) Are not resalable as new parts without new packaging or reconditioning because of their condition.

(D) The supplier shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the current net price of all parts returned for the handling, packing and loading of the parts, unless the supplier elects to list the inventory and perform packing and loading of the parts itself.

Or. Rev. Stat. § 646A.304(1)(a)-(c).

Further, the Oregon statute dictates that:

If a retailer agreement is terminated, cancelled or discontinued, the supplier shall, upon request of the retailer, pay the retailer for:

(A) Computer and communications hardware that:

(i) The supplier required the retailer to purchase within the preceding five years; and

(ii) The retailer possesses on the date of the agreement's termination, cancellation or discontinuation.

(B) Computer software that:

(i) The supplier required the retailer to purchase from the supplier; and

(ii) The retailer used exclusively to support the retailer's dealings with the supplier.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the hardware and software to the retailer's account.

(c) The payment or credit shall be the net cost of the hardware and software, less 20 percent per year that the retailer possessed the hardware and software.

(d) This subsection does not apply if the retailer exercises a contractual right to keep the hardware or software.

(3) (a) If a retailer agreement is terminated, canceled or discontinued, the supplier shall pay the retailer for the retailer's specialized tools.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the specialized tools to the retailer's account.

(c) (A) If a tool is new and unused and used for the supplier's current models, the payment or credit shall be the net cost of the tool.

(B) If a tool is not new and unused and used for the supplier's current models, the payment or credit shall be the net cost of the tool, less 20 percent per year that the retailer possessed the tool.

(4) (a) If a retailer agreement is terminated, canceled or discontinued, the supplier shall pay the retailer for the retailer's current signs.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the signs to the retailer's account.

(c) The payment or credit shall be the net cost of the sign, less 20 percent per year that the retailer possessed the sign.

(5) A supplier shall provide all payments or allowances due under this section within 90 calendar days of the retailer's return of the farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs. A supplier who does not provide a payment or allowance within 90 calendar days of the retailer's return of the farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs shall pay the retailer interest of 18 percent per annum on the past due amount until paid.

(6) This section supplements any retailer agreement between the retailer and the supplier covering the return of farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs. The retailer may elect to pursue either the retailer's remedy under the retailer agreement or the remedy provided under this section. An election by the retailer to pursue the remedy under the retailer agreement does not bar the retailer's right to the remedy provided under this section as to those farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs not affected by the retailer agreement. This section does not affect the right of a supplier to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods.

(7) This section does not apply to farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs that a retailer acquired from a source other than the supplier.

Or. Rev. Stat. § 646A.304(2) -(7).

Repurchase is also required upon the death of a retailer whose business is owned as a tenancy by the entirety, at the option of the retailer's spouse or heirs. Or. Rev. Stat. § 646A.306(1)(a). Repurchase is also required upon the death of a stockholder of a corporation operating as a retailer, at the option of the stockholder's heirs and upon the consent of the board of directors. *Id*. at § 646A.306(1)(b). This option must be exercised within one year after the death of the retailer or stockholder. *Id*. at § 646A.306(2).

C. Warranties

Oregon requires suppliers to pay warranty claims for the retailer's costs, including but not limited to diagnostic services, repair services, repair parts, and labor. Or. Rev. Stat.

§ 646A.316(1). Suppliers must pay retailers for labor at an hourly rate no less than what the retailer charges for non-warranty work. *Id*. at § 646A.316(2). Suppliers must also pay retailers for repair parts at an amount no less than what the retailer paid for such parts plus a reasonable allowance for the shipping and handling of such parts. *Id*. at § 646A.316(3).

Suppliers must approve or disapprove warranty claims within thirty days of the receipt of the claim. Or. Rev. Stat. § 646A.318(1). If a supplier does not approve or disapprove a warranty claim in writing within thirty days of the receipt of the claim, the supplier must pay the claim within sixty days of the receipt of the claim. *Id*. at § 646A.318(2). Likewise, approved claims must be paid within thirty days of approval. *Id*. at § 646A.318(3). Disapproval of any warranty claim must be made in writing and must notify the retailer of the reasons for the disapproval. *Id*. at § 646A.318(4). If a claim is disapproved for failure to comply with claim submission procedures, the retailer may resubmit the claim within thirty days of the retailer's receipt of the disapproval. *Id*. at 646A.318(5). No claim may be disapproved as untimely if the claim covers service or parts provided while the retailer agreement was in effect. *Id*. at § 646A.318(6).

Suppliers may audit retailers' records within one year after payment of a warranty claim. Or. Rev. Stat. § 646A.318(7)(a). If any claims were paid in error, suppliers may adjust the claim or require retailers to return payment made on false claims. *Id*. at § 646A.318(7)(b).

Pennsylvania

The Pennsylvania Fair Dealership Law does not expressly include "outdoor power equipment," in its definition of "equipment," but offers a broad definition that includes "machines designed for or adapted and used for agriculture, horticulture, floriculture, livestock raising, silviculture, landscaping and grounds maintenance, even though incidentally operated or used upon the highways…." 73 Pa. Stat. § 205-2. "Dealer" is defined as "any person, firm or corporation engaged primarily in the business of retail sale or repair of equipment." *Id*. The statute defines "supplier" as "a manufacturer of equipment or repair parts or a wholesaler or distributor of equipment or repair parts who has a valid existing contract with a manufacturer of equipment or repair parts, including the successors or assigns of such manufacturer, wholesaler or distributor." *Id*.

A. Termination

The Pennsylvania statute prohibits suppliers from terminating, cancelling, or failing to renew dealer agreements except as provided by the following:

> A supplier may terminate, cancel or fail to renew a dealer agreement if a dealer:
>
> (1) Fails to consistently comply with essential and reasonable requirements imposed by the supplier.
>
> (2) Has transferred ownership interest in the dealership without the manufacturer's or distributor's consent.
>
> (3) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing.
>
> (4) Has pleaded guilty or has been convicted of a crime, or has been determined to be engaged in an unfair business practice, as defined in other laws of this Commonwealth, the effect of which would be detrimental to the manufacturer, distributor or dealership.
>
> (5) Has failed to operate in a normal course of business for ten consecutive business days or has terminated or voluntarily abandoned said business.
>
> (6) Has relocated the dealer's place of business without the manufacturer's or distributor's consent.
>
> (7) Has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation or discontinuance of any guarantee of the dealer's present or future financial obligations to the supplier.

73 Pa. Stat.§ 205-3(b). If the termination, cancellation, or failure to renew is for the reasons expressed in subsections (1) and (2) above, suppliers must provide at least ninety days' written notice setting forth the reasons. *Id*. at § 205-3(e). Suppliers may terminate, cancel, or fail to renew a dealer agreement for the reasons expressed in subsections (3) through (7) above, effective immediately upon receipt of written notice from the supplier to the dealer setting forth the reasons. *Id*. Except for termination, cancellation, or discontinuance for the reasons expressed in subsections (3) through (7) above, suppliers must allow the dealer no less than sixty days to cure the deficiencies set forth in the notice. *Id*. at § 205-3(f).

Under the statute, a supplier may terminate, cancel, or fail to renew a dealer agreement "under such conditions as may be provided for in the dealer agreement." 73 Pa. Stat. at § 205-3(c). The supplier bears the burden of proof to establish that termination, cancellation, or failure to renew was made for good cause. *Id*. at § 205-3(d).

B. Repurchase

Upon termination, the Pennsylvania statute requires suppliers, upon the written request of dealers, to repurchase items from dealers pursuant to the following terms:

> (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 supplier to compensate the dealer for the inventory, packing and loading of the same to the supplier, provided that the supplier may perform such inventory, packing and loading in lieu of paying 5% to the dealer. Upon the payment or allowance of credit to the dealer's account, as applicable, in the sum required by this section, all of the dealer's title and interest in and to the equipment, repair parts and specialized repair tools shall pass to the supplier, and the supplier shall be entitled to the possession of the same. Payments or allowance of credit to the dealer, as applicable, required by this section shall be made no later than 90 days after such termination, cancellation or discontinuance or 60 days after the supplier's receipt of the equipment, repair parts or specialized repair tools.
>
> (3) In the event a dealer terminates a dealer agreement, the obligation of the supplier to repurchase equipment, repair parts and specialized repair tools shall be governed

> by the terms and conditions then in effect in the dealer agreement between the supplier and the dealer and not by the provisions of this act.

73 Pa. Stat. § 205-3(c).

Pennsylvania requires suppliers to repurchase unused specialized repair tools purchased by dealers pursuant to the requirements of the supplier if they remained unused for more than twelve months after purchase. 73 Pa. Stat. § 205-6. Further, the statute states:

> In the event of the death or incapacity of a dealer, the supplier shall repurchase, at the option of the heir or authorized representative of such person or stockholder, the equipment, repair parts and specialized repair tools of the dealer as if the supplier had terminated, canceled or failed to renew the contract. The heir or authorized representative shall have 120 days from the date of the death of such dealer or from the date such dealer is determined to be incapacitated or becomes totally disabled, as applicable, to exercise the option under this section. Nothing in this act requires the repurchase of any equipment, repair parts and specialized repair tools if the heir and supplier enter into a new contract to operate the retail dealership.

73 Pa. Stat. § 205-5. Repurchase is *not* required of the following:

> (1) any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;
>
> (2) incomplete sets of repair parts which are customarily sold as a set of two or more items;
>
> (3) any repair part which because of physical condition is not resellable as a new part without reconditioning;
>
> (4) any equipment, repair part or specialized repair tool for which the dealer is unable to furnish evidence, satisfactory to the supplier, of title, free and clear of all claims, liens and encumbrances;
>
> (5) any equipment, repair part or specialized repair tool that the dealer desires to keep, provided the dealer has a contractual right to do so;
>
> (6) any equipment which is not in new, unused, undamaged or complete condition, other than company-authorized demonstrators;
>
> (7) any repair parts which are not in new, unused or undamaged condition;
>
> (8) any equipment which was purchased 36 months or more prior to notice of termination or cancellation of or failure to renew the dealer agreement;

(9) any equipment, repair part or specialized repair tool ordered by the dealer on or after the date of notification of termination or cancellation of or failure to renew the dealer agreement; or

(10) any equipment or repair part which was acquired by the dealer from any source other than the supplier.

73 Pa. Stat. § 205-4. If a supplier fails to repurchase and make the payments therefor as required by this act it will be liable to the dealer for interest on the unpaid balance of sums owed to the dealer as provided in section 3. 73 Pa. Stat. § 205-8.

Rhode Island

The Rhode Island Equipment Dealership Act regulates the relationships between dealers and suppliers of many different kinds of equipment, including "yard and garden equipment, attachments, accessories, and repair parts." R.I. Gen. Laws § 6-46-2. The statute defines "dealer" as "a person, corporation, or partnership primarily engaged in the business of retail sales of farm and utility tractors, forestry equipment, industrial or construction equipment, farm implements, farm machinery, yard and garden equipment, attachments, accessories, and repair parts." *Id*. at § 6-46-2(2). "Inventory" is defined as "farm, utility, forestry, industrial or construction equipment, implements, machinery, yard and garden equipment, attachments, or repair parts." *Id*. at § 6-46-2(4). "Supplier" is defined as "a wholesaler, manufacturer, or distributor of inventory who enters into a dealer agreement with a dealer." *Id*. at § 6-46-2(7).

A. Termination

Before terminating a dealer agreement, the Rhode Island statute requires suppliers to notify the dealer of the termination no less than one hundred twenty days before the effective date of the termination. R.I. Gen. Laws § 6-46-3(a). The statute provides that no supplier may terminate, cancel, or fail to renew a dealer agreement without cause. *Id*. "Cause" is defined as the "failure by an equipment dealer to comply with requirements imposed upon the equipment dealer by the dealer agreement provided the requirements are not substantially different from those requirements imposed upon other similarly situated dealers in this state." *Id*. Immediate termination is authorized at any time upon the occurrence of any of the following events:

> (1) The filing of a petition for bankruptcy or for receivership either by or against the dealer;
>
> (2) The making by the dealer of an intentional and material misrepresentation as to the dealer's financial status;
>
> (3) Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
>
> (4) The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation;
>
> (5) A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;
>
> (6) Withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership, or a substantial reduction in the interest of a partner or major shareholder without the prior written consent of the supplier.

Id. at § 6-46-3(b).

If a dealer intends to terminate a dealer agreement with a supplier, the statute requires the dealer to notify the supplier of that intent no less than one hundred twenty days prior to the effective date of the termination. R.I. Gen. Laws § 6-46-3(c). Any notification under this statute must be in writing, must be made by certified mail or by personal delivery, and must contain: (1) a statement of intention to terminate the dealer agreement, (2) a statement of the reasons for the termination, and (3) the date on which the termination shall be effective. *Id*. at § 6-46-3(d).

B. Repurchase

The duty to repurchase inventory is required under the Rhode Island statute whenever a dealer enters into a dealer agreement under which the dealer agrees to maintain an inventory, and the agreement is terminated by either party. R.I. Gen. Laws § 6-46-4(a). The dealer must request in writing the supplier's repurchase within thirty days of the effective date of termination. *Id*. Suppliers are not required to repurchase inventory if:

> (1) The dealer has made an intentional and material misrepresentation as to the dealer's financial status;
>
> (2) The dealer has defaulted under the chattel mortgage or other security agreement between the dealer and supplier; or
>
> (3) The dealer has filed a voluntary petition in bankruptcy.

Id. Additionally, if the dealer or the majority stockholder of the dealer, or if the dealer is a corporation, dies or becomes incompetent, the supplier must, at the option of the heirs or personal representative, repurchase the inventory as if the agreement had been terminated. *Id*. at § 6-46-4(b). This option must be exercised by the heirs or personal representative within six months from the date of the dealer's death. *Id*.

Suppliers may examine any books or records of a dealer who has requested the repurchase of inventory within ninety days from receipt of the written request, to verify the eligibility of any item for repurchase. R.I. Gen. Laws § 6-46-5(a). The supplier must repurchase all inventory, required signage, special tools, books, supplies, data processing equipment, and software previously purchased from the supplier or other qualified vendor in the dealer's possession on the date of termination. *Id*. Suppliers must pay dealers:

> (1) One hundred percent (100%) of the net cost of all new and undamaged and complete farm and utility tractors, forestry equipment, light industrial equipment, farm implements, farm machinery, or yard and garden equipment purchased within the past thirty six (36) months from the supplier, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location;

(2) Ninety percent (90%) of the current net prices of all new and undamaged repair parts;

(3) Eighty-five percent (85%) of the current net price of all new and undamaged superseded repair parts;

(4) Eighty-five percent (85%) of the latest available published net price of all new and undamaged non-current repair parts;

(5) Either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the equipment dealer to acquire or purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment required and approved by the supplier to communicate with the supplier;

(6) Repurchase at seventy-five percent (75%) of the net cost specialized repair tools, signage, books, and supplies previously purchased pursuant to requirements of the supplier and held by the equipment dealer on the date of termination. Specialized repair tools must be unique to the supplier product line and must be complete and in usable condition; and

(7) Repurchase, at average as-is value shown in current industry guides, dealer-owned rental fleet financed by the supplier or its finance subsidiary.

Id. at § 6-46-5(b). Further, the party that initiates the termination must pay the cost of return handling, packing, and loading of all inventory. *Id*. at § 6-46-5(c). Payment for all items returned for repurchase must be made no later than forty-five days after receipt of the inventory by the supplier. *Id*. at § 6-46-5(d). The statute imposes a penalty of two percent per day of any outstanding balance past the required forty-five day period. *Id*.

Rhode Island does not require the repurchase of the following:

(1) A repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to gaskets or batteries;

(2) A single repair part normally priced and sold in a set of two or more items;

(3) A repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

(4) Any inventory that the dealer elects to retain;

(5) Any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier;

(6) Any inventory that was acquired by the dealer from a source other than the supplier.

R.I. Gen. Laws § 6-46-6.

C. Warranties

Rhode Island requires suppliers to pay any warranty claims made for warranty parts and service within thirty days after receipt and approval. R.I. Gen. Laws § 6-46-9. Suppliers must either approve or disapprove warranty claims within thirty days after receiving such claims. *Id*. Claims not specifically disapproved in writing within thirty days are deemed to be approved, and payment must be made by the supplier within thirty days. *Id*.

South Carolina

South Carolina explicitly includes "outdoor power equipment" in its regulation of equipment dealer and manufacturer, wholesaler, and distributor relationships. S.C. Code Ann. § 39-6-10. The South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, includes outdoor power equipment under its definition of "equipment," further stating that "outdoor power equipment" does *not* include equipment "whose primary source of power is a two-cycle or electric motor." *Id*. at § 39-6-20(7)(c). A separate section of the South Carolina statute deals with franchise agreements related to the retail of farm implements and other "inventory." *See* S.C. Code Ann. § 39-59-10(4).

A. Termination

South Carolina prohibits the termination or cancellation of a dealership agreement without due cause. S.C. Code Ann. § 39-6-50(C)(3). The statute defines "due cause" as the "failure by the dealer to comply with reasonable requirements imposed on the dealer by a dealer agreement if the requirements do not differ materially from those imposed on other similarly situated dealers in this State." *Id*. The statute further states that due cause also means that the dealer consistently fails to:

> (a) provide service and replacement parts or perform warranty obligations, or the dealer otherwise engages in business practices that are detrimental to the consumer or the manufacturer including excessive pricing or misleading advertising;
>
> (b) provide adequate sales, service, or parts personnel commensurate with the dealer agreement;
>
> (c) meet reasonable building and housekeeping requirements;
>
> (d) comply with the applicable licensing laws pertaining to products and services the dealer represents as being on behalf of the manufacturer;
>
> (e) meet the manufacturer's market penetration requirements based on available record information after receiving notice from the manufacturer of the requirements as provided in Section 39-6-60(D).

Id.

In most cases, South Carolina requires manufacturers, distributors, and wholesalers to notify dealers in writing of the termination or cancellation of their dealership agreements at least one hundred eighty days before termination or cancellation. S.C. Code Ann. § 39-6-60(A). The notice must state the specific grounds for the termination or cancellation. *Id*. If a supplier opts not to renew a dealership agreement, it must notify the dealer in writing

at least one hundred eighty days before the agreement expires, stating the specific grounds for the nonrenewal. *Id*. at § 39-6-60(B).

If the termination or nonrenewal of a dealer agreement is for the dealer's failure to meet reasonable marketing criteria or market penetration, the manufacturer must provide written notice of its intention to terminate or not renew one year in advance. S.C. Code Ann. § 39-6-60(D). After providing such notice, the manufacturer must provide fair and reasonable efforts to work with the dealer to gain the desired market share. *Id*. After one year, the manufacturer may terminate or elect not to renew the agreement only after providing written notice to the dealer specifying the reasons that the dealer failed to meet reasonable criteria or market penetration. *Id*.

The statute authorizes immediate notice of termination without an opportunity to cure if, during the agreement term, the equipment dealer:

> (1) is declared bankrupt or is determined judicially to be insolvent, assigns all or a substantial part of his assets to or for the benefit of a creditor, or admits his inability to pay his debts as they come due;
>
> (2) abandons the dealership agreement or sales agreement by failing to operate the business for five consecutive days that the equipment dealer is required to operate the business pursuant to the terms of the dealership agreement or sales agreement, or any shorter period after which it is reasonable under the facts and circumstances for the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to conclude that the equipment dealer does not intend to continue to operate pursuant to the dealership agreement or sales agreement, unless the failure to operate is due to fire, flood, earthquake, or other similar causes beyond the equipment dealer's control;
>
> (3) agrees in writing with the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division to terminate the dealership agreement or sales agreement;
>
> (4) makes a misrepresentation material to the acquisition of the dealership agreement or sales agreement or engages in conduct that reflects materially and unfavorably upon the reputation of the business of the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division;
>
> (5) fails to comply with a federal, state, or local law or regulation applicable to the operation of his business for a period of ten days after notification of noncompliance;
>
> (6) has his business or business premises seized, taken over, or foreclosed by a government official in the exercise of his duties or by a creditor, lienholder, or

lessor, and a final judgment against the dealer remains unsatisfied for thirty days absent a filing of a supersedeas or other appeal bond, or a levy of execution is made upon a license granted by the dealership agreement or sales agreement and it is not discharged within five days of the levy;

(7) makes a material misrepresentation or falsification of a record;

(8) pleads guilty to or is convicted of a felony;

(9) transfers a controlling ownership interest in the dealership without the manufacturer's consent, except that the manufacturer may not withhold consent unfairly or unreasonably;

(10) relocates or establishes a new or additional dealer location without the supplier's consent;

(11) fails to satisfy a payment obligation as it comes due and payable to the manufacturer; or

(12) fails to account promptly to the manufacturer for proceeds from the sale of equipment or to hold those proceeds in trust for the manufacturer's benefit.

S.C. Code Ann. § 39-6-60(E).

B. Warranties

South Carolina requires that all manufacturers, wholesalers, and distributors of equipment properly fulfill their warranty agreements and fairly and adequately compensate dealers for labor and parts. S.C. Code Ann. § 39-6-100(A). All warranty claims must be paid within thirty days following their approval. *Id*. Further, all warranty claims must be either approved or disapproved within thirty days of their receipt. *Id*. Disapproved claims require a written notice stating the specific grounds for the disapproval. *Id*.

Manufacturers, wholesalers, and distributors may audit dealers for sales incentives, service incentives, rebates, or other forms of incentive compensation for the twelve month period following termination of the incentive compensation program. *Id*. at § 39-6-100(B). The statute makes it unlawful to deny, delay payment for, or restrict a warranty claim by a dealer for payment or reimbursement for warranty service or parts, incentives, hold-backs, or other amounts owed to the dealer unless the denial, delay, or restriction is the direct result of a material defect in the claim that affects its validity. *Id*. at § 39-6-100(C).

C. Franchise agreements related to the retail of farm implements

A separate section of the South Carolina statute deals with franchise agreements related to the retail of farm implements and other "inventory," which the statute defines as

"farm implements, machinery, utility and industrial, and yard and garden equipment, attachments, or repair parts." S.C. Code Ann. § 39-59-10(4).

1. Repurchase

The statute requires wholesalers, manufacturers, and distributors to repurchase inventory from the retailer upon termination of the franchise agreement unless the retailer wishes to keep it. S.C. Code Ann. § 39-59-20. The franchisor can also credit any outstanding balance on the retailer's account in lieu of repurchasing the inventory. *Id*.

The wholesaler, manufacturer, or distributor must repurchase the inventory previously purchased from him and held by the retailer within ninety days of the date of termination of the contract by either party and must pay one hundred percent of the net cost of all new, unsold, undamaged, and complete farm implements, machinery, utility, and industrial equipment, and attachments, ninety percent of the current net price of all new, unused, undamaged repair parts, and eighty-five percent of the new price of superseded parts. S.C. Code Ann. § 39-59-30. They must also pay the retailer five percent of the current net price on all new, unused, and undamaged repair parts returned to cover the cost of handling, packing, and loading. The wholesaler, manufacturer, or distributor may perform the handling, packing, and loading in lieu of paying the five percent for the services. *Id*.

Payment of the full repurchase amount to the retailer must be made not later than thirty days after the receipt of inventory. S.C. Code Ann. § 39-59-40. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the wholesaler, manufacturer, or distributor. *Id*.

Repurchasing is not required for any of the following:

(1) Any repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, but not industrial "press on" or industrial pneumatic tires;

(2) Any single repair part which is priced as a set of two or more items;

(3) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(4) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer, or distributor, of clear title, free and clear of all claims, liens, and encumbrances;

(5) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(6) Any farm implements, machinery, utility, and industrial equipment, and attachments which are not in new, unused, undamaged, complete condition;

(7) Any repair parts which are not in new, unused, undamaged condition;

(8) Any farm implements, machinery, utility, and industrial equipment, yard, and garden equipment, or attachments which were purchased thirty-six months or more prior to notice of termination of the contract;

(9) Any inventory which was ordered by the retailer on or after the actual receipt of the date of notification of termination of the contract;

(10) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer, or distributor.

S.C. Code Ann. § 39-59-50.

In the event of the death or incapacity of the retailer or the majority stockholder of a corporation operating as a retailer, the wholesaler, manufacturer, or distributor must repurchase, at the option of the heir or retailer, the inventory from the heir or retailer as if the contract had been terminated. S.C. Code Ann. § 39-59-70. The heir or retailer has one year from the date of the death of the retailer or majority stockholder to exercise his option under the statute. *Id*.

2. Warranties

All warranty claims made by the retailer to the wholesaler, manufacturer, or distributor, for labor and parts must be paid within thirty days following their approval. S.C. Code Ann. § 39-59-100. All warranty claims must be either approved or disapproved within thirty days after their receipt, and any claim not specifically disapproved in writing within thirty days after the receipt is construed to be approved and payment must follow within thirty days. *Id.* If there are any parts subject to a warranty claim where the retailer is required by the manufacturer to hold a part or parts for inspection, the inspection must be accomplished within sixty days from the date of the filing of the subject claim, otherwise the retailer has the right to scrap such parts without prejudicing the claim. *Id*.

South Dakota

South Dakota's statute regulating manufacturers and retailers of outdoor power equipment is very specific, defining "retailer of outdoor power equipment" as "a business that purchases outdoor power equipment for resale including: light industrial lawn and garden equipment, handheld lawn and garden equipment, snow removal equipment, and small engines and other power sources that operate such equipment." S.D. Codified Laws § 37-5-16(1). The statute defines "manufacturer" as "a person who manufactures or assembles outdoor power equipment and sells outdoor power equipment directly or through a distributor to a retailer of outdoor power equipment and provides a warranty." *Id*. at § 37-5-16(2). The definition of "merchandise" includes "[o]utdoor power equipment and attachments[.]" *Id*. at § 37-5-12.2.

A. Termination

The following circumstances are not cause for the termination or discontinuance of a dealership contract, nor for entering into a dealership contract for the establishment of an additional dealership in a community for the same line-make:

> (1) The change of executive management or ownership of the dealer, unless the manufacturer can show that the change would be detrimental to the representation or reputation of the manufacturer's product;
>
> (2) Refusal by the dealer to purchase or accept delivery of any machinery, parts, accessories, or any other commodity or service not ordered by the dealer unless such machinery, parts, accessories, or other commodity or service is necessary for the operation of machinery commonly sold in the dealer's area of responsibility;
>
> (3) The sole fact that the manufacturer desires further penetration of the market;
>
> (4) The fact that the dealer owns, has an investment in, participates in the management of, or holds a dealership contract for the sale of another line-make of machinery in the same dealership facilities as those of the manufacturer, if the dealer maintains a reasonable line of credit for each line-make of machinery; or
>
> (5) Refusal by the dealer to participate in any national advertising campaign or contest or purchase any promotional materials, display devices, or display decoration or materials which are at the expense of the dealer.

Id. at § 37-5-14.

B. Repurchase

South Dakota requires manufacturers to pay retailers for merchandise in stock if either the manufacturer or retailer desires to cancel or discontinue the written contract

between them. S.D. Codified Laws § 37-5-5. The dealer may keep the merchandise if they wish. If they do not wish to retain the merchandise, manufacturers must pay retailers one hundred percent of the net cost of all current, unused, and complete merchandise, including transportation and reasonable assembly charges paid by the retailer. *Id*. Manufacturers must pay ninety-five percent of the current net price on repair parts, including superseded parts, listed in a current price list or catalog, if those parts were previously purchased from the manufacturer and held by the retailer on the date of the cancellation or discontinuance of the contract. *Id*. The manufacturer is also responsible for paying a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of the parts as well as any freight charges paid by the retailer. *Id*.

Repurchase is required of any specialized computer hardware or software, specialized tool, or signage which the manufacturer required the dealer to purchase or lease as part of the dealer agreement. S.D. Codified Laws. § 37-5-5.5. Manufacturers must repurchase such items under the following terms:

> (1) For such computer hardware and software specifically required by the wholesaler, manufacturer, or distributor purchased within the last five years, the net cost less twenty percent per year depreciation. For purposes of this subdivision, the term, software, means software that is sourced from the wholesaler, manufacturer, or distributor, or its approved vendor, to meet the minimum requirements of the wholesaler, manufacturer, or distributor;
>
> (2) For current logoed signage constituting the principal outdoor signage required by the wholesaler, manufacturer, or distributor, identifying the dealer as its representative, the original net cost to the dealer less fifteen percent per year, but in no case less than twenty percent of the original net cost to the dealer;
>
> (3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer, or distributor which is unique to the product line and in complete, usable condition, seventy-five percent of the original net cost to the dealer if within ten years of purchase by the dealer, provided that any new, unused specialized repair tool applicable to the products of the wholesaler, manufacturer, or distributor shall be purchased at one hundred percent of the original net cost to the dealer.

S.D. Codified Laws § 37-7-5.5.

Payment for repurchased items must be made no later than sixty days from the date the repurchased merchandise is received by the manufacturer. S.D. Codified Laws § 37-5-7.1. Failure to pay a dealer for items returned for repurchase upon the cancellation of a contract results in civil liability for the manufacturer. *Id*. at § 37-5-8. The civil liability is assessed in the amount of one hundred percent of the net cost of the merchandise, plus transportation charges paid by the dealer, ninety-five percent of the current net price of repair parts, plus five percent for handling and loading plus freight charges paid by the

dealer, and any charges for specialized computer hardware and software, specialized tools, and signage. *Id*.

Upon the death of a dealer or majority stockholder in a corporation operating a dealership, the heirs or personal representative of the dealer or majority stockholder may require the manufacturer to repurchase, at one hundred percent of the net cost, all current, unused, and complete merchandise. S.D. Codified Laws § 37-5-9. All repair parts may be repurchased at ninety-five percent of the current net price, including superseded parts, listed in current price lists or catalogues, plus a sum equal to five percent of the current net price of all parts returned for handling, packaging, and loading. *Id*. Further, any specialized computer hardware or software, specialized tool, or signage as specified in § 37-5-5.5. *Id*. The heirs or personal representative of the dealer may, however, decide to continue operating the dealership. *Id*. In that case, repurchase is not required pursuant to these terms. *Id*.

B. Warranties

South Dakota requires manufacturers of outdoor power equipment to reasonably compensate retailers for warranty work, including diagnostic work, as well as repair service, parts, and labor. S.D. Codified Laws § 37-5-17. The amount of compensation for warranty work is no less than the hourly labor rate paid to the retailer for non-warranty work. *Id*. Reimbursement for parts used in warranty work is required at an amount no less than the amount paid by the retailer to acquire the parts plus a reasonable allowance for handling, no less than thirty percent. *Id*.

Tennessee

Tennessee explicitly includes "outdoor power equipment" in its statute regulating equipment supplier and retailer relations. Tenn. Code Ann. § 47-25-1301. Tennessee includes "outdoor power equipment" in its definition of "inventory." *Id.* at § 47-25-1301(3). In addition, the Tennessee statute defines "retailer" as "any person, firm or corporation engaged in the business of selling and retailing farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, attachments or repair parts and shall not include retailers of petroleum products." *Id*. at § 47-25-1301(4). "Supplier" is defined as "any manufacturer, wholesaler, wholesale distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler or distributor." *Id*. at § 47-25-1301(6).

A. Termination

Tennessee prohibits suppliers from terminating, cancelling, failing to renew, or substantially changing the competitive circumstances of a retail agreement without good cause. Tenn. Code Ann. § 47-25-1302(a). The statute defines "good cause" as the "failure by a retailer to comply with requirements imposed upon the retailer by the retail agreement if such requirements are not different from those imposed on other retailers similarly situated in this state." *Id*. Further, the statute expressly states that good cause exists whenever:

> (1) There has been a closeout on the sale of a substantial part of the retailer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the retailer;
>
> (2) The retailer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;
>
> (3) The retailer has substantially defaulted under a chattel mortgage or other security agreement between the retailer and the supplier, or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier;
>
> (4) The equipment retailer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned the business;
>
> (5) The retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and the supplier; or
>
> (6) The retailer 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. However, good cause does not exist if the supplier consents to an action described in this subsection.

Id. Notice of termination is not required for the preceding violations. *Id*. at § 47-25-1302(b).

The Tennessee statute requires suppliers to provide retailers with at least ninety days' written notice of termination, cancellation, or nonrenewal of the retail agreement and a sixty day right to cure period. Tenn. Code Ann. § 47-25-1302(b). If the deficiency is cured within sixty days, the notice is deemed void. *Id*. The notice must state all reasons constituting good cause. *Id*. In cases where the cancellation is due to market penetration, a reasonable period of time must have existed where the supplier worked with the dealer to gain the desired market share. *Id*.

B. Repurchase

In Tennessee, retailers that have entered into written or oral agreements with suppliers wherein the retailer agrees to maintain an inventory of parts and to provide service have a right to have their inventory and parts repurchased if that agreement is terminated. Tenn. Code Ann. § 47-25-1303. The retailer may keep the inventory if it so desires. *Id*. Suppliers must repurchase all inventory previously purchased from the supplier and held by the retailer on the date of termination of the contract. *Id*. at § 47-25-1305. The supplier must pay one hundred percent of the current net price of all new, unsold, undamaged, and complete outdoor power equipment and attachments. *Id*. All new, unused, undamaged, and superseded repair parts must be repurchased at ninety percent of the current net price. *Id*. Suppliers must pay retailers ten percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading if the supplier does not perform such services itself. *Id*.

Any specific data processing hardware, software, and telecommunications equipment that the supplier required the retailer to purchase within the past five years must be repurchased at its amortized value. Tenn. Code Ann. § 47-25-1305. Suppliers must also repurchase any specialized repair tools purchased in the previous three years at seventy-five percent of the net cost, and any specialized repair tools purchased in the previous four through six years at fifty percent of the net cost. *Id*. Such specialized repair tools must be unique to the supplier's product line and must be in complete and resalable condition. *Id*. Any outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, must be repurchased at its agreed depreciated value. *Id*. However, such equipment must be in new condition and must not have been abused. *Id*.

The following is excepted from Tennessee's repurchase requirements:

(1) Any repair part which, because of its condition, is not resalable as a new part;

(2) Any inventory which the retailer desires to keep; provided, that the retailer has a contractual right to do so;

(3) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment and attachments which are not current models or which are not in new, unused, undamaged, complete condition; provided, that the equipment used in demonstrations or leased as provided in § 47-25-1305 shall be considered new and unused;

(4) Any repair parts which are not in new, unused, undamaged condition;

(5) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment or attachments which were purchased more than thirty-six (36) months prior to notice of termination of the contract; or

(6) Any inventory which was ordered by the retailer on or after the date of termination of the contract.

Tenn. Code Ann. § 47-25-1307.

The failure or refusal to repurchase inventory and pay the retailer for any inventory required to be repurchased by the statute, results in civil liability for the supplier. Tenn. Code Ann. § 47-25-1308. The statute imposes civil liability in such a situation in the amount of one hundred percent of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorneys' fees and court costs, as well as interest on the current net price computed from the sixty-first day after shipment. *Id*.

Upon the retailer's death, or majority stockholder of a corporation operating as a retailer's death, the heirs of the retailer or majority stockholder may require the supplier to repurchase inventory as if the contract had been terminated. Tenn. Code Ann. § 47-25-1309(a). The heirs must exercise this option within one year of the date of the retailer's or majority stockholder's death. *Id*.

C. Warranties

Tennessee requires warranty claims submitted by a retailer for payment under warranty agreements pertaining to inventory to be either approved or disapproved within thirty days of receipt by the supplier. Tenn. Code § 47-25-1802(a). All approved claims must be paid within thirty days of their approval. *Id*. Suppliers must notify retailers of any disapproved claims within thirty days stating the specific grounds upon which the disapproval is based. *Id*. If a claim is not specifically disapproved within thirty days, it is deemed approved and payment by the supplier must follow within thirty days. *Id*. Unpaid warranty claims accrue interest beginning on the thirty-first day after their approval. *Id*.

The statute requires that notice of a warranty claim given to a supplier must contain the following language in conspicuous type:

> If no objections to this claim are made within thirty (30) days of receipt then payment of the claim must be made within thirty (30) days as provided in title 47, chapter 25, part 18.

Id. § 47-25-1802(b).

For claims submitted after termination of the contract for warranty work performed before termination, suppliers must approve or disapprove the claims within thirty days. Tenn. Code § 47-25-1803. Compensation for work performed on warranty claims must be at the retailer's established hourly customer labor rate, which must be provided to the supplier before submitting a warranty claim. *Id*. at § 47-25-1804. The statute requires reimbursement for parts used in warranty work pursuant to the following:

> All parts used by the retailer in performing such warranty work shall be paid to the retailer in the amount equal to the retailer's net price for such parts, plus a minimum of fifteen percent (15%). This addition is to reimburse the retailer for reasonable costs of doing business in performing such warranty service on the supplier's behalf including, but not limited to, freight and handling costs incurred.

Id. at § 47-25-1806. The supplier has the right to audit and adjust for any errors discovered during an audit of warranty claims. *Id*. at § 47-25-1807.

Texas

Outdoor power equipment dealers are governed by one of two sets of laws. Title 4, Chapter 55 of the Business and Commerce Code, though repealed on September 1, 2011, continues to apply to agreements entered into prior to that date, unless the agreement has no expiration date and is a continuing contract, in which case it will be governed by Chapter 57. Chapter 57 took effect September 1, 2011 and applies to a dealer agreement entered into or renewed on or after that date. Chapter 57 also applies to a dealer agreement that was entered into before September 1, 2011, but has no expiration date and is a continuing contract. A dealer agreement entered into before September 1, 2011, other than a dealer agreement that has no expiration date and is a continuing contract, is governed by the law as it existed on the date the agreement was entered into, and the former law (Chapter 55) is continued in effect for that purpose.

Business and Commerce Code Title 4, Chapter 55 (§ 55.001 *et seq.*) Farm, Industrial, Off-Road Construction, Forestry Harvesting, and Outdoor Power Equipment Dealer Agreements

Texas explicitly includes "outdoor power equipment" in its definition of "equipment" in the statute governing equipment dealer agreements. Tex. Bus. & Com. Code Ann. § 55.001(7). The statute defines "dealer" as "a person in the business of the retail sale of equipment…" *Id.* at § 55.001(3). "Outdoor power equipment" is defined as "machinery operated by an engine or electric power and used in the landscaping or cultivation of land for nonagricultural purposes. The term includes lawn and garden implements." *Id.* at § 55.001(9). "Supplier" is defined as "a person engaged in the manufacture, assembly, or wholesale distribution of equipment." *Id.* at § 55.001(10)(A).

A. Termination

A supplier may not terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealer agreement without cause. Tex. Bus. & Com. Code Ann. §§ 55.052; 55.056.

B. Repurchase

The statute provides that:

> (a) If on termination of a dealer agreement the dealer delivers to the supplier or a person designated by the supplier inventory purchased from the supplier and held by the dealer on the date of the termination, the supplier shall pay to the dealer:
>
> > (1) the dealer cost of new, unsold, undamaged, and complete equipment, other than repair parts, returned by the dealer; and

(2) an amount equal to:

(A) 85 percent of the current price of new, undamaged repair parts returned by the dealer, if the supplier handles, packs, and loads the parts; or

(B) 90 percent of the current price of new, undamaged repair parts returned by the dealer, if the supplier does not handle, pack, or load the parts.

(b) Before returning inventory under this section and not later than the 120th day after the effective date of termination, the dealer shall submit to the supplier a list of the inventory the dealer intends to return, including, to the extent possible, each item's trade name, description, and serial number. Not later than the 60th day after the date the supplier receives the list, the supplier shall notify the dealer in writing of:

(1) each item that the supplier claims is not subject to reimbursement under this section; and

(2) the destination for each item the dealer is to deliver to a person designated by the supplier.

(c) The supplier may subtract from the amount owed under Subsection (a) the amount of debt owed by the dealer to the supplier.

(d) The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier or a person designated by the supplier, except that if the dealer delivers an item to a person designated by the supplier the dealer is not responsible for the amount that exceeds the amount for which the dealer would have been responsible if the item had been delivered to the supplier.

(e) The supplier shall pay the amount owed under this section:

(1) before the 91st day after the date the supplier or person designated by the supplier receives inventory from the dealer; and

(2) after the dealer has furnished proof that the inventory was purchased from the supplier.

(f) On payment of the amount owed under this section, title to the inventory is transferred to the supplier or person designated by the supplier.

(g) A supplier and dealer may by agreement alter the time limits provided by this section.

Tex. Bus. & Com. Code § 55.155. If after termination of a dealer agreement the dealer delivers to the supplier data processing or peripheral equipment, software, or specialized repair tools that the supplier required the dealer to purchase, the supplier must:

(1) assume any responsibilities of the dealer under the lease for that equipment or software; and

(2) pay the dealer:

(A) an amount equal to the fair market value of the data processing or peripheral equipment or software purchased by the dealer and delivered to the supplier; and

(B) an amount equal to 75 percent of the cost to the dealer of the specialized repair tools purchased by the dealer and delivered to the supplier.

Id. at § 55.156(a). The supplier and dealer must each pay for one-half of the cost of delivering the data processing or peripheral equipment, software, or specialized repair tools to the supplier. *Id.* at § 55.156(b). The supplier must pay the amount required by this section before the 61st day after the date the supplier receives the data processing or peripheral equipment, software, or specialized repair tools. *Id.* at § 55.156(c).

A supplier is not required to repurchase:

(1) inventory:

(A) that the dealer orders after the dealer receives notice of the termination of the dealer agreement from the supplier; or

(B) for which the dealer cannot furnish evidence of clear title that is satisfactory to the supplier; or

(2) a repair part that:

(A) has a limited storage life and was purchased from the supplier more than two years before the date of termination of the dealer agreement;

(B) is in a broken or damaged package;

(C) is usually sold as part of a set, if the part is separated from the set; or

(D) cannot be sold without reconditioning or repackaging.

Tex. Bus. & Com. Code § 55.158. Similarly, a supplier is not required to repurchase or assume responsibilities under a lease for:

> (1) data processing or peripheral equipment or software that the dealer purchased that was not specifically required by the supplier; or
>
> (2) a specialized repair tool that:
>
> (A) is not unique to the supplier's product line;
>
> (B) is not in complete and salable condition; or
>
> (C) was not purchased by the dealer within the three-year period preceding the date of termination of the dealer agreement.

Tex. Bus. & Com. Code § 55.158.

A supplier that fails to make payment before the 61st day after the date the supplier receives the final shipment of the inventory from the dealer is liable to the dealer for:

> (1) the greater of the dealer cost or current price of any inventory;
>
> (2) any cost to the dealer of the data processing or peripheral equipment, software, or specialized repair tools;
>
> (3) any expense incurred by the dealer in returning the inventory, data processing or peripheral equipment, software, or specialized repair tools to the supplier;
>
> (4) interest on any amounts owed under Subdivision (1), (2), or (3), at the rate applicable to a judgment of a court of this state, beginning on the 61st day after the date the supplier received the inventory, data processing or peripheral equipment, software, or specialized repair tools;
>
> (5) reasonable attorney's fees; and
>
> (6) court costs.

Tex. Bus. & Com. Code § 55.157.

C. Warranties

A supplier must accept or reject a warranty claim within 30 days. Tex. Bus. & Com. Code Ann. § 55.102(a). A claim not rejected before that date is considered accepted. *Id.*

After a warranty claim has been accepted or rejected, a supplier has 30 days to pay the accepted claim or send the dealer written notice of the grounds for rejecting the claim. *Id.* at § 55.102(b). A supplier who pays a claim may not pay less than the hourly labor rate and other expenses involved in the work that the dealer regularly charges to a retail customer who does not assert a warranty and the dealer's net price plus 15 percent for parts. *Id.* at § 55.102(c). After paying a warranty claim, a supplier may not charge back, set off, or otherwise attempt to recover all or part of the amount of the claim unless:

> (1) the claim was fraudulent;
>
> (2) the work for which the claim was made was not properly performed or was unnecessary to comply with the warranty; or
>
> (3) the dealer did not substantiate the claim according to the supplier's written requirements in effect when the claim arose.

Id. at § 55.103.

Business and Commerce Code Title 4, Chapter 57 (§ 57.001 *et seq.*)
Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act

The Texas statute distinguishes between "equipment" and "specialty agricultural equipment." Equipment" is defined as:

> …machinery, equipment, or implements or attachments to the machinery, equipment, or implements used for, or in connection with, any of the following purposes:
>
> > (i) lawn, garden, golf course, landscaping, or grounds maintenance;
> >
> > (ii) planting, cultivating, irrigating, harvesting, or producing agricultural or forestry products;
> >
> > (iii) raising, feeding, or tending to livestock or harvesting products from livestock or any other activity in connection with those activities; or
> >
> > (iv) industrial, construction, maintenance, mining, or utility activities or applications[.]

Tex. Bus. & Com. Code § 57.002(7). "Specialty agricultural equipment" is defined as equipment that is designed for and used in:

> (A) planting, cultivating, irrigating, harvesting, and producing agricultural products; or

(B) raising, feeding, or tending to livestock or harvesting products from livestock.

Tex. Bus. & Com. Code § 57.002(18).

The statute also differentiates between "dealers" and "single-line dealers". "Dealer" is defined as "a person who is primarily engaged in the business of: (A) selling or leasing equipment or repair parts for equipment to end users of the equipment; and (B) repairing or servicing equipment." Tex. Bus. & Com. Code § 57.002(3). "Single-line dealer" is defined as a dealer that:

> (A) has purchased construction, industrial, forestry, or mining equipment from a single supplier constituting 75 percent or more of the dealer's total new equipment that is construction, industrial, forestry, or mining equipment, computed on the basis of net equipment cost; and
>
> (B) has a total annual average sales volume of equipment acquired from the single-line supplier in excess of $ 25 million for the five calendar years immediately preceding the applicable determination date, provided, however, that the $ 25 million threshold will be increased as of September 1 of each year by an amount equal to the threshold on the date the determination is made multiplied by the percentage increase in the index from January of the immediately preceding year to January of the year the determination is made.

Id. at § 57.002.

Similarly, the statute draws a distinction between "suppliers," "single-line suppliers," and "specialty agricultural equipment suppliers." "Supplier" is defined as "a person engaged in the business of the manufacture, assembly, or wholesale distribution of equipment or repair parts." Tex. Bus. & Com. Code § 57.002(20). "Single-line supplier" is defined as a "supplier that is selling to a single-line dealer construction, industrial, forestry, or mining equipment constituting 75 percent of the single-line dealer's new equipment that consists of construction, industrial, forestry, and mining equipment." *Id.* at § 57.002(17). "Specialty agricultural equipment supplier" is defined as a supplier of specialty agricultural equipment whose:

> (A) gross sales revenue to the dealer is less than the threshold amount;
>
> (B) product line does not include farm tractors or combines;
>
> (C) sales of outdoor power equipment to the dealer do not exceed 10 percent of the supplier's total sales to the dealer during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement; and

(D) qualification for that status is determined on a case-by-case basis depending on the sales of the applicable dealer and the sales to the applicable dealer by the specialty agricultural equipment supplier.

Id. at § 57.002(19).

A. Termination

The statute has separate sections governing the termination of dealer agreements other than single-line dealership agreements and single-line dealer agreements. "Termination" includes terminating, cancelling, failing to renew, or substantially changing the competitive circumstances of a dealer agreement. Tex. Bus. & Com. Code § 57.002(21).

1. Dealer Agreements Other Than Single-line Dealer Agreements

A dealer must give the supplier at least 30 days' prior written notice of termination. Tex. Bus. & Com. Code § 57.152. A supplier may not terminate a dealer agreement without good cause. *Id.* at § 57.153. Good cause determinations are made pursuant to Tex. Bus. & Com. Code § 57.154, which provides that:

(a) 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) 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.

Tex. Bus. & Com. Code § 57.154.

The notice requirements of the statute provide that:

(a) Except as otherwise provided by this section, a supplier must provide a dealer written notice of termination of a dealer agreement at least 180 days before the effective date of termination. The notice must state all reasons constituting good cause for the termination and that the dealer has 60 days in which to cure any

claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) A supplier, other than a specialty agricultural equipment supplier, may not terminate 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. 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) 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)(2)--(11).

Tex. Bus. & Com. Code § 57.155.

2. Single-line Dealer Agreements

No supplier may terminate a dealer agreement without good cause. Tex. Bus. & Com. Code § 57.202. "Good cause" is defined at the "failure by a dealer to comply with requirements imposed on the dealer by the dealer agreement if the requirements are not different from those requirements imposed on other similarly situated dealers." *Id.* at § 57.203(a). Additionally, good cause 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.

Id. at § 57.203(b).

The notice requirements of the statute provide that:

(a) Except as provided by Subsection (b) and Section 57.205, a supplier shall provide a dealer with at least 90 days' written notice of termination. The notice must state all reasons constituting good cause for the termination and state that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) 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.

Tex. Bus. & Com. Code § 57.204. 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). *Id.* at § 57.205.

B. Repurchase

For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement. Tex. Bus. & Com. Code § 57.351. The statute provides that:

(a) When a supplier or dealer terminates or otherwise discontinues the dealer agreement entered into between the two parties, the supplier shall 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) 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. 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) 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) 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 to all inventory repurchased

> under this subchapter is transferred to the supplier, and the supplier is entitled to possession of the inventory.

Tex. Bus. & Com. Code § 57.353. All payments or allowances of credit due to a dealer must be paid or credited within 90 days after receipt by the supplier of property required to repurchased. *Id.* at § 57.354(a). Any payment or allowance of credit due to a dealer that is not paid within the 90-day period will accrue interest at the maximum rate allowed by law. *Id.* at § 57.354(b). The supplier may withhold payments due 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. *Id.* at § 57.354(c).

A supplier who refuses to repurchase any required inventory 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.

Tex. Bus. & Com. Code § 57.355(a). Additionally, the supplier and dealer must each pay 50 percent of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier. *Id.* at § 57.355(b).

Specialty agricultural equipment suppliers are exempted from the repurchasing rules above in certain circumstances:

> (a) This subchapter does not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement without good reason. 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) This subchapter may not be 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.

Tex. Bus. & Com. Code § 57.357.

Suppliers are not required to repurchase certain items:

(a) 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) 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) 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.

Tex. Bus. & Com. Code § 57.358.

C. Warranties

For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement. Tex. Bus. & Com. Code § 57.251. For warranty claims submitted by a dealer to a supplier while the dealer agreement is in effect or 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) Not later than the 45th day after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim by providing written notice to the dealer. A claim not rejected before that deadline is considered accepted.

(c) If the warranty claim is accepted, the supplier shall 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.

(d) If the supplier rejects the warranty claim, the supplier shall 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) If no grounds for rejection of a rejected claim are given to the dealer, the claim is considered accepted.

Tex. Bus. & Com. Code § 57.253

If a 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, the

dealer may resubmit the claim in proper form not later than the 30th day after the date the dealer receives notice of the claim's rejection. Tex. Bus. & Com. Code § 57.254.

Warranty work performed by the dealer must 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. Tex. Bus. & Com. Code § 57.255. Parts used in warranty repair work must be reimbursed at the current net parts cost plus 15 percent. *Id.*

Except as provided below, a supplier may audit a warranty claim submitted by a dealer until the first anniversary of the date the claim was paid and may charge back the amount of any claim that is shown by audit to have been misrepresented. Tex. Bus. & Com. Code § 57.257(a). If an audit conducted under this section shows that a warranty claim has been misrepresented, the supplier may 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. *Id.* at § 57.257(b).

Alternate reimbursement terms are enforceable:

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

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

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

Tex. Bus. & Com. Code § 57.258.

Utah

Utah does not explicitly address "outdoor power equipment" in its statute, but includes "retailers of yard and garden equipment not primarily engaged in the farm equipment business" in its definition of "dealer." Utah Code Ann. § 13-14a-1(1). The statute defines "manufacturer" as "any person, firm, or corporation engaged in the business of manufacturing and distributing for retail sale farm implements, machinery, utility and light industrial equipment, attachments, or repair parts, and includes manufacturers of yard and garden equipment not primarily intended for farm use." *Id*. at § 13-14a-1(3). "Wholegoods" or "wholegoods inventory" is defined by the statute as "assembled or complete units of…yard and garden equipment and includes assembled or complete attachments." *Id*. at § 13-14a-1(6).

A. Termination

The Utah statute does not regulate deadlines for notice, or go into an in-depth definition of "cause." The Utah statute simply states:

> Any retailing agreement between a dealer and a manufacturer or wholesaler that is entered into or renewed after May 1, 1989, shall terminate at will, notwithstanding any agreement or law to the contrary, upon written notice of termination from the dealer. Any right arising from a prior breach of contract survives a termination under this section.

Utah Code Ann. § 13-14a-4.

B. Repurchase

Utah requires manufacturers and wholesalers to repurchase inventory upon termination in all instances in which the dealer has agreed to offer the products of the manufacturer or wholesaler for retail sale and to stock wholegoods and parts inventories. Utah Code Ann. § 13-14a-2(1). Payment for repurchased inventory must adhere to the following terms:

> (2) (a) Except as otherwise provided in this section, the amount of payment or credit due for unsold and undamaged wholegoods is 100% of the original invoice price paid by or invoiced to the dealer, plus any freight charges paid by or billed to the dealer, less any volume, sales, or special discounts on the wholegoods previously paid to the dealer.
>
> (b) The manufacturer shall bear the freight charges incurred by the dealer in shipping any wholegoods inventory to the manufacturer's choice of destination. The dealer is responsible for freight charges from the dealer's location to the wholesaler on inventory purchased from that wholesaler.

(3) (a) Payment or credit due to the dealer on wholegoods inventory that has been in the dealer's inventory for more than 36 months from the date of invoice may be adjusted downward from the original invoice price to cover demonstration or rental use. The amount of adjustment shall be agreed upon by the dealer and the manufacturer or wholesaler, but in no case shall the adjustment cause the value of the wholegood to go below the wholesale value listed for that equipment in the edition of the trade-in guide customarily used by dealers or if the equipment is not listed in the trade-in guide, the local retail auction price will prevail at the dealer's choice.

(b) If an agreement cannot be made on adjustment, the adjustment shall be submitted to arbitration under procedures approved by both the manufacturer and the dealer. The manufacturer shall pay the cost of the arbitration.

(4) (a) The amount of payment or credit due to the dealer for parts inventory is 100% of the current wholesale price of the parts listed in the manufacturer's or wholesaler's price book.

(b) The dealer is entitled to reimbursement for any handling or packaging incurred to return the parts inventory to the manufacturer or wholesaler in the amount of 5% of the currently listed wholesale price of the returned parts. The manufacturer or wholesaler shall bear the freight cost to return the inventory to their choice of destination.

(5) (a) New, unsold parts that are listed and priced in the manufacturer's or wholesaler's price book at the time of the termination of the agreement are eligible for return.

(b) Parts with superseded part numbers are eligible for return at 85% of the price listed for the superseding part number, if they meet the criteria of being new and unsold.

(c) Parts that have been deleted from the price book within the previous 24 months prior to termination of the sales agreement shall be repurchased at 50% of the last published price.

(d) Parts that are not eligible for return are:

(i) parts that are normally sold at retail in packages of two or more due to precision machining, such as piston rings or connecting rod bearing liners, if one of the parts is missing; and

(ii) any parts that are improperly identified.

(e) Package quantity between the dealer and the manufacturer or wholesaler will not be cause for rejection of a returned part.

(f) Parts manuals, service manuals, and owners manuals that the dealer has purchased and held for resale at retail shall be repurchased at current wholesale cost.

Id. at § 13-14a-2(2)-(5).

The statute requires all final payments and credits due to the dealer to be made within sixty days of the date of the shipment of the inventory back to the manufacturer or wholesaler. Utah Code Ann. § 13-14a-2(7). Special tools for repair of the manufacturer's equipment that the dealer maintains or tools that the manufacturer requires the dealer to maintain must also be repurchased by the manufacturer upon termination. *Id*. at § 13-14a-2(8). Such items must be repurchased at their fair market value, but not less than twenty-five percent of the replacement cost for a usable tool. *Id*. In addition, manufacturers must repurchase at fair market value: (1) any sign purchased by the dealer for the exclusive advertisement of the manufacturer's or wholesaler's product; and (2) any computer or communications equipment the dealer has purchased for direct interface with the manufacturer or wholesaler. *Id*. at § 13-14a-2(9). In calculating the fair market value of any item, the statute mandates that the depreciation of any item may not exceed ten percent per year for the useful life of the item, but may not go below twenty-five percent of the replacement cost. *Id*. at 13-14a-2(10).

Upon a dealer's death, or the death of a general partner in a partnership operating as a dealer, or the death of a majority shareholder in a corporation operating as a dealer, the manufacturer or wholesaler is required to repurchase the inventory as if the dealer were terminated. Utah Code Ann. § 13-14a-3(1). However, no repurchase is necessary if the heirs of the dealers, the remaining partners, or the remaining shareholders elect to continue to operate the dealership. *Id*. at § 13-14a-3(2).

C. Warranties

Under the Utah Uniform Equipment Dealers Warranty Reimbursement Act, Utah explicitly includes dealers of "outdoor power equipment" in its definition of "equipment dealer." Utah Code Ann. § 13-14b-102(4)(d). The statute allows equipment dealers to submit warranty claims to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty while a dealer agreement is in effect, or after termination of a dealer agreement if the claim is for work performed while the agreement was in effect. *Id*. at § 13-14b-103(1). Suppliers must accept or reject such warranty claims within thirty days of receiving them. *Id*. at § 13-14b-103(2). Claims not rejected within thirty days are deemed accepted. *Id*. Payment on accepted warranty claims is due after thirty days. *Id*. at § 13-14b-103(3). For all rejected claims, suppliers must send the dealer a written notice of the reason the warranty claim was rejected, within thirty days. *Id*.

Compensation for warranty claims is required under the following terms:

(4) (a) (i) A supplier shall compensate the dealer for the warranty claim as follows:

(A) the dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work, including diagnostic time, expressed in hours and fractions of an hour;

(B) the dealer's current net price plus 20% for parts to reimburse the dealer for reasonable costs of doing business in performing the warranty service on the supplier's behalf; and

(C) extraordinary freight and handling costs.

(ii) For purposes of Subsection (4)(a)(i)(C), "extraordinary freight and handling costs" mean costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work.

(b) (i) The supplier shall give due consideration to any extraordinary expenses incurred by the dealer in performing necessary warranty repairs.

(ii) If the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

Utah Code Ann. § 13-14b-103. Suppliers may adjust payment on warranty claims for only three reasons, including: (1) any fraudulent warranty claims; (2) if the services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or (3) the dealer did not substantiate the warranty claim according to the supplier's written requirements. *Id*. at 13-14b-103(5). The warranty provisions under the statute do not apply to dealership agreements that provide for compensation to a dealer for warranty labor and parts costs as part of the pricing plan of the equipment to the dealer or in the form of a lump-sum payment, which must be at least five percent of the suggested retail price of the equipment. *Id*. at § 13-14b-103(8).

Suppliers may not audit a dealer's records concerning any paid warranty claims after a year, except where an audit of records made within one year shows fraudulent claims. Utah Code Ann. § 13-14b-104(1). Suppliers may only audit a warranty claim once after it has been paid or rejected. *Id*. at § 13-14b-104(2).

Vermont

Vermont does not explicitly include "outdoor power equipment" in its equipment dealership statute, but instead includes retailers of "yard and garden equipment, attachments, accessories and repair parts" in its definition of "dealer." Vt. Stat. Ann. tit. 9, § 4071(2). "Inventory" is defined as "farm, utility, forestry or industrial equipment, implements, machinery, yard and garden equipment, attachments or repair parts." *Id*. at § 4071(4)(A). The statute excludes "heavy construction equipment" from the definition of "inventory." *Id*. at § 4071(4)(B). The statute defines "supplier" as "a wholesaler, manufacturer or distributor of inventory as defined in this chapter who enters into a dealer agreement with a dealer." *Id*. at § 4071(6).

A. Termination

Under Vermont law, a supplier may not terminate a dealer without first providing one hundred twenty days written notice by certified mail or personal delivery. Vt. Stat. Ann. tit. 9, § 4072(a), (b). The notice must state the intention to terminate the dealer agreement, a statement of the reasons for termination, and the date on which termination is effective. *Id*. at § 4072(a). Further, no supplier may terminate, cancel, or fail to renew a dealership agreement without cause. *Id*. at § 4072(b). The statute defines "cause" as the "failure of a dealer to meet one or more requirements of a dealer agreement, provided that the requirement is reasonable, justifiable, and substantially the same as requirements imposed on similarly situated dealers in this State." *Id*.

In addition, suppliers may immediately terminate the dealer agreement at any time upon the occurrence of any of the following events:

> (1) The filing of a petition for bankruptcy or for receivership either by or against the dealer.
>
> (2) The making by the dealer of an intentional and material misrepresentation as to the dealer's financial status.
>
> (3) Any default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier.
>
> (4) The commencement of voluntary or involuntary dissolution or liquidation of the dealer if the dealer is a partnership or corporation.
>
> (5) A change or additions in location of the dealer's place of business as provided in the agreement without the prior written approval of the supplier.
>
> (6) Withdrawal of an individual proprietor, partner, major shareholder or the involuntary termination of the manager of the dealership or a substantial reduction

in the interest of a partner or major shareholder without the prior written consent of the supplier.

(7) The dealer abandons the business.

(8) The dealer pleads guilty to or is convicted of a felony that is substantially related to the qualifications, function, or duties of the dealer.

Vt. Stat. Ann. tit. 9, § 4072(d).

B. Repurchase

Vermont requires suppliers to repurchase inventory from dealers that have entered into dealership agreements under which the dealer agrees to maintain an inventory, when such a dealership agreement is terminated by either party. Vt. Stat. Ann. tit. 9, § 4073(a). The dealer must request the repurchase in writing within thirty days of the effective date of the termination. *Id*. No repurchase is required if:

(1) the dealer has made an intentional and material misrepresentation as to the dealer's financial status;

(2) the dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier; or

(3) the dealer has filed a voluntary petition in bankruptcy.

Id. If a dealer, or majority stockholder of the dealer, or if the dealer is a corporation, dies or becomes incompetent, the supplier must, at the option of the heir or personal representative of the dealer, repurchase the inventory as if the agreement had been terminated. *Id*. at § 4073(b). The heir or personal representative of the dealer must exercise this option within one hundred eighty days of the dealer's death. *Id*.

Vermont's statute states that within ninety days of receiving a dealer's written repurchase request, a supplier may examine any books or records of the dealer to verify the eligibility of any item for repurchase. Vt. Stat. Ann. tit. 9, § 4074(a). Suppliers must repurchase all inventory previously purchased from the supplier in the dealer's possession on the date of termination of the dealer agreement, all required signage, special tools, books, manuals, supplies, data processing equipment and software previously purchased from the supplier or other qualified vendor approved by the supplier in the possession of the dealer on the date of termination. *Id*.

Notably, the percentages of the net prices that a supplier must pay a dealer for repair parts has changed. Vermont requires the repurchase of inventory according to the following terms:

(1) 100 percent of the net cost of all new and undamaged and complete farm and utility tractors, utility equipment, forestry equipment, industrial equipment, farm implements, farm machinery, yard and garden equipment, attachments and accessories purchased from the supplier within the 30-month period preceding the date of termination, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location;

(2) 100 percent (was 90 percent) of the current net prices of all new and undamaged repair parts;

(3) 95 percent (was 85 percent) of the current net prices of all new and undamaged superseded repair parts;

(4) 95 percent (was 85 percent) of the latest available published net price of all new and undamaged noncurrent repair parts;

(5) either the fair market value, or assume the lease responsibilities of any specific data processing hardware that the supplier required the dealer to purchase to satisfy the reasonable requirements of the dealer agreement, including computer systems equipment and software required and approved by the supplier to communicate with the supplier;

(6) repurchase at 75 percent of the net cost of specialized repair tools, signage, books and supplies previously purchased, pursuant to requirements of the supplier and held by the dealer on the date of termination. Specialized repair tools must be unique to the supplier's product line and must be complete and in usable condition; and

(7) repurchase at average as-is value shown in current industry guides for dealer-owned rental fleet financed by the supplier or its finance subsidiary, provided the equipment was purchased from the supplier within 30 months of the date of termination.

Vt. Stat. Ann. tit., 9 § 4074(b). The statute further requires that whichever party initiates the termination must pay the cost of the return, handling, packing and loading of the inventory. *Id*. at § 4074(c). If termination is initiated by the supplier, the supplier must reimburse the dealer five percent of the net parts return credited to the dealer to compensate for picking, handling, packing and shipping the parts returned to the supplier. *Id*. Payment for items returned for repurchase is required no later than forty-five days after receipt of the inventory. *Id*. § 4074(d). The statute imposes a penalty of interest on any outstanding balance over the required forty-five days. *Id*.

The following items are exceptions to Vermont's repurchase requirements:

(1) a repair part with a limited storage life or otherwise subject to physical or structural deterioration including, but not limited to, gaskets or batteries;

(2) a single repair part normally priced and sold in a set of two or more items;

(3) a repair part that, because of its condition, cannot be marketed as a new part without repackaging or reconditioning by the supplier or manufacturer;

(4) any inventory that the dealer elects to retain;

(5) any inventory ordered by the dealer after receipt of notice of termination of the dealer agreement by either the dealer or supplier;

(6) any inventory that was acquired by the dealer from a source other than the supplier unless the source was approved by the supplier;

(7) a specialized repair tool that is not unique to the supplier's product line, or that is over 10 years old, incomplete, or in unusable condition;

(8) a part identified by the supplier as nonreturnable at the time of the dealer's order; or

(9) supplies that are not unique to the supplier's product line, or that are over three years old, incomplete, or in unusable condition.

Note that items (7) – (9) are new additions to this list.

Vt. Stat. Ann. tit. 9, § 4075.

C. Warranties

Vermont requires suppliers that provide consumer warranties to pay any warranty claim submitted by a dealer within thirty days after its receipt and approval. Vt. Stat. Ann. tit., 9 § 4078(e). Suppliers must approve or disapprove warranty claims within thirty days after their receipt. *Id*. Claims not specifically disapproved in writing within thirty days are deemed approved and payment due within thirty days. *Id*.

Virginia

Virginia explicitly includes "outdoor power equipment" in its statute regulate equipment dealer and supplier relationships. Va. Code Ann. § 59.1-352.1. The statute defines "dealer" as "a person engaged in the business of selling at retail…attachments, outdoor power equipment, or repair parts." *Id*. at § 59.1-352.1. "Inventory" is defined as "farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts." *Id*. at § 59.1-352.1. "Supplier" is defined as "a wholesaler, manufacturer, distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into an agreement with a dealer." *Id*. Virginia has a separate statute governing heavy equipment dealers. *See* Va. Code. Ann. § 59.1-353.

A. Termination

Virginia does not allow the termination, cancellation, failure to renew, or substantial change in the competitive circumstances of an agreement without good cause. Va. Stat. Ann. § 59.1-352.3(A). "Good cause" is defined as the "failure by a dealer to comply with requirements imposed upon the dealer by the agreement if the requirements are not different from those imposed on other dealers similarly situated in [Virginia]." *Id*. at § 59.352.1. The statute states that "good cause" exists in any of the following circumstances:

1. A petition under bankruptcy or receivership law has been filed against the dealer.

2. The dealer has made an intentional misrepresentation with the intent to defraud the supplier.

3. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier or a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier.

4. Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, which shall not be unreasonably withheld, in the location of the dealer's principal place of business or additional locations set forth in the agreement.

5. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.

6. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

7. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned the business.

8. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier.

9. 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.

Id.

Dealers must provide ninety days' prior notice to suppliers before terminating an agreement. Va. Stat. Ann. § 59.1-352.3(B). Suppliers must provide at least ninety days' written notice of termination stating all reasons constituting good cause and a sixty day right to cure the deficiency. *Id*. at § 59.1-352.3(C). If the deficiency is cured within sixty days, the notice is void. *Id*. If cancellation of an agreement is based upon the dealer's failure to capture the share of the market required in the agreement, the dealer must have had at least twelve months to gain the desired market share. *Id*.

All notices must be in writing and must be by certified mail or personally delivered to the recipient. Va. Stat. Ann. § 59.1-352.3(D). Written notices must contain the following:

1. A statement of intention to terminate the dealership;

2. A statement of the reasons for the termination; and

3. The date on which the termination takes effect.

Id.

B. Repurchase

When a dealer enters an agreement, written or oral, in which the dealer agrees to maintain an inventory, the supplier must repurchase the dealer's inventory pursuant to the statute if the agreement is terminated by either party, unless the dealer chooses to keep the inventory. Va. Stat. Ann. § 59.1-352.4(A). Repurchase amounts may be set off or credited to the retailer's account if there are any outstanding debts to the supplier. *Id*. Suppliers must also repurchase inventory upon the dealer's death or incompetence, or the majority

stockholder of the dealer's death or incompetence, if the dealer is a corporation. *Id*. at § 59.1-352.4(B). Repurchase upon the dealer's death or the majority stockholder's death or incompetence is required only if the heir, personal representative, guardian, or the person who succeeds to the stock, requests repurchase within one year. *Id*.

Repurchase of all inventory previously purchased from the supplier that remains unsold on the date of termination is required within ninety days after termination of the agreement. Va. Stat. Ann. § 59.1-352.5(A). Suppliers must pay dealers:

> 1. One hundred percent of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments.
>
> 2. Ninety percent of the current net price of all new, unused, and undamaged repair and superseded parts.
>
> 3. Seventy-five percent of the net cost of all specialized repair tools purchased in the previous three years and fifty percent of the net cost of all specialized repair tools purchased in the previous four through six years pursuant to the requirements of the supplier and held by the dealer on the date of termination. Such specialized repair tools shall be unique to the supplier's product line and shall be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this section at its agreed depreciated value, provided the equipment is in new condition and has not been damaged.
>
> 4. At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past five years.

Id. at § 59.1-352.5(B).

Suppliers must pay the cost of shipping the inventory from the dealer's location and must pay the dealer ten percent of the current net price of all new, unused, and undamaged repair parts returned to cover the cost of handling, packaging, and loading if the suppliers do not perform it themselves. Va. Stat. Ann. § 59.1-352.5(C). Suppliers must pay the repurchase amount to dealers no later than thirty days after receiving the inventory. *Id*. at § 59.1-352.5(D).

The following is not required to be repurchased:

> 1. A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic tires.

2. A single repair part that is priced as a set of two or more items.

3. A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.

4. Any repair part that is not in new, unused, undamaged condition.

5. An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier.

6. Any inventory that the dealer chooses to keep.

7. Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the franchise agreement.

8. Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased, as provided in § 59.1-352.5, shall be considered new and unused.

9. Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that were purchased more than thirty-six months prior to notice of termination of the agreement.

10. Any inventory that was acquired by the dealer from a source other than the supplier.

Va. Stat. Ann. § 59.1-352.6.

C. Warranties

When a supplier and a dealer enter into an agreement, the supplier must pay any warranty claim for parts or service within thirty days after its approval. Va. Stat. Ann. § 59.1-352.8(A). Claims must be approved or disapproved within thirty days after their receipt. *Id*. Suppliers must notify dealers in writing within thirty days of any disapproved claims stating the specific grounds upon which the disapproval is based. *Id*. Claims not specifically disapproved in writing within thirty days are deemed approved and payment must follow within thirty days. *Id*.

When a supplier and a dealer enter into an agreement, the supplier must indemnify and hold harmless the dealer against any judgment for damages or any settlement agreed to by the supplier, including court costs and attorneys' fees, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the

manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control. Va. Stat. Ann. § 59.1-352.8(B).

Warranty claims submitted after termination must be either approved or disapproved within thirty days if the claims are for work performed before termination. Va. Stat. Ann. § 59.1-353.8(C). Interest accrues on all claims not paid within the time allowed under the statute. *Id*. at § 59.1-352.8(D). Payment for warranty work is required pursuant to the following:

> E. Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof. The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.
>
> F. Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer shall neither be included nor required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.
>
> G. The dealer shall be paid for all parts used by the dealer in performing warranty work. Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of fifteen percent.
>
> H. The manufacturer, wholesaler, or distributor has a right to adjust compensation for errors discovered during an audit and, if necessary, to adjust claims paid in error.
>
> I. The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.

Id. at § 59.1-352.8(E)-(I).

D. Heavy Equipment Dealer Act

Virginia regulates heavy equipment dealers separately through the Heavy Equipment Dealer Act. Va. Code. Ann. § 59.1-353. "Heavy equipment" is defined as self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses, as such terms are commonly used and understood in the trade. The term "heavy equipment" does not include (i) motor vehicles requiring registration and certificates of title, (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers discussed above, or (iii) equipment that is considered "consumer goods," meaning goods that are used or bought for use primarily for personal, family, or household purposes. *Id*.

1. Termination

It is against the Virginia statute for any supplier to unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless good cause exists to do so. Va. Code. Ann. § 59.1-354(A). Pursuant to the statute, "good cause" does not include the sale or purchase of a supplier. *Id.* "Good cause" is limited to withdrawal by the supplier, its successors and assigns, of the sale of its products in Virginia, or dealer performance deficiencies including, but not limited to, the following:

> 1. Bankruptcy or receivership of the dealer;
>
> 2. Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business; or
>
> 3. Failure by the dealer to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the supplier including, but not limited to, a substantial failure by a dealer to (i) maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line, or (ii) render services comparable in quality, quantity or volume to the services rendered by other dealers of the same product or product line similarly situated.

Id. In the event of a dispute over a termination, the supplier has the burden of proof of showing that good cause existed. *Id*. at § 59.1-354(C).

The supplier must provide a dealer at least 120 days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. Va. Code. Ann. § 59.1-355(A). The notice should state all the reasons for the intended amendment, termination, cancellation or nonrenewal. *Id.* During the 120 day period, the dealer has a right to transfer his or her business to another person who meets the material and reasonable qualifications

and standards required by the supplier of its dealers but must give notice to the supplier at least 45 days in advance of the 120-day deadline. *Id*. at § 59.1-355(C).

Should the dealer elect to try to cure the defaults, the dealer has 75 days in which to take such action and, within that time, he or she must give written notice to the supplier if and when such action is taken. Va. Code. Ann. § 59.1-355(B). If the issue has been cured, then the proposed amendment, termination, cancellation or nonrenewal is voided. *Id.* However, where the supplier contends that action on the part of the dealer has not rectified one or more of such conditions, such supplier must give written notice thereof to the dealer within fifteen days after the dealer gave notice to the supplier of the action taken. *Id*.

Notwithstanding any of the above notice requirements, notice is not required and the agreement may be immediately terminated when the termination action is taken due to:

1. The bankruptcy or receivership of the dealer;

2. An assignment for the benefit of the creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business;

3. Willful or intentional misrepresentation made by the dealer with the express intent to defraud the supplier;

4. Failure of the dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, unless such failure has resulted from acts of God, casualties, strikes, or other similar circumstances beyond the dealer's reasonable control;

5. Failure to pay any undisputed amount due the supplier continuing for thirty days after written notice thereof; or

6. A final conviction of the dealer of a felony.

Va. Code. Ann. § 59.1-355(D).

Washington

Washington expressly regulates contractual agreements between dealers and suppliers of outdoor power equipment. The Washington statute includes outdoor power equipment in its definition of "equipment" and specifies that "outdoor power equipment" includes "self-propelled equipment that is used to maintain commercial, public, or residential lawns and gardens or used in landscape, turf, or golf course maintenance." Wash. Rev. Code § 19.98.008(9)(a)(ii). "Dealer" is defined as "a person primarily engaged in the retail sale and service of farm equipment, including a person engaged in the retail sale of outdoor power equipment who is primarily engaged in the retail sale and service of farm equipment. Dealer does not include a person primarily engaged in the retail sale of outdoor power equipment or a supplier." *Id*. at § 19.98.008(4). Thus, retailers who are primarily engaged in the retail sale of outdoor power equipment are not included under Washington's definition of "dealer." *Id*. The statute defines "supplier" as "a person or other entity engaged in the manufacturing, assembly, or wholesale distribution of equipment or repair parts of the equipment….[and] includes any successor in interest, including a purchaser of assets, stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier, or any receiver or any trustee of the original supplier." *Id.* at § 19.98.008(18).

A. Termination

Suppliers must give dealers ninety days' written notice of the supplier's intent to terminate, cancel, not renew a dealership agreement, or substantially change the dealer's competitive circumstances. Wash. Rev. Code § 19.98.130(1). Notice is required except where grounds for termination, nonrenewal, or a substantial change in a dealer's competitive circumstances are contained in subsection (2)(a), (b), (c), (d), (e), or (f), listed below. *Id*. The notice must state all reasons constituting good cause for termination, cancellation, or nonrenewal and must provide, except for termination pursuant to subsection (2)(a), (b), (c), (d), or (e), that the dealer has sixty days in which to cure any claimed deficiency. *Id*. If the deficiency is rectified within sixty days, the notice is void. *Id*. Further, the contractual terms of the dealer agreement do not expire or the dealer's competitive circumstances must not be substantially changed without the written consent of the dealer, prior to the expiration of at least ninety days following such notice. *Id*.

Regarding termination for good cause, the statute states:

> (2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the dealer:
>
> > (a) Has transferred a controlling ownership interest in the dealership without the supplier's consent;
> >
> > (b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated dealerships in the state based on available record information;

(i) Has consistently failed to meet building and housekeeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement.

Wash. Rev. Code § 19.98.130(2).

Notwithstanding other provisions in the statute, subsection 3 states that "before the termination or nonrenewal of a dealer agreement based upon a supplier's claim that the dealer has failed to meet reasonable marketing criteria or marketing penetration, the supplier shall provide written notice of its intention at least one year in advance." Wash. Rev. Code. § 19.98.130(3)(a). Upon the end of that one-year period, "the supplier may terminate or elect not to renew the dealer agreement only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable marketing criteria or market penetration." *Id*. at § 19.98.130(3)(b). Further, the "notice must specify that termination or nonrenewal is effective on hundred eighty days from the date of the notice." *Id*.

B. Repurchase

For suppliers who enter into written or oral dealership agreements with dealers that require the dealers to maintain a stock of parts and equipment, and either party desires to cancel or discontinue the contract, Washington's statute requires suppliers to repurchase the parts and equipment. Wash. Rev. Code § 19.98.010. Repurchase is required in the amount of one hundred percent of the net cost of all unused complete equipment, including transportation charges paid by the dealer. *Id*. The statute requires that equipment purchased more than twenty-four months prior to the cancellation or discontinuance of the dealer agreement is subject to a weather allowance adjustment. *Id*. Suppliers must pay the dealer "ninety-five percent of the current net prices on repair parts, including superseded parts listed in current price lists, catalogs, or electronic catalogs which parts had previously been purchased from the supplier and held by the dealer on the date of the cancellation or discontinuance…or thereafter received by the dealer from the supplier." *Id*.

Suppliers must also pay dealers a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading for return, unless the supplier performs the packing and loading itself. Wash. Rev. Code § 19.98.010. No repurchase is required for repair parts that were purchased by the dealer in sets of multiple parts unless the sets are complete and in resalable condition, or to parts the supplier can demonstrate were identified as nonreturnable when ordered by the dealer. *Id*.

Further, the statute requires repurchase of particular items pursuant to the following terms:

> A supplier must repurchase specific data processing and computer communications hardware specifically required by the supplier to meet the supplier's minimum requirements and purchased by the dealer in the prior five years and held by the dealer on the date of termination. The supplier must also purchase software required by and sourced from the supplier, provided that the software is used exclusively to support the dealer's business with the supplier. The purchase price is the original net cost to the dealer, less twenty percent per year.
>
> A supplier must repurchase, and the dealer must sell to the supplier, specialized repair tools. As applied in this section, specialized repair tools are defined as those tools required by the supplier and unique to the diagnosis or repair of the supplier's products. For specialized repair tools that are in new, unused condition and are applicable to the supplier's current products, the purchase price is one hundred percent of the original net cost to the dealer. For all other specialized repair tools, the purchase price is the original net cost to the dealer less twenty percent per year.
>
> A supplier must repurchase, and the dealer must sell to the supplier, current signage. As used in this section, "current signage" means the principal outdoor signage required by the supplier that displays the supplier's current logo or similar exclusive

identifier, and that identifies the dealer as representing either the supplier or the supplier's products, or both. The purchase price is the original net cost to the dealer less twenty percent per year, but may in no case be less than fifty percent of the original net cost to the dealer.

The provisions of this section shall be supplemental to any agreement between the dealer and the supplier covering the return of equipment and repair parts so that the dealer can elect to pursue either his or her contract remedy or the remedy provided herein, and an election by the dealer to pursue his or her contract remedy shall not bar his or her right to the remedy provided herein as to equipment and repair parts not affected by the contract remedy.

Wash. Rev. Code § 19.98.010.

C. Warranties

Washington regulates warranty claims submitted by dealers to suppliers while a dealer agreement is in effect, or after the termination of a dealer agreement if the claim is for work performed before termination, pursuant to the following terms:

(a) A supplier shall fulfill any warranty agreement with each of its dealers for labor and parts relative to repairs of equipment covered by the terms of such an agreement.

(b) The supplier must approve or disapprove, in writing, any claim submitted by a dealer for warranty compensation for labor or parts within thirty days of receipt of such a claim by the supplier.

(c) The supplier must pay to the submitting dealer any approved dealer claim within thirty days following approval of such a claim.

(d) If a supplier disapproves a dealer warranty claim, the supplier must state the specific reasons for rejecting the claim in its written notification required by (b) of this subsection.

(e) A claim that is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty days of receipt by the dealer of the supplier's notification of such a disapproval.

(f) A claim that is not specifically disapproved, in writing, by the supplier within thirty days following the supplier's receipt of such a claim is conclusively deemed to be approved and must be paid to the submitting dealer within thirty days following expiration of the notification period established in (b) of this subsection.

> (g) A supplier may audit warranty claims submitted by its dealers for a period of up to one year following payment of the claims, and may charge back to its dealers any amounts paid based upon claims shown by audit to be false. The supplier has the right to adjust claims for errors discovered during the audit, and if necessary, to adjust claims paid in error.

Wash. Rev. Code § 19.98.170(1).

Under the statute, payment is required pursuant to the following schedule:

> (a) Reasonable compensation must be made by the supplier for costs associated with diagnostic work, repair service, parts, and labor that are related to warranted repairs;
>
> (b) Time allowances for diagnosis and performance of warranty work and service must be adequate for the work being performed;
>
> (c) The hourly labor rate for which the dealer is compensated may not be less than the rate charged by the dealer for like services provided to nonwarranty customers for nonwarranted service; and
>
> (d) Compensation for parts used in the performance of a warranted repair may not be less than the amount paid by the dealer to obtain the parts, plus a reasonable allowance for shipping and handling.

Wash. Rev. Code § 19.98.170(2).

Suppliers may not audit a dealer's records with respect to any warranty claims submitted more than one year before the audit, unless a false claim is disclosed. Wash. Rev. Code § 19.98.180. Suppliers have the right to audit warranty claims more than one year old before the audit when the audit discloses a false claim. *Id*.

West Virginia

The West Virginia Farm Equipment Dealer Contract Act specifically includes "outdoor power equipment" in its definition of "dealer." W. Va. Code § 47-11F-2(a)(3). More specifically, the statute defines "dealer" as "any person, firm, partnership, association, corporation or other business entity engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing and who maintains a total inventory of new equipment and repair parts having an aggregate value of not less than twenty-five thousand dollars at current net price and who provides repair service for such equipment." *Id*. "Inventory" is defined as "the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier, including, but not limited to, any data processing hardware and software, special service tools, and business signs the supplier has required the dealer to purchase and maintain." *Id*. at § 47-11F-2(4).

A. Termination

The West Virginia statute states that a supplier who terminates a contract or agreement with a dealer must notify that dealer of the termination not less than six months prior to the effective date of the termination. W. Va. Code § 47-11F-3(a). The statute is clear that a supplier may terminate an agreement at any time after the occurrence of any of the following described events:

> (1) The filing of a petition for bankruptcy or for receivership filed either by or against the dealer;
>
> (2) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier;
>
> (3) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;
>
> (4) The close out or sale or discontinuance of all or at least fifty percent of the dealer's business related to the handling of goods or products of the supplier;
>
> (5) If the dealer is a partnership or corporation, the commencement of dissolution or liquidation, whether voluntary or involuntary of such dealer;
>
> (6) A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;
>
> (7) The withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written approval of the supplier. If the dealership is operated from more than one location, the

involuntary termination of a manager at one or more branch locations without the prior written approval of the supplier shall not be grounds for termination of the dealership by the supplier;

(8) The revocation or discontinuance by a guarantor or of any guarantee of the dealer's present or future obligations to the supplier.

Id.

Any agreement or contract may also be terminated by the written mutual consent of the parties. W. Va. Code § 47-11F-3(c). The statute states that notification of termination must be in writing and shall be given by certified mail, return receipt requested, or by personal delivery to the recipient and the receipt thereof acknowledged in writing by such recipient. *Id*. at § 47-11F-3(d). Further, "[a]ny such notice of termination shall contain (i) a statement of intention to terminate the agreement; (ii) a statement of the reasons for such termination; and (iii) the date on which termination is to take effect." *Id*.

B. Repurchase

West Virginia requires suppliers who enter into agreements or contracts with dealers to repurchase the dealer's inventory upon termination, unless the dealer chooses to keep the inventory and advises the supplier in writing. W. Va. Code § 47-11F-4(a). Suppliers must also repurchase inventory from dealers upon the dealer's death or incompetence as if the dealer had been terminated, if the dealer's heirs request repurchase. *Id*. at § 47-11F-4(c). The heirs have one year to exercise this option. *Id*.

Suppliers must repurchase all new, unused, undamaged and complete inventory, repair parts, special service tools, business signs and data processing equipment, from dealers within ninety days of the date of termination of the agreement or contract, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location. W. Va. Code § 47-11F-4(d). The statute requires that suppliers must pay dealers:

(1) One hundred percent of the net cost of all new, unused, undamaged and complete inventory, except repair parts, special service tools, business signs and data processing equipment, less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location; and

(2) Ninety percent of the current net price of all new, unused, and undamaged repair parts that are currently listed in the supplier's price book as of the effective date of such termination; and

(3) Seventy-five percent of the net cost of all undamaged special service tools and business signs in the possession of the dealer which are currently available; and

(4) Net cost less twenty percent per year depreciation of all data processing hardware and software that the supplier required the dealer to purchase or the supplier shall assume all data processing hardware and software lease responsibilities of the dealer if the supplier required the dealer to lease the data processing hardware and software from a specific supplier of such hardware and/or software.

Id. at § 47-11F-4(e). Suppliers must pay the full repurchase amount no later than ninety days after receipt of the inventory by the supplier. *Id*. at § 47-11F-4(g).

The following items are not required for repurchase:

(i) a repair part of or with a limited storage life or which is otherwise subject to deterioration; that is to say by way of example and not in limitation thereof, such items as gaskets or batteries;

(ii) multiple packaged repair parts when the package has been broken;

(iii) a repair part that because of its condition is not resalable as a new part without repackaging or reconditioning;

(iv) any portion of the inventory that the dealer chooses to retain; or

(v) any inventory that was acquired by the dealer from a source other than the supplier, except for data processing hardware and software, special service tools, and business signs that the supplier required the dealer to purchase; and

(vi) any tractor, implement, attachment or equipment that the dealer purchased from the supplier more than thirty-six months before the date of the termination notice.

W. Va. Code § 47-11F-5.

C. Warranties

West Virginia requires suppliers to either accept or reject warranty claims submitted after termination for work performed before termination, within a minimum of forty-five days from the day the supplier received the warranty claim. W. Va. Code § 47-11F-7. Warranty claims not rejected before the forty-five day expiration period are deemed to be accepted by the supplier. *Id*. If a warranty claim is accepted by the supplier, that claim must be paid no later than sixty days from the date the supplier received the claim. *Id*.

Wisconsin

On its face, the Wisconsin Fair Dealership Law does not state that it applies to outdoor power equipment manufacturers and dealers. However, the statute states that it should be "liberally construed" and is meant:

> (a) To promote the compelling interest of the public in fair business relations between dealers and grantors, and in the continuation of dealerships on a fair basis;
>
> (b) To protect dealers against unfair treatment by grantors, who inherently have superior economic power and superior bargaining power in the negotiation of dealerships;
>
> (c) To provide dealers with rights and remedies in addition to those existing by contract or common law;
>
> (d) To govern all dealerships, including any renewals or amendments, to the full extent consistent with the constitutions of this state and the United States.

Wis. Stat. § 135.025(1)-(2). Moreover, the law "may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only." *Id*. § 135.025(3). Under law, a dealer may sue for damages, including attorneys' fees and costs, and seek injunctive relief against a manufacturer. *Id*. at § 135.06.

Section 135.02 of the Wisconsin Fair Dealership Law contains the following relevant definitions:

> (1) "Community of interest" means a continuing financial interest between the grantor and grantee in either the operation of the dealership business or the marketing of such goods or services.
>
> (2) "Dealer" means a person who is a grantee of a dealership situated in this state.
>
> (3) "Dealership" means any of the following:
>
> (a) A contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise.

(b) A contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons by which a wholesaler, as defined in s. 125.02 (21), is granted the right to sell or distribute intoxicating liquor or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol related to intoxicating liquor. This paragraph does not apply to dealerships described in s. 135.066 (5) (a) and (b).

(4) "Good cause" means:

(a) Failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement; or

(b) Bad faith by the dealer in carrying out the terms of the dealership.

(5) "Grantor" means a person who grants a dealership.

(6) "Person" means a natural person, partnership, joint venture, corporation or other entity.

Wis. Stat. §§ 135.02(1)-(6).

A. Termination

Under the Wisconsin Fair Dealership Law, "[n]o grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor." Wis. Stat. § 135.03. A manufacturer must first send a termination that complies with the following:

> Except as provided in this section, a grantor shall provide a dealer at least 90 days' prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances. The notice shall state all the reasons for termination, cancellation, nonrenewal or substantial change in competitive circumstances and shall provide that the dealer has 60 days in which to rectify any claimed deficiency. If the deficiency is rectified within 60 days the notice shall be void. The notice provisions of this section shall not apply if the reason for termination, cancellation or nonrenewal is insolvency, the occurrence of an assignment for the benefit of creditors or bankruptcy. If the reason for termination, cancellation, nonrenewal or substantial change in competitive circumstances is nonpayment of sums due under the dealership, the dealer shall be

> entitled to written notice of such default, and shall have 10 days in which to remedy such default from the date of delivery or posting of such notice.

Id. at § 135.04.

B. Repurchase

Section 135.045 of the Wisconsin Fair Dealership Law provides as follows:

> If a dealership is terminated by the grantor, the grantor, at the option of the dealer, shall repurchase all inventories sold by the grantor to the dealer for resale under the dealership agreement at the fair wholesale market value. This section applies only to merchandise with a name, trademark, label or other mark on it which identifies the grantor.

Wis. Stat. § 135.045.

Wyoming

Wyoming does not explicitly include "outdoor power equipment" in its equipment dealership statute, but includes "lawn, garden, golf course, landscaping or grounds maintenance" machinery in its definition of "equipment." Wyo. Stat. Ann. § 40-20-113(a)(vii)(D)(I). "Dealer" is defined as "any person, not including mass retailers, engaged in the business of: (A) selling or leasing equipment or repair parts to the consumer; and (B) repairing or servicing equipment." *Id*. at § 40-20-113(a)(iii). The statute defines "terminate" as "to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer agreement." *Id*. at § 40-20-113(a)(xix).

A. Termination

The Wyoming statute authorizes dealers to terminate dealer agreements without cause. Wyo. Stat. Ann. § 40-20-115(a). Dealers must give at least thirty days' prior written notice of termination. *Id*. Suppliers, however, may only terminate for good cause. *Id*. The statute states that "good cause" means "the failure by a dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealer agreement, provided the requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement." *Id*. The statute further states that good cause exists where:

> (i) The dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;
>
> (ii) The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, there has been a closeout or sale of a substantial part of the dealer's assets related to the business or there has been a commencement of dissolution or liquidation of the dealer;
>
> (iii) There has been a deletion, addition or change in dealer or dealership locations without the prior written approval of the supplier;
>
> (iv) The dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. Good cause shall not exist if a person revokes any guarantee in connection with or following the transfer of the person's entire ownership interest in the dealer unless the supplier requires the new person to execute a new guarantee of the dealer's present or future obligations in connection with the transfer of ownership interest;
>
> (v) The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

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

(vii) The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare or the representation or reputation of the supplier's product;

(viii) 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 given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

Id. These provisions do not apply to dealer agreements between a single line dealer and the single line supplier. *Id*. at § 40-20-115(b). A single line supplier is defined as a supplier "selling the single line dealer construction and industrial equipment constituting seventy-five percent (75%) of the dealer's new equipment. *Id*. at § 40-20-113(a)(xvii). A single line dealer means a dealer that has "purchased construction or industrial equipment from a single supplier constituting seventy-five percent (75%) of the dealer's new equipment, calculated on the basis of net cost; and a total average sales volume in excess of twenty million dollars ($20,000,000,00) for the three (3) calendar years immediately preceding the applicable determination date. The twenty million dollar ($20,000,000.00) threshold shall be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the index from January of the immediately preceding year to January of the current year." *Id*. at § 40-20-113(a)(xvi).

Suppliers must provide at least one hundred eighty days' prior written notice of termination of a dealer agreement. Wyo. Stat. Ann. § 40-20-117(a). The notice must state all reasons constituting good cause for the termination and must state the dealer has sixty days in which to cure any claimed deficiency. *Id*. If a deficiency is cured within sixty days, the notice shall be void. *Id*. If the termination is for failing to meet and maintain the supplier's requirements for reasonable standards and performance objectives, under § 40-20-115(a)(viii), the supplier cannot terminate unless it gives the dealer notice of the action at least two years before the effective date of the action. *Id*. If the dealer then achieves the supplier's requirements for reasonable standards or performance objectives before the two years is up, the notice is void and the dealer agreement continues in full force and effect. *Id*. The notice and right to cure provisions do not apply if the reason for termination is set forth in § 40-20-115(a)(i) through (vii). *Id*.

B. Repurchase

When a dealer enters into a dealer agreement with a supplier and either party desires to cancel, not renew, or otherwise discontinue the agreement, the Wyoming statute requires suppliers to repurchase, or credit dealers' accounts if they have any outstanding sums owed to suppliers, equipment or repair parts pursuant to the following terms:

(i) A sum equal to one hundred percent (100%) of the net equipment cost of all new, unsold, undamaged equipment, one hundred percent (100%) of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for depreciation due to usage of the demonstrators, which adjustment shall be based on published industry rental rates to the extent such rates are available and ninety-five percent (95%) of the current net parts prices on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date the dealer agreement terminates or expires. Demonstrators with less than fifty (50) hours of use for machines with hour meters, shall be considered new, unsold or undamaged equipment subject to repurchase under this paragraph;

(ii) A sum equal to five percent (5%) of the current net parts price of all repair parts returned to compensate the dealer for the handling, packing and loading of the repair parts for return to the supplier. The five percent (5%) shall not be paid or credited to the dealer if the supplier elects to perform the handling, packing and loading of the repair parts;

(iii) The fair market value of any specific data processing hardware or software 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. Fair market value of property subject to repurchase pursuant to this paragraph shall be deemed to be the acquisition cost, including any shipping, handling and setup fees, less straight line depreciation of the acquisition cost over three (3) years. 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 shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier;

(iv) A supplier shall repurchase specialized repair tools at a price equal to seventy-five percent (75%) of the total invoice amount charged by the supplier to the dealer.

Wyo. Stat. Ann. § 40-20-120(a). Any payments not made within ninety days begin to accrue interest at the maximum rate allowed by law. *Id*. at § 40-20-120(b).

If a supplier refuses to repurchase inventory covered by the statute after cancellation, nonrenewal, or discontinuance of the dealer agreement, the statute imposes civil liability on suppliers in the amount of one hundred ten percent of the amount that would have been due for inventory if the supplier had complied with the statute. Wyo. Stat. Ann. § 40-20-120(c). In addition, suppliers who do not comply with the statute are liable for any freight charges paid by the dealer, any interest accrued, and the dealer's actual costs of any court or arbitration proceeding, including costs for attorneys' fees and costs of arbitrators. *Id*. Further, suppliers and dealers must each pay fifty percent of the costs of

freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to the statute. *Id*. at § 40-20-120(d).

> Repurchase of the following is not required:
>
> (i) Any repair part in a broken or damaged package. The supplier shall be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to eighty-five percent (85%) of the current net price for the repair part, if the aggregate current net price for the entire package of repair parts is seventy-five dollars ($75.00) or higher;
>
> (ii) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;
>
> (iii) Any inventory the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens and encumbrances;
>
> (iv) Any inventory the dealer desires to keep, provided the dealer has a contractual right to do so;
>
> (v) Any equipment or repair parts not in new, unsold, undamaged or complete condition, subject to the provisions of this chapter relating to demonstrators;
>
> (vi) Any equipment delivered to the dealer prior to the beginning of the thirty-six (36) month period immediately preceding the date of notification of termination;
>
> (vii) Any equipment or repair parts ordered by the dealer on or after the date of notification of termination;
>
> (viii) Any equipment or repair parts acquired by the dealer from any source other than the supplier unless the equipment or repair parts were ordered from or invoiced to the dealer by the supplier; or
>
> (ix) Any equipment or repair parts not returned to the supplier within ninety (90) days after the later of:
>
> > (A) The effective date of termination of a dealer agreement; and
> >
> > (B) The date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return policy. This subparagraph shall not be applicable to a dealer if the supplier did not give the dealer notice of the ninety (90) day deadline at the time the applicable notice of termination was sent to the dealer.

Wyo. Stat. Ann. § 40-20-121(a).

C. Warranties

Suppliers must accept or reject warranty claims submitted for work performed during the duration of the dealer agreement, or within sixty days after termination if the claim is for work performed before termination, in writing within thirty days of receiving a claim. Wyo. Stat. Ann. § 40-20-119(a). If a warranty claim is not rejected within thirty days, the claim is deemed accepted. *Id*. If a supplier accepts a warranty claim, payment or credit to the dealer's account is due within thirty days after acceptance. *Id*. Suppliers must provide a written rejection stating the reasons for rejecting the claim, which must be consistent with the reasons for rejecting the claims of other dealers. *Id*. If no grounds for rejection are given, the claim is deemed accepted. *Id*.

Any claim which is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submitting a warranty claim may be resubmitted in proper form by the dealer within thirty days. Wyo. Stat. Ann. § 40-20-119(b). Suppliers must compensate dealers for warranty work in accordance with the reasonable and customary amount of time required to complete the work at the dealer's established customer hourly retail labor rate, which must be previously supplied to the supplier by the dealer. *Id*. at § 40-20-119(c). Parts used in warranty work must be reimbursed at the current net price plus fifteen percent. *Id*.

Work performed on the dealer's equipment in inventory or the dealer's customers at the request of the supplier is deemed to create a warranty claim for which the dealer must be paid pursuant to the guidelines set out above. Wyo. Stat. Ann. § 40-20-119(d). Suppliers may audit warranty claims submitted by dealers for a period of up to one year following payment of the claims. *Id*. at § 40-20-119(e). Suppliers may charge back to dealers any amounts paid upon claims shown by an audit to be misrepresented. *Id*. If any misrepresented claim is discovered, the supplier's right to audit claims extends to any claim submitted in the three years preceding the misrepresented claim. *Id*.

Dealers may choose to accept reimbursement terms and conditions other than those set forth in the statute for warranty work if there is a written dealer agreement between the supplier and the dealer that requires the supplier to compensate the dealer for warranty labor costs either as: (i) a discount in the pricing of the equipment to the dealer, or (ii) a lump sum payment to the dealer that is made to the dealer within ninety days of the sale of the supplier's new equipment. Wyo. Stat. Ann. § 40-20-119(g). The statute requires that:

> The discount or lump sum described in subsection (g) of this section shall be no less than five percent (5%) of the suggested retail price of the equipment. If the requirements of subsections (g) and (h) of this section are met and alternate terms and conditions are in place, subsections (a) through (c) of this section do not apply and the alternate terms and conditions are enforceable. Nothing contained in this subsection or subsection (g) of this section shall be deemed to effect the supplier's

> obligation to reimburse the dealer for parts in accordance with subsection (c) of this section.

Id. at § 40-20-119(h).

If a supplier violates any provision of the statute, a dealer may bring an action against the supplier in a court of competent jurisdiction for damages, including lost profits, actual costs, attorneys' fees, and arbitrator costs. *Id*. at § 40-20-122. A dealer may also be granted injunctive relief against unlawful termination. *Id*.

III. APPENDIX

The attached Appendix is an indexed compilation of the portions of the statutes cited in Part II of this document. Readers should consult the full text of the statutes, as well as applicable case law, when considering specific termination, repurchase or warranty requirements.