

AMENDED IN SENATE JUNE 22, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 585

Introduced by Assembly Member Negrete McLeod

February 16, 2005

An act to amend Sections 22900, 22901, 22902, 22903, 22904, 22905, 22906, 22907, 22908, 22909, 22910, 22911, 22913, 22915, 22920, 22922, 22924, 22925, 22926, and 22927 of, to amend the heading of Chapter 28 (commencing with Section 22900) of Division 8 of, and to add Sections 22903.1, 22903.2, and 22903.3 to, the Business and Professions Code, relating to dealers.

LEGISLATIVE COUNSEL'S DIGEST

AB 585, as amended, Negrete McLeod. Equipment dealers.

(1) Existing law provides for the regulation of equipment dealers and defines equipment for those purposes as machines designed for agriculture, livestock, grazing, light industrial, and utility purposes. Under existing law, this definition excludes all-terrain vehicles, earthmoving and heavy construction equipment, and mining and forestry equipment. Existing law authorizes an equipment dealer to establish a lien for unpaid charges and requires the dealer to file the lien with the Secretary of State.

This bill would expand the definition of equipment to include all-terrain vehicles and other machinery, equipment, implements, or attachments used for specified purposes and would designate a person or entity primarily engaged in the retail sale of equipment as a dealer

or dealership. The bill would also define various additional terms for the purpose of its provisions including “good cause,” “single-line dealers,” and “single-line suppliers.”

(2) Existing law makes unlawful various acts and practices by a supplier with respect to an equipment dealer. Specifically, existing law, among other things, prohibits discriminatory pricing and unreasonably withholding consent to a transfer of a dealership on a dealer’s death. Existing law also prohibits a supplier from requiring a dealer to complete a substantial renovation or property acquisition without one year’s notice as a condition to renewal or extension of the dealership contract, and requires the supplier to give the dealer a reasonable time to complete the renovation or acquisition.

This bill would revise and recast these provisions dealing with discriminatory pricing and establish procedures for approving or denying a transfer of a dealership upon a dealer’s death. The bill would require a supplier to give a dealer 2 years to complete a renovation or acquisition. The bill would additionally prohibit a supplier from engaging in *other* specified—~~other~~ coercive discriminatory acts with respect to a dealer.

(3) Existing law provides that a supplier shall not terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealer agreement, without cause, as defined.

This bill would make these provisions only applicable to a dealer contract between a dealer who is not a single-line dealer and a supplier who is not a single-line supplier. The bill would expand the definition of good cause for the purpose of this provision. The bill would also create a procedure for approving or denying a request for a sale or transfer of a dealer’s business or an equity ownership interest where the supplier has contractual authority. The bill would provide that a single-line supplier may not terminate a dealer contract without good cause.

The bill would also require a supplier to ~~accept~~ *approve* or reject a warranty claim by written notice, as specified, to the dealer within ~~30~~ 45 days after the supplier received the warranty claim and *would* prescribe procedures for resolving those claims.

(4) Existing law requires suppliers to provide an opportunity annually for dealers to return a portion of their surplus inventory parts for credit. Existing law provides that the minimum lawful credit for returned parts is 95% of the net price, as listed in the supplier’s current returnable parts list, as specified.

This bill would make a supplier liable for 110% of the total current net parts cost, plus interest at the ~~maximum~~ *statutory* rate ~~allowed by law~~ from the payment due date until the date of payment and actual costs for any court or arbitration proceedings, including costs for attorney’s fees and arbitrators if a supplier fails or refuses to pay for returned parts within 30 days.

(5) Existing law requires the supplier to repurchase inventory upon termination of a dealer agreement at specified prices based on fair market value or specified percentages of net cost.

This bill would define fair market value for these purposes and modify the percentages of *the* net equipment cost to be paid for specified types of inventory. The bill would also prescribe the parties’ rights and responsibilities with respect to handling, packing, and loading parts for return to the supplier. The bill would entitle the dealer to interest and costs if the payments for inventory are not timely made. The bill would also specify parts that are excluded from these repurchase requirements.

The bill would make numerous technical, conforming, and nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Chapter 28 (commencing with
2 Section 22900) of Division 8 of the Business and Professions
3 Code is amended to read:

4
5 CHAPTER 28. FAIR PRACTICES OF EQUIPMENT
6 MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND DEALERS
7 ACT

8
9 SEC. 2. Section 22900 of the Business and Professions Code
10 is amended to read:

11 22900. The Legislature finds and declares that the retail
12 distribution, sales, and rental of agricultural, construction, utility,
13 industrial, mining, outdoor power, forestry, and lawn and garden
14 equipment, utilizing independent dealers operating under contract
15 with the supplier vitally affects the general economy of the state,
16 the public interest, and the public welfare. Therefore, the

1 Legislature has determined that it is necessary to regulate the
2 business relations between the dealers and suppliers as described
3 in this chapter and that a violation of this chapter contravenes an
4 important public policy of this state.

5 SEC. 3. Section 22901 of the Business and Professions Code
6 is amended to read:

7 22901. The following definitions apply for purposes of this
8 chapter:

9 (a) “Act” means the Fair Practices of Equipment
10 Manufacturers, Distributors, Wholesalers, and Dealers Act.

11 (b) “Bulk sales law” means the Uniform Commercial
12 Code-Bulk Sales as contained in Division 6 (commencing with
13 Section 6101) of the Commercial Code.

14 (c) “Claim” means a dealer’s claim for reimbursement from a
15 supplier for labor and materials expended by the dealer to meet
16 the requirements of the supplier’s warranty agreement with a
17 consumer of the supplier’s products where the dealer has
18 complied with the supplier’s then-existing written policies and
19 procedures for warranties and warranty claims.

20 (d) “Current parts price” means, with respect to current parts,
21 the price for repair parts listed in the supplier’s price list or
22 catalog in effect at the time the dealer contract is canceled or
23 discontinued or, for purposes of Section 22905, the price list or
24 catalog in effect at the time the repair parts were ordered.
25 “Current parts price” also means, with respect to superseded
26 repair parts, the price listed in the supplier’s price list or catalog
27 in effect at the time the dealer contract is canceled or
28 discontinued for the part that performs the same function and
29 purpose as the superseded part, but is simply listed under a
30 different part number.

31 ~~(d)~~

32 (e) “Current net parts cost” means the current parts price less
33 any trade or cash discounts typically given to the dealer with
34 respect to that dealer’s normal, ordinary course of orders of
35 repair parts. “Current net parts cost” also means, with respect to
36 a warranty, the current parts price of the supplier for the
37 equipment repaired less any trade or cash discounts typically
38 given to the dealer with respect to that dealer’s normal, ordinary
39 course of orders of repair parts.

40 ~~(e)~~

1 (f) “Dealer” means any person primarily engaged in the retail
2 sale of equipment as defined in subdivision (i). For the purposes
3 of this act, “dealer” does not include a “franchisee” as defined in
4 Section 331.1 of the Vehicle Code or a “new motor vehicle
5 dealer” as defined in Section 426 of the Vehicle Code.

6 ~~(f)~~

7 (g) “Dealer contract” means either an oral or written contract,
8 agreement, or arrangement for a definite or indefinite period
9 between a dealer and a supplier that provides for the rights and
10 obligations of the parties with respect to the purchase or sale of
11 equipment or repair parts. Notwithstanding the foregoing, if a
12 dealer has more than one business location covered by the same
13 dealer contract, the requirements of this act shall apply to the
14 repurchase of a dealer’s inventory at a particular location upon
15 the closing of that location.

16 ~~(g)~~

17 (h) “Dealership” means the retail sale business engaged in by
18 a dealer under a dealer contract.

19 ~~(h)~~

20 (i) “Demonstrator” means equipment in a dealer’s inventory
21 that has not been sold, but has had its usage demonstrated to
22 potential customers, either without charge or pursuant to a
23 short-term rental agreement, with the intent of encouraging the
24 potential customer to purchase the equipment.

25 ~~(i)~~

26 (j) (1) “Equipment” means all-terrain vehicles and other
27 machinery, equipment, implements, or attachments used for, or
28 in connection with, any of the following purposes:

29 (A) Lawn, garden, golf course, landscaping, or grounds
30 maintenance.

31 (B) Planting, cultivating, irrigating, harvesting, and producing
32 agricultural or forestry products.

33 (C) Raising, feeding, tending to, or harvesting products from,
34 livestock and any other activity in connection with those
35 activities.

36 (D) Industrial, construction, maintenance, mining, or utility
37 activities or applications, including, but not limited to, material
38 handling equipment.

1 (2) Self-propelled vehicles designed primarily for the
2 transportation of persons or property on a street or highway are
3 specifically excluded from the definition of equipment.

4 ~~(j)~~

5 (k) “Family member” means a spouse, parent, sibling, child,
6 son-in-law, daughter-in-law, and lineal descendent, including
7 those by adoption.

8 ~~(k)~~

9 (l) “Good cause” means failure by a dealer to comply with the
10 requirements imposed on the dealer by the dealer contract, if
11 those requirements are not different from those requirements
12 imposed on other similarly situated dealers in this state.

13 ~~(l)~~

14 (m) “Index” means the United States Department of Labor,
15 Bureau of Labor Statistics purchase price index for construction
16 machinery series identification number pcu333120333120, or
17 any successor index measuring substantially similar information.

18 ~~(m)~~

19 (n) “Inventory” means equipment, repair parts, data-~~process~~
20 *processing* hardware or software, and specialized service or
21 repair parts.

22 ~~(n)~~

23 (o) “Major shareholder” means a shareholder with 51 percent
24 or greater interest in a dealership.

25 ~~(o)~~

26 (p) “Manufacturer Created Incentive Program” means a
27 program in which the dealer’s inventory has not been sold but
28 has been used for specialized purposes, including, but not limited
29 to, harvest rental programs, dealer purchase rentals, and
30 short-term rentals. Equipment used for these purposes are
31 considered new, minus hours of operation, when sold to the
32 consumer. The warranty that is transferred to the consumer upon
33 sale is the manufacturer provided base warranty, less hours and
34 time used while in a manufacturers created incentive program.

35 ~~(p)~~

36 (q) “Net equipment cost” means the price the dealer actually
37 paid to the supplier for equipment, plus (1) freight, at truckload
38 rates in effect as of the effective date of the termination of a
39 dealer contract, if freight was paid by the dealer from the
40 supplier’s location to the dealer’s location and (2) reimbursement

1 for labor incurred in preparing the equipment for retail sale or
2 rental, which labor will be reimbursed at the dealer’s standard
3 labor rate charged by the dealer to its customers for nonwarranty
4 repair work; provided, however, if a supplier has established a
5 reasonable setup time, that labor will be reimbursed at an amount
6 equal to the reasonable setup time in effect as of the date of
7 delivery multiplied by the dealer’s standard labor rate.

8 ~~(q)~~

9 (r) “Person” means an individual, corporation, partnership,
10 limited liability company, trust, or any and all other forms of
11 business entities, including any other entity in which a person has
12 a majority interest or of which a person has control, as well as the
13 individual officers, directors, and other persons in active control
14 of the activities of each entity.

15 ~~(r)~~

16 (s) “Repair parts” means all parts and products related to the
17 service or repair of equipment, including superseded parts.

18 ~~(s)~~

19 (t) “Single-line dealer” means a dealer that has (1) purchased
20 construction, industrial, forestry and mining equipment from a
21 single supplier constituting 75 percent of the dealer’s new
22 equipment, calculated on the basis of net cost; and (2) a total
23 annual average sales volume in excess of forty million dollars
24 (\$40,000,000) for the three calendar years immediately preceding
25 the applicable determination date; provided, however, the sales
26 threshold shall be increased each year by an amount equal to the
27 current sales threshold multiplied by the percentage increase in
28 the index from January 1 of the immediately preceding year to
29 January 1 of the current year.

30 ~~(t)~~

31 (u) “Single-line supplier” means the supplier that is selling the
32 single-line dealer construction, industrial, forestry and mining
33 equipment constituting 75 percent of the dealer’s new equipment.

34 ~~(u)~~

35 (v) “Supplier” means any person engaged in the business of
36 manufacturing, assembly or wholesale distribution of equipment
37 or repair parts. ~~The term “supplier” and the provisions of this act
38 shall be interpreted liberally and shall not be limited to traditional
39 doctrines of corporate successor liability or take into account
40 whether a (1) a successor expressly assumed the liabilities of the~~

1 ~~supplier or (2) there has been one or more intermediate~~
 2 ~~successors to the initial supplier. The obligations of a supplier~~
 3 ~~shall consequently apply to any actual or effective successor in~~
 4 ~~interest to a supplier, including, but not limited to, a purchaser of~~
 5 ~~all or substantially all of the assets of a supplier or all or~~
 6 ~~substantially all of the assets of any division or product line of a~~
 7 ~~supplier, any receiver, trustee, liquidator, or assignee of the~~
 8 ~~supplier, or any surviving corporation resulting from a merger,~~
 9 ~~liquidation, or reorganization of the original or any intermediate~~
 10 ~~succesor supplier. Purchasers of all or substantially all of the~~
 11 ~~inventory of a supplier or a supplier's division or product line~~
 12 ~~shall constitute a purchaser of all or substantially all of the~~
 13 ~~supplier's assets. "Supplier" also includes any successor in~~
 14 ~~interest to a supplier, including a purchaser of assets or stock, or~~
 15 ~~a surviving corporation resulting from a merger, liquidation, or~~
 16 ~~reorganization of a supplier.~~

17 ~~(v)~~

18 (w) "Terminate" means to terminate, cancel, fail to renew, or
 19 materially change the competitive circumstances of a dealer
 20 contract.

21 SEC. 4. Section 22902 of the Business and Professions Code
 22 is amended to read:

23 22902. It shall be a violation of this chapter for a supplier to
 24 take any of the following actions:

25 (a) To coerce or compel any dealer to order or accept delivery
 26 of any equipment or parts that the dealer has not voluntarily
 27 ordered, except as required by any applicable law or unless the
 28 equipment or repair parts are safety features required by the
 29 supplier.

30 (b) To coerce or compel any dealer to enter into any contract,
 31 whether written or oral, or amend an existing dealer contract with
 32 the supplier, unless the contract or amendment is imposed on all
 33 other similarly situated dealers in the state.

34 (c) To refuse to deliver to any dealer in reasonable quantities
 35 and within a reasonable time after receipt of the dealer's order,
 36 equipment covered by the dealer contract specifically advertised
 37 or represented by the supplier to be available for immediate
 38 delivery or on an agreed-upon delivery date. The failure to
 39 deliver the equipment shall not be considered a violation of this
 40 act if the failure is due to prudent and reasonable restrictions on

1 extension of credit by the supplier to the dealer, any breach of or
2 default under the contract by the dealer, an act of God, work
3 stoppage or delay due to a strike or labor difficulty, a bona fide
4 shortage of materials, freight embargo, or a business decision by
5 the supplier to limit the production volume of the equipment and
6 written notice is provided to the dealer within 30 days of that
7 decision or other cause over which the supplier has no control.

8 (d) To terminate, cancel, or fail to renew a dealer contract or
9 materially change the competitive circumstances of the dealer
10 contract without good cause.

11 (e) To require as a condition of renewal or extension of a
12 dealer contract that the dealer complete substantial renovation of
13 the dealer's place of business or acquire new or additional space
14 to serve as the dealer's place of business, unless the supplier
15 provides at least one year's written notice of the condition that
16 states all grounds supporting the condition. The supplier shall
17 provide not less than two years for the dealer to complete the
18 renovation or acquisition after the one year's notice period has
19 expired.

20 (f) To discriminate, directly or indirectly, in prices charged
21 between different dealers with respect to purchases of equipment
22 or repair parts of like grade and quality and identical brand,
23 where the effect of that discrimination may be to substantially
24 lessen competition, tend to create a monopoly in any line of
25 commerce, or injure, destroy, or prevent competition with any
26 dealer who either grants or knowingly receives the benefit of the
27 discrimination. However, different prices may be charged if (1)
28 the differences are due to differences in the cost of manufacture,
29 sale or delivery of the equipment or repair parts, or (2) the
30 supplier can show that its lower price was made in good faith to
31 meet an equally low price of a competitor and the lower price
32 was made available to other dealers, or (3) the differences are
33 related to the volume of equipment purchased by dealers if the
34 supplier offers all other similarly situated dealers the same
35 volume program.

36 (g) To prevent, by contract or otherwise, any dealer from
37 changing its capital structure, ownership, or the means by which
38 the dealership is financed, provided the dealer at all times meets
39 any reasonable capital standards imposed by the supplier or as
40 otherwise agreed to between the dealer and the supplier and

1 imposed on similarly situated dealers, and provided this change
2 by the dealer does not result in a change of the controlling
3 interest in the executive management or board of directors, or
4 any guarantors of the dealership.

5 (h) To prevent, by contract or otherwise, any dealer or any
6 officer, member, partner, or stockholder of any dealer from
7 selling or transferring any part of the interest of any of them to
8 any other party or parties. However, no dealer, officer, partner,
9 member, or stockholder shall have the right to sell, transfer, or
10 assign the dealership or power of management or control of the
11 dealership without the written consent of the supplier.

12 (i) To require a dealer to assent to a release, assignment,
13 novation, waiver, or estoppel that would relieve any person from
14 liability imposed by this section.

15 (j) To require any dealer to purchase goods or services as a
16 condition of the sale by the supplier to the dealer of any
17 equipment, repair parts, or other goods or services; except that
18 nothing in this subdivision shall prohibit a supplier from
19 requiring the dealer to purchase repair parts, special tools, and
20 training reasonably necessary to maintain the safe operation or
21 quality of operation in the field of any equipment offered for sale
22 by the dealer.

23 (k) To coerce any dealer into a refusal to purchase equipment
24 manufactured by another supplier.

25 (l) To penalize any dealer that purchases equipment or repair
26 parts for sale manufactured by another supplier.

27 (m) To discriminate, directly or indirectly, between dealers of
28 the same product line in filling an order placed by a dealer for
29 retail sale or lease of equipment under a dealer contract.

30 SEC. 5. Section 22903 of the Business and Professions Code
31 is amended to read:

32 22903. (a) This section shall only apply to a dealer contract
33 between a dealer who is not a single-line dealer and a supplier
34 who is not a single-line supplier.

35 (b) Except where there are grounds for termination of a dealer
36 contract pursuant to paragraph (1), (2), (3), (4), (5), (6), ~~or (7)~~
37 (7), or (8) of subdivision (c), a supplier shall give a dealer 180
38 days written notice of the supplier's intent to terminate a dealer
39 contract. The notice shall include all reasons constituting good
40 cause for the termination and shall provide the dealer with 60

1 days to cure any claimed deficiency. If the deficiency is cured
2 within 60 days, the notice of termination shall be void. ~~A~~ *Except*
3 *as provided in subdivision (d)*, a supplier may not terminate a
4 dealer contract based on paragraph ~~(H)~~ (12) of subdivision (c)
5 unless the supplier gives the dealer notice of that action at least
6 two years before the effective date of that action. If the dealer
7 achieves the supplier's requirements for reasonable standards or
8 performance objectives before the expiration of the two-year
9 notice period, the notice shall be void and the dealer contract
10 shall continue in full force and effect.

11 (c) No supplier, directly or through an officer, agent, or
12 employee, may terminate, cancel, fail to renew, or materially
13 change the competitive circumstances of a dealer contract
14 without good cause. In addition to the definition in subdivision
15 (k) of Section 22901, good cause exists whenever the dealer has
16 taken any of the following actions:

17 (1) Transferred a controlling ownership interest in the
18 dealership without the consent of the supplier, who shall not
19 withhold consent unreasonably.

20 (2) Made a material misrepresentation or falsification of any
21 record.

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

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

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

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

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

1 new guarantee of the dealer's present or future obligations in
2 connection with that transfer of ownership interest.

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

7 (9) Engaged in conduct that is injurious or detrimental to the
8 dealer's customers, the public welfare, or the representation or
9 reputation of the supplier's product.

10 ~~(9)~~

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

14 ~~(10)~~

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

18 ~~(11)~~

19 (12) Consistently failed to meet and maintain the supplier's
20 requirements for reasonable standards and performance
21 objectives, if the supplier has given the dealer reasonable
22 standards and performance objectives that are based on the
23 manufacturer's experience in other comparable market areas.

24 (d) *Notwithstanding subdivision (c), a supplier that represents*
25 *the lesser of 10 percent or three hundred fifty thousand dollars*
26 *(\$350,000) of total gross annual revenue which includes, but is*
27 *not limited to, the sales, service, rental, or repair, for each dealer*
28 *location, may not terminate a dealer contract based on*
29 *paragraph (12) of subdivision (c) unless the supplier gives the*
30 *dealer notice of that action at least 180 days before the effective*
31 *date of that action. If the dealer achieves the supplier's*
32 *requirements for reasonable standards or performance*
33 *objectives within 60 days of receipt of the cancellation notice, the*
34 *notice shall be void and the dealer contract shall continue in full*
35 *force and effect.*

36 SEC. 6. Section 22903.1 is added to the Business and
37 Professions Code, to read:

38 22903.1. (a) This section shall only apply to a dealer contract
39 between a dealer who is not a single-line dealer and a supplier
40 who is not a single-line supplier.

1 (b) If a supplier has contractual authority to approve or deny a
2 request for a sale or transfer of a dealer's business or an equity
3 ownership interest in the business, the supplier shall approve or
4 deny the request within 60 days after receiving a written request
5 from the dealer. If the supplier has neither approved nor denied
6 the request within the 60-day period, the request shall be deemed
7 approved. The dealer's request shall include reasonable financial
8 information, personal background, character references, and
9 work history information for the acquiring persons. If a supplier
10 denies a request made pursuant to this section, the supplier shall
11 provide the dealer with a written notice of that denial that states
12 the reasons for the denial. A supplier may only deny a request
13 based on the failure of the proposed transferees to meet the
14 reasonable requirements consistently imposed by the supplier in
15 determining approval of transfers or approvals of new dealers.

16 (c) If a dealer dies and the supplier has contractual authority to
17 approve or deny a request for the sale or transfer of the dealer's
18 business or an equity ownership interest in the business, the
19 dealer's estate or other person with authority to transfer the
20 dealer's assets shall have 180 days to submit to the supplier a
21 written request for a sale or transfer of that business or equity
22 ownership interest. If the request is timely submitted, the supplier
23 shall approve or deny that request in accordance with subdivision
24 (b). Notwithstanding any contrary provision of this chapter, any
25 attempt by a supplier to terminate the dealer contract as a result
26 of the death of a dealer shall be delayed until there has been
27 compliance with the terms of this section or the 180-day period
28 has expired, as applicable.

29 (d) Notwithstanding subdivision (c), if a supplier and dealer
30 executed an agreement concerning succession rights prior to the
31 dealer's death, and if the agreement is still in effect, the
32 agreement shall be observed even if it designated someone other
33 than the surviving spouse or heirs of the decedent as the
34 successor.

35 (e) A supplier may withhold consent to a transfer of an interest
36 in a dealership if, with due regard to regional market conditions
37 and distribution economies, the dealer's area of responsibility or
38 trade area does not afford sufficient sales potential to reasonably
39 support a dealer. In any dispute between a supplier and dealer
40 under this subdivision, the supplier shall bear the burden of

1 proving that the dealer's area of responsibility or trade area does
2 not afford sufficient sales potential to reasonably support a
3 dealer.

4 SEC. 7. Section 22903.2 is added to the Business and
5 Professions Code, to read:

6 22903.2. (a) This section shall only apply to dealer contracts
7 between a single-line dealer and its single-line supplier.

8 (b) No supplier may terminate a dealer contract without good
9 cause. In addition to the definition in subdivision (k) of Section
10 22901, good cause exists whenever any one of the following is
11 applicable:

12 (1) There has been a closeout or sale of 65 percent or more of
13 the dealer's assets related to the equipment business or there has
14 been a commencement of a dissolution or liquidation of the
15 dealer.

16 (2) The dealer has changed its principal place of business or
17 added additional locations without prior approval of the supplier,
18 which shall not be unreasonably withheld.

19 (3) The dealer has materially defaulted under a chattel
20 mortgage or other security agreement between the dealer and the
21 supplier, or there has been a revocation or discontinuance of a
22 guarantee of a present or future obligation of the dealer to the
23 supplier.

24 (4) The dealer has failed to operate in the normal course of
25 business for seven consecutive days, without the consent of the
26 supplier, or has otherwise abandoned ~~its~~ *the* business.

27 (5) The dealer has pleaded guilty to or has been convicted of a
28 felony involving an act of moral turpitude.

29 (6) The dealer has transferred an interest in the dealership, or a
30 person with a substantial interest in the ownership or control of
31 the dealership, including an individual, proprietor, partner or
32 major shareholder, has withdrawn from the dealership or died, or
33 a substantial reduction has occurred in the interest of a partner or
34 major shareholder in the dealership. However, good cause does
35 not exist if the supplier has consented to an action described in
36 this paragraph.

37 (c) Except as otherwise provided in this subdivision, a supplier
38 shall provide a dealer with at least 90-days written notice of
39 termination. The notice shall state all reasons constituting good
40 cause for termination and shall state that the dealer has 60 days in

1 which to cure any claimed deficiency. If the deficiency is cured
2 within 60 days, the notice shall be void. Notwithstanding the
3 ~~forgoing~~ *foregoing*, if the good cause for termination is due to the
4 dealer's failure to meet or maintain the supplier's requirements
5 for market penetration, a reasonable period of time shall have
6 existed where the supplier has worked with the dealer to gain the
7 desired market share. The notice and right to cure provisions
8 under this subdivision shall not apply if the reason for
9 termination is for any reason set forth in subdivision (b).

10 (d) If a dealer dies, a supplier shall have 90 days in which to
11 consider and make a determination on a request by a family
12 member to enter into a new dealer contract to operate the
13 dealership. If the supplier determines that the requesting family
14 member is not acceptable, the supplier shall provide the family
15 member with a written notice of its determination with the stated
16 reasons for rejection. This section does not entitle an heir,
17 personal representative, or family member to operate a dealership
18 without specific written consent of the supplier.

19 (e) Notwithstanding subdivision (d), if a supplier and dealer
20 have previously executed an agreement concerning succession
21 rights prior to the dealer's death, and if that agreement is still in
22 effect, the agreement shall be observed even if it designated
23 someone other than the surviving spouse or heirs of the decedent
24 as the successor.

25 (f) For purposes of this section, dealer assets shall not include
26 land or buildings.

27 SEC. 8. Section 22903.3 is added to the Business and
28 Professions Code, to read:

29 22903.3. (a) If a dealer submits a warranty claim to a
30 supplier while the dealer contract is in effect or within 60 days
31 after the termination of the dealer contract, and if the claim is for
32 work performed before the termination or expiration of the dealer
33 contract, the supplier shall ~~accept~~ *approve* or reject that warranty
34 claim by written notice to the dealer within ~~30~~ 45 days after the
35 supplier's receipt of the warranty claim. If the supplier ~~accepts~~
36 *approves* the warranty claim, the supplier shall pay the dealer or
37 credit the dealer's account the entire amount owed with respect
38 to the claim within 30 days of ~~acceptance~~ *approval*. If the
39 supplier rejects the warranty claim, the supplier shall give the
40 dealer written or electronic notice of the grounds for rejection.

1 These reasons must be consistent with the supplier's reason for
2 rejecting the warranty claims of other dealers, both in terms and
3 manner of enforcement. If the supplier does not provide the
4 dealer with grounds for rejection, the claim shall be deemed to be
5 ~~accepted~~ *approved*.

6 (b) Any claim that is not approved by the supplier based upon
7 the dealer's failure to properly follow the procedural or technical
8 requirements for submission of the warranty claim may be
9 resubmitted in proper form by the dealer within 30 days of
10 receipt of the supplier's ~~disapproval~~ *rejection* notification.

11 (c) Warranty work performed by the dealer shall be
12 compensated in accordance with the reasonable and customary
13 amount of time required to complete the work, expressed in
14 hours and fractions multiplied by the dealer's established
15 customer hourly retail labor rate, which shall have previously
16 been made known to the supplier. Parts used in warranty repair
17 work shall be reimbursed at the current net parts cost plus 15
18 percent and the cost of freight. *For purposes of this subdivision,*
19 *"established customer hourly retail labor rate" means the lowest*
20 *posted customer in-shop retail labor rate for the six months*
21 *preceding the claim.*

22 (d) For the purpose of this act, any repair work or installation
23 of replacement parts with respect to the dealer's equipment in
24 inventory or equipment of the dealer's customers at the request
25 of the supplier, including work performed pursuant to a product
26 improvement program, shall be deemed to create a warranty
27 claim for which the dealer shall be paid pursuant to this section.

28 (e) A supplier may audit warranty claims submitted by its
29 dealers for a period of up to one year. If the audit reveals an
30 amount was misrepresented by the supplier, the supplier may
31 charge its dealers the amount shown by the audit to be
32 misrepresented. If a warranty claim is misrepresented, then
33 subsequent warranty claims submitted within the two-year period
34 ending with the date of the audit may be audited. However, a
35 supplier shall not audit a warranty claim more than once.

36 (f) The requirements of subdivisions (a), (b), and (c) apply to
37 all warranty claims submitted by a dealer to a supplier where the
38 dealer has complied with the supplier's reasonable *written*
39 policies and procedures for warranty reimbursement. A
40 supplier's warranty reimbursement policies and procedures shall

1 be deemed unreasonable to the extent they conflict with any of
2 the provisions of this section.

3 (g) A dealer may choose to accept alternate reimbursement
4 terms and conditions instead of the requirements of subdivisions
5 (a), (b), and (c) if there is a written dealer contract between the
6 supplier and the dealer that requires the supplier to compensate
7 the dealer for warranty labor costs either as: (1) a discount in the
8 pricing of the equipment to the dealer; or (2) a lump-sum
9 payment to the dealer that is made to the dealer within 90 days of
10 the sale of the supplier's new equipment. If the requirements of
11 this subdivision are met and alternate terms and conditions are in
12 place, subdivisions (a), (b), and (c) do not apply and the alternate
13 terms and conditions are enforceable. Nothing contained in this
14 subdivision shall be deemed to ~~effect~~ *affect* the supplier's
15 obligation to reimburse the dealer for parts in accordance with
16 subdivision (c).

17 (h) If a supplier fails or refuses to pay for warranty work
18 covered under this section within 30 days of the supplier's
19 ~~acceptance~~ *approval* of the dealer's claim, the supplier shall be
20 liable for 110 percent of the total claim, plus interest at the
21 ~~maximum statutory rate allowed by law~~ from the payment due
22 date until the date of payment, and actual costs for any court or
23 arbitration proceeding, including costs for ~~attorney~~ *attorney's*
24 fees and arbitrators.

25 SEC. 9. Section 22904 of the Business and Professions Code
26 is amended to read:

27 22904. Every supplier shall provide to its dealers, on an
28 annual basis, an opportunity to return a portion of their surplus
29 parts inventory for credit. The surplus procedure shall be
30 administered as follows:

31 (a) The supplier may notify its dealers of a time period, of at
32 least 90 days' duration, during which time dealers may submit
33 their surplus parts list and return their surplus parts to the
34 supplier. A supplier may choose to designate a different period of
35 time for each dealer to return surplus parts.

36 (b) If a supplier has not notified a dealer of a specific time
37 period for returning surplus parts within the preceding 12
38 months, then it shall authorize and allow the dealer's surplus
39 parts return request within 60 days after receipt of that request
40 from the dealer.

1 (c) Pursuant to the provisions of this section, a supplier shall
 2 allow surplus parts return authority on a dollar value of parts
 3 equal to 10 percent of the total dollar value of parts purchased by
 4 the dealer from the supplier during the 12-month period
 5 immediately preceding the notification to the dealer by the
 6 supplier of the surplus parts return program, or the month the
 7 dealer’s return request is made, whichever is applicable.

8 (d) Returned parts shall be in new and unused condition and
 9 shall have been purchased by the dealer from the supplier to
 10 whom they are returned, ~~unless no program for the return of that~~
 11 ~~part has been offered by the supplier.~~ *Obsolete and superseded*
 12 *parts may be returned if listed in the supplier’s current*
 13 *returnable parts list or if those parts have not been the subject of*
 14 *a supplier’s return program at the date of the notification to the*
 15 *dealer by the supplier of the surplus parts return program, or the*
 16 *date of the dealer’s parts return request, whichever is applicable.*

17 (e) The minimum lawful credit to be allowed for returned parts
 18 shall be 95 percent of the current net parts cost, as listed in the
 19 supplier’s current returnable parts list at the date of the
 20 notification to the dealer by the supplier of the surplus parts
 21 return program, or the date of the dealer’s parts return request,
 22 whichever is applicable.

23 (f) The supplier shall credit the dealer’s account within 30
 24 days after the supplier’s receipt of the dealer’s returned parts.

25 (g) The annual parts return provided for in this section may be
 26 waived by a dealer.

27 (h) If a supplier fails or refuses to pay for returned parts
 28 covered by this section within 30 days of the supplier’s receipt of
 29 returned parts, the supplier shall be liable for 110 percent of the
 30 total current net parts cost, plus interest at the ~~maximum~~ *statutory*
 31 ~~rate allowed by law~~ from the payment due date until the date of
 32 payment, and actual costs for any court or arbitration proceeding,
 33 including costs for ~~attorney~~ *attorney’s* fees and arbitrators.

34 SEC. 10. Section 22905 of the Business and Professions Code
 35 is amended to read:

36 22905. Whenever a dealer contract is terminated by
 37 cancellation or nonrenewal ~~by the supplier or dealer~~, the supplier
 38 shall repurchase the inventory as provided in this section.

39 (a) The supplier shall repurchase at its fair market value or
 40 assume the lease responsibilities of any specific data-processing

1 hardware that the supplier required the dealer to purchase to
2 satisfy the minimum requirements of the dealer contract,
3 including computer systems equipment required and approved by
4 the supplier to communicate with the supplier. The fair market
5 value of property subject to repurchase shall be deemed to be
6 equal to the acquisition cost, including any shipping, handling
7 and set-up fees, less straight line depreciation of that acquisition
8 cost over three years. If the dealer purchased data-processing
9 hardware or software that exceeded the supplier's minimum
10 requirements, the acquisition cost of that data-processing
11 hardware or software shall be deemed to be the acquisition cost
12 of hardware or software of similar quality that did not exceed the
13 minimum requirements of the supplier.

14 (b) The supplier shall pay a sum equal to 100 percent of the
15 net equipment cost of all new, unsold, ~~and~~ undamaged , *and*
16 *complete* equipment.

17 (c) The supplier shall pay a sum equal to 100 percent of the
18 net equipment cost of all unsold, undamaged demonstrators, less
19 depreciation due to usage of those demonstrators. The
20 depreciation adjustment shall be based on published industry
21 rental rates to the extent those rates are available.
22 Notwithstanding other provisions of law, demonstrators, with
23 hour meters that have less than 50 hours of use shall be
24 considered new, unsold, ~~undamaged~~ equipment subject to
25 repurchase under this section.

26 (d) The supplier shall pay a sum equal to 100 percent of the
27 net equipment cost of all unsold and undamaged equipment used
28 in a manufacturer created incentive program, as defined in
29 subdivision (o) of Section 22901, less depreciation due to usage
30 and bonus or volume incentive received by the dealer for the
31 equipment. The depreciation adjustment shall be based on
32 published industry rental rates to the extent these rates are
33 available. Notwithstanding any other provision of law, machines
34 with hour meters used in a manufacturer created incentive
35 program with less than 50 hours of use will be considered new,
36 unsold, ~~undamaged~~ equipment subject to repurchase under this
37 section.

38 (e) The supplier shall pay a sum equal to 95 percent of the
39 current net parts costs on new, unsold, undamaged repair parts
40 that had previously been purchased from the supplier and held by

1 the dealer on the date that the dealer contract terminates or
2 expires.

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

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

21 (h) Upon the payment or allowance of credit to the dealer's
22 account of the sums required by this section, the title to all
23 inventory purchased shall pass to the supplier making payment,
24 and the supplier shall be entitled to the possession of the
25 inventory. All payments or allowances of credit due to dealers
26 shall be paid or credited within 90 days after receipt by the
27 supplier of property required to be repurchased. Any payments or
28 allowances of credit due to dealers that are not paid within the
29 90-day period will accrue interest at the ~~maximum~~ *statutory* rate
30 ~~allowed by law~~. The supplier may withhold payments due under
31 this section during the period of time in which the dealer fails to
32 comply with its contractual obligations to remove any signage
33 indicating that the dealer is an authorized dealer of the supplier.

34 (i) The supplier and dealer shall each pay 50 percent of the
35 costs of freight to ship equipment to the nearest retail outlet or to
36 ship repair parts to the nearest supplier distribution center.

37 (j) The provisions of this section shall not require the
38 repurchase from the dealer of any of the following:

39 (1) Any repair part that is in a broken or damaged package.
40 However, the supplier shall be required to repurchase a repair

1 part in a broken or damaged package, for a repurchase price that
2 is equal to 85 percent of the current net parts cost for the repair
3 part, if the aggregate current price for the entire package of repair
4 parts is seventy-five dollars (\$75) or higher.

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

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

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

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

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

19 (7) Any equipment or repair parts that are not returned to the
20 supplier within 90 days after the latter of (A) the effective date of
21 termination of a dealer contract or (B) the date the dealer receives
22 from the supplier all information, documents or supporting
23 materials required by the supplier to comply with the supplier's
24 return policy. However, this paragraph shall not be applicable to
25 a dealer if the supplier did not give the dealer notice of the
26 90-day deadline at the time the applicable notice of termination
27 was sent to the dealer.

28 (k) If any supplier fails or refuses to repurchase any inventory
29 covered under this section within 90 days after termination of a
30 dealer contract, the supplier shall be liable for the total amount of
31 110 percent of the current net equipment cost of the inventory,
32 plus any freight charges paid by the dealer, interest accrued at the
33 ~~maximum statutory rate allowed by law~~ from the date of
34 shipment to the supplier until the date of payment, 5 percent for
35 handling, packing, and loading, and actual costs for any court or
36 arbitration proceedings, including costs for ~~attorney~~ *attorney's*
37 fees and arbitrators.

38 (l) Notwithstanding any provision to the contrary in the
39 Commercial Code, the dealer shall retain a first and prior lien
40 against all inventory returned by the dealer to the supplier under

1 this act until the dealer has paid all amounts owed by the supplier
2 for the repurchase of inventory required under this act.

3 (m) This section shall not be construed to affect any security
4 interest that the supplier may have in the inventory of the dealer,
5 and any repurchase shall not be subject to the provisions of the
6 bulk sales law or to the claims of any secured or unsecured
7 creditors of the supplier or any assignee of the supplier until such
8 time as the dealer has received full payment or credit.

9 (n) *The dealer may not cancel a dealer contract to avoid a
10 payment obligation to the supplier for equipment or parts.*

11 SEC. 11. Section 22906 of the Business and Professions Code
12 is amended to read:

13 22906. (a) A dealer, as defined in subdivision (e) of Section
14 22901, is not entitled to establish a lien pursuant to this act,
15 unless that person has first sent to the lien debtor a written notice,
16 by certified mail, which states all of the following:

17 (1) The payment of the reasonable or agreed charges is more
18 than 90 days overdue. This requirement does not apply to
19 equipment subject to repurchase that was returned to the supplier
20 subsequent to return of other equipment also subject to
21 repurchase for which payment is overdue.

22 (2) The amount of reasonable or agreed charges that are
23 overdue.

24 (3) The lien debtor has the following three alternatives:

25 (A) Allow the lien to be filed.

26 (B) Enter into a consensual security interest in the proceeds,
27 pursuant to the Commercial Code.

28 (C) Pay the reasonable or agreed charges that are overdue.

29 (4) The lien debtor has 10 days from receipt of the notice to
30 select an alternative, notify the lien claimant of the alternative
31 selected, and satisfy all of the requirements of the selected
32 alternative. This part of the notice to the lien debtor shall be in
33 10-point type or bolder.

34 (5) The lien claimant may file the notice of claim of lien
35 pursuant to this chapter at any time thereafter if the lien debtor
36 does not comply with the requirements of this section.

37 (b) A dealer who has complied with subdivision (a), has a lien
38 for payment of the repurchase amount payable pursuant to
39 subdivisions (b), (c), (d), (e), and (f) of Section 22905 and for the
40 costs of enforcing the lien.

1 (c) The lien established pursuant to this chapter attaches to the
2 proceeds of any sale of the equipment returned for repurchase.

3 (d) The amount of charges secured by the lien shall not exceed
4 an amount equal to the reasonable or agreed charges for the
5 equipment specified in Section 22905.

6 SEC. 12. Section 22907 of the Business and Professions Code
7 is amended to read:

8 22907. Except as otherwise provided in this act, the notice of
9 lien shall remain in effect, and no new notice of claim of lien
10 shall be required in order to maintain the lien, as long as the
11 dealer remains unpaid for the amounts secured by the lien.

12 SEC. 13. Section 22908 of the Business and Professions Code
13 is amended to read:

14 22908. The lien created by this act shall be perfected and
15 shall be effective upon the filing of a notice claim of lien with the
16 Secretary of State.

17 SEC. 14. Section 22909 of the Business and Professions Code
18 is amended to read:

19 22909. The notice of claim of lien shall contain all of the
20 following information:

21 (a) The name and address of the lien claimant.

22 (b) The name and address of the lien debtor.

23 (c) The location of the property to which the equipment was
24 returned.

25 (d) A statement that the payment of reasonable or agreed
26 charges is more than 90 days overdue.

27 (e) The amount of the reasonable or agreed charges that are
28 overdue.

29 (f) A statement, signed under penalty of perjury, that includes
30 all of the following:

31 (1) That the lien claimant sent to the lien debtor the notice
32 required pursuant to subdivision (a) of Section 22906.

33 (2) That more than 10 days have elapsed since the notice was
34 received by the lien debtor.

35 (3) That the lien debtor has not complied with the
36 requirements of subdivision (a) of Section 22906.

37 (g) A statement that the lien claimant has an equipment
38 repurchase lien pursuant to Section 22906.

39 SEC. 15. Section 22910 of the Business and Professions Code
40 is amended to read:

1 22910. The notice of claim of lien shall be signed by the lien
2 claimant or by a person authorized by the claimant.

3 SEC. 16. Section 22911 of the Business and Professions Code
4 is amended to read:

5 22911. The notice of a claim of lien shall be filed on a form
6 prescribed by the Secretary of State pursuant to Section 9502 of
7 the Commercial Code. The standard form shall be completed in
8 its entirety except as follows:

9 (a) The lien claimant may be identified either as a lien
10 claimant or as a secured party.

11 (b) The form shall be signed by the lien claimant and need not
12 be signed by the lien debtor.

13 (c) The description of the collateral shall be the information
14 specified in subdivisions (c), (d), (e), and (g) of Section 22909.

15 (d) Attached to the form shall be a separately signed statement
16 containing the information specified in subdivision (f) of Section
17 22909.

18 SEC. 17. Section 22913 of the Business and Professions Code
19 is amended to read:

20 22913. The lien claimant shall provide written notice of the
21 claim of lien to the lien debtor within 10 days of the date of filing
22 the lien with the Secretary of State.

23 SEC. 18. Section 22915 of the Business and Professions Code
24 is amended to read:

25 22915. (a) The lien created pursuant to this act shall be
26 treated according to the following:

27 (1) Have priority in accordance with the time the notice of
28 claim of lien is filed with the Secretary of State.

29 (2) Have the same priority as a security interest perfected by
30 the filing of a financing statement as of the date of notice of
31 claim of lien was filed with the Secretary of State.

32 (3) Not have priority over labor claims for wages and salaries
33 for personal services which are provided by any employee to any
34 lien debtor in connection with the equipment supplied, the
35 proceeds of which are subject to the lien.

36 SEC. 19. Section 22920 of the Business and Professions Code
37 is amended to read:

38 22920. (a) When a lien claimant receives payment for the
39 total amounts secured by the lien, the lien claimant shall send the
40 lien debtor a statement relinquishing the security interest under

1 the notice of claim of lien, which shall be identified by the date,
2 names of parties thereto, and file number. If the affected
3 lienholder of record fails to send the termination statement within
4 10 days, he or she is liable to the debtor for all actual damages
5 suffered by the debtor by reason of this failure, and if that failure
6 is in bad faith, for a penalty of one hundred dollars (\$100).

7 (b) The filing officer shall mark each termination statement
8 with the date and time of the filing and shall index the statement
9 under the name of the lien debtor and under the file number of
10 the original lien. If the filing officer has an electronic microfilm
11 or other photographic record of the lien and related filings, he or
12 she may remove and destroy the originals from the files after
13 receipt of the termination statement. If the filing officer does not
14 have the record, he or she may remove and destroy the originals
15 from the files after one year from the receipt of the termination
16 statement.

17 SEC. 20. Section 22922 of the Business and Professions Code
18 is amended to read:

19 22922. (a) Except to the extent specifically set forth in this
20 act, the lien created by this act is subject to Division 9
21 (commencing with Section 9101) of the Commercial Code.

22 (b) For the purposes of this act, the following terms have the
23 following meanings:

24 (1) "Secured party" refers to the dealer, lien creditor, lien
25 claimant, or assignee thereof.

26 (2) "Debtor" refers to the supplier, lien debtor, or debtor.

27 (3) "Collateral" refers to the equipment subject to the lien
28 created under this chapter.

29 (c) A security agreement is not necessary to make an
30 equipment repurchase lien created under this chapter enforceable.

31 (d) An equipment repurchase lien created under this chapter
32 shall not continue in the repurchased equipment following the
33 disposition thereof.

34 (e) The right of a dealer to enforce the lien created under this
35 act shall be governed by this act and shall not be governed by
36 Chapter 6 (commencing with Section 9601) of Division 9 of the
37 Commercial Code.

38 SEC. 21. Section 22924 of the Business and Professions Code
39 is amended to read:

1 22924. (a) In the event of the death or incapacity of the
2 dealer, which in this context shall mean an owner, equal or
3 majority partner, or the majority stockholder of a corporation,
4 operating as a dealer, the supplier shall, at the option of the heirs
5 at law, if the dealer died intestate, or the executor under the terms
6 of the deceased dealer's last will and testament, if the dealer died
7 testate, repurchase the inventory from the estate as if the supplier
8 had terminated the dealer contract and the inventory repurchase
9 provisions of Section 22905 are applicable. The heirs or executor
10 shall have 180 days from the date of the death of the dealer or
11 majority stockholder to exercise the option under this section.
12 However, nothing in this section shall require the repurchase of
13 inventory, if the heirs or executor and the supplier enter into a
14 new dealer agreement, or if a successor to the dealer is
15 established pursuant to subdivision (b) of Section 22903.1. This
16 section shall be subject to that portion of the dealer contract
17 pertaining to death of the dealer or succession, to the extent the
18 contract is not inconsistent. Nothing in this section shall entitle
19 an heir or personal representative of a deceased dealer or
20 majority stockholder to operate the dealership beyond the 180
21 days provided for in this subdivision without the consent of the
22 supplier.

23 (b) The provisions of this section shall be supplemental to any
24 agreement between the dealer and the supplier covering the
25 return of equipment, attachments, and repair parts.
26 Notwithstanding anything contained in this section, the rights of
27 a supplier to charge back to the dealer's account amounts
28 previously paid or credited as a discount incident to the dealer's
29 purchase of inventory shall not be affected. Further, any
30 repurchase shall not be subject to the provisions of the bulk sales
31 law.

32 SEC. 22. Section 22925 of the Business and Professions Code
33 is amended to read:

34 22925. Any dealer may bring an action against a supplier in
35 any court of competent jurisdiction for damages sustained by the
36 dealer as a consequence of the supplier's violation of any
37 provisions of this chapter, together with costs and reasonable
38 attorney's fees. The dealer may also be granted injunctive relief
39 against unlawful termination, cancellation, nonrenewal, and
40 change in competitive circumstances. The remedies set forth in

1 this action shall not be deemed exclusive and shall be in addition
2 to any other remedies permitted by law. This section is not
3 intended to affect current law pertaining to product liability
4 actions.

5 SEC. 23. Section 22926 of the Business and Professions Code
6 is amended to read:

7 22926. If any provision of this act or the application thereof
8 to any person or circumstances is held invalid, that invalidity
9 shall not affect other provisions or applications of this act which
10 can be given effect without the invalid provision or application,
11 and to this end the provisions of this act are severable.

12 SEC. 24. Section 22927 of the Business and Professions Code
13 is amended to read:

14 22927. This act shall apply to dealer contracts in effect on the
15 effective date of this act that have no expiration date and that are
16 continuing contracts, and all other dealer contracts entered into or
17 renewed on or after the effective date of this act.

18 A provision in any contract or agreement with respect to a
19 supplier that requires jurisdiction or venue or forum outside of
20 this state or requires the application of the laws of another state is
21 void with respect to a claim otherwise enforceable under this act.