

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2893

57th Legislature
2002 Regular Session

Passed by the House March 9, 2002
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 5, 2002
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2893** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2893

AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature 2002 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Clements and Conway)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to equipment dealers; amending RCW 19.98.010,
2 19.98.020, 19.98.030, 19.98.040, 19.98.100, 19.98.120, and 19.98.130;
3 adding new sections to chapter 19.98 RCW; and repealing RCW 19.98.110.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.98 RCW
6 to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Audit" means a review by a supplier of a dealer's warranty
10 claims records.

11 (2) "Change in competitive circumstances" means to materially
12 impact a specific dealer's ability to compete with similarly situated
13 dealers selling the same brand of equipment.

14 (3) "Current net price" means the price charged to a dealer for
15 repair parts as listed in the printed price list, catalog, or
16 electronic catalog of the supplier in effect at the time a warranty
17 claim is made and superseded parts listed in current price lists,
18 catalogs, or electronic catalogs when parts had previously been
19 purchased from the supplier and held by the dealer on the date of the

1 cancellation or discontinuance of a dealer agreement or thereafter
2 received by the dealer from the supplier.

3 (4) "Dealer" means a person primarily engaged in the retail sale
4 and service of farm equipment, including a person engaged in the retail
5 sale of outdoor power equipment who is primarily engaged in the retail
6 sale and service of farm equipment. Dealer does not include a person
7 primarily engaged in the retail sale of outdoor power equipment or a
8 supplier.

9 (5) "Dealer agreement" means an oral or written contract or
10 agreement for a definite or indefinite period of time in which a
11 supplier of equipment grants to a dealer permission to use a trade
12 name, service mark, or related characteristic, and where there is a
13 community of interest in the marketing of equipment or services related
14 to the equipment at wholesale, retail, leasing, or otherwise.

15 (6) "Dealership" means the retail sale business engaged in by a
16 dealer under a dealer agreement.

17 (7) "Distributor" means a person who sells or distributes new
18 equipment to dealers or who maintains distributor representatives
19 within the state.

20 (8) "Distributor branch" means a branch office, maintained by a
21 distributor, that sells or distributes new equipment to dealers.
22 "Distributor branch" includes representatives of the branch office.

23 (9)(a) "Equipment" includes:

24 (i) Farm equipment. Farm equipment includes but is not limited to
25 tractors, trailers, combines, tillage implements, balers, and other
26 equipment, including attachments and accessories that are used in the
27 planting, cultivating, irrigation, harvesting, and marketing of
28 agricultural, horticultural, or livestock products.

29 (ii) Outdoor power equipment. Outdoor power equipment includes
30 self-propelled equipment that is used to maintain commercial, public,
31 or residential lawns and gardens or used in landscape, turf, or golf
32 course maintenance.

33 (b) "Equipment" does not include motor vehicles designed or
34 intended for use upon public roadways as defined in RCW 46.70.011 or
35 motorcycles as defined in RCW 46.94.010.

36 (10) "Factory branch" means a branch office maintained by a
37 manufacturer that makes or assembles equipment for sale to distributors
38 or dealers or that is maintained for directing and supervising the
39 representatives of the manufacturer.

1 (11) "Factory representative" means a person employed by a
2 manufacturer or by a factory branch for the purpose of selling or
3 promoting the sale of equipment or for supervising, servicing,
4 instructing, or contracting with dealers or prospective dealers.

5 (12) "Free on board" or "F.O.B." has the same meaning as described
6 in RCW 62A.2-319.

7 (13) "Geographic market area" means the geographic region for which
8 a particular dealer is responsible for the marketing, selling, leasing,
9 or servicing of equipment pursuant to a dealer agreement.

10 (14) "Good cause" means failure by a dealer to comply with
11 requirements imposed upon the dealer by the dealer agreement, provided
12 such requirements are not different from those requirements imposed on
13 other similarly situated dealer in the state either by their terms or
14 in the manner of their enforcement.

15 (15) "Manufacturer" means a person engaged in the business of
16 manufacturing or assembling new and unused equipment.

17 (16) "Person" includes a natural person, corporation, partnership,
18 trust, or other entity, including any other entity in which it has a
19 majority interest or of which it has control, as well as the individual
20 officers, directors, or other persons in active control of the
21 activities of each entity.

22 (17) "Similarly situated dealer" means a dealer of comparable
23 geographic location, volume, and market type.

24 (18) "Supplier" means a person or other entity engaged in the
25 manufacturing, assembly, or wholesale distribution of equipment or
26 repair parts of the equipment. "Supplier" includes any successor in
27 interest, including a purchaser of assets, stock, or a surviving
28 corporation resulting from a merger, liquidation, or reorganization of
29 the original supplier, or any receiver or any trustee of the original
30 supplier.

31 (19) "Warranty claim" means a claim for payment submitted by a
32 dealer to a supplier for either service, or parts, or both, provided to
33 a customer under a warranty issued by the supplier.

34 (20) "Wholesaler" means a person who sells or attempts to sell new
35 equipment exclusively to dealers or to other wholesalers.

36 **Sec. 2.** RCW 19.98.010 and 1975 1st ex.s. c 277 s 1 are each
37 amended to read as follows:

1 Whenever any person, firm, or corporation engaged in the (~~retail~~)
2 sale of (~~farm implements and~~) equipment, repair parts, or services
3 therefor enters into a written or oral contract with (~~any wholesaler,~~
4 ~~manufacturer, or distributor~~) a supplier of (~~farm implements,~~
5 ~~machinery, attachments, accessories~~) equipment, or repair parts
6 whereby (~~such retailer~~) the dealer agrees to maintain a stock of
7 parts (~~or complete or whole machines, attachments, or accessories,~~)
8 and equipment and either party to such contract desires to cancel or
9 discontinue the contract, unless the (~~retailer~~) dealer should desire
10 to keep such (~~merchandise~~) parts and equipment the (~~manufacturer,~~
11 ~~wholesaler, or distributor~~) supplier shall pay the (~~retailer~~) dealer
12 for the (~~merchandise. Such~~) equipment and reasonable reimbursement
13 for services performed in connection with assembly and predelivery
14 inspections of the equipment. The payment shall be in the amount of
15 one hundred percent of the net cost of all (~~current~~) unused complete
16 (~~farm implements, machinery, attachments, and accessories~~) equipment,
17 including transportation charges paid by the (~~retailer, and eighty-~~
18 ~~five~~) dealer. Equipment purchased more than twenty-four months prior
19 to the cancellation or discontinuance of the dealer agreement is
20 subject to a weather allowance adjustment. The supplier assumes
21 ownership of new unused complete equipment F.O.B. the dealer location.
22 The supplier shall pay the dealer in the amount of ninety-five percent
23 of the current net prices on repair parts, including superseded parts
24 listed in current price lists (~~or~~), catalogs, or electronic catalogs
25 which parts had previously been purchased from (~~such wholesaler,~~
26 manufacturer, or distributor) the supplier and held by (~~such~~
27 ~~retailer~~) the dealer on the date of the cancellation or discontinuance
28 of such contract or thereafter received by (~~such retailer~~) the dealer
29 from the (~~wholesaler, manufacturer, or distributor~~) supplier. The
30 (~~wholesaler, manufacturer, or distributor~~) supplier shall also pay
31 (~~such retailer~~) the dealer a sum equal to five percent of the current
32 net price of all parts returned for the handling, packing, and loading
33 of such parts for return(~~:- PROVIDED, That~~), unless the supplier
34 elects to catalog or list the inventory and perform packing and loading
35 of the parts itself. However, the provisions of this section shall
36 apply only to repair parts which are new, unused, and in (~~good~~)
37 resalable condition. The provisions of this section do not apply to
38 repair parts that were purchased by the dealer in sets of multiple
39 parts unless the sets are complete and in resalable condition, or to

1 parts the supplier can demonstrate were identified as nonreturnable
2 when ordered by the dealer.

3 Upon the payment of such amounts, the title to (~~such farm~~
4 ~~implements, farm machinery, attachments, accessories,~~) the equipment
5 or repair parts(~~(,)~~) shall pass to the (~~manufacturer, wholesaler, or~~
6 ~~distributor~~) supplier making such payment, and (~~such manufacturer,~~
7 ~~wholesaler, or distributor~~) the supplier shall be entitled to the
8 possession of such (~~merchandise~~) equipment and repair parts.

9 All payments or allowances of credit due dealers under this section
10 shall be paid or credited by the supplier within ninety days after the
11 return of the repair parts or the transfer of equipment. After the
12 ninety days, all sums of credits due include interest at the rate of
13 eighteen percent per year. Title to equipment, attachments, and
14 accessories is transferred to the supplier F.O.B. the dealer location.

15 The provisions of this section shall apply to any (~~annual~~) part
16 return adjustment agreement made between a (~~seller or retailer~~)
17 dealer and a (~~manufacturer, wholesaler, or distributor~~) supplier.

18 A supplier must repurchase specific data processing and computer
19 communications hardware specifically required by the supplier to meet
20 the supplier's minimum requirements and purchased by the dealer in the
21 prior five years and held by the dealer on the date of termination.
22 The supplier must also purchase software required by and sourced from
23 the supplier, provided that the software is used exclusively to support
24 the dealer's business with the supplier. The purchase price is the
25 original net cost to the dealer, less twenty percent per year.

26 A supplier must repurchase, and the dealer must sell to the
27 supplier, specialized repair tools. As applied in this section,
28 specialized repair tools are defined as those tools required by the
29 supplier and unique to the diagnosis or repair of the supplier's
30 products. For specialized repair tools that are in new, unused
31 condition and are applicable to the supplier's current products, the
32 purchase price is one hundred percent of the original net cost to the
33 dealer. For all other specialized repair tools, the purchase price is
34 the original net cost to the dealer less twenty percent per year.

35 A supplier must repurchase, and the dealer must sell to the
36 supplier, current signage. As used in this section, "current signage"
37 means the principal outdoor signage required by the supplier that
38 displays the supplier's current logo or similar exclusive identifier,
39 and that identifies the dealer as representing either the supplier or

1 the supplier's products, or both. The purchase price is the original
2 net cost to the dealer less twenty percent per year, but may in no case
3 be less than fifty percent of the original net cost to the dealer.

4 The provisions of this section shall be supplemental to any
5 agreement between the ((retailer)) dealer and the ((~~manufacturer,~~
6 ~~wholesaler, or distributor~~)) supplier covering the return of ((~~farm~~
7 ~~implements, machinery, attachments, accessories,~~)) equipment and repair
8 parts so that the ((retailer)) dealer can elect to pursue either his or
9 her contract remedy or the remedy provided herein, and an election by
10 the ((retailer)) dealer to pursue his or her contract remedy shall not
11 bar his or her right to the remedy provided herein as to ((~~those farm~~
12 ~~implements, machinery, attachments, accessories,~~)) equipment and repair
13 parts not affected by the contract remedy.

14 The provisions of this section shall apply to all contracts now in
15 effect which have no expiration date and are a continuing contract, and
16 all other contracts entered into or renewed after January 1, 1976. Any
17 contract in force and effect on January 1, 1976, which by its own terms
18 will terminate on a date subsequent thereto shall be governed by the
19 law as it existed prior to this chapter: PROVIDED, That no contract
20 covered by this chapter may be canceled by any party without good
21 cause. For the purposes of this section, good cause shall include, but
22 shall not be restricted to, the failure of any party to comply with the
23 lawful provisions of the contract, the adjudication of any party to a
24 contract as a bankrupt, wrongful refusal of ((~~manufacturer, wholesaler,~~
25 or ~~distributor~~)) the supplier to supply ((~~farm machinery, farm~~
26 implements)) equipment and repair parts therefor.

27 **Sec. 3.** RCW 19.98.020 and 2000 c 171 s 66 are each amended to read
28 as follows:

29 All repurchase payments to ((~~retailers and sellers~~)) dealers made
30 pursuant to RCW 19.98.010 shall be less amounts owed on any lien or
31 claim then outstanding upon such items covered by this section. Any
32 ((~~wholesaler, manufacturer, or distributor~~)) supplier making repurchase
33 payments covered by this chapter to any ((~~retailer or seller~~)) dealer
34 shall satisfy such secured liens or claims pursuant to Article
35 ((~~62A.9~~)) 62A.9A RCW less any interest owed to the lienholder arising
36 from the financing of such items which shall be paid to any such
37 secured lienholder by the ((~~retailer or seller~~)) dealer. In no case
38 shall the ((~~wholesaler, manufacturer, or distributor~~)) supplier, in

1 making payments covered by RCW 19.98.010, pay in excess of those
2 amounts prescribed therein.

3 **Sec. 4.** RCW 19.98.030 and 1975 1st ex.s. c 277 s 3 are each
4 amended to read as follows:

5 The prices of (~~farm implements, machinery~~) equipment and repair
6 parts therefor, required to be paid to any (~~retail~~) dealer as
7 provided in RCW 19.98.010 shall be determined by taking one hundred
8 percent of the net cost (~~on farm implements, machinery, and~~
9 ~~attachments, and eighty-five~~) of the invoiced price of equipment and
10 ninety-five percent of the current net price of repair parts therefor
11 as shown upon the (~~manufacturer's, wholesaler's, or distributor's~~)
12 supplier's price lists (~~or~~), catalogues, or electronic catalogs in
13 effect at the time such contract is canceled or discontinued.

14 The supplier assumes transfer of ownership of equipment F.O.B.
15 dealer location.

16 **Sec. 5.** RCW 19.98.040 and 1975 1st ex.s. c 277 s 4 are each
17 amended to read as follows:

18 In the event that any (~~manufacturer, wholesaler, or distributor of~~
19 ~~farm machinery, farm implements,~~) supplier of equipment and repair
20 parts (~~therefor~~), upon cancellation or discontinuation of a contract
21 by either a (~~retailer~~) dealer or (~~a manufacturer, wholesaler, or~~
22 ~~distributor~~) supplier, fails or refuses to make payment to such dealer
23 as is required by RCW 19.98.010, (~~such manufacturer, wholesaler, or~~
24 ~~distributor shall be~~) the supplier is liable in a civil action to be
25 brought by (~~such retailer~~) the dealer for such payments as are
26 required by RCW 19.98.010.

27 **Sec. 6.** RCW 19.98.100 and 1990 c 124 s 1 are each amended to read
28 as follows:

29 The legislature of this state finds that the retail distribution
30 and sales of (~~agricultural~~) equipment, utilizing independent (~~retail~~
31 ~~business~~) dealers operating under agreements with (~~the manufacturers~~
32 ~~and distributors~~) suppliers, vitally affects the general economy of
33 the state, public interests, and public welfare and that it is
34 necessary to regulate the business relations between the
35 (~~independent~~) dealers and the (~~equipment manufacturers, wholesalers,~~
36 ~~and distributors~~) suppliers.

1 **Sec. 7.** RCW 19.98.120 and 1990 c 124 s 3 are each amended to read
2 as follows:

3 It shall be a violation of this chapter for a supplier to:

4 (1) Require or attempt to require any ((equipment)) dealer to order
5 or accept delivery of any equipment or parts (~~(or any equipment with~~
6 ~~special features or accessories not included in the base list price of~~
7 ~~such equipment as publicly advertised by the supplier which)) that the~~

8 ((equipment)) dealer has not voluntarily ordered;

9 (2) Require or attempt to require any ((equipment)) dealer to enter
10 into any agreement, whether written or oral, supplementary to an
11 existing dealer agreement with the supplier, unless such supplementary
12 agreement is imposed on other similarly situated dealers in the state;

13 (3) Refuse to deliver in reasonable quantities and within a
14 reasonable time after receipt of the ((equipment)) dealer's order, to
15 any ((equipment)) dealer having a dealer agreement for the retail sale
16 of new equipment sold or distributed by the supplier, equipment covered
17 by the dealer agreement specifically advertised or represented by the
18 supplier to be available for immediate delivery. However, the failure
19 to deliver any such equipment shall not be considered a violation of
20 this chapter when deliveries are based on prior ordering histories, the
21 priority given to the sequence in which the orders are received, or
22 manufacturing schedules or if the failure is due to prudent and
23 reasonable restriction on extension of credit by the supplier to the
24 ((equipment)) dealer, an act of God, work stoppage or delay due to a
25 strike or labor difficulty, a bona fide shortage of materials, freight
26 embargo, or other cause over which the supplier has no control;

27 (4) Terminate, cancel, or fail to renew the dealer agreement of any
28 ((equipment)) dealer or substantially change the ((equipment)) dealer's
29 competitive circumstances, attempt to terminate or cancel, or threaten
30 to not renew the dealer agreement or to substantially change the
31 competitive circumstances without good cause;

32 (5) Condition the renewal, continuation, or extension of a dealer
33 agreement on the ((equipment)) dealer's substantial renovation of the
34 ((equipment)) dealer's place of business or on the construction,
35 purchase, acquisition, or rental of a new place of business by the
36 ((equipment)) dealer unless: The supplier has advised the
37 ((equipment)) dealer in writing of its demand for such renovation,
38 construction, purchase, acquisition, or rental within a reasonable time
39 prior to the effective date of the proposed date of renewal or

1 extensions, but in no case less than one year; the supplier
2 demonstrates the need for such change in the place of business and the
3 reasonableness of the demand with respect to marketing and servicing
4 the supplier's product and any economic conditions existing at the time
5 in the dealer's trade area; and the ((equipment)) dealer does not make
6 a good faith effort to complete the construction or renovation plans
7 within one year;

8 (6) Discriminate in the prices charged for equipment of like grade
9 ((and)), quality, and brand sold by the supplier to similarly situated
10 dealers in this state. This subsection does not prevent the use of
11 differentials which make only due allowance for differences in the cost
12 of manufacture, sale, or delivery resulting from the differing methods
13 or quantities in which such commodities are sold or delivered:
14 PROVIDED, That nothing shall prevent a ((seller)) supplier from
15 offering a lower price in order to meet an equally low price of a
16 competitor, or the services or facilities furnished by a competitor;

17 ~~(7) ((Unreasonably withhold consent for an equipment dealer to~~
18 ~~change the capital structure of the equipment dealership or the means~~
19 ~~by which it is financed: PROVIDED, That the equipment dealer meets the~~
20 ~~reasonable capital requirements of the manufacturer;~~

21 ~~(8) Prevent, by contract or otherwise, any equipment dealer or any~~
22 ~~officer, member, partner, or stockholder of any equipment dealer from~~
23 ~~selling or transferring any part of the interest in the equipment~~
24 ~~dealership of any of them to any other person or persons or party or~~
25 ~~parties. However, no equipment dealer, officer, partner, member, or~~
26 ~~stockholder shall have the right to sell, transfer, or assign the~~
27 ~~equipment dealership or power of management or control thereunder~~
28 ~~without the written consent of the supplier. Such consent shall not be~~
29 ~~unreasonably withheld if the person or persons or party or parties~~
30 ~~meets the reasonable financial, business experience, and character~~
31 ~~standards of the supplier;~~

32 ~~(9))~~ Prevent, by contract or otherwise, any equipment dealer from
33 changing the capital structure of the equipment dealership or the means
34 by which the equipment dealership is financed, provided the equipment
35 dealer at all times meets any reasonable capital standards imposed by
36 the supplier or as otherwise agreed to between the equipment dealer and
37 supplier, and provided this change by the equipment dealer does not
38 result in a change of the controlling interest in the executive

1 management or board of directors, or any guarantors of the equipment
2 dealership;

3 (8) Prevent, by contract or otherwise, any equipment dealer or any
4 officer, member, partner, or stockholder of any equipment dealer from
5 selling or transferring any part of the interest of any of them to any
6 other party or parties. However, no equipment dealer, officer,
7 partner, member, or stockholder has the right to sell, transfer, or
8 assign the equipment dealership or power of management or control of
9 the dealership without the written consent of the supplier. Should a
10 supplier determine that the designated transferee is not acceptable,
11 the supplier shall provide the equipment dealer with written notice of
12 the supplier's objection and specific reasons for withholding its
13 consent;

14 (9) Withhold consent to a transfer of interest in an equipment
15 dealership unless, with due regard to regional market conditions and
16 distribution economies, the dealer's area of responsibility or trade
17 area does not afford sufficient sales potential to reasonably support
18 a dealer. In any dispute between a supplier and an equipment dealer,
19 the supplier bears the burden of proving that the dealer's area of
20 responsibility or trade area does not afford sufficient sales potential
21 to reasonably support a dealer. The proof offered must be in writing.
22 The provisions of this subsection do not preclude any other basis for
23 a supplier to withhold consent to a transfer of interest in an
24 equipment dealer;

25 (10) Fail to compensate a dealer for preparation and delivery of
26 equipment that the supplier sells or leases for use within this state
27 and that the dealer prepares for delivery and delivers;

28 (11) Require ((an equipment)) a dealer to assent to a release,
29 assignment, novation, waiver, or estoppel that would relieve any person
30 from liability imposed by this chapter; or

31 ((~~(10)~~)) (12)(a) Unreasonably withhold consent, in the event of the
32 death of the ((equipment)) dealer or the principal owner of the
33 ((equipment)) dealership, to the transfer of the ((equipment)) dealer's
34 interest in the ((equipment)) dealership ((to a member or members of
35 the family of the equipment dealer, the principal owner of the
36 equipment dealership, or)) to another qualified individual if the
37 ((family member or other)) qualified individual meets the reasonable
38 financial, business experience, and character standards required by the
39 supplier. Should a supplier determine that the designated ((family

1 ~~member or other~~) qualified individual does not meet those reasonable
2 written standards, it shall provide the ~~((equipment)) dealership, heirs~~
3 to the dealership, or the estate of the dealer with written notice of
4 its objection and specific reasons for withholding its consent. A
5 supplier shall have sixty days to consider ~~((an equipment))~~ a dealer's
6 request to make a transfer ~~((to a family member or other qualified~~
7 ~~individual))~~. If the ~~((family member or other))~~ qualified individual
8 reasonably satisfies the supplier's objections within sixty days, the
9 supplier shall approve the transfer. ~~((As used in this section,~~
10 ~~"family" includes a spouse, parents, siblings, children, stepchildren,~~
11 ~~sons in law, daughters in law, and lineal descendants, including those~~
12 ~~by adoption, of the equipment dealer or principal owner of the~~
13 ~~equipment dealership.))~~ Nothing in this section shall entitle a
14 ~~((family member or other))~~ qualified individual ~~((of a deceased dealer~~
15 ~~or principal owner of the equipment dealership))~~ to continue to operate
16 the dealership without the consent of the supplier.

17 (b) If a supplier and ~~((equipment))~~ dealer have duly executed an
18 agreement concerning succession rights prior to the ~~((equipment))~~
19 dealer's death and the agreement has not been revoked, the agreement
20 shall be observed even if it designates someone other than the
21 surviving spouse or heirs of the decedent as the successor.

22 **Sec. 8.** RCW 19.98.130 and 1990 c 124 s 4 are each amended to read
23 as follows:

24 (1) Except where a grounds for termination or nonrenewal of a
25 dealer agreement or a substantial change in ~~((an equipment))~~ a dealer's
26 competitive circumstances are contained in subsection (2)(a), (b), (c),
27 (d), (e), or (f) of this section, a supplier shall give ~~((an~~
28 ~~equipment))~~ a dealer ninety days' written notice of the supplier's
29 intent to terminate, cancel, or not renew a dealer agreement or
30 substantially change the ~~((equipment))~~ dealer's competitive
31 circumstances. The notice shall state all reasons constituting good
32 cause for termination, cancellation, or nonrenewal and shall provide,
33 except for termination pursuant to subsection (2)(a), (b), (c), (d), or
34 (e) of this section, that the ~~((equipment))~~ dealer has sixty days in
35 which to cure any claimed deficiency. If the deficiency is rectified
36 within sixty days, the notice shall be void. The contractual terms of
37 the dealer agreement shall not expire or the ~~((equipment))~~ dealer's
38 competitive circumstances shall not be substantially changed without

1 the written consent of the ((equipment)) dealer prior to the expiration
2 of at least ninety days following such notice.

3 (2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a
4 termination by a supplier of a dealer agreement shall be with good
5 cause when the ((equipment)) dealer:

6 (a) Has transferred a controlling ownership interest in the
7 ((equipment)) dealership without the supplier's consent;

8 (b) Has made a material misrepresentation to the supplier;

9 (c) Has filed a voluntary petition in bankruptcy or has had an
10 involuntary petition in bankruptcy filed against the ((equipment))
11 dealer which has not been discharged within sixty days after the
12 filing, is in default under the provisions of a security agreement in
13 effect with the supplier, or is insolvent or in receivership;

14 (d) Has been convicted of a crime, punishable for a term of
15 imprisonment for one year or more;

16 (e) Has failed to operate in the normal course of business for ten
17 consecutive business days or has terminated the business;

18 (f) Has relocated the ((equipment)) dealer's place of business
19 without supplier's consent;

20 (g) Has consistently engaged in business practices that are
21 detrimental to the consumer or supplier by way of excessive pricing,
22 misleading advertising, or failure to provide service and replacement
23 parts or perform warranty obligations;

24 (h) Has inadequately represented the supplier over a measured
25 period causing lack of performance in sales, service, or warranty areas
26 and failed to achieve market penetration at levels consistent with
27 similarly situated ((equipment)) dealerships in the state based on
28 available record information;

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

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

35 (k) Has consistently failed to comply with the terms of the dealer
36 agreement.

37 (3)(a) Notwithstanding the provisions of subsections (1) and (2) of
38 this section, before the termination or nonrenewal of a dealer
39 agreement based upon a supplier's claim that the dealer has failed to

1 meet reasonable marketing criteria or market penetration, the supplier
2 shall provide written notice of its intention at least one year in
3 advance.

4 (b) Upon the end of the one-year period established in this
5 subsection (3), the supplier may terminate or elect not to renew the
6 dealer agreement only upon written notice specifying the reasons for
7 determining that the dealer failed to meet reasonable marketing
8 criteria or market penetration. The notice must specify that
9 termination or nonrenewal is effective one hundred eighty days from the
10 date of the notice.

11 NEW SECTION. Sec. 9. A new section is added to chapter 19.98 RCW
12 to read as follows:

13 When a supplier enters into an agreement to establish a new dealer
14 or dealership or to relocate a current dealer or dealership for a
15 particular product line or make of equipment, the supplier must give
16 written notice of such an agreement by certified mail to all existing
17 dealers or dealerships whose assigned area of responsibility is
18 contiguous to the new dealer or dealership location. If no area of
19 responsibility has been assigned then the supplier must give written
20 notice of such an agreement by certified mail to the dealers or
21 dealerships within a seventy-five mile radius of the new dealer
22 location. The supplier must provide in its written notice the
23 following information about the proposed new or relocated dealer or
24 dealership:

25 (1) The proposed location;

26 (2) The proposed date for commencement of operation at the new
27 location; and

28 (3) The identities of all existing dealers or dealerships or
29 dealerships whose assigned area of responsibility is contiguous to the
30 new dealer or dealership location. If no area of responsibility has
31 been assigned then the supplier must give written notice of such an
32 agreement by certified mail to the dealers or dealerships located
33 within a seventy-five mile radius of the new dealer location.

34 NEW SECTION. Sec. 10. A new section is added to chapter 19.98 RCW
35 to read as follows:

36 (1) In the event a warranty claim is submitted by a dealer to a
37 supplier while a dealer agreement is in effect, or after the

1 termination of a dealer agreement, if the claim is for work performed
2 before the effective date of the dealer agreement termination:

3 (a) A supplier shall fulfill any warranty agreement with each of
4 its dealers for labor and parts relative to repairs of equipment
5 covered by the terms of such an agreement.

6 (b) The supplier must approve or disapprove, in writing, any claim
7 submitted by a dealer for warranty compensation for labor or parts
8 within thirty days of receipt of such a claim by the supplier.

9 (c) The supplier must pay to the submitting dealer any approved
10 dealer claim within thirty days following approval of such a claim.

11 (d) If a supplier disapproves a dealer warranty claim, the supplier
12 must state the specific reasons for rejecting the claim in its written
13 notification required by (b) of this subsection.

14 (e) A claim that is disapproved by the supplier based upon the
15 dealer's failure to properly follow the procedural or technical
16 requirements for submission of warranty claims may be resubmitted in
17 proper form by the dealer within thirty days of receipt by the dealer
18 of the supplier's notification of such a disapproval.

19 (f) A claim that is not specifically disapproved, in writing, by
20 the supplier within thirty days following the supplier's receipt of
21 such a claim is conclusively deemed to be approved and must be paid to
22 the submitting dealer within thirty days following expiration of the
23 notification period established in (b) of this subsection.

24 (g) A supplier may audit warranty claims submitted by its dealers
25 for a period of up to one year following payment of the claims, and may
26 charge back to its dealers any amounts paid based upon claims shown by
27 audit to be false. The supplier has the right to adjust claims for
28 errors discovered during the audit, and if necessary, to adjust claims
29 paid in error.

30 (2) A supplier must compensate its dealers for warranty claims
31 pursuant to the following schedule:

32 (a) Reasonable compensation must be made by the supplier for costs
33 associated with diagnostic work, repair service, parts, and labor that
34 are related to warranted repairs;

35 (b) Time allowances for diagnosis and performance of warranty work
36 and service must be adequate for the work being performed;

37 (c) The hourly labor rate for which the dealer is compensated may
38 not be less than the rate charged by the dealer for like services
39 provided to nonwarranty customers for nonwarranted service; and

1 (d) Compensation for parts used in the performance of a warranted
2 repair may not be less than the amount paid by the dealer to obtain the
3 parts, plus a reasonable allowance for shipping and handling.

4 (3) Notwithstanding the provisions of subsections (1) and (2) of
5 this section, a supplier may withhold payment of a warranty claim as
6 setoff against reasonable obligations otherwise owed by the dealer to
7 the supplier.

8 (4) Notwithstanding the provisions of subsection (2) of this
9 section, a dealer may accept the supplier's reimbursement terms and
10 conditions in lieu of the terms and conditions set forth in subsection
11 (2) of this section.

12 NEW SECTION. Sec. 11. A new section is added to chapter 19.98 RCW
13 to read as follows:

14 A supplier may not audit a dealer's records with respect to any
15 warranty claim submitted more than one year before the audit, unless a
16 false claim is disclosed. However, the supplier has the right to audit
17 warranty claims submitted more than one year before the audit when the
18 audit discloses a false claim.

19 NEW SECTION. Sec. 12. A new section is added to chapter 19.98 RCW
20 to read as follows:

21 (1) In the event that the supplier fails to make payment in
22 accordance with the terms of section 10 of this act or violates any
23 other provisions of section 10 or 11 of this act, a dealer may bring an
24 action in a court of competent jurisdiction to obtain payment of a
25 warranty claim submitted to a supplier.

26 (2) In the event that the court finds that the supplier has failed
27 to make payment in accordance with the terms of section 10 of this act
28 or has violated any other provisions of section 10 or 11 of this act,
29 the court shall award the dealer costs and reasonable attorneys' fees.

30 NEW SECTION. Sec. 13. A new section is added to chapter 19.98 RCW
31 to read as follows:

32 (1) In the event a supplier requires the dealer to work on
33 equipment to enhance the safe operation of the equipment, the supplier
34 must reimburse the dealer for parts, labor, and transportation of
35 equipment or personnel to perform the work on equipment covered by the
36 requirements of the supplier.

1 (2) In the event a supplier requires the dealer to perform product
2 improvement work on equipment, the supplier must reimburse the dealer
3 for parts and labor.

4 (3) For purposes of this section, a supplier must compensate its
5 dealers pursuant to the following schedule:

6 (a) The hourly labor rate for which the dealer is compensated may
7 not be less than the rate charged by the dealer for like services
8 provided; and

9 (b) Compensation for parts used in the performance of safety
10 enhancements or product improvements as requested by the supplier may
11 not be less than the amount paid by the dealer to obtain the parts,
12 plus a reasonable allowance for shipping and handling.

13 (4) Notwithstanding the provisions of subsection (3) of this
14 section, a dealer may accept the supplier's reimbursement terms and
15 conditions in lieu of the terms and conditions set forth in subsection
16 (3) of this section.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 19.98 RCW
18 to read as follows:

19 (1) Any party to a dealer agreement aggrieved by the conduct of the
20 other party to the agreement with respect to the provisions of this
21 chapter may seek arbitration of the issues involved in the decision of
22 the other party under the provisions of RCW 7.04.010 through 7.04.210.
23 The arbitration is pursuant to the commercial arbitration rules of the
24 American arbitration association. The findings and conclusions of the
25 arbitrator or panel of arbitrators is binding upon both parties. Upon
26 demand for arbitration by one party, it is presumed for purposes of the
27 provisions of RCW 7.04.010 through 7.04.210 that the parties have
28 consented to arbitration, and that the costs of witness fees and other
29 fees in the case, together with reasonable attorneys' fees, must be
30 paid by the losing party.

31 (2) Notwithstanding subsection (1) of this section, any dealer has
32 a cause of action against a supplier for damages sustained by the
33 dealer as a consequence of the supplier's violation of any provisions
34 of RCW 19.98.120 or 19.98.130, together with the actual costs of such
35 action, including reasonable attorneys' fees.

36 (3) The dealer may also be granted injunctive relief against
37 unlawful termination, cancellation, nonrenewal, or change in

1 competitive circumstances as determined under subsection (1) of this
2 section or by a court.

3 (4) The remedies set forth in this section may not be considered
4 exclusive and are in addition to any other remedies permitted by law,
5 unless the parties have chosen binding arbitration under subsection (1)
6 of this section.

7 NEW SECTION. **Sec. 15.** RCW 19.98.110 (Definitions) and 2000 c 171
8 s 67 & 1990 c 124 s 2 are each repealed.

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