
HOUSE BILL 1182

State of Washington

57th Legislature

2001 Regular Session

By Representatives G. Chandler, Clements, Conway, Schoesler, Grant, McMorris, B. Chandler, Hunt, Wood, Lisk and Linville

Read first time 01/19/2001. Referred to Committee on Commerce & Labor.

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; repealing RCW 19.98.110; and
4 providing an effective date.

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

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

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

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

12 (2) "Current net price" means the price charged to a dealer for
13 repair parts as listed in the printed price list or catalog of the
14 supplier in effect at the time a warranty claim is made and superseded
15 parts listed in current price lists or catalogs when parts had
16 previously been purchased from the supplier and held by the dealer on
17 the date of the cancellation or discontinuance of a dealer agreement or
18 thereafter received by the dealer from the supplier.

1 (3) "Dealer" or "equipment dealer" means a person who sells or
2 attempts to sell equipment and who is in the business of the retail
3 sale of equipment. This term does not include suppliers.

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

10 (5) "Dealership" means the retail sale business engaged in by a
11 dealer under a dealer agreement.

12 (6) "Distributor" means a person who sells or distributes new
13 equipment to equipment dealers or who maintains distributor
14 representatives within the state.

15 (7) "Distributor branch" means a branch office, maintained by a
16 distributor, that sells or distributes new equipment to equipment
17 dealers. "Distributor branch" includes representatives of the branch
18 office.

19 (8)(a) "Equipment" includes:

20 (i) All-terrain vehicles. All-terrain vehicles, or "ATVs," include
21 three and four-wheeled motorized vehicles, generally characterized by
22 large, low-pressure tires, a seat designed to be straddled by the
23 operator, and handlebars for steering. ATVs are intended for off-road
24 use by an individual operator.

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

30 (iii) Industrial maintenance and construction power equipment.
31 Industrial maintenance and construction power equipment means equipment
32 used for industrial, maintenance, or construction applications, but
33 does not include farm equipment or outdoor power equipment.

34 (iv) Outdoor power equipment. Outdoor power equipment means
35 equipment, powered by two-cycle or four-cycle gas or diesel engines, or
36 electric motors, which is used to maintain commercial, public, or
37 residential lawns and gardens or used in landscape, turf, golf course,
38 plant nursery, forestry, or tree maintenance.

1 (b) "Equipment" does not include: (i) Motor vehicles designed or
2 intended for use upon public roadways; or (ii) motorcycles.

3 (9) "Factory branch" means a branch office maintained by a
4 manufacturer that makes or assembles equipment for sale to distributors
5 or equipment dealers or that is maintained for directing and
6 supervising the representatives of the manufacturer.

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

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

15 (12) "Good cause" means failure by a dealer to substantially comply
16 with essential and reasonable requirements imposed upon the equipment
17 dealer by the dealer agreement, provided such requirements are not
18 different from those requirements imposed on other similarly situated
19 equipment dealers in the state either by their terms or in the manner
20 of their enforcement.

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

23 (14) "Person" includes a natural person, corporation, partnership,
24 trust, or other entity, including any other entity in which it has a
25 majority interest or of which it has control, as well as the individual
26 officers, directors, or other persons in active control of the
27 activities of each entity.

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

35 (16) "Warranty claim" means a claim for payment submitted by an
36 equipment dealer to a supplier for either service, or parts, or both,
37 provided to a customer under a warranty issued by the supplier.

38 (17) "Wholesaler" means a person who sells or attempts to sell new
39 equipment exclusively to equipment dealers or to other wholesalers.

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

3 Whenever any person, firm, or corporation engaged in the (~~retail~~)
4 sale of (~~farm implements and~~) equipment, repair parts, or services
5 therefor enters into a written or oral contract with (~~any wholesaler,~~
6 ~~manufacturer, or distributor~~) a supplier of (~~farm implements,~~
7 ~~machinery~~) equipment, attachments, accessories, or repair parts
8 whereby (~~such retailer~~) the dealer agrees to maintain a stock of
9 parts or complete or whole machines, attachments, or accessories, and
10 either party to such contract desires to cancel or discontinue the
11 contract, unless the (~~retailer~~) dealer should desire to keep such
12 merchandise the (~~manufacturer, wholesaler, or distributor~~) supplier
13 shall pay the (~~retailer~~) dealer for the merchandise. Such payment
14 shall be in the amount of one hundred percent of the net cost of all
15 current unused complete (~~farm implements, machinery~~) equipment,
16 attachments, and accessories(~~, including transportation charges paid~~
17 ~~by the retailer, and eighty five~~) that are current models and that
18 have been purchased by the dealer from the supplier within the thirty-
19 six months immediately preceding notification by either party of intent
20 to cancel or discontinue the dealer agreement, including the
21 transportation charges to the dealer and from the dealer to the
22 supplier, if the charges have been paid by the dealer or invoiced to
23 the dealer's account by the supplier, and one hundred percent of the
24 current net prices on repair parts, including superseded parts listed
25 in current price lists or catalogs which parts had previously been
26 purchased from (~~such wholesaler, manufacturer, or distributor~~) the
27 supplier and held by (~~such retailer~~) the dealer on the date of the
28 cancellation or discontinuance of such contract or thereafter received
29 by (~~such retailer~~) the dealer from the (~~wholesaler, manufacturer, or~~
30 ~~distributor~~) supplier. The (~~wholesaler, manufacturer, or~~
31 ~~distributor~~) supplier shall also pay (~~such retailer~~) the dealer a
32 sum equal to five percent of the current net price of all parts
33 returned for the handling, packing, and loading of such parts for
34 return(~~:- PROVIDED, That~~), unless the supplier elects to catalog or
35 list the inventory and perform packing and loading of the parts itself.
36 However, the provisions of this section shall apply only to repair
37 parts which are new, unused, and in good condition, including repair
38 parts such as rubber items, gaskets, batteries, oils, lubricants, parts
39 from opened packages, and single repair parts priced as a set of two or

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

7 All payments or allowances of credit due dealers under this section
8 shall be paid or credited by the supplier within ninety days after the
9 return of the equipment, attachments, or repair parts. After the
10 ninety days, all sums of credits due include interest at the rate of
11 eighteen percent per year.

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

15 A supplier must repurchase at amortized value any specific data
16 processing hardware, software, or telecommunications equipment that the
17 supplier required the dealer to purchase within the past five years.
18 The supplier shall also repurchase at seventy-five percent of the net
19 cost specialized repair tools purchased in the previous six years as
20 required by the supplier and held by the dealer on the date of
21 termination. Tools must be unique to the supplier's product line and
22 must be in complete and resalable condition.

23 The provisions of this section shall be supplemental to any
24 agreement between the (~~retailer~~) dealer and the (~~manufacturer,~~
25 ~~wholesaler, or distributor~~) supplier covering the return of (~~farm~~
26 ~~implements, machinery~~) equipment, attachments, accessories, and repair
27 parts so that the (~~retailer~~) dealer can elect to pursue either his or
28 her contract remedy or the remedy provided herein, and an election by
29 the (~~retailer~~) dealer to pursue his or her contract remedy shall not
30 bar his or her right to the remedy provided herein as to (~~those farm~~
31 ~~implements, machinery~~) equipment, attachments, accessories, and repair
32 parts not affected by the contract remedy.

33 The provisions of this section shall apply to all contracts now in
34 effect which have no expiration date and are a continuing contract, and
35 all other contracts entered into or renewed after January 1, 1976. Any
36 contract in force and effect on January 1, 1976, which by its own terms
37 will terminate on a date subsequent thereto shall be governed by the
38 law as it existed prior to this chapter: PROVIDED, That no contract
39 covered by this chapter may be canceled by any party without good

1 cause. For the purposes of this section, good cause shall include, but
2 shall not be restricted to, the failure of any party to comply with the
3 lawful provisions of the contract, the adjudication of any party to a
4 contract as a bankrupt, wrongful refusal of (~~manufacturer, wholesaler,~~
5 ~~or distributor~~)) the supplier to supply (~~farm machinery, farm~~
6 implements)) equipment and repair parts therefor.

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

9 All repurchase payments to (~~retailers and sellers~~) dealers made
10 pursuant to RCW 19.98.010 shall be less amounts owed on any lien or
11 claim then outstanding upon such items covered by this section. Any
12 (~~wholesaler, manufacturer, or distributor~~) supplier making repurchase
13 payments covered by this chapter to any (~~retailer or seller~~) dealer
14 shall satisfy such secured liens or claims pursuant to Article
15 (~~62A.9~~) 62A.9A RCW less any interest owed to the lienholder arising
16 from the financing of such items which shall be paid to any such
17 secured lienholder by the (~~retailer or seller~~) dealer. In no case
18 shall the (~~wholesaler, manufacturer, or distributor~~) supplier, in
19 making payments covered by RCW 19.98.010, pay in excess of those
20 amounts prescribed therein.

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

23 The prices of (~~farm implements, machinery~~) equipment and repair
24 parts therefor, required to be paid to any (~~retail~~) dealer as
25 provided in RCW 19.98.010 shall be determined by taking one hundred
26 percent of the net cost on (~~farm implements, machinery,~~) equipment
27 and attachments, and (~~eighty-five~~) one hundred percent of the current
28 net price of repair parts therefor as shown upon the (~~manufacturer's,~~
29 ~~wholesaler's, or distributor's~~) supplier's price lists or catalogues
30 in effect at the time such contract is canceled or discontinued.

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

33 In the event that any (~~manufacturer, wholesaler, or distributor of~~
34 ~~farm machinery, farm implements,~~) supplier of equipment and repair
35 parts (~~therefor~~), upon cancellation or discontinuation of a contract
36 by either a (~~retailer~~) dealer or (~~a manufacturer, wholesaler, or~~

1 ~~distributor~~) supplier, fails or refuses to make payment to such dealer
2 as is required by RCW 19.98.010, (~~(such manufacturer, wholesaler, or~~
3 ~~distributor shall be)~~) the supplier is liable in a civil action to be
4 brought by (~~(such retailer)~~) the dealer for such payments as are
5 required by RCW 19.98.010.

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

8 The legislature of this state finds that the retail distribution
9 and sales of (~~(agricultural)~~) equipment, utilizing independent (~~(retail~~
10 ~~business)~~) dealers operating under agreements with (~~(the manufacturers~~
11 ~~and distributors)~~) suppliers, vitally affects the general economy of
12 the state, public interests, and public welfare and that it is
13 necessary to regulate the business relations between the
14 (~~(independent)~~) dealers and the (~~(equipment manufacturers, wholesalers,~~
15 ~~and distributors)~~) suppliers.

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

18 (1) It shall be a violation of this chapter for a supplier to:

19 (~~(+1)~~) (a) Require or attempt to require any equipment dealer to
20 order or accept delivery of any equipment or parts or any equipment
21 with special features or accessories not included in the base list
22 price of such equipment as publicly advertised by the supplier which
23 the equipment dealer has not voluntarily ordered;

24 (~~(+2)~~) (b) Require or attempt to require any equipment dealer to
25 enter into any agreement, whether written or oral, supplementary to an
26 existing dealer agreement with the supplier, unless such supplementary
27 agreement is imposed on other similarly situated dealers in the state;

28 (~~(+3)~~) (c) Refuse to deliver in reasonable quantities and within
29 a reasonable time after receipt of the equipment dealer's order, to any
30 equipment dealer having a dealer agreement for the retail sale of new
31 equipment sold or distributed by the supplier, equipment covered by the
32 dealer agreement specifically advertised or represented by the supplier
33 to be available for immediate delivery. However, the failure to
34 deliver any such equipment shall not be considered a violation of this
35 chapter when deliveries are based on prior ordering histories, the
36 priority given to the sequence in which the orders are received, or
37 manufacturing schedules or if the failure is due to prudent and

1 reasonable restriction on extension of credit by the supplier to the
2 equipment dealer, an act of God, work stoppage or delay due to a strike
3 or labor difficulty, a bona fide shortage of materials, freight
4 embargo, or other cause over which the supplier has no control;

5 ~~((+4))~~ (d) Terminate, cancel, or fail to renew the dealer
6 agreement of any equipment dealer or substantially change the equipment
7 dealer's competitive circumstances, attempt to terminate or cancel, or
8 threaten to not renew the dealer agreement or to substantially change
9 the competitive circumstances without good cause;

10 ~~((+5))~~ (e) Condition the renewal, continuation, or extension of a
11 dealer agreement on the equipment dealer's substantial renovation of
12 the equipment dealer's place of business or on the construction,
13 purchase, acquisition, or rental of a new place of business by the
14 equipment dealer unless: The supplier has advised the equipment dealer
15 in writing of its demand for such renovation, construction, purchase,
16 acquisition, or rental within a reasonable time prior to the effective
17 date of the proposed date of renewal or extensions, but in no case less
18 than one year; the supplier demonstrates the need for such change in
19 the place of business and the reasonableness of the demand with respect
20 to marketing and servicing the supplier's product and any economic
21 conditions existing at the time in the dealer's trade area; and the
22 equipment dealer does not make a good faith effort to complete the
23 construction or renovation plans within one year;

24 ~~((+6))~~ (f) Discriminate in the prices charged for equipment of
25 like grade and quality sold by the supplier to similarly situated
26 dealers in this state. This subsection does not prevent the use of
27 differentials which make only due allowance for differences in the cost
28 of manufacture, sale, or delivery resulting from the differing methods
29 or quantities in which such commodities are sold or delivered:
30 PROVIDED, That nothing shall prevent a seller from offering a lower
31 price in order to meet an equally low price of a competitor, or the
32 services or facilities furnished by a competitor;

33 ~~((+7) Unreasonably withhold consent for an equipment dealer to
34 change the capital structure of the equipment dealership or the means
35 by which it is financed: PROVIDED, That the equipment dealer meets the
36 reasonable capital requirements of the manufacturer;~~

37 ~~(+8))~~ (g) Discriminate against or penalize a dealer for carrying on
38 business as a dealer or agent for another supplier, or selling or

1 servicing the product of another supplier from the same location and
2 building;

3 (h) Prevent, attempt to prevent, or unreasonably disapprove any
4 equipment dealer from changing executive management control, capital
5 structure, or means by which it is financed, unless the change results
6 in control by a person not of good moral character or who does not meet
7 the supplier's existing and reasonable, written, and uniformly applied
8 capital standards. The dealer must be given written notice of the
9 reasons for the rejection of the proposed change of executive
10 management control, capital structure, or means by which it is financed
11 within thirty days of receipt of notice from the dealer of a proposed
12 change;

13 (i)(i) Prevent, by contract or otherwise, any equipment dealer or
14 any officer, member, partner, or stockholder of any equipment dealer
15 from selling or transferring any part of the interest in the equipment
16 dealership of any of them to any other person or persons or party or
17 parties. However, no equipment dealer, officer, partner, member, or
18 stockholder shall have the right to sell, transfer, or assign the
19 equipment dealership or power of management or control thereunder
20 without the written consent of the supplier. ((Such consent shall not
21 be unreasonably withheld if the person or persons or party or parties
22 meets the reasonable financial, business experience, and character
23 standards of the supplier))

24 (ii) The supplier's consent may only be withheld if the buyer or
25 transferee is not of good moral character, does not meet the supplier's
26 existing and reasonable, written, and uniformly applied capital
27 standards, or does not meet the supplier's written and uniformly
28 applied business experience standards. The dealer must be given
29 written notice setting forth the reasons for rejection of the proposed
30 sale or transfer within thirty days of notice by the dealer of the sale
31 or transfer. The burden of proof is on the supplier to show that its
32 consent to the sale, transfer, or assignment of any interest in the
33 dealership was properly withheld. Material factors to be considered
34 may include but are not limited to whether the basic financial and
35 facility requirements of the dealership agreement will be met by the
36 proposed sale, transfer, or assignment and whether the proposed
37 transferee is capable of operating, managing, and supervising such a
38 business;

1 (j) Cause the equipment dealer to refrain from participation in the
2 management, investment, acquisition, or sale of any other related
3 product or product line of equipment, parts, or accessories;

4 (k) Enter into an agreement by which the supplier, factory branch,
5 factory representative, distributor, distributor branch, or distributor
6 representative can directly solicit the dealer's customers;

7 ~~((9))~~ (l) Require an equipment dealer to assent to a release,
8 assignment, novation, waiver, or estoppel that would relieve any person
9 from liability imposed by this chapter; or

10 ~~((10)(a))~~ (m)(i) Unreasonably withhold consent, in the event of
11 the death of the equipment dealer or the principal owner of the
12 equipment dealership, to the transfer of the equipment dealer's
13 interest in the equipment dealership to a member or members of the
14 family of the equipment dealer, the principal owner of the equipment
15 dealership, or to another qualified individual if the family member or
16 other qualified individual meets the reasonable financial, business
17 experience, and character standards required by the supplier. Should
18 a supplier determine that the designated family member or other
19 qualified individual does not meet those reasonable written standards,
20 it shall provide the equipment dealer with written notice of its
21 objection and specific reasons for withholding its consent. A supplier
22 shall have sixty days to consider an equipment dealer's request to make
23 a transfer to a family member or other qualified individual. If the
24 family member or other qualified individual reasonably satisfies the
25 supplier's objections within sixty days, the supplier shall approve the
26 transfer. As used in this section, "family" includes a spouse,
27 parents, siblings, children, stepchildren, sons-in-law, daughters-in-
28 law, and lineal descendants, including those by adoption, of the
29 equipment dealer or principal owner of the equipment dealership.
30 Nothing in this section shall entitle a family member or other
31 qualified individual of a deceased dealer or principal owner of the
32 equipment dealership to continue to operate the dealership without the
33 consent of the supplier.

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

1 (2) In the event that a supplier fails to give notice, obtain
2 consent, or fails or refuses to comply with the provisions of this
3 section, the guaranty or security agreement thereby affected is deemed
4 canceled and terminated.

5 (3) A supplier must give a dealer a minimum of sixty days' notice
6 in writing and obtain consent from the dealer before: (a) Changing the
7 time and manner of payment of any indebtedness owed by a dealer to a
8 supplier; (b) taking and making any changes in notes or security for
9 any indebtedness; (c) releasing or adding additional guarantors; or (d)
10 granting renewals or extensions of the indebtedness.

11 (4) No person signing a security agreement or guaranty agreement
12 with a supplier is required to pledge or encumber its assets in a value
13 in excess of the amount of the indebtedness secured.

14 (5) The provisions of this section apply to all contracts now in
15 effect that have no expiration date and are a continuing contract, and
16 all other contracts entered into or renewed after the effective date of
17 this section. Any contract in force and effect on the effective date
18 of this section, which by its own terms will terminate on a date
19 subsequent thereto shall be governed by the law as it existed prior to
20 this act. However, no contract covered by this act may be canceled by
21 any party without good cause. For the purposes of this section, good
22 cause includes, but is not restricted to, the failure of any party to
23 comply with the lawful provisions of the contract, the adjudication of
24 any party to a contract as a bankrupt, wrongful refusal of the supplier
25 to supply equipment and repair parts therefor.

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

28 (1) Except where a grounds for termination or nonrenewal of a
29 dealer agreement or a substantial change in an equipment dealer's
30 competitive circumstances are contained in subsection (2)(a), (b), (c),
31 (d), (e), or (f) of this section, a supplier shall give an equipment
32 dealer ninety days' written notice of the supplier's intent to
33 terminate, cancel, or not renew a dealer agreement or substantially
34 change the equipment dealer's competitive circumstances. The notice
35 shall state all reasons constituting good cause for termination,
36 cancellation, or nonrenewal and shall provide, except for termination
37 pursuant to subsection (2)(a), (b), (c), (d), or (e) of this section,
38 that the equipment dealer has sixty days in which to cure any claimed

1 deficiency. If the deficiency is rectified within sixty days, the
2 notice shall be void. The contractual terms of the dealer agreement
3 shall not expire or the equipment dealer's competitive circumstances
4 shall not be substantially changed without the written consent of the
5 equipment dealer prior to the expiration of at least ninety days
6 following such notice.

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

10 (a) Has transferred a controlling ownership interest in the
11 equipment dealership (~~((without the supplier's consent))~~) to a person not
12 of good moral character or to a person who does not meet the supplier's
13 existing and reasonable, written, and uniformly applied capital
14 standards;

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

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

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

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

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

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

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

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

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

4 (~~(k)~~) (j) Has consistently failed to comply with the terms of the
5 dealer agreement.

6 (3) Notwithstanding the provisions of subsection (2)(a) through (g)
7 of this section, before the termination or nonrenewal of a dealer
8 agreement based upon a supplier's claim that the dealer has failed to
9 meet reasonable marketing criteria or market penetration, the supplier
10 shall provide written notice of its intention at least one year in
11 advance.

12 (a) After issuance of such a notice, the supplier shall provide
13 fair and reasonable efforts to work with the dealer to assist the
14 dealer in gaining the required market share including, but not limited
15 to, making available to the dealer an adequate inventory of new
16 equipment and parts and competitive marketing programs.

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

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

26 (1) A supplier that intends to establish a new dealer or dealership
27 or that intends to relocate a current dealer or dealership for a
28 particular product line or make of equipment within the geographic
29 market area of an existing dealer of the same product line or make of
30 equipment must give written notice of such an intention by certified
31 mail to all existing dealers within the geographic market area. The
32 supplier must provide in its written notice the following information
33 about the proposed new or relocated dealer or dealership:

34 (a) The specific proposed location;

35 (b) The proposed date for commencement of operation at the new
36 location;

37 (c) The identities of all existing dealers or dealerships located
38 in the affected geographic market area; and

1 (d) The name and address of the proposed new or relocating dealer
2 or dealers.

3 (2) Any existing dealer located in the geographic market area in
4 which a supplier intends to establish a new dealership or relocate a
5 current dealership may petition a court of competent jurisdiction,
6 within sixty days of the receipt of the supplier's notice as required
7 by subsection (1) of this section, to enjoin or prohibit the
8 establishment of the new or relocating dealer or dealership within the
9 geographic market area of the petitioning dealer. The court may enjoin
10 or prohibit the establishment of the new dealer or dealership or
11 relocation of a current dealer or dealership within the geographic
12 market area of the petitioning dealer if the petitioning dealer proves
13 by a preponderance of the evidence that he or she is providing adequate
14 representation of the product line or make of equipment in his or her
15 geographic market area. In determining if the existing dealer is
16 providing adequate representation and whether the new or relocated
17 dealer is justified and necessary, the court may consider, but is not
18 limited to considering, the following factors:

19 (a) The impact the establishment of the new or relocated dealer or
20 dealership will have on users of the equipment, the public at large,
21 and all existing dealers within the geographic market area;

22 (b) The size and permanency of investment reasonably made and the
23 reasonable obligations incurred by all existing dealers within the
24 geographic market area to perform obligations under their dealer
25 agreements;

26 (c) The reasonably expected market penetration of the product line
27 or make of equipment for the geographic market area, after
28 consideration of all factors that may affect the penetration including,
29 but not limited to, demographic factors such as age, income, education,
30 product popularity, retail sales and lease transactions, and other
31 factors affecting marketing of equipment in the geographic market area;

32 (d) Actions by the supplier in denying its existing dealer or
33 dealers of the same product line or make of equipment the opportunity
34 for reasonable growth, market expansion, or relocation including the
35 availability of equipment in keeping with reasonable expectations of
36 the supplier in providing an adequate number of dealerships in the
37 geographic market area;

38 (e) Attempts by the supplier to coerce the existing dealer or
39 dealers into consenting to an additional or relocated dealer or

1 dealership of the same product line or make of equipment in the
2 geographic market area;

3 (f) The distance, travel time, traffic patterns, and accessibility
4 between the location of the existing dealer or dealers and the location
5 of the proposed new or relocated dealer or dealership;

6 (g) The potential benefits to users of equipment within the
7 geographic market area resulting from the proposed new or relocated
8 dealer or dealership;

9 (h) Whether the existing dealer or dealers within the geographic
10 market area are in substantial compliance with their dealer agreements;

11 (i) Whether the proposed establishment of a new dealer or
12 dealership or relocation of a current dealer or dealership appears to
13 be justified and necessary based upon economic and market conditions
14 pertinent to dealers competing in the geographic market area, including
15 any anticipated changes in these conditions; and

16 (j) The volume of sales and lease transactions, and product service
17 transactions, engaged in by the existing dealer or dealers within the
18 geographic market area of the proposed new or relocating dealer or
19 dealership.

20 (3) This section does not apply to:

21 (a) The addition of a new dealership at a location that is within
22 a three-mile radius of a former dealership of the same product line or
23 make of equipment that has been out of business for less than two
24 years;

25 (b) The relocation of a current dealer or dealership to a new
26 location that is farther away from any protesting dealer's location
27 than the relocated dealer's previous location;

28 (c) The relocation of a current dealer or dealership to a new
29 location that is within a three-mile radius of the dealer's current
30 location, when the dealership has been at the current location at least
31 ten years; or

32 (d) A supplier of outdoor power equipment whose sales of outdoor
33 power equipment represent less than ten percent of the supplier's gross
34 annual sales in the United States.

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

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

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

4 (a) A supplier shall fulfill any warranty agreement with, and
5 fairly compensate as provided in (b) of this subsection, each of its
6 dealers for labor, parts, and transportation of equipment or dealership
7 personnel relative to repairs of equipment covered by the terms of such
8 an agreement.

9 (b) The provisions of this section do not apply to a manufacturer
10 who provides in a written dealer agreement for compensation to a dealer
11 for warranty labor costs either as a discount in the pricing of the
12 equipment to the dealer, or as a lump sum payment to the dealer,
13 provided such a payment is not less than five percent of the suggested
14 retail price of the equipment.

15 (i) The supplier must approve or disapprove, in writing, any claim
16 submitted by a dealer for warranty compensation for labor, parts, or
17 transportation of equipment within thirty days of receipt of such a
18 claim by the supplier.

19 (ii) The supplier must pay to the submitting dealer any approved
20 dealer claim within thirty days following approval of such a claim.

21 (iii) If a supplier disapproves a dealer warranty claim, the
22 supplier must state the specific reasons for rejecting the claim in its
23 written notification required by (b)(i) of this subsection.

24 (iv) A claim that is disapproved by the supplier based upon the
25 dealer's failure to properly follow the procedural or technical
26 requirements for submission of warranty claims may be resubmitted in
27 proper form by the dealer within thirty days of receipt by the dealer
28 of the supplier's notification of such a disapproval.

29 (v) A claim that is not specifically disapproved, in writing, by
30 the supplier within thirty days following the supplier's receipt of
31 such a claim is conclusively deemed to be approved and must be paid to
32 the submitting dealer within thirty days following expiration of the
33 notification period established in (b)(i) of this subsection.

34 (vi) A supplier may audit warranty claims submitted by its dealers
35 for a period of up to one year following payment of the claims, and may
36 charge back to its dealers any amounts paid based upon claims shown by
37 audit to be false or fraudulent.

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

1 (a) Reasonable compensation must be made by the supplier for costs
2 associated with diagnostic work, repair service, parts, labor, and
3 transportation of equipment or dealership personnel that are related to
4 warranted repairs;

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

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

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

13 (3) It is unlawful for a supplier to disapprove, delay payment for,
14 or restrict a warranty claim submitted by a dealer for compensation for
15 any costs associated with the provision of warranty service unless the
16 disapproval, delay, or restriction is the direct result of a material
17 defect in the claim that affects its validity.

18 (4) Notwithstanding the provisions of subsections (1) through (3)
19 of this section, a supplier may withhold payment of a warranty claim as
20 setoff against reasonable obligations otherwise owed by the dealer to
21 the supplier.

22 (5) A supplier must provide for and take all action that is
23 reasonable to ensure the availability of repair parts throughout the
24 reasonable useful product life of any equipment sold in the state.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.98 RCW
26 to read as follows:

27 A supplier may not audit a dealer's records with respect to any
28 warranty claim submitted more than one year prior to the audit.

29 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.98 RCW
30 to read as follows:

31 (1) In the event that the supplier fails to make payment in
32 accordance with the terms of section 10 of this act, or wrongfully
33 rejects a warranty claim, or violates any other provisions of section
34 10 or 11 of this act, a dealer may bring an action in a court of
35 competent jurisdiction to obtain payment of a warranty claim submitted
36 to a supplier.

1 (2) In the event that the court finds that the supplier has failed
2 to make payment in accordance with the terms of section 10 of this act,
3 or has wrongfully rejected a warranty claim, or has violated any other
4 provisions of section 10 or 11 of this act, the court shall award the
5 equipment dealer costs and reasonable attorneys' fees.

6 NEW SECTION. **Sec. 13.** Sections 10 through 12 of this act take
7 effect October 1, 2001.

8 NEW SECTION. **Sec. 14.** RCW 19.98.110 (Definitions) and 2000 c 171
9 s 67 & 1990 c 124 s 2 are each repealed.

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