

HOUSE BILL No. 6205

November 12, 1992, Introduced by Reps. Weeks, Hickner, Wallace, Niederstadt, Pitoniak, Webb, Anthony and Olshove and referred to the Committee on Agriculture, Forestry and Minerals.

A bill to amend the title and sections 2, 3, 4, 5, 6, 7, 8, and 9 of Act No. 341 of the Public Acts of 1984, entitled as amended

"Farm and utility equipment act,"

as amended by Act No. 296 of the Public Acts of 1989, being sections 445.1452, 445.1453, 445.1454, 445.1455, 445.1456, 445.1457, 445.1458, and 445.1459 of the Michigan Compiled Laws; and to add sections 7a and 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2, 3, 4, 5, 6, 7, 8, and
2 9 of Act No. 341 of the Public Acts of 1984, as amended by Act
3 No. 296 of the Public Acts of 1989, being sections 445.1452,
4 445.1453, 445.1454, 445.1455, 445.1456, 445.1457, 445.1458, and
5 445.1459 of the Michigan Compiled Laws, are amended and sections
6 7a and 9a are added to read as follows:

TITLE

1

2 An act to provide for the COMPENSATION FOR OR repurchase ~~by~~
3 ~~a manufacturer~~ of CERTAIN farm tractors, ~~and~~ ATTACHMENTS,
4 equipment, and utility tractors and equipment BY A MANUFACTURER
5 OR SUPPLIER subject to a dealer, wholesaler, or distributor
6 agreement; to provide for the repurchase of CERTAIN repair parts;
7 to impose certain duties and responsibilities ON CERTAIN PERSONS;
8 and to provide CERTAIN remedies.

9 Sec. 2. As used in this act unless the context clearly
10 requires otherwise:

11 (a) "Attachments" means machinery or any part of a piece of
12 machinery designed to be used on or in conjunction with farm
13 tractors, farm equipment, utility tractors, and utility
14 equipment.

15 (b) "Current net price" means the price listed in the
16 supplier's ~~or manufacturer's~~ printed price lists, ~~or~~ cata-
17 logs, MICROFICHE, PRICE TAPES, INVOICES, OR ANY OTHER PRINTED OR
18 ELECTRONICALLY RECORDED DATA in effect at the time ~~a contract~~
19 AN AGREEMENT is canceled or discontinued, less all applicable
20 discounts.

21 (c) "Dealer" means a person engaged in the business of the
22 retail sale of farm tractors and equipment, utility tractors and
23 equipment, or the attachments to or repair parts for that
24 equipment. DEALER INCLUDES RETAIL DEALERS, WHOLESALERS, AND DIS-
25 TRIBUTORS THAT OBTAIN INVENTORY FROM ANOTHER PERSON FOR RESALE.

26 (d) "Equipment" means motorized machines designed for or
27 adapted and used for agriculture, horticulture, livestock

1 raising, forestry, grounds maintenance, lawn and garden,
2 construction, materials handling, and earth moving.

3 (e) "Agreement" means a written, ORAL, or implied contract,
4 sales agreement, security agreement, or franchise agreement
5 between a supplier ~~or manufacturer~~ and a dealer ~~, wholesaler,~~
6 ~~or distributor~~ by which the dealer ~~, wholesaler, or~~
7 ~~distributor~~ is authorized to engage in the business of the
8 retail sale and service, wholesale sale and service, or the dis-
9 tribution of tractors and equipment AS AN AUTHORIZED OUTLET OF
10 THE SUPPLIER OR in accordance with methods and procedures
11 PROVIDED FOR OR prescribed by the supplier. ~~or manufacturer.~~

12 (f) "Inventory" means farm tractors, ~~and equipment,~~ util-
13 ity tractors, ~~and~~ equipment, and ~~the~~ ACCESSORIES FOR attach-
14 ments to and repair parts for those tractors and THAT equipment.

15 (g) "Net cost" means an amount equal to the original invoice
16 price that the dealer paid for the merchandise to the
17 ~~manufacturer, wholesaler, or distributor~~ SUPPLIER, less all
18 applicable discounts allowed AND RECEIVED, plus the freight cost
19 incurred by the dealer from the location of the ~~manufacturer,~~
20 ~~wholesaler, or distributor~~ SUPPLIER to the location of the
21 dealer.

22 (h) "Person" means a sole proprietorship, partnership, cor-
23 poration, or any other form of business organization.

24 (i) "Supplier" means a MANUFACTURER, wholesaler, or distrib-
25 utor of farm and utility tractors and farm and utility equipment,
26 or the attachments to or repair parts for that equipment.

27 SUPPLIER INCLUDES ANY COMPONENT MEMBER OF A CONTROLLED GROUP OF

1 CORPORATIONS OF WHICH A SUPPLIER IS A COMPONENT MEMBER, OR A
2 SUCCESSOR IN INTEREST OF A SUPPLIER, INCLUDING ANY PERSON WHO OR
3 WHICH ACQUIRES MORE THAN 25% OF THE ASSETS, STOCK, GOOD WILL, OR
4 TRADE NAME OF A SUPPLIER, ANY SURVIVING CORPORATION RESULTING
5 FROM A MERGER OF LIQUIDATION, ANY RECEIVER OR ASSIGNEE, OR ANY
6 TRUSTEE OF A SUPPLIER.

7 (J) "USAGE FOR DEMONSTRATION" MEANS USAGE, NOT PROHIBITED BY
8 AN AGREEMENT, TO DEMONSTRATE THE FUNCTION OF EQUIPMENT OR INVEN-
9 TORY TO POTENTIAL CUSTOMERS, BUT DOES NOT INCLUDE USE BY A BUYER
10 WHO SUBSEQUENTLY RESCINDS THE PURCHASE OF THE INVENTORY OR
11 EQUIPMENT.

12 (K) "USAGE FOR RENTAL" MEANS USAGE BY A CUSTOMER OF THE
13 DEALER, NOT PROHIBITED BY THE AGREEMENT, UNDER A RENTAL CONTRACT
14 OR NONFINANCING LEASE.

15 (L) "DEALER SUPPLIES" MEANS ANY DISPLAY, MACHINERY, SIGNAGE,
16 BOOK, MANUAL, COMPUTER, MICROFICHE, MICROFILM, COMMUNICATION
17 DEVICE, OR TOOL THAT A DEALER PURCHASED FROM A SUPPLIER, OR FROM
18 A THIRD PARTY UPON THE REQUEST OR REQUIREMENT OF THE SUPPLIER,
19 AND WHICH IS USED BY THE DEALER TO FACILITATE THE SALE OR REPAIR
20 OF INVENTORY FURNISHED BY THE SUPPLIER AND NO OTHER PRODUCT LINE
21 SOLD OR SERVICED BY THE DEALER.

22 (M) "CONTROLLED GROUP OF CORPORATIONS" MEANS ANY OF THE
23 FOLLOWING:

24 (i) A PARENT - SUBSIDIARY CONTROLLED GROUP.

25 (ii) A BROTHER-SISTER CONTROLLED GROUP.

26 (iii) A COMBINED GROUP.

1 (iv) A GROUP HAVING CONSTRUCTIVE OWNERSHIP OF 1 OR MORE
2 CORPORATIONS.

3 (N) "PARENT-SUBSIDIARY CONTROLLED GROUP" MEANS 1 OR MORE
4 CHAINS OF CORPORATIONS CONNECTED THROUGH STOCK OWNERSHIP WITH A
5 COMMON PARENT CORPORATION IF ALL OF THE FOLLOWING EXIST:

6 (i) STOCK POSSESSING AT LEAST 80% OF THE TOTAL COMBINED
7 VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR AT LEAST
8 80% OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF STOCK OF EACH
9 OF THE CORPORATIONS, EXCEPT THE COMMON PARENT CORPORATION, IS
10 DIRECTLY OWNED BY 1 OR MORE OF THE OTHER CORPORATIONS OR STOCK
11 SUBJECT TO CONSTRUCTIVE OWNERSHIP BY THE CORPORATION.

12 (ii) THE COMMON PARENT CORPORATION OWNS OR HAS CONSTRUCTIVE
13 OWNERSHIP OF STOCK POSSESSING AT LEAST 80% OF THE TOTAL COMBINED
14 VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR AT LEAST
15 80% OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF STOCK OF AT
16 LEAST 1 OF THE OTHER CORPORATIONS, EXCLUDING, IN COMPUTING SUCH
17 VOTING POWER OR VALUE, STOCK OWNED DIRECTLY BY SUCH OTHER
18 CORPORATIONS.

19 (O) "BROTHER-SISTER CONTROLLED GROUP" MEANS 2 OR MORE CORPO-
20 RATIONS IF 5 OR FEWER PERSONS WHO ARE INDIVIDUALS, ESTATES, OR
21 TRUSTS OWN OR HAVE CONSTRUCTIVE OWNERSHIP OF STOCK POSSESSING
22 BOTH OF THE FOLLOWING:

23 (i) AT LEAST 80% OF THE TOTAL COMBINED VOTING POWER OF ALL
24 CLASSES OF STOCK ENTITLED TO VOTE OR AT LEAST 80% OF THE TOTAL
25 VALUE OF SHARES OF ALL CLASSES OF THE STOCK OF EACH CORPORATION.

26 (ii) MORE THAN 50% OF THE TOTAL COMBINED VOTING POWER OF ALL
27 CLASSES OF STOCK ENTITLED TO VOTE OR MORE THAN 50% OF THE TOTAL

1 VALUE OF SHARES OF ALL CLASSES OF STOCK OF EACH CORPORATION,
2 TAKING INTO ACCOUNT THE STOCK OWNERSHIP OF EACH SUCH PERSON ONLY
3 TO THE EXTENT SUCH STOCK OWNERSHIP IS IDENTICAL WITH RESPECT TO
4 EACH SUCH CORPORATION.

5 (P) "COMBINED GROUP" MEANS 3 OR MORE CORPORATIONS EACH OF
6 WHICH IS A MEMBER OF A PARENT-SUBSIDIARY CONTROLLED GROUP OR A
7 BROTHER-SISTER CONTROLLED GROUP AND 1 OF WHICH IS BOTH OF THE
8 FOLLOWING:

9 (i) IS A COMMON PARENT CORPORATION INCLUDED IN A
10 PARENT-SUBSIDIARY CONTROLLED GROUP.

11 (ii) IS INCLUDED IN A BROTHER-SISTER CONTROLLED GROUP.

12 (Q) "CONSTRUCTIVE OWNERSHIP" MEANS ANY OR ALL OF THE
13 FOLLOWING:

14 (i) A PERSON WHO HAS AN OPTION TO ACQUIRE STOCK FOR PURPOSES
15 OF THIS SUBPARAGRAPH, AN OPTION TO ACQUIRE IS AN OPTION, AND EACH
16 1 OF A SERIES OF SUCH OPTION, IS CONSIDERED AN OPTION TO ACQUIRE
17 SUCH STOCK.

18 (ii) STOCK OWNED, DIRECTLY OR INDIRECTLY, BY OR FOR A
19 PARTNERSHIP. CONSTRUCTIVE OWNERSHIP INCLUDES OWNERSHIP BY ANY
20 PARTNER HAVING AN INTEREST OF 5 % OR MORE IN EITHER THE CAPITAL
21 OR PROFITS OF THE PARTNERSHIP IN PROPORTION TO HIS OR HER INTER-
22 EST IN CAPITAL OR PROFITS, WHICHEVER SUCH PROPORTION IS THE
23 GREATER.

24 (iii) STOCKED OWNED, DIRECTLY OR INDIRECTLY, BY OR FOR AN
25 ESTATE OR TRUST. CONSTRUCTIVE OWNERSHIP INCLUDES OWNERSHIP BY
26 ANY BENEFICIARY WHO HAS AN ACTUARIAL INTEREST OF 5% OR MORE IN
27 SUCH STOCK, TO THE EXTENT OF SUCH ACTUARIAL INTEREST. FOR

1 PURPOSES OF THIS SUBPARAGRAPH, THE ACTUARIAL INTEREST OF EACH
2 BENEFICIARY SHALL BE DETERMINED BY ASSUMING THE MAXIMUM EXERCISE
3 OF DISCRETION BY THE FIDUCIARY IN FAVOR OF SUCH BENEFICIARY AND
4 THE MAXIMUM USE OF SUCH STOCK TO SATISFY HIS OR HER RIGHTS AS A
5 BENEFICIARY.

6 Sec. 3. If a dealer ~~, wholesaler, or distributor~~ enters
7 into an agreement with a supplier ~~or manufacturer that is evi-~~
8 ~~denced by a written or implied contract, sales agreement, secur-~~
9 ~~ity agreement, or franchise agreement, and the contract, sales~~
10 ~~agreement, security agreement, or franchise agreement~~ AND THE
11 AGREEMENT is subsequently terminated, the supplier ~~or~~
12 ~~manufacturer~~ shall repurchase any inventory of the dealer ~~,~~
13 ~~wholesaler, or distributor~~ as provided in this act. The dealer
14 ~~, wholesaler, or distributor~~ may choose to keep the inventory
15 if there exists a contractual right to do so.

16 Sec. 4. (1) ~~The supplier or manufacturer shall repurchase~~
17 ~~inventory previously purchased from the supplier or manufacturer~~
18 ~~and held by the dealer, wholesaler, or distributor at the date of~~
19 ~~termination of the contract.~~ The supplier ~~or manufacturer~~
20 shall pay 100% of the net cost of all ~~new, unused,~~ undamaged
21 ~~,~~ and complete tractors, equipment, and attachments WHICH ARE
22 RESALABLE, LESS A REASONABLE ALLOWANCE FOR USAGE FOR DEMONSTRA-
23 TION OR USAGE FOR RENTAL, and 90% of the current net price of all
24 new, unused, and undamaged repair parts. The supplier ~~or~~
25 ~~manufacturer~~ shall pay the dealer ~~, wholesaler, or distributor~~
26 5% of the current net price on all new, unused, and undamaged
27 repair parts returned to cover the cost of handling, packing, and

1 loading. The supplier ~~or manufacturer~~ may perform the
2 handling, packing, and loading in lieu of paying the 5% for
3 services.

4 (2) THE SUPPLIER SHALL PURCHASE OR REPURCHASE, AT THE
5 DEALER'S BOOK VALUE NET OF DEPRECIATION ON THE DATE OF TERMINA-
6 TION, ALL DEALER SUPPLIES, EXCEPT THAT:

7 (A) NO ELECTRONIC DEVICE MORE THAN 5 YEARS OLD IS REQUIRED
8 TO BE PURCHASED.

9 (B) THE SUPPLIER SHALL ASSUME THE DEALER'S LEASE OBLIGATIONS
10 WITH RESPECT TO ANY DEALER SUPPLIES THAT ARE LEASED.

11 (C) THE SUPPLIER SHALL PAY THE DEALER AT LEAST 75% OF THE
12 SUPPLIER'S NET PRICE LAST PUBLISHED FOR ANY NEW DEALER SUPPLIES,
13 PURCHASED FROM THE SUPPLIER.

14 (3) ~~(2)~~ Upon payment of the repurchase amount to the
15 dealer, ~~wholesaler, or distributor,~~ the title and right of pos-
16 session to the repurchased inventory shall transfer to the
17 supplier. ~~or manufacturer.~~

18 (4) ~~(3)~~ The supplier ~~or manufacturer~~ may subtract from
19 the sums due under ~~subsection~~ SUBSECTIONS (1) OR (2) the amount
20 of debts owed by the dealer ~~, wholesaler, or distributor~~ to the
21 supplier. ~~or manufacturer.~~

22 (5) WITH OR WITHOUT THE PRIOR CONSENT OR AUTHORIZATION OF A
23 SUPPLIER, A DEALER MAY SHIP ALL INVENTORY SUITABLE FOR REPURCHASE
24 TO THE SUPPLIER, NOT LESS THAN 60 DAYS AFTER THE SUPPLIER HAS
25 NOTIFIED THE DEALER, OR THE DEALER HAS NOTIFIED THE SUPPLIER BY
26 CERTIFIED MAIL, THAT THE AGREEMENT BETWEEN THEM HAS BEEN
27 TERMINATED. THE SUPPLIER MAY INSPECT A DEALER'S INVENTORY AND

1 DESIGNATE PORTIONS THEREOF TO BE NOT RETURNABLE UNDER THIS ACT,
2 PROVIDED THAT NO SUCH DESIGNATION RECEIVED BY THE DEALER MORE
3 THAN 30 DAYS AFTER THE TERMINATION IS EFFECTIVE.

4 (6) NOT MORE THAN 90 DAYS FROM THE TERMINATION OF THE AGREE-
5 MENT, THE DEALER MAY SHIP INVENTORY TO ANY LOCATION FROM WHICH
6 INVENTORY OF LIKE KIND HAS BEEN SHIPPED TO THE DEALER IN THE 12
7 MONTHS PRECEDING THE SHIPMENT, OR IF NO SHIPMENT OF SUCH TYPE OF
8 INVENTORY HAS OCCURRED IN THAT TIME PERIOD, TO ANY PLACE OF BUSI-
9 NESS MAINTAINED BY THE SUPPLIER. FREIGHT TO SUCH DESTINATION
10 SHALL BE PAID BY THE DEALER. THE SUPPLIER SHALL ACCEPT A SHIP-
11 MENT MADE PURSUANT TO THIS SUBSECTION.

12 (7) IF A PROPERLY SHIPPED SHIPMENT IS UNDELIVERABLE, OR NOT
13 ACCEPTED BY THE SUPPLIER, THE DEALER MAY ORDER THE INVENTORY
14 RETURNED, MAY ORDER IT STORED FOR THE SUPPLIER'S ACCOUNT, OR MAY
15 ORDER IT LIQUIDATED OR ABANDONED BY THE CARRIER. ALL RISK OF
16 LOSS TO PROPERLY SHIPPED BUT UNDELIVERABLE OR UNACCEPTED GOODS IS
17 THE SUPPLIER'S, INCLUDING, BUT NOT LIMITED TO, LOSSES FROM EXPO-
18 SURE, LIQUIDATION, ABANDONMENT, OR THEFT. A SUPPLIER'S ACCEP-
19 TANCE OF A SHIPMENT DOES NOT CONSTITUTE AN ADMISSION THAT THE
20 INVENTORY INSPECTED BY THE SUPPLIER BEFORE SHIPMENT PURSUANT TO
21 SUBSECTION (5) AND DECLARED NOT RETURNABLE MUST BE REPURCHASED,
22 BUT THAT ALL PROPERLY SHIPPED INVENTORY THAT IS NOT DELIVERABLE
23 OR NOT ACCEPTED IS CONSIDERED TO HAVE BEEN PROPERLY SUBMITTED FOR
24 REPURCHASE, AND THE SUPPLIER IS LIABLE TO PAY THE REPURCHASE
25 AMOUNT FOR SUCH INVENTORY.

26 (8) INSTEAD OF THE RETURN OF THE INVENTORY TO THE SUPPLIER
27 UNDER THE TERMS OF SUBSECTION (7), A DEALER MAY NOTIFY A SUPPLIER

1 BY CERTIFIED MAIL THAT THE DEALER HAS INVENTORY THAT THE DEALER
2 INTENDS TO RETURN. THE NOTICE OF THE DEALER'S INTENTION TO
3 RETURN SHALL BE IN WRITING, SWORN TO BEFORE A NOTARY PUBLIC AS TO
4 THE ACCURACY OF THE LISTING OF INVENTORY AND THE SUITABILITY OF
5 THE ITEMS FOR REPURCHASE. THE NOTICE SHALL INCLUDE THE NAME AND
6 BUSINESS ADDRESS OF THE PERSON OR BUSINESS WHO HAS POSSESSION AND
7 CUSTODY OF THE INVENTORY AND THE LOCATION WHERE THE INVENTORY MAY
8 BE INSPECTED AND THE LIST OF INVENTORY MAY BE VERIFIED. THE
9 NOTICE MUST ALSO STATE THE NAME AND BUSINESS ADDRESS OF THE
10 PERSON OR BUSINESS WHO HAS THE AUTHORITY TO SERVE AS THE ESCROW
11 AGENT OF THE DEALER, TO ACCEPT PAYMENT OR A CREDIT TO THE
12 DEALER'S ACCOUNT ON BEHALF OF THE DEALER, AND TO RELEASE THE
13 MACHINERY AND PARTS TO THE SUPPLIER. THE NOTICE CONSTITUTES THE
14 APPOINTMENT OF THE ESCROW AGENT TO ACT ON THE DEALER'S BEHALF
15 REGARDING THE ACTIVITIES DESCRIBED IN THIS SUBSECTION.

16 (9) THE SUPPLIER HAS 30 DAYS FROM THE DATE OF THE MAILING OF
17 THE NOTICE DESCRIBED IN SUBSECTION (8) IN WHICH TO INSPECT THE
18 INVENTORY AND VERIFY THE ACCURACY OF THE DEALER'S LIST. THE SUP-
19 PLIER SHALL, WITHIN 10 DAYS AFTER INSPECTION DO 1 OF THE
20 FOLLOWING:

21 (A) PAY THE ESCROW AGENT.

22 (B) GIVE EVIDENCE THAT A CREDIT TO THE ACCOUNT OF THE DEALER
23 HAS BEEN MADE IF THE DEALER HAS OUTSTANDING SUMS DUE THE
24 SUPPLIER.

25 (C) SEND TO THE ESCROW AGENT A CREDIT LIST AND SHIPPING
26 LABELS FOR THE RETURN OF THE INVENTORY TO THE SUPPLIER THAT ARE
27 ACCEPTABLE AS RETURNS.

1 (10) IF THE SUPPLIER SENDS A CREDIT LIST TO THE ESCROW
2 AGENT, PAYMENT OR A CREDIT AGAINST THE DEALER'S INDEBTEDNESS IN
3 ACCORDANCE WITH SUBSECTION (9) FOR THE ACCEPTABLE RETURNS SHALL
4 ACCOMPANY THE CREDIT LIST. UPON RECEIPT OF THE PAYMENT, EVIDENCE
5 OF A CREDIT TO THE ACCOUNT OF THE DEALER, OR THE CREDIT LIST WITH
6 PAYMENT, THE TITLE TO THE INVENTORY ACCEPTABLE AS RETURNS PASSES
7 TO THE SUPPLIER MAKING THE PAYMENT OR ALLOWING THE CREDIT AND THE
8 SUPPLIER IS ENTITLED TO KEEP THE INVENTORY. THE ESCROW AGENT
9 SHALL SHIP OR CAUSE TO BE SHIPPED THE INVENTORY ACCEPTABLE AS
10 RETURNS TO THE SUPPLIER UNLESS THE SUPPLIER ELECTS TO PERSONALLY
11 PERFORM THE INVENTORYING, PACKING, AND LOADING.

12 (11) WHEN THE INVENTORY HAS BEEN RECEIVED BY THE SUPPLIER,
13 NOTICE OF THE RECEIPT OF THE INVENTORY SHALL BE SENT BY CERTIFIED
14 MAIL TO THE ESCROW AGENT WHO SHALL THEN DISBURSE 90% OF THE PAY-
15 MENT HE OR SHE HAS RECEIVED, LESS ITS ACTUAL EXPENSES AND A REA-
16 SONABLE FEE FOR HIS OR HER SERVICES, TO THE DEALER. THE ESCROW
17 AGENT SHALL KEEP THE BALANCE OF THE FUNDS IN THE DEALER'S ESCROW
18 ACCOUNT UNTIL HE OR SHE IS NOTIFIED THAT AN AGREEMENT HAS BEEN
19 REACHED AS TO THE NONRETURNS, AFTER WHICH THE ESCROW AGENT
20 SHALL DISBURSE THE REMAINING FUNDS AND DISPOSE OF ANY REMAINING
21 INVENTORY AS PROVIDED IN THE SETTLEMENT. IF NO SETTLEMENT IS
22 REACHED IN A REASONABLE TIME, THE ESCROW AGENT MAY REFER THE
23 MATTER TO ARBITRATION AS PROVIDED IN SECTION 9A.

24 Sec. 5. (1) The provisions of this act are supplemental to
25 any agreement between the dealer ~~—wholesaler, or distributor—~~
26 and the supplier ~~—or manufacturer—~~ governing the return of
27 inventory and the dealer ~~—wholesaler, or distributor—~~ may elect

1 to pursue either a contract remedy or the remedy provided in this
2 act. WITH RESPECT TO A DEALER LOCATED IN THIS STATE, A REMEDY
3 PROVIDED FOR IN THIS ACT SHALL NOT BE LIMITED BY ANY AGREEMENT OR
4 CONTRACT BETWEEN A SUPPLIER AND A DEALER.

5 (2) An election by the dealer ~~, wholesaler, or distributor~~
6 to pursue a contract remedy does not bar the right of the dealer
7 ~~, wholesaler, or distributor~~ to the remedy provided in this act
8 as to that inventory not affected by PURSUIT OF THE contract
9 remedy.

10 (3) Notwithstanding anything contained in this act, the
11 rights of a supplier ~~or manufacturer~~ to charge back to the
12 dealer's ~~, wholesaler's, or distributor's~~ account amounts pre-
13 viously paid or credited as a discount incident to the dealer's
14 ~~, wholesaler's, or distributor's~~ purchase of the inventory
15 repurchased shall not be affected.

16 Sec. 6. The provisions of this act shall not require the
17 repurchase of the following by a supplier ~~or manufacturer~~ from
18 a dealer: ~~, wholesaler, or distributor:~~

19 (a) Any PERISHABLE repair part ~~that has a limited storage~~
20 ~~life~~ INCLUDED IN A LIST OF PARTS WITH SHELF LIVES PUBLISHED BY
21 THE SUPPLIER AND PROVIDED TO THE DEALER BEFORE TERMINATION, THE
22 SHELF LIFE OF WHICH HAS ELAPSED BEFORE THE TERMINATION, or WHICH
23 shows evidence of deterioration.

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

26 (c) Any repair part that, because of its condition, is not
27 ~~resaleable~~ RESALABLE as a new part.

1 (d) Any inventory for which the dealer ~~, wholesaler, or~~
2 ~~distributor~~ is unable to furnish evidence, satisfactory to the
3 supplier, ~~or manufacturer~~ of title free and clear of all
4 claims, liens, and encumbrances.

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

7 (f) Any farm tractors and equipment, utility tractors and
8 equipment, and equipment, ~~and~~ OR attachments that are not in
9 new, unused, undamaged, complete, and ~~saleable~~ SALABLE
10 condition. THIS SUBDIVISION DOES NOT APPLY TO THOSE RESALABLE
11 ITEMS DESCRIBED IN SECTION 4(1) THAT WERE USED FOR DEMONSTRATION
12 OR RENTAL.

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

16 (h) Any inventory that was ordered by the dealer ~~, whole-~~
17 ~~saler, or distributor~~ on or after the date of notification of
18 termination of the contract.

19 (i) Any inventory that was acquired by the dealer ~~, whole-~~
20 ~~saler, or distributor~~ from any source other than the supplier.
21 ~~or manufacturer.~~

22 Sec. 7. (1) If any supplier ~~or manufacturer~~ fails or
23 refuses to pay or credit the account of the dealer ~~, wholesaler,~~
24 ~~or distributor~~ for any inventory required to be repurchased by
25 section 3 within 90 days after receipt by the supplier ~~or~~
26 ~~manufacturer~~ of that inventory, he or she shall be liable for
27 100% of the NET COST OF ALL TRACTORS, EQUIPMENT, AND ATTACHMENTS

1 RETURNED OR THE current net price of ~~the inventory~~ ALL REPAIR
2 PARTS RETURNED plus any freight charges paid by the dealer,
3 ~~wholesaler, or distributor,~~ reasonable attorney's fees, court
4 costs, and interest on the current net price computed at the
5 legal interest rate from the sixty-first day after receipt of the
6 inventory.

7 (2) A DEALER MAY BRING AN ACTION AGAINST A SUPPLIER IN ANY
8 COURT OF COMPETENT JURISDICTION FOR THE ACTUAL DAMAGES SUSTAINED
9 BY HIM OR HER AS CONSEQUENCE OF THE SUPPLIER'S VIOLATION OF THIS
10 ACT TOGETHER WITH THE ACTUAL COSTS OF THE ACTION, INCLUDING REA-
11 SONABLE ACTUAL ATTORNEY FEES. A DEALER LOCATED IN THIS STATE
12 SHALL NOT WAIVE HIS OR HER RIGHT TO BRING ANY ACTION UNDER THIS
13 ACT IN THE COURTS OF THIS STATE. A DEALER IS NOT, BY VIRTUE OF
14 ENTERING INTO AN AGREEMENT WITH A SUPPLIER IN ANOTHER STATE, CON-
15 sidered TO BE DOING BUSINESS IN THE OTHER STATE.

16 SEC. 7A. (1) A SUPPLIER SHALL NOT TERMINATE, CANCEL, FAIL
17 TO RENEW, OR SUBSTANTIALLY CHANGE THE COMPETITIVE CIRCUMSTANCES
18 OF AN AGREEMENT WITHOUT GOOD CAUSE. A SUPPLIER SHALL PROVIDE A
19 DEALER AT LEAST 90 DAYS' PRIOR WRITTEN NOTICE OF TERMINATION,
20 CANCELLATION, NONRENEWAL, OR SUBSTANTIAL CHANGE IN COMPETITIVE
21 CIRCUMSTANCES.

22 (2) THE NOTICE DESCRIBED IN SUBSECTION (1) SHALL STATE ALL
23 THE REASONS FOR TERMINATION, CANCELLATION, NONRENEWAL, OR SUB-
24 STANTIAL CHANGE IN COMPETITIVE CIRCUMSTANCES AND SHALL PROVIDE
25 THAT THE DEALER HAS 90 DAYS IN WHICH TO RECTIFY ANY CLAIMED
26 DEFICIENCY. IF A PLAN TO RECTIFY IS SUBMITTED OR THE DEFICIENCY
27 IS RECTIFIED WITHIN 90 DAYS, THE NOTICE IS CONSIDERED VOID.

1 (3) THE NOTICE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF
2 THE REASON FOR TERMINATION, CANCELLATION, OR NONRENEWAL IS INSOL-
3 VENCY, THE OCCURRENCE OF AN ASSIGNMENT FOR THE BENEFIT OF CREDI-
4 TORS, OR BANKRUPTCY. IF THE REASON FOR TERMINATION, CANCELLA-
5 TION, NONRENEWAL, OR SUBSTANTIAL CHANGE IN COMPETITIVE CIRCUM-
6 STANCES IS NONPAYMENT OF SUMS DUE UNDER THE AGREEMENT, THE DEALER
7 SHALL BE ENTITLED TO WRITTEN NOTICE OF DEFAULT IN PAYMENT AND
8 SHALL HAVE 10 DAYS FROM THE DATE OF DELIVERY OF POSTING OF THE
9 NOTICE IN WHICH TO REMEDY THE DEFAULT. A DEALER MAY BRING AN
10 ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR DAMAGES AND
11 INJUNCTIVE RELIEF UPON THE SUPPLIER'S BREACH OF SUBSECTION (1)
12 AND MAY RECOVER THE ACTUAL COSTS OF THE ACTION, INCLUDING REASON-
13 ABLE ATTORNEY FEES.

14 Sec. 8. (1) Upon the death of the dealer ~~, wholesaler, or~~
15 ~~distributor~~ or the majority stockholder of a corporation or a
16 partner in a partnership operating as a dealer, ~~wholesaler, or~~
17 ~~distributor~~, the supplier ~~or manufacturer~~ shall, at the option
18 of the heirs, repurchase the inventory from the surviving spouse
19 or the heir or heirs of the dealer ~~, wholesaler, or distributor~~
20 or majority stockholder as if the contract had been terminated.

21 (2) The heir or heirs shall have 200 days from the date of
22 the death of the dealer ~~, wholesaler, or distributor~~ or major-
23 ity stockholder to exercise their options under this act. The
24 repurchase of an inventory is not required if the heirs or the
25 supplier ~~or manufacturer~~ enter into an agreement to operate the
26 dealership, wholesale business, or distributorship ON
27 SUBSTANTIALLY SIMILAR TERMS TO THOSE OF THE DECEASED DEALER.

1 Sec. 9. The provisions of this act shall not be construed
2 to affect in any way any security interest which any financial
3 institution, person, or supplier ~~or manufacturer~~ has in the
4 inventory of the dealer ~~, wholesaler, or distributor,~~ and any
5 repurchase shall not be subject to article 6 of the uniform com-
6 mercial code, Act No. 174 of the Public Acts of 1962, being sec-
7 tions 440.6101 to 440.6111 of the Michigan Compiled Laws. ~~The~~
8 ~~supplier or manufacturer may furnish a representative to inspect~~
9 ~~all parts and certify their acceptability when packed for~~
10 ~~shipment.~~

11 SEC. 9A. UPON THE TERMINATION OF AN AGREEMENT, ANY PARTY TO
12 THE AGREEMENT MAY REQUIRE THAT ALL ISSUES RELATING TO THE PARTIES
13 RIGHTS UNDER THIS ACT BE SUBMITTED TO BINDING ARBITRATION UNDER
14 THE SUPERVISION OF THE AMERICAN ARBITRATION ASSOCIATION OR SUCH
15 OTHER BINDING ARBITRATION PROCESS TO WHICH THE PARTIES MAY
16 AGREE. THE DECISION OF AN ARBITRATOR SHALL BE FINAL UNLESS PRO-
17 CURED BY FRAUD.