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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 28. Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act [22900 - 22927] (*Heading of Chapter 28 amended by Stats. 2005, Ch. 712, Sec. 1.*)

22900. The Legislature finds and declares that the retail distribution, sales, and rental of agricultural, construction, utility, industrial, mining, outdoor power, forestry, and lawn and garden equipment, utilizing independent dealers operating under contract with the supplier vitally affects the general economy of the state, the public interest, and the public welfare. Therefore, the Legislature has determined that it is necessary to regulate the business relations between the dealers and suppliers as described in this chapter. (Amended by Stats. 2005, Ch. 712, Sec. 2. Effective October 7, 2005.)

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

- (a) "Act" means the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.
- (b) "Bulk sales law" means the Uniform Commercial Code-Bulk Sales as contained in Division 6 (commencing with Section 6101) of the Commercial Code.
- (c) "Claim" means a dealer's claim for reimbursement from a supplier for labor and materials expended by the dealer to meet the requirements of the supplier's warranty agreement with a consumer of the supplier's products if the dealer has complied with the supplier's then-existing written policies and procedures for warranties and warranty claims.
- (d) "Current parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalog in effect at the time the dealer contract is canceled or discontinued or, for purposes of Section 22905, the price list or catalog in effect at the time the repair parts were ordered. "Current parts price" also means, with respect to superseded repair parts, the price listed in the supplier's price list or catalog in effect at the time the dealer contract is canceled or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number.
- (e) "Current net parts cost" means the current parts price less any trade or cash discounts typically given to the dealer with respect to that dealer's normal, ordinary course of orders of repair parts. "Current net parts cost" also means, with respect to a warranty, the current parts price of the supplier for the equipment repaired less any trade or cash discounts typically given to the dealer with respect to that dealer's normal, ordinary course of orders of repair parts.
- (f) "Dealer" means any person primarily engaged in the retail sale of equipment as defined in subdivision (j). For the purposes of this act, "dealer" does not include a "franchisee" as defined in Section 331.1 of the Vehicle Code or a "new motor vehicle dealer" as defined in Section 426 of the Vehicle Code.
- (g) "Dealer contract" means either an oral or written contract, agreement, or arrangement for a definite or indefinite period between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts.
- (h) "Dealership" means the retail sale business engaged in by a dealer under a dealer contract.
- (i) "Demonstrator" means equipment in a dealer's inventory that has not been sold, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short-term rental agreement, with the intent of encouraging the potential customer to purchase the equipment.
- (j) (1) "Equipment" means all-terrain vehicles and other machinery, equipment, implements, or attachments used for, or in connection with, any of the following purposes:
 - (A) Lawn, garden, golf course, landscaping, or grounds maintenance.
 - (B) Planting, cultivating, irrigating, harvesting, and producing agricultural or forestry products.

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

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

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

(k) "Family member" means a spouse, parent, sibling, child, son-in-law, daughter-in-law, and lineal descendant, including those by adoption.

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

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

(n) "Inventory" means equipment, repair parts, data-processing hardware or software, and specialized service or repair parts.

(o) "Major shareholder" means a shareholder with 51-percent or greater interest in a dealership.

(p) "Manufacturer created incentive program" means a program in which the dealer's inventory has not been sold but has been used for specialized purposes, including, but not limited to, harvest rental programs, dealer purchase rentals, and short-term rentals. The warranty that is transferred to the consumer upon sale, which shall be disclosed prior to sale, is the manufacturer-provided base warranty, less hours and time used while in a manufacturer created incentive program.

(q) "Net equipment cost" means the price the dealer actually paid to the supplier for equipment, plus (1) freight, at truckload rates in effect as of the effective date of the termination of a dealer contract, if freight was paid by the dealer from the supplier's location to the dealer's location and (2) reimbursement for labor incurred in preparing the equipment for retail sale or rental, which labor will be reimbursed at the dealer's standard labor rate charged by the dealer to its customers for nonwarranty repair work; provided, however, if a supplier has established a reasonable setup time, that labor will be reimbursed at an amount equal to the reasonable setup time in effect as of the date of delivery multiplied by the dealer's standard labor rate.

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

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

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

(u) "Single-line supplier" means the supplier that is selling the single-line dealer construction, industrial, forestry, and mining equipment constituting 75 percent of the dealer's new equipment.

(v) "Supplier" means any person engaged in the business of manufacturing, assembly, or wholesale distribution of equipment or repair parts. "Supplier" also includes any successor in interest to a supplier, including a purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation, or reorganization of a supplier.

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

(Amended by Stats. 2006, Ch. 538, Sec. 32. Effective January 1, 2007.)

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

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

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

(c) To refuse to deliver to any dealer in reasonable quantities and within a reasonable time after receipt of the dealer's order, equipment covered by the dealer contract specifically advertised or represented by the supplier to be available for immediate delivery or on an agreed-upon delivery date. The failure to deliver the equipment shall not be considered a violation of this act if the failure is due to reasonable restrictions on extension of credit by the supplier to the dealer, any breach of or default under the contract by the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials,

freight embargo, or a business decision by the supplier to limit the production volume of the equipment and written notice is provided to the dealer within 30 days of that decision or other cause over which the supplier has no control.

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

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

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

(g) To prevent, by contract or otherwise, any dealer from changing its capital structure, ownership, or the means by which the dealership is financed, provided the dealer at all times meets any reasonable capital standards imposed by the supplier or as otherwise agreed to between the dealer and the supplier and imposed on similarly situated dealers, and provided this change by the dealer does not result in a change of the controlling interest in the executive management or board of directors, or any guarantors of the dealership.

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

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

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

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

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

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

(Amended by Stats. 2005, Ch. 712, Sec. 4. Effective October 7, 2005.)

22902.5. Nothing in this chapter permits the offering or enforcement of a provision in a dealer contract that requires a dealer to comply with a minimum price-fixing provision or any other provision to limit competition. For purposes of this chapter, a provision in a dealer contract providing for exclusive territorial rights and its corresponding provisions shall not be prohibited.

(Added by Stats. 2005, Ch. 712, Sec. 5. Effective October 7, 2005.)

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

(b) Except where there are grounds for termination of a dealer contract pursuant to paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of subdivision (c), a supplier shall give a dealer 180 days written notice of the supplier's intent to terminate a dealer contract. The notice shall include all reasons constituting good cause for the termination and shall provide the dealer with 60 days to cure any claimed deficiency. If the deficiency is cured within 60 days to the satisfaction of the supplier, which shall be determined in good faith, the notice of termination shall be void. Except as provided in subdivision (d), a supplier may not terminate a dealer contract based on paragraph (12) of subdivision (c) unless the supplier gives the dealer notice of that action at least one year before the effective date of that action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the one-year notice period, the notice shall be void and the dealer contract shall continue in full force and effect.

(c) No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or materially change the competitive circumstances of a dealer contract without good cause. In addition to the definition in subdivision (l) of Section 22901,

good cause exists whenever the dealer has taken any of the following actions:

- (1) Transferred a controlling ownership interest in the dealership without the consent of the supplier, who shall not withhold consent unreasonably.
- (2) Made a material misrepresentation or falsification of any record.
- (3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer that has not been dismissed within 60 days after the filing or is insolvent or in receivership.
- (4) Pleaded guilty to or has been convicted of a felony involving an act of moral turpitude.
- (5) Failed to operate in the normal course of business for seven consecutive business days, without the consent of the supplier, or has terminated the business.
- (6) Relocated or established a new or additional dealer's place of business without the supplier's consent.
- (7) Materially defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. However, good cause does not exist if a person revokes any guarantee in connection with or following the transfer of that person's entire ownership interest in the dealer unless the supplier requires that person to execute a new guarantee of the dealer's present or future obligations in connection with that transfer of ownership interest.
- (8) Failed to satisfy any payment obligation as it became due and payable to the supplier, failed to promptly account to the supplier for any proceeds from the sale of equipment, or failed to hold those proceeds in trust for the benefit of the supplier.
- (9) Engaged in conduct that is injurious or detrimental to any of the following:
 - (A) The dealer's customers. This includes, but is not limited to, the following conduct: excessive pricing, misleading advertising, failure to provide service and replacement parts, and failure to perform warranty obligations.
 - (B) The public welfare.
 - (C) The representation or reputation of the supplier's product.
- (10) Consistently failed to meet building and housekeeping requirements, or failed to provide adequate sales, service, or parts personnel commensurate with the dealer contract.
- (11) Consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on the supplier's behalf.
- (12) Consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, if the supplier has given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

(d) Notwithstanding subdivision (c), if the sales, service, rental, and repair of a supplier's product represents the lesser of 10 percent or three hundred fifty thousand dollars (\$350,000) of the dealer's total gross annual revenue that includes, but is not limited to, the sales, service, rental, or repair, for each dealer location, the supplier may terminate a dealer contract based on paragraph (12) of subdivision (c) upon providing the dealer with notice of that action at least 180 days before the effective date of that action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives within 60 days of receipt of the termination notice, the notice shall be void and the dealer contract shall continue in full force and effect.

(e) Notwithstanding a dealer contract that provides for exclusivity during the term of the contract, a supplier may begin contract negotiations with a potential replacement dealer 60 days prior to the expiration of the notice period that has been provided pursuant to subdivisions (b) or (d) if the dealer failed to achieve the supplier's requirements for reasonable standards or performance objectives within 60 days of receipt of the termination notice. Nothing in this subdivision shall authorize a replacement dealer to conduct operations with a supplier during the term of a dealer contract.

(Amended by Stats. 2009, Ch. 500, Sec. 8. (AB 1059) Effective January 1, 2010.)

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

(b) If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest in the business, the supplier shall approve or deny the request within 60 days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the 60-day period, the request shall be deemed approved. The dealer's request shall include reasonable financial information, personal background, character references, and work

history information for the acquiring persons. If a supplier denies a request made pursuant to this section, the supplier shall provide the dealer with a written notice of that denial that states the reasons for the denial. A supplier may only deny a request based on the failure of the proposed transferees to meet the reasonable requirements consistently imposed by the supplier in determining approval of transfers or approvals of new dealers.

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

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

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

(Added by Stats. 2005, Ch. 712, Sec. 7. Effective October 7, 2005.)

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

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

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

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

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

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

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

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

(c) Except as otherwise provided in this subdivision, a supplier shall provide a dealer with at least 90 days written notice of termination. The notice shall state all reasons constituting good cause for termination and shall state that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice shall be void. Notwithstanding the foregoing, if the good cause for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this subdivision shall not apply if the reason for termination is for any reason set forth in subdivision (b).

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

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

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

(Added by Stats. 2005, Ch. 712, Sec. 8. Effective October 7, 2005.)

22903.3. (a) If a dealer submits a warranty claim to a supplier while the dealer contract is in effect or within 60 days after the termination of the dealer contract, and if the claim is for work performed before the termination or expiration of the dealer contract, the supplier shall approve or reject that warranty claim by written notice to the dealer within 45 days after the supplier's receipt of the warranty claim. If the supplier approves the warranty claim, the supplier shall pay the dealer or credit the dealer's account the entire amount owed with respect to the claim within 30 days of approval. If the supplier rejects the warranty claim, the supplier shall give the dealer written or electronic notice of the grounds for rejection. These reasons must be consistent with the supplier's reason for rejecting the warranty claims of other dealers, both in terms and manner of enforcement. If the supplier does not provide the dealer with grounds for rejection, the claim shall be deemed to be approved.

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

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

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

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

(f) The requirements of subdivisions (a), (b), and (c) apply to all warranty claims submitted by a dealer to a supplier where the dealer has complied with the supplier's reasonable written policies and procedures for warranty reimbursement. A supplier's warranty reimbursement policies and procedures shall be deemed unreasonable to the extent they conflict with any of the provisions of this section.

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

(h) If a supplier fails or refuses to pay for warranty work covered under this section within 30 days of the supplier's approval of the dealer's claim, the supplier shall be liable for 110 percent of the total claim, plus interest at the statutory rate from the payment due date until the date of payment, and actual costs for any court or arbitration proceeding, including costs for attorney's fees and arbitrators.

(Added by Stats. 2005, Ch. 712, Sec. 9. Effective October 7, 2005.)

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

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

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

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

(d) Returned parts shall be in new and unused condition and shall have been purchased by the dealer from the supplier to whom they are returned. Obsolete and superseded parts may be returned if listed in the supplier's current returnable parts list or if those parts have not been the subject of a supplier's return program at the date of the notification to the dealer by the supplier of the surplus parts return program, or the date of the dealer's parts return request, whichever is applicable.

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

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

(g) If an outstanding balance is owed to the supplier, the supplier may credit the dealer's account within 30 days after the supplier's receipt of the dealer's returned parts. If no balance exists, the supplier shall pay the dealer within 30 days after the supplier's receipt of the dealer's returned parts. If a supplier refuses to credit the dealer's account or pay the dealer for returned parts covered by this section within 30 days of the supplier's receipt of returned parts, the supplier shall be liable for 110 percent of the total current net parts cost, plus interest at the statutory rate from the payment due date until the date of payment, and actual costs for any court or arbitration proceeding, including costs for attorney's fees and arbitrators.

(Amended by Stats. 2005, Ch. 712, Sec. 10. Effective October 7, 2005.)

22905. Except as provided in subdivision (p), whenever a dealer contract is terminated by cancellation or nonrenewal, the supplier shall repurchase the inventory as provided in this section.

(a) The supplier shall repurchase at its fair market value or assume the lease responsibilities of any specific data-processing hardware that the supplier required the dealer to purchase to satisfy the minimum requirements of the dealer contract, including computer systems equipment required and approved by the supplier to communicate with the supplier. The fair market value of property subject to repurchase shall be deemed to be equal to the acquisition cost, including any shipping, handling and set-up fees, less straight line depreciation of that acquisition cost over three years. If the dealer purchased data-processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of that data-processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.

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

(c) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less depreciation due to usage of those demonstrators. The depreciation adjustment shall be based on published industry rental rates to the extent those rates are available. For purposes of this subdivision, demonstrators, with hour meters that have less than 50 hours of use shall be considered new, unsold equipment subject to repurchase under this section.

(d) The supplier shall pay a sum equal to 100 percent of the net equipment cost of all unsold and undamaged equipment used in a manufacturer created incentive program, as defined in subdivision (p) of Section 22901, less depreciation due to usage and bonus or volume incentive received by the dealer for the equipment. The depreciation adjustment shall be based on published industry rental rates to the extent these rates are available. For purposes of this subdivision, equipment with hour meters used in a manufacturer created incentive program with less than 50 hours of use will be considered new, unsold equipment subject to repurchase under this section.

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

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

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

(h) Upon the payment or allowance of credit to the dealer's account of the sums required by this section, the title to all inventory purchased shall pass to the supplier making payment, and the supplier shall be entitled to the possession of the inventory. All payments or allowances of credit due to dealers shall be paid or credited within 90 days after receipt by the supplier of property required to be repurchased. Any payments or allowances of credit due to dealers that are not paid within the 90-day period will accrue interest at the statutory rate. The supplier may withhold payments due under this section during the period of time in which

the dealer fails to comply with its contractual obligations to remove any signage indicating that the dealer is an authorized dealer of the supplier.

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

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

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

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

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

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

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

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

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

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

(l) Notwithstanding any provision to the contrary in the Commercial Code, the dealer shall retain a first and prior lien against all inventory returned by the dealer to the supplier under this act until the dealer has paid all amounts owed by the supplier for the repurchase of inventory required under this act.

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

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

(o) If a dealer has more than one business location covered by the same dealer contract, the repurchase requirements of this section shall apply only to the repurchase of a dealer's inventory obtained from the supplier or the supplier's distributor by the particular business location or locations involved in the dealer contract termination and shall not apply to any other business locations covered by the same contract.

(p) If a supplier's product represents the lesser of 10 percent or three hundred fifty thousand dollars (\$350,000) of the dealer's total gross annual revenue that includes, but is not limited to, the sales, service, rental, or repair for each dealer location, then the supplier shall repurchase the inventory only if a dealer contract is canceled or not renewed by the dealer for any of the following reasons:

(1) The supplier consistently failed to provide adequate product support for the type and use of the product, which includes, but is not limited to, technical assistance, operators and repair manuals, and parts lists and diagrams.

(2) The supplier consistently failed to provide adequate training, required by the supplier, for maintenance, repair, or usage of the supplier's product.

(3) The supplier consistently failed to provide marketing and marketing support for the supplier's product if marketing is a requirement of the dealer contract.

(4) The supplier's product is defective and breaches the implied warranty of merchantability as defined in Section 1791.1 of the Civil Code.

(5) The supplier consistently failed to meet its warranty obligations to the dealer.

(6) The supplier abandons the market thereby failing to provide parts and services necessary for a dealer to perform warranty obligations.

(7) The supplier engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare, or the reputation of the dealer.

(8) The supplier made a material misrepresentation or falsification of any record.

(9) The supplier violated any provision of this chapter.

(q) Notwithstanding subdivision (p), nothing in this section shall be construed to limit the supplier's responsibility to repurchase a dealer's inventory as provided in this section when the supplier cancels or fails to renew a dealer contract.

(Amended by Stats. 2005, Ch. 712, Sec. 11. Effective October 7, 2005.)

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

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

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

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

(A) Allow the lien to be filed.

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

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

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

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

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

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

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

(Amended by Stats. 2005, Ch. 712, Sec. 12. Effective October 7, 2005.)

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

(Amended by Stats. 2005, Ch. 712, Sec. 13. Effective October 7, 2005.)

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

(Amended by Stats. 2005, Ch. 712, Sec. 14. Effective October 7, 2005.)

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

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

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

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

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

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

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

- (1) That the lien claimant sent to the lien debtor the notice required pursuant to subdivision (a) of Section 22906.
- (2) That more than 10 days have elapsed since the notice was received by the lien debtor.
- (3) That the lien debtor has not complied with the requirements of subdivision (a) of Section 22906.

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

(Amended by Stats. 2005, Ch. 712, Sec. 15. Effective October 7, 2005.)

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

(Amended by Stats. 2005, Ch. 712, Sec. 16. Effective October 7, 2005.)

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

- (a) The lien claimant may be identified either as a lien claimant or as a secured party.
- (b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.
- (c) The description of the collateral shall be the information specified in subdivisions (c), (d), (e), and (g) of Section 22909.
- (d) Attached to the form shall be a separately signed statement containing the information specified in subdivision (f) of Section 22909.

(Amended by Stats. 2005, Ch. 712, Sec. 17. Effective October 7, 2005.)

22912. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Sections 9516 and 9519 of the Commercial Code.

(Amended by Stats. 1999, Ch. 991, Sec. 1.2. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

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

(Amended by Stats. 2005, Ch. 712, Sec. 18. Effective October 7, 2005.)

22914. For the purpose of the Secretary of State's index pursuant to Sections 9516 and 9519 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9523 or 9528 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

(Amended by Stats. 1999, Ch. 991, Sec. 1.3. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

22915. The lien created pursuant to this act shall be treated according to the following:

- (a) Have priority in accordance with the time the notice of claim of lien is filed with the Secretary of State.
- (b) Have the same priority as a security interest perfected by the filing of a financing statement as of the date of notice of claim of lien was filed with the Secretary of State.
- (c) Not have priority over labor claims for wages and salaries for personal services that are provided by any employee to any lien debtor in connection with the equipment supplied, the proceeds of which are subject to the lien.

(Amended by Stats. 2006, Ch. 538, Sec. 33. Effective January 1, 2007.)

22916. A member of the public may obtain a certificate from the Secretary of State identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of the filing of each notice, and the names and addresses of each lienholder in the certificate. The fee for the certificate is the same as the fee for the certificate issued pursuant to Section 9523 of the Commercial Code.

(Amended by Stats. 1999, Ch. 991, Sec. 1.4. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

22917. A member of the public may obtain a copy of any notice of an equipment repurchase lien, including notices affecting the notices from the Secretary of State. The fee for these copies shall be the same as that prescribed in Section 9525 of the Commercial Code.

(Amended by Stats. 1999, Ch. 991, Sec. 1.5. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

22918. The lien claimant shall provide written notice to secured creditors at least 30 days prior to enforcing the claim of lien. For purposes of this section, "secured creditors" means any entity named as a secured party in the financing statement filed with regard to the debtor and which covers returned equipment.

(Added by Stats. 1992, Ch. 1271, Sec. 1. Effective January 1, 1993.)

22919. The lien claimant shall foreclose on a lien created by this chapter only in an action to recover the reasonable or agreed charges. The final judgment shall be enforced pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(Added by Stats. 1992, Ch. 1271, Sec. 1. Effective January 1, 1993.)

22920. (a) When a lien claimant receives payment for the total amounts secured by the lien, the lien claimant shall send the lien debtor a statement relinquishing the security interest under the notice of claim of lien, which shall be identified by the date, names of parties thereto, and file number. If the affected lienholder of record fails to send the termination statement within 10 days, he or she is liable to the debtor for all actual damages suffered by the debtor by reason of this failure, and if that failure is in bad faith, for a penalty of one hundred dollars (\$100).

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

(Amended by Stats. 2005, Ch. 712, Sec. 20. Effective October 7, 2005.)

22921. (a) A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment or transfer with the office of the Secretary of State in the same manner that a statement is filed pursuant to Section 9514 of the Commercial Code.

(Amended by Stats. 1999, Ch. 991, Sec. 1.6. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

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

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

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

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

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

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

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

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

(Amended by Stats. 2005, Ch. 712, Sec. 21. Effective October 7, 2005.)

22923. The Secretary of State may adopt any regulations necessary to carry out his or her duties pursuant to this chapter, including prescribing necessary forms.

(Added by Stats. 1992, Ch. 1271, Sec. 1. Effective January 1, 1993.)

22924. (a) In the event of the death or incapacity of the dealer, which in this context shall mean an owner, equal or majority partner, or the majority stockholder of a corporation, operating as a dealer, the supplier shall, at the option of the heirs at law, if the dealer died intestate, or the executor under the terms of the deceased dealer's last will and testament, if the dealer died testate, repurchase the inventory from the estate as if the supplier had terminated the dealer contract and the inventory repurchase provisions of Section 22905 are applicable. The heirs or executor shall have 180 days from the date of the death of the dealer or majority stockholder to exercise the option under this section. However, nothing in this section shall require the repurchase of inventory, if the heirs or

executor and the supplier enter into a new dealer agreement, or if a successor to the dealer is established pursuant to subdivision (b) of Section 22903.1. This section shall be subject to that portion of the dealer contract pertaining to death of the dealer or succession, to the extent the contract is not inconsistent. Nothing in this section shall entitle an heir or personal representative of a deceased dealer or majority stockholder to operate the dealership beyond the 180 days provided for in this subdivision without the consent of the supplier.

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

(Amended by Stats. 2005, Ch. 712, Sec. 22. Effective October 7, 2005.)

22925. Any dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of any provisions of this chapter, together with costs and reasonable attorney's fees. The dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, and change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. This section is not intended to affect current law pertaining to product liability actions.

(Amended by Stats. 2005, Ch. 712, Sec. 23. Effective October 7, 2005.)

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

(Amended by Stats. 2005, Ch. 712, Sec. 24. Effective October 7, 2005.)

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

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

(Amended by Stats. 2005, Ch. 712, Sec. 25. Effective October 7, 2005.)