



HOUSE BILL No. 4352

February 8, 1995, Introduced by Reps. Weeks, Kukuk, Goschka, LeTarte, Voorhees, Hill and Geiger and referred to the Committee on Agriculture and Forestry.

A bill to amend the title and sections 2, 3, 4, 5, 6, 7, 8, 9, and 10 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, 445.1459, and 445.1460 of the Michigan Compiled Laws; and to add section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2, 3, 4, 5, 6, 7, 8, 9,
2 and 10 of Act No. 341 of the Public Acts of 1984, as amended by
3 Act 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,
5 445.1459, and 445.1460 of the Michigan Compiled Laws, are amended
6 and section 7a is 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 CERTAIN MANUFAC-
5 TURERS OR SUPPLIERS subject to ~~a~~ CERTAIN dealer, wholesaler, or
6 distributor ~~agreement~~ AGREEMENTS; to provide for the repurchase
7 of CERTAIN repair parts; to impose certain duties and responsi-
8 bilities ON CERTAIN PERSONS; 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 OR 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 PUR-
15 POSES OF THIS SUBPARAGRAPH, AN OPTION TO ACQUIRE IS AN OPTION,
16 AND EACH 1 OF A SERIES OF SUCH OPTION, IS CONSIDERED AN OPTION TO
17 ACQUIRE 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 (R) "CONSUMER WARRANTY" MEANS THE PROMISE OF A SUPPLIER TO
7 REPAIR OR REPLACE ANY INVENTORY AFTER THE INVENTORY IS SOLD OR
8 LEASED BY A DEALER.

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

19 Sec. 4. (1) ~~The supplier or manufacturer shall repurchase~~
20 ~~inventory previously purchased from the supplier or manufacturer~~
21 ~~and held by the dealer, wholesaler, or distributor at the date of~~
22 ~~termination of the contract.~~ The supplier ~~or manufacturer~~
23 shall pay 100% of the net cost of all ~~new, unused,~~ undamaged
24 ~~,~~ and complete tractors, equipment, and attachments, WHICH WERE
25 PURCHASED WITHIN 30 MONTHS OF THE TERMINATION OF THE AGREEMENT,
26 LESS AN ALLOWANCE FOR USAGE FOR DEMONSTRATION OR USAGE FOR
27 RENTAL, PROVIDED THE DEALER'S DEMONSTRATION AND RENTAL PROGRAMS

1 ARE NOT IN CONFLICT WITH THE SUPPLIER'S AGREEMENT OR WRITTEN
2 POLICIES, and 90% of the current net price of all new, unused,
3 and undamaged repair parts. The supplier ~~or manufacturer~~ shall
4 pay the dealer ~~, wholesaler, or distributor~~ 5% of the current
5 net price on all new, unused, and undamaged repair parts returned
6 to cover the cost of handling, packing, and loading. The sup-
7 plier ~~or manufacturer~~ may perform the handling, packing, and
8 loading in lieu of paying the 5% for services.

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

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

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

16 (C) THE SUPPLIER SHALL PAY THE DEALER AT LEAST 75% OF THE
17 SUPPLIER'S NET PRICE LAST PUBLISHED FOR ANY NEW DEALER SUPPLIES
18 PURCHASED FROM THE SUPPLIER.

19 (D) NO SPECIALIZED REPAIR TOOL THAT IS NOT COMPLETE AND IN
20 USAGE CONDITION IS REQUIRED TO BE PURCHASED.

21 (3) ~~(2)~~ Upon payment of the repurchase amount to the
22 dealer, ~~wholesaler, or distributor,~~ the title and right of pos-
23 session to the repurchased inventory shall transfer to the
24 supplier. ~~or manufacturer.~~

25 (4) ~~(3)~~ The supplier ~~or manufacturer~~ may subtract from
26 the sums due under subsection (1) OR (2) the amount of debts owed

1 by the dealer ~~, wholesaler, or distributor~~ to the supplier.
2 ~~or manufacturer~~.

3 (5) WITH OR WITHOUT THE PRIOR CONSENT OR AUTHORIZATION OF A
4 SUPPLIER, A DEALER MAY SHIP ALL INVENTORY SUITABLE FOR REPURCHASE
5 TO THE SUPPLIER, NOT LESS THAN 60 DAYS AFTER THE SUPPLIER HAS
6 NOTIFIED THE DEALER, OR THE DEALER HAS NOTIFIED THE SUPPLIER BY
7 CERTIFIED MAIL, THAT THE AGREEMENT BETWEEN THEM HAS BEEN
8 TERMINATED. THE SUPPLIER SHALL INSPECT A DEALER'S INVENTORY
9 WITHIN 30 DAYS OF TERMINATION OF THE AGREEMENT AND DESIGNATE POR-
10 TIONS OF THAT INVENTORY TO BE NOT RETURNABLE UNDER THIS ACT.
11 HOWEVER, SUCH A DESIGNATION RECEIVED BY THE DEALER MORE THAN 30
12 DAYS AFTER THE TERMINATION IS NOT EFFECTIVE.

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

21 (7) IF A PROPERLY SHIPPED SHIPMENT IS UNDELIVERABLE, OR NOT
22 ACCEPTED BY THE SUPPLIER, THE DEALER MAY ORDER THE INVENTORY
23 RETURNED, MAY ORDER IT STORED FOR THE SUPPLIER'S ACCOUNT, OR MAY
24 ORDER IT LIQUIDATED OR ABANDONED BY THE CARRIER. ALL RISK OF
25 LOSS TO PROPERLY SHIPPED BUT UNDELIVERABLE OR UNACCEPTED GOODS IS
26 THE SUPPLIER'S, INCLUDING, BUT NOT LIMITED TO, LOSSES FROM
27 EXPOSURE, LIQUIDATION, ABANDONMENT, OR THEFT. A SUPPLIER'S

1 ACCEPTANCE OF A SHIPMENT DOES NOT CONSTITUTE AN ADMISSION THAT
2 THE INVENTORY INSPECTED BY THE SUPPLIER BEFORE SHIPMENT PURSUANT
3 TO SUBSECTION (5) AND DECLARED NOT RETURNABLE MUST BE REPUR-
4 CHASED, BUT THAT ALL PROPERLY SHIPPED INVENTORY THAT IS NOT DELI-
5 VERABLE OR NOT ACCEPTED IS CONSIDERED TO HAVE BEEN PROPERLY SUB-
6 MITTED FOR REPURCHASE, AND THE SUPPLIER IS LIABLE TO PAY THE
7 REPURCHASE AMOUNT FOR THAT INVENTORY.

8 (8) INSTEAD OF THE RETURN OF THE INVENTORY TO THE SUPPLIER
9 UNDER THE TERMS OF SUBSECTION (7), A DEALER MAY NOTIFY A SUPPLIER
10 BY CERTIFIED MAIL THAT THE DEALER HAS INVENTORY THAT THE DEALER
11 INTENDS TO RETURN. THE NOTICE OF THE DEALER'S INTENTION TO
12 RETURN SHALL BE IN WRITING, SWORN TO BEFORE A NOTARY PUBLIC AS TO
13 THE ACCURACY OF THE LISTING OF INVENTORY AND THE SUITABILITY OF
14 THE ITEMS FOR REPURCHASE. THE NOTICE SHALL INCLUDE THE NAME AND
15 BUSINESS ADDRESS OF THE PERSON OR BUSINESS WHO HAS POSSESSION AND
16 CUSTODY OF THE INVENTORY AND THE LOCATION WHERE THE INVENTORY MAY
17 BE INSPECTED AND THE LIST OF INVENTORY MAY BE VERIFIED. THE
18 NOTICE MUST ALSO STATE THE NAME AND BUSINESS ADDRESS OF THE
19 PERSON OR BUSINESS WHO HAS THE AUTHORITY TO SERVE AS THE ESCROW
20 AGENT OF THE DEALER, TO ACCEPT PAYMENT OR A CREDIT TO THE
21 DEALER'S ACCOUNT ON BEHALF OF THE DEALER, AND TO RELEASE THE
22 MACHINERY AND PARTS TO THE SUPPLIER. THE NOTICE CONSTITUTES THE
23 APPOINTMENT OF THE ESCROW AGENT TO ACT ON THE DEALER'S BEHALF
24 REGARDING THE ACTIVITIES DESCRIBED IN THIS SUBSECTION. THE
25 ESCROW AGENT SHALL BE A PERSON OR BUSINESS THAT IS INDEPENDENT OF
26 THE DEALERSHIP, DEALER PRINCIPAL, OR ANY EMPLOYEES OF THE
27 DEALERSHIP OR SUPPLIER.

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

6 (A) PAY THE ESCROW AGENT.

7 (B) GIVE EVIDENCE THAT A CREDIT TO THE ACCOUNT OF THE DEALER
8 HAS BEEN MADE IF THE DEALER HAS OUTSTANDING SUMS DUE THE
9 SUPPLIER.

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

13 (10) IF THE SUPPLIER SENDS A CREDIT LIST TO THE ESCROW
14 AGENT, PAYMENT OR A CREDIT AGAINST THE DEALER'S INDEBTEDNESS IN
15 ACCORDANCE WITH SUBSECTION (9) FOR THE ACCEPTABLE RETURNS SHALL
16 ACCOMPANY THE CREDIT LIST. UPON RECEIPT OF THE PAYMENT, EVIDENCE
17 OF A CREDIT TO THE ACCOUNT OF THE DEALER, OR THE CREDIT LIST WITH
18 PAYMENT, THE TITLE TO THE INVENTORY ACCEPTABLE AS RETURNS PASSES
19 TO THE SUPPLIER MAKING THE PAYMENT OR ALLOWING THE CREDIT AND THE
20 SUPPLIER IS ENTITLED TO KEEP THE INVENTORY. THE ESCROW AGENT
21 SHALL SHIP OR CAUSE TO BE SHIPPED THE INVENTORY ACCEPTABLE AS
22 RETURNS TO THE SUPPLIER UNLESS THE SUPPLIER ELECTS TO PERSONALLY
23 PERFORM THE INVENTORYING, PACKING, AND LOADING.

24 (11) WHEN THE INVENTORY HAS BEEN RECEIVED BY THE SUPPLIER,
25 NOTICE OF THE RECEIPT OF THE INVENTORY SHALL BE SENT BY CERTIFIED
26 MAIL TO THE ESCROW AGENT WHO SHALL THEN DISBURSE 90% OF THE
27 PAYMENT HE OR SHE HAS RECEIVED, LESS ITS ACTUAL EXPENSES AND A

1 REASONABLE FEE FOR HIS OR HER SERVICES, TO THE DEALER. THE
2 ESCROW AGENT SHALL KEEP THE BALANCE OF THE FUNDS IN THE DEALER'S
3 ESCROW ACCOUNT UNTIL HE OR SHE IS NOTIFIED THAT AN AGREEMENT HAS
4 BEEN REACHED AS TO THE NONRETURNS, AFTER WHICH THE ESCROW
5 AGENT SHALL DISBURSE THE REMAINING FUNDS AND DISPOSE OF ANY
6 REMAINING INVENTORY AS PROVIDED IN THE SETTLEMENT.

7 (12) WHENEVER AN AGREEMENT PROVIDES FOR A DEALER TO SERVICE
8 CONSUMER WARRANTIES BY REPAIRING, RETURNING, OR REPLACING INVEN-
9 TORY, THE SUPPLIER SHALL PAY ANY WARRANTY CLAIM MADE BY OR
10 THROUGH THE DEALER FOR WARRANTY PARTS OR SERVICE WITHIN 90 DAYS
11 AFTER THE NOTICE OF TERMINATION OF THE AGREEMENT. IF A CLAIM IS
12 NOT SPECIFICALLY DISAPPROVED IN WRITING DURING THE 90-DAY PERIOD
13 AFTER NOTICE OF TERMINATION OF AN AGREEMENT, STATING IN DETAIL
14 THE REASONS FOR THE DISAPPROVAL, THE CLAIM SHALL BE CONSIDERED
15 APPROVED AND THE SUPPLIER SHALL PAY THE DEALER FOR ALL PARTS AND
16 SERVICE APPLIED TO THE SERVICING OF THE WARRANTY CLAIM.

17 (13) IF A WARRANTY CLAIM IS APPROVED OR CONSIDERED APPROVED
18 UNDER SUBSECTION (12) BUT REPAIRS ARE NOT MADE, THE SUPPLIER IS
19 NOT OBLIGATED TO PAY THE DEALER. HOWEVER, THE SUPPLIER SHALL
20 ACCEPT FOR RETURN BY THE DEALER ANY INVENTORY PURCHASED,
21 RECEIVED, OR SET ASIDE BY THE DEALER FOR SERVICING OF THE CLAIM
22 UNLESS, WHILE IN THE POSSESSION OF THE DEALER, THE INVENTORY HAS
23 CEASED TO BE IN APPROPRIATE CONDITION FOR RETURN.

24 (14) INVENTORY IN POSSESSION OF A SUPPLIER AND IDENTIFIED TO
25 A WARRANTY CLAIM MADE BY OR THROUGH A DEALER ON THE DATE OF THE
26 NOTICE OF TERMINATION OF THE AGREEMENT MAY BE SHIPPED BY THE
27 SUPPLIER, AT THE DEALER'S OPTION, PROVIDED THAT IF THE DEALER

1 DIRECTS THE SUPPLIER TO SHIP THE INVENTORY AFTER NOTICE OF
 2 TERMINATION OF THE AGREEMENT, THAT INVENTORY SHALL NOT BE
 3 RETURNABLE.

4 Sec. 5. (1) The provisions of this act are supplemental to
 5 any agreement between the dealer ~~, wholesaler, or distributor~~
 6 and the supplier ~~or manufacturer~~ governing the return of inven-
 7 tory and the dealer ~~, wholesaler, or distributor~~ may elect to
 8 pursue either a contract remedy or the remedy provided in this
 9 act. WITH RESPECT TO A DEALER LOCATED IN THIS STATE, A REMEDY
 10 PROVIDED FOR IN THIS ACT SHALL NOT BE LIMITED BY ANY AGREEMENT OR
 11 CONTRACT BETWEEN A SUPPLIER AND A DEALER.

12 (2) An election by the dealer ~~, wholesaler, or distributor~~
 13 to pursue a contract remedy does not bar the right of the dealer
 14 ~~, wholesaler, or distributor~~ to the remedy provided in this act
 15 as to that inventory not affected by PURSUIT OF THE contract
 16 remedy.

17 (3) Notwithstanding anything contained in this act, the
 18 rights of a supplier ~~or manufacturer~~ to charge back to the
 19 dealer's ~~, wholesaler's, or distributor's~~ account amounts pre-
 20 viously paid or credited as a discount incident to the dealer's
 21 ~~, wholesaler's, or distributor's~~ purchase of the inventory
 22 repurchased shall not be affected.

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

26 (a) Any PERISHABLE repair part ~~that has a limited storage~~
 27 ~~life~~ INCLUDED IN A LIST OF PARTS WITH SHELF LIVES PUBLISHED BY

1 THE SUPPLIER AND PROVIDED TO THE DEALER BEFORE TERMINATION, THE
2 SHELF LIFE OF WHICH HAS ELAPSED BEFORE THE TERMINATION, or WHICH
3 shows evidence of deterioration.

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

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

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

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

14 (f) Any farm tractors and equipment, utility tractors and
15 equipment, and equipment, ~~and~~ OR attachments that are not in
16 new, unused, undamaged, complete, and ~~saleable~~ SALABLE
17 condition. THIS SUBDIVISION DOES NOT APPLY TO THOSE RESALABLE
18 ITEMS DESCRIBED IN SECTION 4(1) THAT WERE USED FOR DEMONSTRATION
19 OR RENTAL.

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

23 (h) Any inventory that was ordered by the dealer ~~, whole-~~
24 ~~salor, or distributor~~ on or after the date of notification of
25 termination of the contract.

1 (i) Any inventory that was acquired by the dealer ~~→~~
2 ~~wholesaler, or distributor~~ from any source other than the
3 supplier. ~~or manufacturer.~~

4 Sec. 7. (1) If any supplier ~~or manufacturer~~ fails or
5 refuses to pay or credit the account of the dealer ~~→, wholesaler,~~
6 ~~or distributor~~ for any inventory required to be repurchased by
7 section 3 within 90 days after receipt by the supplier ~~or~~
8 ~~manufacturer~~ of that inventory, he or she shall be liable for
9 100% of the NET COST OF ALL TRACTORS, EQUIPMENT, AND ATTACHMENTS
10 RETURNED OR THE current net price of ~~the inventory~~ ALL REPAIR
11 PARTS RETURNED plus any freight charges paid by the dealer,
12 ~~wholesaler, or distributor,~~ reasonable attorney's fees, court
13 costs, and interest on the current net price computed at the
14 legal interest rate from the sixty-first day after receipt of the
15 inventory.

16 (2) A DEALER MAY BRING AN ACTION AGAINST A SUPPLIER IN ANY
17 COURT OF COMPETENT JURISDICTION FOR THE ACTUAL DAMAGES SUSTAINED
18 BY HIM OR HER AS CONSEQUENCE OF THE SUPPLIER'S VIOLATION OF THIS
19 ACT TOGETHER WITH THE ACTUAL COSTS OF THE ACTION, INCLUDING REA-
20 SONABLE ACTUAL ATTORNEY FEES. A DEALER LOCATED IN THIS STATE
21 SHALL NOT WAIVE HIS OR HER RIGHT TO BRING ANY ACTION UNDER THIS
22 ACT IN THE COURTS OF THIS STATE. A DEALER IS NOT, BY VIRTUE OF
23 ENTERING INTO AN AGREEMENT WITH A SUPPLIER IN ANOTHER STATE, CON-
24 sidered TO BE DOING BUSINESS IN THE OTHER STATE. AN ACTION ARIS-
25 ING UNDER PROVISIONS OF THIS ACT SHALL BE BROUGHT IN THE CIRCUIT
26 COURT OF THE COUNTY IN WHICH THE DEALER HAS ITS PRINCIPAL PLACE
27 OF BUSINESS IN MICHIGAN.

1 SEC. 7A. (1) A SUPPLIER SHALL NOT TERMINATE, CANCEL, FAIL
2 TO RENEW, OR SUBSTANTIALLY CHANGE THE COMPETITIVE CIRCUMSTANCES
3 OF AN AGREEMENT WITHOUT GOOD CAUSE. A SUPPLIER SHALL PROVIDE A
4 DEALER AT LEAST 90 DAYS' PRIOR WRITTEN NOTICE OF TERMINATION,
5 CANCELLATION, NONRENEWAL, OR SUBSTANTIAL CHANGE IN COMPETITIVE
6 CIRCUMSTANCES. THE NOTICE SHALL STATE THE REASONS OR DEFICIEN-
7 CIES FOR THE ACTION, AND THE DEALER HAS 90 DAYS TO SUBMIT A PLAN
8 TO CORRECT THE STATED REASONS OR DEFICIENCIES THAT IS ACCEPTABLE
9 TO THE SUPPLIER OR TO CORRECT THE STATED REASONS OR
10 DEFICIENCIES. FAILURE BY A DEALER TO COMPLY WITH THE REQUIRE-
11 MENTS IMPOSED UPON THE DEALER BY THE SUPPLIER'S AGREEMENT SHALL
12 BE CAUSE FOR TERMINATION, PROVIDED THE REQUIREMENTS ARE NOT DIF-
13 FERENT FROM THOSE REQUIREMENTS IMPOSED BY THE SUPPLIER ON OTHER
14 SIMILARLY SITUATED EQUIPMENT DEALERS WITHIN THE STATE.

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

21 (3) THE NOTICE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF
22 THE REASON FOR TERMINATION, CANCELLATION, OR NONRENEWAL IS INSOL-
23 VENCY, THE OCCURRENCE OF AN ASSIGNMENT FOR THE BENEFIT OF CREDI-
24 TORS, BANKRUPTCY, OR MATERIAL MISREPRESENTATION AND FALSIFICATION
25 OF RECORDS. IF THE REASON FOR TERMINATION, CANCELLATION, NONRE-
26 NEWAL, OR SUBSTANTIAL CHANGE IN COMPETITIVE CIRCUMSTANCES IS
27 NONPAYMENT OF SUMS DUE UNDER THE AGREEMENT, THE DEALER SHALL BE

1 ENTITLED TO WRITTEN NOTICE OF DEFAULT IN PAYMENT AND SHALL HAVE
2 10 DAYS FROM THE DATE OF DELIVERY OF POSTING OF THE NOTICE IN
3 WHICH TO REMEDY THE DEFAULT. A DEALER MAY BRING AN ACTION IN ANY
4 COURT OF COMPETENT JURISDICTION FOR DAMAGES AND INJUNCTIVE RELIEF
5 UPON THE SUPPLIER'S BREACH OF SUBSECTION (1) AND MAY RECOVER THE
6 ACTUAL COSTS OF THE ACTION, INCLUDING REASONABLE ATTORNEY FEES.

7 Sec. 8. (1) Upon the death of the dealer ~~, wholesaler, or~~
8 ~~distributor~~ or the majority stockholder of a corporation or a
9 partner in a partnership operating as a dealer, ~~wholesaler, or~~
10 ~~distributor~~, the supplier ~~or manufacturer~~ shall, at the option
11 of the heirs, repurchase the inventory from the surviving spouse
12 or the heir or heirs of the dealer ~~, wholesaler, or distributor~~
13 or majority stockholder as if the contract had been terminated.

14 (2) The heir or heirs shall have 200 days from the date of
15 the death of the dealer ~~, wholesaler, or distributor~~ or major-
16 ity stockholder to exercise their options under this act. The
17 repurchase of an inventory is not required if the heirs or the
18 supplier ~~or manufacturer~~ enter into an agreement to operate the
19 dealership, wholesale business, or distributorship ON SUBSTAN-
20 Tially SIMILAR TERMS TO THOSE OF THE DECEASED DEALER.

21 Sec. 9. The provisions of this act shall not be construed
22 to affect in any way any security interest which any financial
23 institution, person, or supplier ~~or manufacturer~~ has in the
24 inventory of the dealer ~~, wholesaler, or distributor~~, and any
25 repurchase shall not be subject to article 6 of the uniform com-
26 mercial code, Act No. 174 of the Public Acts of 1962, being
27 sections 440.6101 to 440.6111 of the Michigan Compiled Laws.

1 ~~The supplier or manufacturer may furnish a representative to~~
2 ~~inspect all parts and certify their acceptability when packed for~~
3 ~~shipment.~~

4 Sec. 10. The provisions of this act shall apply to all
5 agreements, contracts, sales agreements, security agreements, or
6 franchise agreements written or implied in force and effect on or
7 after ~~December 27, 1984~~ JANUARY 2, 1990.