AN ACT concerning contracts; relating to dealership agreements for farm
equipment, outdoor power equipment and lawn and garden equipment;
amending K.S.A. 16-120, 16-1002, 16-1202, 16-1203, 16-1204, 16-
1205, 16-1302, 16-1305, 16-1306, 16-1307, 16-1309, 16-1402, 16-
1405, 16-1406, 16-1407 and 16-1409 and repealing the existing
sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 16-120 is hereby amended to read as follows: 16-
120. (a) As used in this section:

(1) "Contract" has the meaning provided by K.S.A. 16-1302 or 16-
1402, and amendments thereto.

(2) "Dealer" includes farm equipment dealers, as defined in K.S.A.
16-1202, and amendments thereto, or retailers, as defined in K.S.A. 16-
1302 or 16-1402, and amendments thereto.

(3) "Dealership agreement" has the meaning provided by K.S.A. 16-
1202, and amendments thereto.

(4) "Equipment" includes farm equipment, as defined in K.S.A. 16-
1202, and amendments thereto, outdoor power equipment, as defined in
K.S.A. 16-1302, and amendments thereto, or equipment, as defined in
K.S.A. 16-1402, and amendments thereto.

(5) "Manufacturer" includes farm equipment manufacturers as
defined in K.S.A. 16-1202, and amendments thereto, or suppliers, as
defined in K.S.A. 16-1302 or 16-1402, and amendments thereto.

(b) With respect to any equipment sold on or after July 1, 2000, any
warranty repair work performed for a consumer by a dealer under the
provisions of a manufacturer's express warranty, shall require the
manufacturer to reimburse the dealer at an hourly labor rate which is the
same as the hourly labor rate the dealer currently charges consumers for
nonwarranty repair work.

(e) Nothing in this act shall apply to, or operate or be construed to
invalidate, impair or otherwise infringe upon the specific requirements of
any contract or dealership agreement between a dealer and a manufacturer
entered into prior to the effective date of this act, if such contract or
dealership agreement is in effect on the effective date of this act.

(d) The provisions of this section shall not apply to a manufacturer.
who provides in a written dealer agreement for compensation to a 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, provided such payment is not less than 5% of the suggested retail price of the equipment will be subject to the following:

(1) (A) If a dealer submits a warranty claim to a manufacturer while the contract or dealership agreement is in effect or within 60 days after the termination of such contract or dealership agreement and the claim is for work performed before the termination or expiration of such contract or dealership agreement, the manufacturer must accept or reject such warranty claim by written notice to the dealer within 30 days after the manufacturer's receipt thereof. If the manufacturer does not reject the warranty claim within 30 days, the claim will be deemed to be accepted.

(B) If the manufacturer accepts the warranty claim, the manufacturer must pay or credit to the dealer's account all amounts owed with respect to the claim to the dealer within 30 days after it is accepted. If the manufacturer rejects a warranty claim, the manufacturer must give the dealer written or electronic notice of the grounds for rejection, which reasons must be consistent with the manufacturer's reasons for rejecting warranty claims of other dealers, both in their terms and manner of enforcement. If no grounds for rejection are given, the claim will be deemed to be accepted.

(2) Any claim that is disapproved by the manufacturer based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within 30 days of receipt by the dealer of the manufacturer's notification of the disapproval.

(3) 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 thereof multiplied by the dealer's established customer hourly retail labor rate for non-warranty repair work, which shall have previously been made known to the manufacturer. Repair parts used in warranty repair work shall be reimbursed at the current net parts cost to purchase such parts from the manufacturer plus 15% and the cost of freight.

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

(5) A manufacturer may audit warranty claims submitted by a dealer for a period of up to one year following payment of the claims and may
charge back to the dealer any amounts paid based upon claims shown by audit to be misrepresented. If a warranty claim is misrepresented, then warranty claims submitted within the three-year period ending with the date a claim is shown by audit to be misrepresented may be audited.

(6) The requirements of paragraphs (1), (2) and (3) shall apply to all warranty claims submitted by a dealer to a manufacturer in which the dealer has complied with the manufacturer's reasonable policies and procedures for warranty reimbursement and such claims are warranted claims under the manufacturer's warranty policy. A manufacturer's warranty reimbursement policies and procedures shall be deemed unreasonable to the extent they conflict with any of the provisions of this section.

Sec. 2. K.S.A. 16-1002 is hereby amended to read as follows: 16-1002. (a) Whenever any person, firm or corporation engaged in the business of selling and retailing farm implements, machinery, attachments or repair parts therefor enters into a written or parol contract, sales agreement or security agreement evidenced by a franchise agreement whereby such retailer agrees to maintain a stock of parts or complete or whole implements, machines or attachments with any wholesaler, manufacturer or distributor of such implements, machinery, attachments or repair parts, and either such wholesaler, manufacturer or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer or distributor shall pay to such retailer or credit to such retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer or distributor, unless the retailer should desire to keep such merchandise, a sum equal to 100% of the net cost of all new, unused, undamaged, complete farm implements, machinery and attachments and 95% of the current net prices on new, unused, undamaged repair parts, including superseded parts, which implements, machinery, attachments and parts had previously been purchased from such wholesaler, manufacturer, distributor or transferee of such wholesaler, manufacturer or distributor if the transferee acquired substantially all of the assets of such wholesaler, manufacturer or distributor, and held by such retailer on the date of the cancellation or discontinuance of such contract. The wholesaler, manufacturer or distributor shall also pay such retailer a sum equal to 5% of the current net price of all parts returned for the handling, packing and loading of such parts for return to the wholesaler, manufacturer or distributor, except that such 5% shall not be paid or credited to the retailer if the wholesaler, manufacturer or distributor elects to perform the handling, packing, loading and transportation of the parts itself. Upon the payment or allowance of credit to the retailer's account of the sum required by this section, the title to such farm implements, machinery, attachments and repair parts therefor shall pass to the
manufacturer, wholesaler or distributor making such payment, and such
manufacturer, wholesaler or distributor shall be entitled to the possession
of such farm implements, machinery, attachments or repair parts. All
payments or allowances of credit due retailers shall be paid or credited
within 60 days after the return of implements, machinery, attachments or
repair parts. After 60 days, all payments or allowances shall include
interest at the rate prescribed by K.S.A. 16-204, and amendments thereto.

(b) The provisions of this section relating to a retailer's right to cancel
or discontinue a contract and receive payment for implements, machines,
attachments and parts returned shall apply to all contracts now in effect
which have no expiration date and are a continuing contract, and all other
contracts entered into or renewed after July 1, 1976. The provisions for a
retailer to receive payment for implements, machines, attachments and
parts returned shall apply only to implements, machines, attachments and
parts purchased after the effective date of this act. Any contract in force
and effect on July 1, 1976, which by its own terms will terminate on a date
subsequent thereto shall be governed by the law as it existed prior to this
act.

(c) The provisions of this section shall not be construed to affect in
any way any security interest which the wholesaler, manufacturer or
distributor may have in the inventory of the retailer, except that any
repurchase hereunder shall not be subject to the provisions of the bulk
sales law or to the claims of any secured or unsecured creditors of the
wholesaler, manufacturer or distributor or any assignee of the wholesaler,
manufacturer or distributor until such time the retailer has received
payment in full subject to any offset the retailer may owe to the
wholesaler, manufacturer or distributor.

(d) Any term of a contract, either expressed or implied, that is
inconsistent with the terms of this act shall be void and unenforceable and
shall not waive any rights that are provided to any person by this act.

Sec. 3. K.S.A. 16-1202 is hereby amended to read as follows: 16-
1202. As used in this act:

(a) "Change in competitive circumstances" means an event, act or
omission that has a detrimental effect on a farm equipment dealer's ability
to compete with another farm equipment dealer that sells the same brand
of farm equipment, including, but not limited to, approval of a new
authorized retail dealership location or relocation of an existing retail
dealership location, termination of a farm equipment dealer's
authorization to sell a type of equipment or product line or termination of
a farm equipment dealer's authorization to sell the manufacturer's
equipment, or any type of product line thereof, from one or more business
locations operated by the farm equipment dealer.

(b) "Farm equipment" means equipment including, but not limited to,
tractors, trailers, combines, tillage implements, bailers and other equipment, including attachments and repair parts therefor, used in planting, cultivating, irrigation, harvesting and marketing of agricultural products, excluding self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

(b) (c) "Farm equipment manufacturer" means any person, partnership, corporation, association or other form of business enterprise engaged in the manufacturing, assembly or wholesale distribution of farm equipment.

e) (d) "Farm equipment dealer" or "farm equipment dealership" means any person, partnership, corporation, association or other form of business enterprise engaged in the retail sale of farm equipment.

(e) (e) "Dealership agreement" means an oral or written agreement of definite or indefinite duration between a farm equipment manufacturer and a farm equipment dealer which provides for the rights and obligations of the parties with respect to the purchase or sale of farm equipment.

Sec. 4. K.S.A. 16-1203 is hereby amended to read as follows: 16-1203. (a) No farm equipment manufacturer, directly or through any officer, agent or employee may terminate, cancel, or fail to renew a dealership agreement, or substantially change the competitive circumstances of a farm equipment dealership agreement, without good cause. A provision or allowance in a dealership agreement for an event, act or omission may be considered but does not control whether the event, act or omission resulted in a change in competitive circumstances.

(b) For the purposes of this subsection, good cause means and includes the failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

(a) (1) Except for transfers that are not prohibited pursuant to K.S.A. 16-1205, and amendments thereto, the farm equipment dealer has transferred an interest in the farm equipment dealership without the manufacturer's consent, or there has been a withdrawal from the dealership of an individual proprietor, partner, major shareholder, or the manager of the dealership, or there has been a substantial reduction in interest of a partner or major stockholder without the consent of the manufacturer;

(b) (2) the farm equipment dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the filing, or there has been a closeout or sale of a substantial part of the dealer's assets related to the farm equipment business, or there has been a commencement
of dissolution or liquidation of the dealer;

(c) (3) there has been a change, without the prior written approval of
the manufacturer, in the location of the dealer's principal place of business
under the dealership agreement;

(d) (4) the farm equipment dealer has defaulted under any chattel
mortgage or other security agreement between the dealer and the farm
equipment manufacturer, or there has been a revocation or discontinuance
of any guarantee of the dealer's present or future obligations to the farm
equipment manufacturer;

(e) (5) the farm equipment dealer has failed to operate in the normal
course of business for seven consecutive days or has otherwise abandoned
its business;

(f) (6) the farm equipment dealer has pleaded guilty to or has been
convicted of a felony affecting the relationship between the dealer and
manufacturer;

(g) (7) the dealer has engaged in conduct which is injurious or
detrimental to the dealer's customers or to the public welfare; or

(h) (8) the farm equipment dealer has consistently failed to meet the
manufacturer's requirements for reasonable market penetration based on
the manufacturer's experience in other comparable marketing areas.

Sec. 5. K.S.A. 16-1204 is hereby amended to read as follows: 16-
1204. (a) Except as otherwise provided in this section, a farm equipment
manufacturer shall provide a farm equipment dealer at least
90 days’ prior written notice of termination, cancellation or nonrenewal of
the dealership agreement or a substantial change in competitive
circumstances of a farm equipment dealership. The notice shall state all
reasons constituting good cause for termination, cancellation or
nonrenewal or substantial change in competitive circumstances and shall
provide that the dealer has 60 days in which to cure any claimed
deficiency. If the deficiency is rectified within 60 days the notice shall be
void. The notice and right to cure provisions under this section shall not
apply if the reason for termination, cancellation or nonrenewal or
substantial change in competitive circumstances is for any reason set forth
in subsections (a) through (h) of K.S.A. 16-1203, and amendments thereto.

(b) In the event that a farm equipment manufacturer has contractual
authority to approve or deny a request by a farm equipment dealer to sell
or transfer any portion the dealer's business ownership to another party or
to enter into an agreement to operate the dealership with another party, the
manufacturer shall approve or deny such a request within 90 60 days after
receiving the request. If the manufacturer has neither approved nor denied
the request within 90 60 days, the request shall be deemed approved. The
farm equipment dealer's request shall include the reasonable financial
information, personal background, character references and work histories
as required by the manufacturer to render such a determination on the history of
the person to whom business ownership or the dealership is proposed to
be sold or transferred. In the event the manufacturer denies the request,
the manufacturer shall provide the farm equipment dealer with a written
notice of its determination with the stated reasons for the denial. A farm
equipment manufacturer may only deny a request based on the failure of
the proposed transferee to meet the reasonable requirements consistently
imposed by the farm equipment manufacturer in determining approval of
the transfer or approval of new farm equipment dealers.

Sec. 6. K.S.A. 16-1205 is hereby amended to read as follows: 16-
1205. (a) It is a violation of this act for a farm equipment manufacturer to
c coerc, or attempt to coerce, any farm equipment dealer to accept delivery
of any farm equipment, parts or accessories therefor, which the farm
equipment dealer has not voluntarily ordered.
(b) It is a violation of this act for a farm equipment manufacturer to:
(1) Condition, or attempt to condition, the sale of any farm
equipment on a requirement that the farm equipment dealer also purchase
other goods or services; except that nothing herein shall prohibit a farm
equipment manufacturer from requiring the dealer to purchase all parts
reasonably necessary to maintain the quality of operation in the field of
any farm equipment used in such dealer's trade area;
(2) to coerce or attempt to coerce any farm equipment dealer into a
refusal to purchase the farm equipment manufactured by another farm
equipment manufacturer; or
(3) to discriminate in the prices charged for farm equipment of like
grade and quality sold by the farm equipment manufacturer to similarly
situated farm equipment dealers, except that nothing herein shall prevent
differentials which make only due allowance for differences in the cost of
manufacture, sale or delivery resulting from the differing methods or
quantities in which such farm equipment is sold or delivered, by the farm
equipment manufacturer; or
(4) prevent, by contract or otherwise, the issuance or transfer of a
non-controlling ownership interest in a farm equipment dealer.

Sec. 7. K.S.A. 16-1302 is hereby amended to read as follows: 16-
1302. As used in this act:
(a) "Change in competitive circumstances" means an event, act or
omission that has a detrimental effect on a retailer's ability to compete
with another retailer that sells the same brand of outdoor power
equipment, including, but not limited to, approval of a new authorized
retail dealership location or relocation of an existing retail dealership
location, termination of a retailer's authorization to sell a type of
equipment or product line or termination of a retailer's authorization to
sell the supplier's equipment, or any type of product line thereof, from one
or more business locations operated by the retailer.

(b) "Outdoor power equipment" means and includes machinery, equipment, attachments or repair parts therefor, used for industrial, construction, maintenance or utility purposes.

(c) "Retailer" means any person, partnership, firm, corporation, association, or other form of business enterprise engaged in the business of:

(1) Selling or leasing outdoor power equipment to the ultimate consumer thereof; and

(2) Repairing or servicing outdoor power equipment.

(d) "Contract" means either a written or parol agreement or arrangement for a definite or indefinite period between a retailer and a supplier which provides for the rights and obligations of the parties with respect to the purchase or sale of outdoor power equipment, and which agreement, regardless of the retailer's territorial scope, contemplates the establishment or maintenance by the retailer of a location within the state of Kansas at which outdoor power equipment and services for the same are displayed, and offered or demonstrated for sale.

(e) "Net cost" means the amount of money actually paid by a retailer to the supplier.

(f) "Current net price" means the price listed in a supplier's price list or catalogue in effect on the date of termination of a contract, less any applicable trade and cash discounts.

(g) "Supplier" means any person, partnership, corporation, association, or any and all other forms of business enterprise engaged in the business of manufacturing, assembly or wholesale distribution of outdoor power equipment. The term "supplier" and the provisions of this act shall be interpreted liberally, with regard to the equities of the retailer, and in a manner not limited to traditional doctrines of corporate successor liability, and the obligations of a supplier hereunder shall consequently apply to any actual successor in interest to a supplier, including but not limited to, a purchaser of substantial assets or substantial stock, any receiver, trustee or assignee, or any surviving corporation resulting from a merger, liquidation or reorganization of the original or any intermediate successor supplier.

Sec. 8. K.S.A. 16-1305 is hereby amended to read as follows: 16-1305. (a) In the event that any supplier, after such supplier or the retailer terminates, cancels, fails to renew, or in fact substantially discontinues such contract or substantially changes the competitive circumstances of a retailer, fails or refuses to make payment to such retailer as required by the provisions of K.S.A. 16-1303, and amendments thereto, such supplier shall be liable in a civil action to the retailer for:

(1) The actual costs of the action, including attorney, paralegal and
expert witness fees; for

(2) interest as provided in K.S.A. 16-1303, and amendments thereto; for

(3) 100% of the net cost of such machinery, plus transportation charges which have been paid by the retailer; and for

(4) 100% of the current net price of the repair parts, plus 5% for handling, packing and loading plus freight charges which have been paid by the retailer.

(b) In any such action pursuant to subsection (a), it shall be the burden of the supplier to establish that the terms of K.S.A. 16-1304, and amendments thereto, may apply to except any particular item of outdoor power equipment from the terms of K.S.A. 16-1303, and amendments thereto.

Sec. 9. K.S.A. 16-1306 is hereby amended to read as follows: 16-1306. (a) No supplier, directly or through any officer, agent or employee, may terminate, cancel or fail to renew a contract, or substantially change the competitive circumstances of a retailer, without good cause.

(b) For the purposes of this section, good cause means and includes the failure by a retailer to substantially comply with essential and reasonable requirements imposed upon the retailer by the contract, provided such requirements are not different from those requirements imposed on similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

(1) Except for transfers that are not prohibited pursuant to K.S.A. 16-1307, and amendments thereto, the retailer has transferred a controlling interest in the retailer business without the supplier's consent;

(2) the retailer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within 30 days after the date of filing, or there has been a closeout or sale of a substantial part of the retailer's assets related to the retailer's business or there has been a commencement or dissolution or liquidation of the retailer's business;

(3) there has been a change, without the prior written approval of the supplier, in the location of retailer's principal place of business if such approval is required under the retailer's agreement with the supplier;

(4) the retailer has defaulted under any reasonable and essential term of a chattel mortgage or other security agreement between the retailer and supplier, or there has been a revocation or discontinuance of any guarantee of the retailer's present or future obligations to the supplier;

(5) the retailer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned such retailer's business, except for reasonable and customary closures of business;
(f) (6) the retailer has pleaded guilty to or has been convicted of a felony affecting the relationship between the retailer and supplier;

(g) (7) the retailer has engaged in conduct that is injurious or detrimental to the retailer's customers or the public welfare; or

(h) (8) following receipt of written notices of the supplier's requirements and of written notices of the supplier's determination of the retailer's initial and persisting failures to meet the supplier's requirements, the retailer has consistently failed to meet the supplier's requirements for reasonable market penetration based on the supplier's experience in other identified and comparable market areas.

Sec. 10. K.S.A. 16-1307 is hereby amended to read as follows: 16-1307. (a) Except as otherwise provided in this section, a supplier shall provide a retailer at least 90 days' prior notice of termination, cancellation, or nonrenewal of the contract or a substantial change in competitive circumstances of a retailer. The notice shall state all reasons constituting good cause for termination, cancellation or nonrenewal or substantial change in competitive circumstances and shall provide that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is rectified within 60 days, the notice shall be void. The notice and right to cure provisions under this section shall not apply if the reason for termination, cancellation or nonrenewal or substantial change in competitive circumstances is for any reason set forth in subsections (a) through (h) of K.S.A. 16-1306, and amendments thereto.

(b) In the event that a "supplier" of outdoor power equipment has contractual authority to approve or deny a request by a "retailer" to sell or transfer any portion of the retailer's business ownership to another party or to enter into an agreement to operate the dealership with another party, the supplier shall approve or deny the request within 90 days after receiving such a request. If the supplier has neither approved nor denied the request within 90 days, the request shall be deemed approved. The retailer's request shall include the reasonable financial information, personal background, character references and work histories as required by the supplier to render such a determination history of the person to whom business ownership or the dealership is proposed to be sold or transferred. In the event the supplier denies the request, the supplier shall provide the retailer with a written notice of its determination with the stated reasons for the denial. A supplier may only deny a request based on the failure of the proposed transferee to meet the reasonable requirements consistently imposed by the supplier in determining approval of the transfer or approval of new retailers.

(c) It is a violation of this act for a supplier to:

(1) Coerce, or attempt to coerce, any retailer to accept delivery of any outdoor power equipment that the retailer has not voluntarily ordered;
(2) condition, or attempt to condition, the sale of any outdoor power equipment on a requirement that the retailer also purchase other goods or services, except that nothing herein shall prohibit a supplier from requiring the retailer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any outdoor power equipment used in such dealer's trade area;

(3) coerce or attempt to coerce any retailer into a refusal to purchase the outdoor power equipment manufactured by another supplier;

(4) discriminate in the prices charged for outdoor power equipment of like grade and quality sold by the supplier to similarly situated retailers, except that nothing herein shall prevent differentials that make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such outdoor power equipment is sold or delivered by the supplier; or

(5) prevent, by contract or otherwise, the issuance or transfer of a non-controlling ownership interest in a retailer.

Sec. 11. K.S.A. 16-1309 is hereby amended to read as follows: 16-1309. (a) Except for subsection (b) of K.S.A. 16-1307(b), and amendments thereto, the provisions of this act shall apply to all continuing and nonrenewable contracts, and all other contracts entered into, renewed, amended, assigned or transferred by a supplier to a transferee on or after July 1, 1991, and shall apply only to outdoor power equipment and repair parts purchased after the effective date of this act. The provisions of subsection (b) of K.S.A. 16-1307(b), and amendments thereto, shall apply only to those contracts executed after July 1, 1998. Any contract in force and effect on July 1, 1991, or with respect to the provisions of subsection (b) of K.S.A. 16-1307(b), and amendments thereto, on July 1, 1998, which by its own terms will terminate on a date certain subsequent thereto shall be governed by the law as it existed prior to this act unless renewed, amended, assigned or transferred as described above.

(b) Any term of a contract, either expressed or implied, that is inconsistent with the terms of this act shall be void and unenforceable and shall not waive any rights that are provided to any person by this act.

Sec. 12. K.S.A. 16-1402 is hereby amended to read as follows: 16-1402. As used in this act:

(a) "Change in competitive circumstances" means an event, act or omission that has a detrimental effect on a retailer's ability to compete with another retailer that sells the same brand of equipment, including, but not limited to, approval of a new authorized retail dealership location or relocation of an existing retail dealership location, termination of a retailer's authorization to sell a type of equipment or product line or termination of a retailer's authorization to sell the supplier's equipment, or any type of product line thereof, from one or more business locations
operated by the retailer.

(b) "Equipment" means and includes machinery, equipment, attachments or repair parts therefor, used for lawn, garden, golf course, landscaping or grounds maintenance purposes.

(b) (c) "Retailer" means any person, partnership, firm, corporation, association, or other form of business enterprise engaged in the business of:

(1) Selling or leasing lawn and garden equipment to the ultimate consumer thereof; and

(2) repairing or servicing lawn and garden equipment.

(d) "Contract" means either a written or parol agreement or arrangement for a definite or indefinite period between a retailer and a supplier which provides for the rights and obligations of the parties with respect to the purchase or sale of lawn and garden equipment, and which agreement, regardless of the retailer's territorial scope, contemplates the establishment or maintenance by the retailer of a location within the state of Kansas at which lawn and garden equipment and services for the same are displayed, and offered or demonstrated for sale.

(e) (e) "Net cost" means the amount of money actually paid by a retailer to the supplier.

(f) "Current net price" means the price listed in a supplier's price list or catalogue in effect on the date of termination of a contract, less any applicable trade and cash discounts.

(g) "Supplier" means any person, partnership, corporation, association, or any and all other forms of business enterprise engaged in the business of manufacturing, assembly or wholesale distribution of lawn and garden equipment. The term "supplier" and the provisions of this act shall be interpreted liberally, with regard to the equities of the retailer, and in a manner not limited to traditional doctrines of corporate successor liability, and the obligations of a supplier hereunder shall consequently apply to any actual successor in interest to a supplier, including but not limited to, a purchaser of substantial assets or substantial stock, any receiver, trustee or assignee, or any surviving corporation resulting from a merger, liquidation or reorganization of the original or any intermediate successor supplier.

Sec. 13. K.S.A. 16-1405 is hereby amended to read as follows: 16-1405. (a) In the event that any supplier, after such supplier terminates, cancels, fails to renew, or in fact substantially discontinues such contract, or substantially changes the competitive circumstances of a retailer, fails or refuses to make payment to such retailer as required by the provisions of K.S.A. 16-1403, and amendments thereto, such supplier shall be liable in a civil action to the retailer for:

(1) The actual costs of the action, including attorney, paralegal and
expert witness fees; for interest as provided in K.S.A. 16-1403, and
amendments thereto; for
(2) 100% of the net cost of such machinery, plus transportation
charges which have been paid by the retailer; and for
(3) 100% of the current net price of the repair parts, plus 5% for
handling, packing and loading plus freight charges which have been paid
by the retailer.
(b) In any such action pursuant to subsection (a), it shall be the
burden of the supplier to establish that the terms of K.S.A. 16-1404, and
amendments thereto, may apply to except any particular item of lawn and
garden equipment from the terms of K.S.A. 16-1403, and amendments
thereto.
Sec. 14. K.S.A. 16-1406 is hereby amended to read as follows: 16-
1406. (a) No supplier, directly or through any officer, agent or employee,
may terminate, cancel or fail to renew a contract, or substantially change
the competitive circumstances of a retailer, without good cause.
(b) For the purposes of this section, good cause means and includes
the failure by a retailer to substantially comply with essential and
reasonable requirements imposed upon the retailer by the contract—
provided such requirements are not different from those requirements
imposed on similarly situated dealers either by their terms or in the manner
of their enforcement. In addition, good cause shall exist whenever:
(a) (1) Except for transfers that are not prohibited pursuant to K.S.A.
16-1407, and amendments thereto, the retailer has transferred a controlling
interest in the retailer business without the supplier's consent;
(b) (2) the retailer has filed a voluntary petition in bankruptcy or has
had an involuntary petition in bankruptcy filed against it which has not
been discharged within 30 days after the date of filing, or there has been a
closeout or sale of a substantial part of the retailer's assets related to the
retailer's business or there has been a commencement or dissolution or
liquidity of the retailer's business;
(e) (3) there has been a change, without the prior written approval of
the supplier, in the location of retailer's principal place of business if such
approval is required under the retailer's agreement with the supplier;
(d) (4) the retailer has defaulted under any reasonable and essential
term of a chattel mortgage or other security agreement between the retailer
and supplier, or there has been a revocation or discontinuance of any
guarantee of the retailer's present or future obligations to the supplier;
(e) (5) the retailer has failed to operate in the normal course of
business for seven consecutive days or has otherwise abandoned such
retailer's business, except for reasonable and customary closures of
business;
(f) (6) the retailer has pleaded guilty to or has been convicted of a
felony affecting the relationship between the retailer and supplier;

(g) (7) the retailer has engaged in conduct which is injurious or
detrimental to the retailer's customers or the public welfare; or

(h) (8) following receipt of written notices of the supplier's
requirements and of written notices of the supplier's determination of the
retailer's initial and persisting failures to meet the supplier's requirements,
the retailer has consistently failed to meet the supplier's requirements for
reasonable market penetration based on the supplier's experience in other
identified and comparable market areas.

Sec. 15. K.S.A. 16-1407 is hereby amended to read as follows: 16-
1407. (a) Except as otherwise provided in this section, a supplier shall
provide a retailer at least 90 days' prior notice of termination, cancellation,
or nonrenewal of the contract or a substantial change in competitive
circumstances of a retailer. The notice shall state all reasons constituting
good cause for termination, cancellation or nonrenewal or substantial
change in competitive circumstances and shall provide that the dealer has
60 days in which to cure any claimed deficiency. If the deficiency is
rectified within 60 days, the notice shall be void. The notice and right to
cure provisions under this section shall not apply if the reason for
termination, cancellation or nonrenewal or substantial change in
competitive circumstances is for any reason set forth in subsections (a)
through (h) of K.S.A. 16-1406, and amendments thereto.

(b) In the event that a supplier of lawn and garden equipment has
contractual authority to approve or deny a request by a retailer to sell or
transfer any portion of the retailer's business ownership to another party or
to enter into an agreement to operate the dealership with another party, the
supplier shall approve or deny the request within 90 days of receiving
such a request. If the supplier has neither denied nor approved the request
within 90 days, the request shall be deemed approved. The retailer's
request shall include the reasonable financial information, personal
background, character references and work histories as required by the
supplier to render such a determination.

In the event the supplier denies the request, the supplier shall provide the
retailer with a written notice of its determination with the stated reasons
for the denial. A supplier may only deny a request based on the failure of
the proposed transferee to meet the reasonable requirements consistently
imposed by the supplier in determining approval of the transfer or
approval of new retailers.

(c) It is a violation of this act for a supplier to:

(1) Coerce, or attempt to coerce, any retailer to accept delivery of
any equipment that the retailer has not voluntarily ordered;

(2) condition, or attempt to condition, the sale of any equipment on a
requirement that the retailer also purchase other goods or services, except
that nothing herein shall prohibit a supplier from requiring the retailer to
purchase all parts reasonably necessary to maintain the quality of
operation in the field of any equipment used in such dealer's trade area;
(3) coerce or attempt to coerce any retailer into a refusal to purchase
the equipment manufactured by another supplier;
(4) discriminate in the prices charged for equipment of like grade
and quality sold by the supplier to similarly situated retailers, except that
nothing herein shall prevent differentials that make only due allowance for
differences in the cost of manufacture, sale or delivery resulting from the
differing methods or quantities in which such equipment is sold or
delivered by the supplier; or
(5) prevent, by contract or otherwise, the issuance or transfer of a
non-controlling ownership interest in a retailer.

Sec. 16. K.S.A. 16-1409 is hereby amended to read as follows: 16-
1409. (a) Except for the provisions of subsection (b) of K.S.A. 16-
1407(b), and amendments thereto, the provisions of this act shall apply to
all continuing and nonrenewable contracts, and all other contracts entered
into, renewed, amended, assigned or transferred by a supplier to a
transferee on or after July 1, 1992, and shall apply only to lawn and garden
equipment and repair parts purchased after the effective date of this act.
The provisions of subsection (b) of K.S.A. 16-1407(b), and amendments
thereto, shall apply only to those contracts executed after July 1, 1998.
Any contract in force and effect on July 1, 1992, or with respect to
subsection (b) of K.S.A. 16-1407(b), and amendments thereto, on July 1,
1998, which by its own terms will terminate on a date certain subsequent
thereto shall be governed by the law as it existed prior to this act unless
renewed, amended, assigned or transferred as described above.
(b) Any term of a contract, either expressed or implied, that is
inconsistent with the terms of this act shall be void and unenforceable and
shall not waive any rights that are provided to any person by this act.

Sec. 17. K.S.A. 16-120, 16-1002, 16-1202, 16-1203, 16-1204, 16-
1205, 16-1302, 16-1305, 16-1306, 16-1307, 16-1309, 16-1402, 16-1405,
16-1406, 16-1407 and 16-1409 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its
publication in the statute book.