

AMENDED IN ASSEMBLY MAY 3, 2012
AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 12

Introduced by Senator Corbett

December 6, 2010

An act to amend Sections 22901, 22903, 22903.2, 22905, 22906, 22924, 24044.5, and 24045.5 of the Business and Professions Code, to amend Section 485.010 of the Code of Civil Procedure, to amend Section 2403 of, and to repeal Division 6 (commencing with Section 6101) of, the Commercial Code, and to amend Section 2953.1 of the Revenue and Taxation Code, relating to bulk sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Corbett. Bulk sales.

(1) Existing law, the Uniform Commercial Code—Bulk Sales, is a comprehensive body of law regulating bulk sales, which are defined to include a sale not in the ordinary course of the seller's business of more than $\frac{1}{2}$ the seller's inventory and equipment, as specified. Existing law exempts from the bulk sales law, among other transactions, a sale of assets with a value of less than \$10,000, as specified, or a value of more than \$5,000,000 on the date of the bulk sale agreement. Existing law imposes certain notice requirements on a buyer of assets in a bulk sale, and provides that a buyer who fails to comply with those notice requirements with respect to a claimant is liable to the claimant for specified damages. Existing law contains detailed provisions with respect to bulk sales involving transfers through escrow and those involving consideration of less than \$2,000,000 where the consideration is substantially all cash or an obligation of the transferee to pay cash in the future, or a combination thereof.

This bill would repeal those provisions and make conforming changes, including deleting references that would become obsolete upon that repeal.

(2) Existing law, the Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the issuance of licenses for the manufacture, distribution, and sale of alcoholic beverages. That act provides that it shall not be a violation or grounds for disciplinary action for a licensee selling alcoholic beverages to extend credit to a holder of an interim operating permit issued to an applicant for a retail license, or a transferee of any license who is a holder of a temporary permit issued by the department, or to receive payment from those holders in a manner not expressly authorized, unless the seller has knowledge that the purchaser was operating under an interim operating license or temporary permit, as may be established by specified evidence. That evidence may include that the holder has recorded and published notice pursuant to existing law governing bulk sales.

This bill, *as a conforming change discussed above in (1)*, would delete that notice from the types of evidence that may establish knowledge regarding an interim operating permit or temporary permit as described above.

(3) Existing law provides that no right to attach order or writ of attachment may be issued pursuant to a specified ex parte procedure unless it appears from facts shown by affidavit that great or irreparable injury would result to the plaintiff if issuance were delayed, as specified, including, but not limited to, showing that a bulk sales notice has been recorded and published in accordance with the existing law governing bulk sales.

This bill would delete reference to a bulk sales notice as a satisfactory showing that great or irreparable injury would result under that provision.

(4) Existing law provides that property that is assessed on the unsecured roll may be seized by the tax collector prior to delinquency without filing a declaration with the clerk of the county board of supervisors under specified circumstances, including, but not limited to, when the property has been advertised for sale pursuant to existing law governing bulk sales.

This bill, *as a conforming change discussed above in (1)*, would delete that circumstance from the circumstances authorizing seizure by the tax collector ~~as~~ *under the provisions* described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22901 of the Business and Professions
2 Code is amended to read:
3 22901. The following definitions apply for purposes of this
4 chapter:
5 (a) “Act” means the Fair Practices of Equipment Manufacturers,
6 Distributors, Wholesalers, and Dealers Act.
7 (b) “Claim” means a dealer’s claim for reimbursement from a
8 supplier for labor and materials expended by the dealer to meet
9 the requirements of the supplier’s warranty agreement with a
10 consumer of the supplier’s products if the dealer has complied
11 with the supplier’s then-existing written policies and procedures
12 for warranties and warranty claims.
13 (c) “Current parts price” means, with respect to current parts,
14 the price for repair parts listed in the supplier’s price list or catalog
15 in effect at the time the dealer contract is canceled or discontinued
16 or, for purposes of Section 22905, the price list or catalog in effect
17 at the time the repair parts were ordered. “Current parts price” also
18 means, with respect to superseded repair parts, the price listed in
19 the supplier’s price list or catalog in effect at the time the dealer
20 contract is canceled or discontinued for the part that performs the
21 same function and purpose as the superseded part, but is simply
22 listed under a different part number.
23 (d) “Current net parts cost” means the current parts price less
24 any trade or cash discounts typically given to the dealer with
25 respect to that dealer’s normal, ordinary course of orders of repair
26 parts. “Current net parts cost” also means, with respect to a
27 warranty, the current parts price of the supplier for the equipment
28 repaired less any trade or cash discounts typically given to the
29 dealer with respect to that dealer’s normal, ordinary course of
30 orders of repair parts.
31 (e) “Dealer” means any person primarily engaged in the retail
32 sale of equipment as defined in subdivision (j). For the purposes
33 of this act, “dealer” does not include a “franchisee” as defined in
34 Section 331.1 of the Vehicle Code or a “new motor vehicle dealer”
35 as defined in Section 426 of the Vehicle Code.

1 (f) “Dealer contract” means either an oral or written contract,
2 agreement, or arrangement for a definite or indefinite period
3 between a dealer and a supplier that provides for the rights and
4 obligations of the parties with respect to the purchase or sale of
5 equipment or repair parts.

6 (g) “Dealership” means the retail sale business engaged in by
7 a dealer under a dealer contract.

8 (h) “Demonstrator” means equipment in a dealer’s inventory
9 that has not been sold, but has had its usage demonstrated to
10 potential customers, either without charge or pursuant to a
11 short-term rental agreement, with the intent of encouraging the
12 potential customer to purchase the equipment.

13 (i) (1) “Equipment” means all-terrain vehicles and other
14 machinery, equipment, implements, or attachments used for, or in
15 connection with, any of the following purposes:

16 (A) Lawn, garden, golf course, landscaping, or grounds
17 maintenance.

18 (B) Planting, cultivating, irrigating, harvesting, and producing
19 agricultural or forestry products.

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

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

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

28 (j) “Family member” means a spouse, parent, sibling, child,
29 son-in-law, daughter-in-law, and lineal descendant, including those
30 by adoption.

31 (k) “Good cause” means failure by a dealer to comply with the
32 requirements imposed on the dealer by the dealer contract, if those
33 requirements are not different from those requirements imposed
34 on other similarly situated dealers in this state.

35 (l) “Index” means the United States Department of Labor,
36 Bureau of Labor Statistics purchase price index for construction
37 machinery series identification number pcu333120333120, or any
38 successor index measuring substantially similar information.

39 (m) “Inventory” means equipment, repair parts, data-processing
40 hardware or software, and specialized service or repair parts.

1 (n) “Major shareholder” means a shareholder with 51-percent
2 or greater interest in a dealership.

3 (o) “Manufacturer created incentive program” means a program
4 in which the dealer’s inventory has not been sold but has been
5 used for specialized purposes, including, but not limited to, harvest
6 rental programs, dealer purchase rentals, and short-term rentals.
7 The warranty that is transferred to the consumer upon sale, which
8 shall be disclosed prior to sale, is the manufacturer-provided base
9 warranty, less hours and time used while in a manufacturer created
10 incentive program.

11 (p) “Net equipment cost” means the price the dealer actually
12 paid to the supplier for equipment, plus (1) freight, at truckload
13 rates in effect as of the effective date of the termination of a dealer
14 contract, if freight was paid by the dealer from the supplier’s
15 location to the dealer’s location and (2) reimbursement for labor
16 incurred in preparing the equipment for retail sale or rental, which
17 labor will be reimbursed at the dealer’s standard labor rate charged
18 by the dealer to its customers for nonwarranty repair work;
19 provided, however, if a supplier has established a reasonable setup
20 time, that labor will be reimbursed at an amount equal to the
21 reasonable setup time in effect as of the date of delivery multiplied
22 by the dealer’s standard labor rate.

23 (q) “Person” means an individual, corporation, partnership,
24 limited liability company, trust, or any and all other forms of
25 business entities, including any other entity in which a person has
26 a majority interest or of which a person has control, as well as the
27 individual officers, directors, and other persons in active control
28 of the activities of each entity.

29 (r) “Repair parts” means all parts and products related to the
30 service or repair of equipment, including superseded parts.

31 (s) “Single-line dealer” means a dealer that has (1) purchased
32 construction, industrial, forestry, and mining equipment from a
33 single supplier constituting 75 percent of the dealer’s new
34 equipment, calculated on the basis of net cost; and (2) a total annual
35 average sales volume in excess of forty million dollars
36 (\$40,000,000) for the three calendar years immediately preceding
37 the applicable determination date; provided, however, the sales
38 threshold shall be increased each year by an amount equal to the
39 current sales threshold multiplied by the percentage increase in

1 the index from January 1 of the immediately preceding year to
2 January 1 of the current year.

3 (t) “Single-line supplier” means the supplier that is selling the
4 single-line dealer construction, industrial, forestry, and mining
5 equipment constituting 75 percent of the dealer’s new equipment.

6 (u) “Supplier” means any person engaged in the business of
7 manufacturing, assembly, or wholesale distribution of equipment
8 or repair parts. “Supplier” also includes any successor in interest
9 to a supplier, including a purchaser of assets or stock, or a surviving
10 corporation resulting from a merger, liquidation, or reorganization
11 of a supplier.

12 (v) “Terminate” means to terminate, cancel, fail to renew, or
13 materially change the competitive circumstances of a dealer
14 contract.

15 SEC. 2. Section 22903 of the Business and Professions Code
16 is amended to read:

17 22903. (a) This section shall only apply to a dealer contract
18 between a dealer who is not a single-line dealer and a supplier who
19 is not a single-line supplier.

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

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

1 Section 22901, good cause exists whenever the dealer has taken
2 any of the following actions:

3 (1) Transferred a controlling ownership interest in the dealership
4 without the consent of the supplier, who shall not withhold consent
5 unreasonably.

6 (2) Made a material misrepresentation or falsification of any
7 record.

8 (3) Filed a voluntary petition in bankruptcy or has had an
9 involuntary petition in bankruptcy filed against the dealer that has
10 not been dismissed within 60 days after the filing or is insolvent
11 or in receivership.

12 (4) Pleaded guilty to or has been convicted of a felony involving
13 an act of moral turpitude.

14 (5) Failed to operate in the normal course of business for seven
15 consecutive business days, without the consent of the supplier, or
16 has terminated the business.

17 (6) Relocated or established a new or additional dealer's place
18 of business without the supplier's consent.

19 (7) Materially defaulted under any chattel mortgage or other
20 security agreement between the dealer and the supplier, or there
21 has been a revocation of any guarantee of the dealer's present or
22 future obligations to the supplier. However, good cause does not
23 exist if a person revokes any guarantee in connection with or
24 following the transfer of that person's entire ownership interest in
25 the dealer unless the supplier requires that person to execute a new
26 guarantee of the dealer's present or future obligations in connection
27 with that transfer of ownership interest.

28 (8) Failed to satisfy any payment obligation as it became due
29 and payable to the supplier, failed to promptly account to the
30 supplier for any proceeds from the sale of equipment, or failed to
31 hold those proceeds in trust for the benefit of the supplier.

32 (9) Engaged in conduct that is injurious or detrimental to any
33 of the following:

34 (A) The dealer's customers. This includes, but is not limited to,
35 the following conduct: excessive pricing, misleading advertising,
36 failure to provide service and replacement parts, and failure to
37 perform warranty obligations.

38 (B) The public welfare.

39 (C) The representation or reputation of the supplier's product.

1 (10) Consistently failed to meet building and housekeeping
2 requirements, or failed to provide adequate sales, service, or parts
3 personnel commensurate with the dealer contract.

4 (11) Consistently failed to comply with the applicable licensing
5 laws pertaining to the products and services being represented for
6 and on the supplier's behalf.

7 (12) Consistently failed to meet and maintain the supplier's
8 requirements for reasonable standards and performance objectives,
9 if the supplier has given the dealer reasonable standards and
10 performance objectives that are based on the manufacturer's
11 experience in other comparable market areas.

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

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

34 SEC. 3. Section 22903.2 of the Business and Professions Code
35 is amended to read:

36 22903.2. (a) This section shall only apply to dealer contracts
37 between a single-line dealer and its single-line supplier.

38 (b) No supplier may terminate a dealer contract without good
39 cause. In addition to the definition in subdivision (k) of Section

1 22901, good cause exists whenever any one of the following is
2 applicable:

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

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

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

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

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

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

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

39 (d) If a dealer dies, a supplier shall have 90 days in which to
40 consider and make a determination on a request by a family

1 member to enter into a new dealer contract to operate the
2 dealership. If the supplier determines that the requesting family
3 member is not acceptable, the supplier shall provide the family
4 member with a written notice of its determination with the stated
5 reasons for rejection. This section does not entitle an heir, personal
6 representative, or family member to operate a dealership without
7 specific written consent of the supplier.

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

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

16 SEC. 4. Section 22905 of the Business and Professions Code
17 is amended to read:

18 22905. Except as provided in subdivision (p), whenever a dealer
19 contract is terminated by cancellation or nonrenewal, the supplier
20 shall repurchase the inventory as provided in this section.

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

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

38 (c) The supplier shall pay a sum equal to 100 percent of the net
39 equipment cost of all unsold, undamaged demonstrators, less
40 depreciation due to usage of those demonstrators. The depreciation

1 adjustment shall be based on published industry rental rates to the
2 extent those rates are available. For purposes of this subdivision,
3 demonstrators, with hour meters that have less than 50 hours of
4 use shall be considered new, unsold equipment subject to
5 repurchase under this section.

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

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

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

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

39 (h) Upon the payment or allowance of credit to the dealer's
40 account of the sums required by this section, the title to all

1 inventory purchased shall pass to the supplier making payment,
2 and the supplier shall be entitled to the possession of the inventory.
3 All payments or allowances of credit due to dealers shall be paid
4 or credited within 90 days after receipt by the supplier of property
5 required to be repurchased. Any payments or allowances of credit
6 due to dealers that are not paid within the 90-day period will accrue
7 interest at the statutory rate. The supplier may withhold payments
8 due under this section during the period of time in which the dealer
9 fails to comply with its contractual obligations to remove any
10 signage indicating that the dealer is an authorized dealer of the
11 supplier.

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

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

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

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

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

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

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

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

37 (7) Any equipment or repair parts that are not returned to the
38 supplier within 90 days after the latter of (A) the effective date of
39 termination of a dealer contract or (B) the date the dealer receives
40 from the supplier all information, documents, or supporting

1 materials required by the supplier to comply with the supplier's
2 return policy. However, this paragraph shall not be applicable to
3 a dealer if the supplier did not give the dealer notice of the 90-day
4 deadline at the time the applicable notice of termination was sent
5 to the dealer.

6 (k) If any supplier fails or refuses to repurchase any inventory
7 covered under this section within 90 days after termination of a
8 dealer contract, the supplier shall be liable for the total amount of
9 110 percent of the current net equipment cost of the inventory,
10 plus any freight charges paid by the dealer, interest accrued at the
11 statutory rate from the date of shipment to the supplier until the
12 date of payment, 5 percent for handling, packing, and loading, and
13 actual costs for any court or arbitration proceedings, including
14 costs for attorney's fees and arbitrators.

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

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

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

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

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

1 canceled or not renewed by the dealer for any of the following
2 reasons:

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

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

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

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

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

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

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

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

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

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

31 SEC. 5. Section 22906 of the Business and Professions Code
32 is amended to read:

33 22906. (a) A dealer, as defined in subdivision (e) of Section
34 22901, is not entitled to establish a lien pursuant to this act, unless
35 that person has first sent to the lien debtor a written notice, by
36 certified mail, which states all of the following:

37 (1) The payment of the reasonable or agreed charges is more
38 than 90 days overdue. This requirement does not apply to
39 equipment subject to repurchase that was returned to the supplier

1 subsequent to return of other equipment also subject to repurchase
2 for which payment is overdue.

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

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

5 (A) Allow the lien to be filed.

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

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

9 (4) The lien debtor has 10 days from receipt of the notice to
10 select an alternative, notify the lien claimant of the alternative
11 selected, and satisfy all of the requirements of the selected
12 alternative. This part of the notice to the lien debtor shall be in
13 10-point type or bolder.

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

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

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

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

26 SEC. 6. Section 22924 of the Business and Professions Code
27 is amended to read:

28 22924. (a) In the event of the death or incapacity of the dealer,
29 which in this context shall mean an owner, equal or majority
30 partner, or the majority stockholder of a corporation, operating as
31 a dealer, the supplier shall, at the option of the heirs at law, if the
32 dealer died intestate, or the executor under the terms of the
33 deceased dealer's last will and testament, if the dealer died testate,
34 repurchase the inventory from the estate as if the supplier had
35 terminated the dealer contract and the inventory repurchase
36 provisions of Section 22905 are applicable. The heirs or executor
37 shall have 180 days from the date of the death of the dealer or
38 majority stockholder to exercise the option under this section.
39 However, nothing in this section shall require the repurchase of
40 inventory, if the heirs or executor and the supplier enter into a new

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

9 (b) The provisions of this section shall be supplemental to any
10 agreement between the dealer and the supplier covering the return
11 of equipment, attachments, and repair parts. Notwithstanding
12 anything contained in this section, the rights of a supplier to charge
13 back to the dealer's account amounts previously paid or credited
14 as a discount incident to the dealer's purchase of inventory shall
15 not be affected.

16 SEC. 7. Section 24044.5 of the Business and Professions Code
17 is amended to read:

18 24044.5. (a) The department, in its discretion, may issue an
19 interim operating permit to an applicant for any license to operate
20 the premises during the period an application for a license at the
21 premises is pending and when all of the following conditions exist:

22 (1) The application has been protested pursuant to Article 3
23 (commencing with Section 24011).

24 (2) The department has made a determination based upon its
25 investigation that the license should be issued.

26 (3) The applicant for the interim operating permit has filed with
27 the department an application for issuance of a license at the
28 premises to himself or herself.

29 (4) The application for the interim operating permit is
30 accompanied by a fee of one hundred dollars (\$100).

31 (b) An interim operating permit issued by the department
32 pursuant to this section shall be for a period not to exceed 120
33 days. An interim operating permit may be extended at the discretion
34 of the department for additional 120-day periods as necessary upon
35 payment of an additional fee of one hundred dollars (\$100) and
36 upon compliance with all conditions required by this section. Any
37 interim operating permit issued by the department shall be
38 automatically canceled when a final determination made by the
39 department regarding the protests becomes effective or when the
40 application for the license is withdrawn, whichever occurs first.

1 An interim operating permit is a conditional permit and authorizes
2 the holder to whom issued to exercise the rights and privileges of
3 the license for which the application has been filed with the
4 department. Any conditions for which the applicant has petitioned
5 pursuant to Article 1.5 (commencing with Section 23800) of
6 Chapter 5 shall apply to any interim operating permit issued by
7 the department.

8 (c) Purchase of beer and wine by the holder of an interim
9 operating permit issued to an applicant for a retail license shall be
10 made only upon payment before or at the time of delivery in
11 currency or by check. Purchase of distilled spirits by the holder of
12 an interim operating permit issued to an applicant for a retail
13 license shall be made only upon payment before or at the time of
14 delivery in currency or by certified check. However, the holder of
15 an interim operating permit issued to an applicant for a retail
16 license, who also holds one or more retail licenses and is operating
17 under the retail license or licenses in addition to the interim
18 operating permit, and who is not delinquent under the provisions
19 of Section 25509 as to any retail license under which he or she
20 operates, may purchase alcoholic beverages on credit under the
21 interim operating permit.

22 (d) All checks received by a seller for beer or wine purchased
23 by the holder of an interim operating permit issued to an applicant
24 for a retail license shall be deposited not later than the second
25 business day following the date the beer or wine is delivered.

26 A check dishonored on presentation shall not be deemed
27 payment. The receipt by the seller or his or her agent in good faith
28 from a holder of an interim operating permit of a check dishonored
29 on presentation shall not be cause for disciplinary action against
30 the seller.

31 (e) Issuance of the license for which the holder of an interim
32 operating permit issued to an applicant for a retail license has filed
33 an application shall not be approved by the department until the
34 holder of the interim operating permit has filed with the department
35 a statement executed under penalty of perjury that all current
36 obligations have been discharged, and that all outstanding checks
37 issued by him or her in payment for alcoholic beverages will be
38 honored on presentation.

39 (f) It shall not be a violation of this section or grounds for
40 disciplinary action for any licensee to extend credit to the holder

1 of an interim operating permit issued to an applicant for a retail
2 license or to receive payment from the holder of an interim
3 operating permit in a manner other than authorized herein unless
4 the seller has knowledge of the fact that the purchaser was
5 operating under an interim operating permit. Knowledge of the
6 fact may be established by evidence, including, but not limited to,
7 evidence that, at the time of receipt of payment or the extension
8 of credit, the premises operated under an interim operating permit
9 were posted with the notice required by Section 23985, or the
10 holder of the interim operating permit has recorded notice as
11 required by Section 24073, or the holder of the interim operating
12 permit has published notice as required by Section 23986.

13 (g) Refusal by the department to issue or extend an interim
14 operating permit shall not entitle the applicant to petition for the
15 permit pursuant to Section 24011, or to a hearing pursuant to
16 Section 24012. Articles 2 (commencing with Section 23985) and
17 3 (commencing with Section 24011) shall not apply to interim
18 operating permits.

19 (h) Notwithstanding any other provision of law, the department
20 may, in its discretion, cancel or suspend summarily at any time an
21 interim operating permit if the department determines that good
22 cause for the cancellation or suspension exists. Chapter 8
23 (commencing with Section 24300) shall not apply to interim
24 operating permits.

25 (i) Application for an interim operating permit shall be on any
26 form the department shall prescribe. If an application for an interim
27 operating permit is withdrawn before issuance or is refused by the
28 department, the fee that accompanied the application shall be
29 refunded in full, and Section 23959 shall not apply. Fees received
30 by the department for issuance of interim operating permits shall
31 be deposited in the Alcohol Beverage Control Fund as provided
32 in Section 25761.

33 SEC. 8. Section 24045.5 of the Business and Professions Code
34 is amended to read:

35 24045.5. The department in its discretion may issue a temporary
36 permit to the transferee of any license to continue the operation of
37 the premises during the period a transfer application for the license
38 from person to person at the same premises is pending and when
39 all the following conditions exist:

1 (a) The premises shall have been operated under a license within
2 30 days of the date of filing the application for a temporary permit.

3 (b) The license for the premises shall have been surrendered
4 pursuant to rules of the department.

5 (c) The applicant for the temporary permit shall have filed with
6 the department an application for transfer of the license at the
7 premises to himself or herself.

8 (d) The application for the temporary permit shall be
9 accompanied by a temporary permit fee of one hundred dollars
10 (\$100).

11 A temporary permit issued by the department pursuant to this
12 section shall be for a period not to exceed four calendar months.
13 A temporary permit may be extended at the discretion of the
14 department for an additional four calendar months upon payment
15 of an additional fee of one hundred dollars (\$100) and upon
16 compliance with all conditions required herein. A temporary permit
17 is a conditional permit and authorizes the holder thereof to sell the
18 alcoholic beverages as would be permitted to be sold under the
19 privileges of the license for which the transfer application has been
20 filed with the department.

21 Purchase of beer, wine, and distilled spirits by the holder of a
22 temporary permit shall be made only upon payment before or at
23 the time of delivery in currency or by check. However, the holder
24 of a temporary retail permit who also holds one or more retail
25 licenses and is operating under the retail license or licenses in
26 addition to the temporary permit, and who is not delinquent under
27 the provisions of Section 25509 as to any retail license under which
28 he or she operates, may purchase alcoholic beverages on credit
29 under the temporary permit.

30 All checks received by a seller for alcoholic beverages purchased
31 by the holder of a temporary retail permit shall be deposited not
32 later than the second business day following the date the alcoholic
33 beverages are delivered.

34 A check dishonored on presentation shall not be deemed
35 payment. The receipt by the seller or his or her agent in good faith
36 from a holder of a temporary permit of a check dishonored on
37 presentation shall not be cause for disciplinary action against the
38 seller.

39 Transfer of the license for which the holder of a temporary permit
40 has filed an application shall not be approved by the department

1 until the holder of the temporary permit has filed with the
2 department a statement executed under penalty of perjury that all
3 current obligations have been discharged, and that all outstanding
4 checks issued by him or her in payment for alcoholic beverages
5 will be honored on presentation.

6 It shall not be a violation of this section or otherwise grounds
7 for disciplinary action for any licensee to extend credit to the holder
8 of a temporary permit or to receive payment from the permittee
9 in a manner other than authorized herein unless the seller had
10 knowledge of the fact that the purchaser was operating under a
11 temporary permit. Knowledge of the fact may be established by
12 evidence, including, but not limited to, evidence that, at the time
13 of receipt of payment or the extension of credit, the premises
14 operated under a temporary permit were posted with the notice
15 required by Section 23985, or the holder of the temporary permit
16 had recorded notice as required by Section 24073, or the holder
17 of the temporary permit had published notice as required by Section
18 23986.

19 Refusal by the department to issue or extend a temporary permit
20 shall not entitle the applicant to petition for the permit pursuant to
21 Section 24011, or to a hearing pursuant to Section 24012. Articles
22 2 (commencing with Section 23985) and 3 (commencing with
23 Section 24011) shall not apply to temporary permits.

24 Notwithstanding any other provision of law, a temporary permit
25 may be canceled or suspended summarily at anytime if the
26 department determines that good cause for the cancellation or
27 suspension exists. Chapter 8 (commencing with Section 24300)
28 shall not apply to temporary permits.

29 Application for a temporary permit shall be on any form the
30 department shall prescribe. If an application for a temporary permit
31 is withdrawn before issuance or is refused by the department, the
32 fee which accompanied the application shall be refunded in full,
33 and Section 23959 shall not apply. Fees received by the department
34 for issuance of temporary permits shall be deposited in the Alcohol
35 Beverage Control Fund as provided in Section 25761.

36 SEC. 9. Section 485.010 of the Code of Civil Procedure is
37 amended to read:

38 485.010. (a) Except as otherwise provided by statute, no right
39 to attach order or writ of attachment may be issued pursuant to
40 this chapter unless it appears from facts shown by affidavit that

1 great or irreparable injury would result to the plaintiff if issuance
2 of the order were delayed until the matter could be heard on notice.

3 (b) The requirement of subdivision (a) is satisfied if any of the
4 following are shown:

5 (1) Under the circumstances of the case, it may be inferred that
6 there is a danger that the property sought to be attached would be
7 concealed, substantially impaired in value, or otherwise made
8 unavailable to levy if issuance of the order were delayed until the
9 matter could be heard on notice.

10 (2) Under the circumstances of the case, it may be inferred that
11 the defendant has failed to pay the debt underlying the requested
12 attachment and the defendant is insolvent in the sense that the
13 defendant is generally not paying his or her debts as those debts
14 become due, unless the debts are subject to a bona fide dispute.
15 Plaintiff's affidavit filed in support of the ex parte attachment shall
16 state, in addition to the requirements of Section 485.530, the known
17 undisputed debts of the defendant, that the debts are not subject
18 to bona fide dispute, and the basis for plaintiff's determination that
19 the defendant's debts are undisputed.

20 (3) An escrow has been opened pursuant to the provisions of
21 Section 24074 of the Business and Professions Code with respect
22 to the sale by the defendant of a liquor license.

23 (4) Any other circumstance showing that great or irreparable
24 injury would result to the plaintiff if issuance of the order were
25 delayed until the matter could be heard on notice.

26 (c) Upon a writ being issued solely on a showing under
27 paragraph (2) of subdivision (b), if the defendant requests the court
28 to review the issuance of the writ, the court shall conduct a hearing
29 within five court days after the plaintiff is served with notice of
30 the defendant's request. A writ issued solely on a showing under
31 paragraph (3) of subdivision (b) shall be limited to the plaintiff's
32 pro rata share of the proceeds of the sale in escrow.

33 SEC. 10. Section 2403 of the Commercial Code is amended
34 to read:

35 2403. (1) A purchaser of goods acquires all title which his
36 transferor had or had power to transfer except that a purchaser of
37 a limited interest acquires rights only to the extent of the interest
38 purchased. A person with voidable title has power to transfer a
39 good title to a good faith purchaser for value. When goods have

1 been delivered under a transaction of purchase the purchaser has
2 such power even though

3 (a) The transferor was deceived as to the identity of the
4 purchaser, or

5 (b) The delivery was in exchange for a check which is later
6 dishonored, or

7 (c) It was agreed that the transaction was to be a “cash sale,” or

8 (d) The delivery was procured through fraud punishable as
9 larcenous under the criminal law.

10 (2) Any entrusting of possession of goods to a merchant who
11 deals in goods of that kind gives him power to transfer all rights
12 of the entruster to a buyer in ordinary course of business.

13 (3) “Entrusting” includes any delivery and any acquiescence in
14 retention of possession for the purpose of sale, obtaining offers to
15 purchase, locating a buyer, or the like; regardless of any condition
16 expressed between the parties to the delivery or acquiescence and
17 regardless of whether the procurement of the entrusting or the
18 possessor’s disposition of the goods have been such as to be
19 larcenous under the criminal law.

20 (4) The rights of other purchasers of goods and of lien creditors
21 are governed by the divisions on secured transactions (Division
22 9) and documents of title (Division 7).

23 SEC. 11. Division 6 (commencing with Section 6101) of the
24 Commercial Code is repealed.

25 SEC. 12. Section 2953.1 of the Revenue and Taxation Code
26 is amended to read:

27 2953.1. Notwithstanding the provisions of Section 2953, any
28 property that is assessed on the unsecured roll and *either* is
29 advertised to be sold at public auction; or ~~that~~ has been seized for
30 prior year’s delinquent taxes, may be seized by the tax collector
31 prior to delinquency without filing a declaration with the clerk of
32 the board of supervisors.