

AMENDED IN ASSEMBLY JUNE 25, 2012

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 and add~~ 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~~

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 ½ 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. In the case of a bulk sale where the consideration is \$2,000,000 or less and is substantially all cash or an obligation of the transferee to pay cash, existing law requires the buyer or escrow agent involved to apply the cash consideration to pay the debts of the seller for which claims are due and payable, as specified. A person holding a claim incurred in the seller's business, other than specified claims, is a claimant under the bulk sales law.~~

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The Cigarette and Tobacco Products Licensing Act provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products.

This bill would repeal the Uniform Commercial Code-Bulk Sales provisions. The bill would add provisions that apply, on and after January 1, 2013, to a sale not in the ordinary course of a seller's business of more than $\frac{1}{2}$ the seller's inventory and equipment, including the inventory or equipment purchased from a wholesaler or distributor of alcoholic beverages or cigarette and tobacco products, without regard to the value of the assets involved, as specified. The bill would require the buyer to deposit the full amount of the purchase price or consideration with an escrow agent to be distributed to meet obligations and claims, as specified, and would limit a claimant to specified persons, including a wholesaler or distributor of alcoholic beverages or cigarette and tobacco products.

~~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 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. Division 6 (commencing with Section 6101) of
- 2 the Commercial Code is repealed.
- 3 SEC. 2. Division 6 (commencing with Section 6101) is added
- 4 to the Commercial Code, to read:

DIVISION 6. BULK SALES

1
2

3 6101. This division shall be known and may be cited as the
4 Bulk Sales Law.

5 6102. (a) In this division, unless the context otherwise requires:

6 (1) “Assets” means the inventory and equipment that is the
7 subject of a bulk sale and any tangible and intangible personal
8 property used or held for use primarily in, or arising from, the
9 seller’s business and sold in connection with that inventory and
10 equipment, but the term does not include any of the following:

11 (A) Fixtures, as defined in paragraph (41) of subdivision (a) of
12 Section 9102, other than readily removable factory and office
13 machines.

14 (B) The lessee’s interest in a lease of real property.

15 (C) Property to the extent it is generally exempt from creditor
16 process under nonbankruptcy law.

17 (2) “Bulk sale” means a sale not in the ordinary course of the
18 seller’s business of more than one-half of the seller’s inventory
19 and equipment, including the inventory and equipment purchased
20 from a licensee, as measured by value on the date of the bulk-sale
21 agreement.

22 (3) “Claim” means a right to payment from the seller, whether
23 or not the right is reduced to judgment, liquidated, fixed, matured,
24 disputed, secured, legal, or equitable. The term includes costs of
25 collection and attorney’s fees only to the extent that the laws of
26 this state permit the holder of the claim to recover them in an
27 action against the obligor. The term does not include any of the
28 following:

29 (A) An unsecured and unmatured claim for employment
30 compensation and benefits, including commissions and vacation,
31 severance, and sick-leave pay.

32 (B) A claim for injury to an individual or to property, or for
33 breach of warranty, unless all of the following are satisfied:

34 (i) A right of action for the claim has accrued.

35 (ii) The claim has been asserted against the seller.

36 (iii) The seller knows the identity of the person asserting the
37 claim and the basis upon which the person has asserted it.

38 (C) A claim for taxes owing to a governmental unit, if both of
39 the following are satisfied:

1 (i) A statute governing the enforcement of the claim permits or
2 requires notice of the bulk sale to be given to the governmental
3 unit in a manner other than by compliance with the requirements
4 of this division.

5 (ii) Notice is given in accordance with the statute.

6 (4) “Claimant” means any person holding a claim described
7 in paragraphs (1) to (5), inclusive, of subdivision (b) of Section
8 6106.4 incurred in the seller’s business, or a licensee holding a
9 claim incurred in the seller’s business.

10 (5) (A) “Date of the bulk sale” means the later of the date on
11 which either of the following occurs:

12 (i) More than 10 percent of the net contract price is paid to or
13 for the benefit of the seller.

14 (ii) More than 10 percent of the assets, as measured by value,
15 are transferred to the buyer.

16 (B) For purposes of this paragraph the following shall apply:

17 (i) Delivery of a negotiable instrument, as defined in subdivision
18 (a) of Section 3104, to or for the benefit of the seller in exchange
19 for assets constitutes payment of the contract price pro tanto.

20 (ii) The contract price is paid to or for the benefit of the seller
21 when the seller acquires the unconditional right to receive the
22 deposit or when the deposit is delivered to the seller or for the
23 benefit of the seller, whichever is earlier.

24 (iii) An asset is transferred when a person holding an unsecured
25 claim can no longer obtain through judicial proceedings rights to
26 the asset that are superior to those of the buyer arising as a result
27 of the bulk sale. A person holding an unsecured claim can obtain
28 those superior rights to a tangible asset at least until the buyer
29 has an unconditional right, under the bulk-sale agreement, to
30 possess the asset, and a person holding an unsecured claim can
31 obtain those superior rights to an intangible asset at least until
32 the buyer has an unconditional right, under the bulk-sale
33 agreement, to use the asset.

34 (6) “Date of the bulk-sale agreement” means the date on which
35 a bulk-sale agreement becomes enforceable between the buyer
36 and the seller.

37 (7) “Debt” means liability on a claim.

38 (8) “Licensee” means a person licensed as a distributor under
39 the Alcoholic Beverage Control Act (Division 9 (commencing with
40 Section 23000) of the Business and Professions Code), a

1 wholesaler, as defined in Section 23021 of the Business and
2 Professions Code, licensed under the Alcoholic Beverage Control
3 Act (Division 9 (commencing with Section 23000) of the Business
4 and Professions Code), or a person licensed as a wholesaler or
5 distributor of cigarettes and tobacco products pursuant to Chapter
6 3 (commencing with Section 22975) of Division 8.6 of the Business
7 and Professions Code.

8 (9) “Net contract price” means the new consideration the buyer
9 is obligated to pay for the assets less each of the following:

10 (A) The amount of any proceeds of the sale of an asset, to the
11 extent the proceeds are applied in partial or total satisfaction of
12 a debt secured by the asset.

13 (B) The amount of any debt to the extent it is secured by a
14 security interest or lien that is enforceable against the asset before
15 and after it has been sold to a buyer. If a debt is secured by an
16 asset and other property of the seller, the amount of the debt
17 secured by a security interest or lien that is enforceable against
18 the asset is determined by multiplying the debt by a fraction, the
19 numerator of which is the value of the new consideration for the
20 asset on the date of the bulk sale and the denominator of which is
21 the value of all property securing the debt on the date of the bulk
22 sale.

23 (10) A sale is “in the ordinary course of the seller’s business”
24 if the sale comports with usual or customary practices in the kind
25 of business in which the seller is engaged or with the seller’s own
26 usual or customary practices.

27 (11) “United States” includes its territories and possessions
28 and the Commonwealth of Puerto Rico.

29 (12) “Value” means fair market value.

30 (b) The following definitions in other divisions apply to this
31 division:

32 (1) “Buyer.” Paragraph (a) of subdivision (1) of Section 2103.

33 (2) “Equipment.” Paragraph (33) of subdivision (a) of Section
34 9102.

35 (3) “Inventory.” Paragraph (48) of subdivision (a) of Section
36 9102.

37 (4) “Sale.” Subdivision (1) of Section 2106.

38 (5) “Seller.” Paragraph (d) of subdivision (1) of Section 2103.

1 (c) In addition, Division 1 (commencing with Section 1101)
2 contains general definitions and principles of construction and
3 interpretation applicable throughout this division.

4 6103. (a) Except as otherwise provided in subdivision (c), this
5 division applies to a bulk sale if both of the following are satisfied:

6 (1) The seller's principal business is the sale of inventory from
7 stock, including those who manufacture what they sell, or that of
8 a restaurant owner.

9 (2) On the date of the bulk-sale agreement the seller is located
10 in this state or, if the seller is located in a jurisdiction that is not
11 a part of the United States, the seller's major executive office in
12 the United States is in this state.

13 (b) A seller is deemed to be located at its place of business. If
14 a seller has more than one place of business, the seller is deemed
15 located at its chief executive office.

16 (c) This division does not apply to any of the following:

17 (1) A transfer made to secure payment or performance of an
18 obligation.

19 (2) A transfer of collateral to a secured party pursuant to Section
20 9609.

21 (3) A disposition of collateral pursuant to Section 9610.

22 (4) Retention of collateral pursuant to Section 9620.

23 (5) A sale of an asset encumbered by a security interest or lien
24 if (A) all the proceeds of the sale are applied in partial or total
25 satisfaction of the debt secured by the security interest or lien or
26 (B) the security interest or lien is enforceable against the asset
27 after it has been sold to the buyer and the net contract price is
28 zero.

29 (6) A general assignment for the benefit of creditors or to a
30 subsequent transfer by the assignee.

31 (7) A sale by an executor, administrator, receiver, trustee in
32 bankruptcy, debtor in possession, or any public officer under
33 judicial process.

34 (8) A sale made in the course of judicial or administrative
35 proceedings for the dissolution or reorganization of an
36 organization.

37 (9) A sale to a buyer whose principal place of business is in the
38 United States and who satisfies each of the following:

39 (A) Assumes in full the debts that were incurred in the seller's
40 business before the date of the bulk sale.

1 (B) *Is not insolvent after the assumption.*

2 (C) *Records and publishes notice of the assumption not later*
3 *than 30 days after the date of the bulk sale in the manner provided*
4 *by Section 6105.*

5 (10) *A sale required by, and made pursuant to, statute.*

6 (11) *A transfer of personal property, if the personal property*
7 *is leased back to the transferor immediately following the transfer*
8 *and either there has been compliance with subdivision (h) of*
9 *Section 3440.1 of the Civil Code or the transfer is exempt under*
10 *subdivision (k) of Section 3440.1 of the Civil Code.*

11 (12) *A transfer which is subject to and complies with Article 5*
12 *(commencing with Section 24070) of Chapter 6 of Division 9 of*
13 *the Business and Professions Code, if the transferee records and*
14 *publishes notice of the transfer at least 12 business days before*
15 *the transfer is to be consummated in the manner provided in*
16 *Section 6105 and the notice contains the information set forth in*
17 *paragraphs (1) to (4), inclusive, of subdivision (a) of Section 6105.*

18 (13) *A transfer of goods in a warehouse where a warehouse*
19 *receipt has been issued therefor by a warehouseman (Section 7102)*
20 *and a copy of the receipt is kept at the principal place of business*
21 *of the warehouseman and at the warehouse in which the goods*
22 *are stored.*

23 (d) *The notice under subparagraph (C) of paragraph (9) of*
24 *subdivision (c) shall state each of the following:*

25 (1) *That a sale that may constitute a bulk sale has been or will*
26 *be made.*

27 (2) *The date or prospective date of the bulk sale.*

28 (3) *The individual, partnership, or corporate names and the*
29 *addresses of the seller and buyer.*

30 (4) *The address to which inquiries about the sale may be made,*
31 *if different from the seller's address.*

32 (5) *That the buyer has assumed or will assume the debts that*
33 *were incurred in the seller's business before the date of the bulk*
34 *sale.*

35 6105. (a) *In a bulk sale, as defined in paragraph (2) of*
36 *subdivision (a) of Section 6102, the buyer shall give notice in*
37 *accordance with this section.*

38 (b) *The notice shall comply with each of the following:*

39 (1) *State that a bulk sale is about to be made.*

1 (2) State the name and business address of the seller together
2 with any other business name and address listed by the seller and
3 the name and business address of the buyer.

4 (3) State the location and general description of the assets.

5 (4) State the place and the anticipated date of the bulk sale.

6 (5) The name and address of the escrow agent with whom claims
7 may be filed and the last date for filing those claims, which shall
8 be the business day before the date stated under paragraph (4).

9 (c) At least 12 business days before the date of the bulk sale,
10 the notice shall be:

11 (1) Recorded in the office of the county recorder in the county
12 or counties in this state in which the tangible assets are located
13 and, if different, in the county in which the seller is located.

14 (2) Published at least once in a newspaper of general circulation
15 published in the judicial district in this state in which the tangible
16 assets are located and in the judicial district, if different, in which
17 the seller is located, if in either case there is one, and if there is
18 none, then in a newspaper of general circulation in the county in
19 which the judicial district is located. If the tangible assets are
20 located in more than one judicial district in this state, the
21 publication required under this paragraph shall be in a newspaper
22 of general circulation published in the judicial district in this state
23 in which a greater portion of the tangible assets are located, on
24 the date the notice is published, than in any other judicial district
25 in this state and, if different, in the judicial district in which the
26 seller is located. As used in this subdivision, "business day" means
27 any day other than a Saturday, Sunday, or day observed as a
28 holiday by the state government.

29 (3) Delivered or sent by registered or certified mail to the county
30 tax collector in the county or counties in this state in which the
31 tangible assets are located. If delivered during the period from
32 January 1 to May 7, inclusive, the notice shall be accompanied by
33 a completed business property statement with respect to property
34 involved in the bulk sale pursuant to Section 441 of the Revenue
35 and Taxation Code.

36 6106.2. (a) Upon every bulk sale, it is the duty of the escrow
37 agent to apply the consideration so far as necessary to pay those
38 debts of the seller for which the claims are due and payable on or
39 before the date of the bulk sale and are received in writing by the
40 escrow agent on or prior to the date specified as the last date to

1 *file claims. This duty of the escrow agent runs to each claimant*
2 *timely filing the claim. Claims shall be deemed timely filed only if*
3 *actually received by the escrow agent before the close of business*
4 *on the day specified as the last date to file those claims.*

5 *(b) If the seller disputes whether a claim is due and payable on*
6 *the date of the bulk sale or the amount of any claim, the escrow*
7 *agent shall withhold from distribution an amount equal to (1) 125*
8 *percent of the first seven thousand five hundred dollars (\$7,500)*
9 *of the claim, and (2) an amount equal to that portion of the claim*
10 *in excess of the first seven thousand five hundred dollars (\$7,500),*
11 *or the pro rata amount under subdivision (b) of Section 6106.4, if*
12 *applicable, and shall send a written notice to the claimant filing*
13 *the claim on or before two business days after the distribution that*
14 *the amount will be paid to the seller, or to the other claimants in*
15 *accordance with subdivision (b) of Section 6106.4, as the case*
16 *may be, unless attached within 25 days from the mailing of the*
17 *notice. Any portion of the amount withheld which is not attached*
18 *by the claimant within that time shall be paid by the escrow agent*
19 *to the seller, or to the other claimants in accordance with*
20 *subdivision (b) of Section 6106.4 if they have not been paid in full.*
21 *An attachment of any amount so withheld shall be limited in its*
22 *effect to the amount withheld for the attaching claimant and shall*
23 *give the attaching claimant no greater priority or rights with*
24 *respect to its claim than the claimant would have had if the claim*
25 *had not been disputed. For purposes of this subdivision, a claimant*
26 *may obtain the issuance of an attachment for a claim which is less*
27 *than five hundred dollars (\$500) and which otherwise meets the*
28 *requirements of Section 483.010 of the Code of Civil Procedure*
29 *or which is a secured claim or lien of the type described in Section*
30 *483.010 of the Code of Civil Procedure. The remedy in this*
31 *subdivision shall be in addition to any other remedies the claimant*
32 *may have, including any right to attach the property intended to*
33 *be transferred or any other property.*

34 *(c) The escrow agent shall, within 45 days after the buyer takes*
35 *legal title to any of the goods, either pay to the extent of the cash*
36 *consideration the claims filed and not disputed, or the applicable*
37 *portion thereof to the extent of the cash consideration under*
38 *subdivision (b) of Section 6106.4, or institute an action in*
39 *interpleader pursuant to subdivision (b) of Section 386 of the Code*
40 *of Civil Procedure and deposit the consideration with the clerk of*

1 *the court pursuant to subdivision (c) of that section. The action*
2 *shall be brought in the appropriate court in the county where the*
3 *seller had its principal place of business in this state. Sections*
4 *386.1 and 386.6 of the Code of Civil Procedure shall apply in the*
5 *action.*

6 *(d) This section shall not be construed to release any security*
7 *interest or other lien on the property which is the subject of the*
8 *bulk sale except upon a voluntary release by the secured party or*
9 *lienholder.*

10 *6106.4. The intended buyer shall deposit with the escrow agent*
11 *the full amount of the purchase price or consideration. If, at the*
12 *time the bulk sale is otherwise ready to be consummated, the*
13 *amount of cash deposited or agreed to be deposited at or prior to*
14 *consummation in the escrow is insufficient to pay in full all of the*
15 *claims filed with the escrow agent, the escrow agent shall do each*
16 *of the following:*

17 *(a) (1) Delay the distribution of the consideration and the*
18 *passing of legal title for a period of not less than 25 days nor more*
19 *than 30 days from the date the notice required in paragraph (2)*
20 *is mailed.*

21 *(2) Within five business days after the time the bulk sale would*
22 *otherwise have been consummated, send a written notice to each*
23 *claimant who has filed a claim stating the total consideration*
24 *deposited or agreed to be deposited in the escrow, the name of*
25 *each claimant who filed a claim against the escrow and the amount*
26 *of each claim, the amount proposed to be paid to each claimant,*
27 *the new date scheduled for the passing of legal title pursuant to*
28 *paragraph (1) and the date on or before which distribution will*
29 *be made to claimants which shall not be more than five days after*
30 *the new date specified for the passing of legal title.*

31 *(3) If no written objection to the distribution described in the*
32 *notice required by paragraph (2) is received by the escrow agent*
33 *prior to the new date specified in the notice for the passing of legal*
34 *title, the escrow agent shall not be liable to any person to whom*
35 *the notice required by paragraph (2) was sent for any good faith*
36 *error that may have been committed in allocating and distributing*
37 *the consideration as stated in the notice.*

38 *(b) Distribute the consideration in the following order of*
39 *priorities:*

1 (1) All obligations owing to the United States, to the extent given
2 priority by federal law.

3 (2) Secured claims, including statutory and judicial liens, to the
4 extent of the consideration fairly attributable to the value of the
5 properties securing the claims and in accordance with the priorities
6 provided by law. A secured creditor shall participate in the
7 distribution pursuant to this subdivision only if a release of lien
8 is deposited by the secured creditor conditioned only upon
9 receiving an amount equal to the distribution.

10 (3) Escrow and professional charges and brokers' fees
11 attributable directly to the sale.

12 (4) Wage claims given priority by Section 1205 of the Code of
13 Civil Procedure.

14 (5) All other tax claims.

15 (6) All other unsecured claims pro rata, including any deficiency
16 claims of partially secured creditors.

17 (c) To the extent that an obligation of the buyer to pay cash in
18 the future is a part of the consideration and the cash consideration
19 is not sufficient to pay all claims filed in full, apply all principal
20 and interest received on the obligation to the payment of claims
21 in accordance with subdivision (b) until they are paid in full before
22 making any payment to the seller. In that case, the notice sent
23 pursuant to subdivision (a) shall state the amount, terms, and due
24 dates of the obligation and the portion of the claims expected to
25 be paid thereby.

26 No funds may be drawn from the escrow, prior to the actual
27 closing and completion of the escrow, for the payment, in whole
28 or in part, of any commission, fee, or other consideration as
29 compensation for a service that is contingent upon the performance
30 of any act, condition, or instruction set forth in the escrow.

31 6106.6. This division shall apply to a bulk sale if the date of
32 the bulk-sale agreement is on or after January 1, 2013.

33 ~~SECTION 1. Section 22901 of the Business and Professions~~
34 ~~Code is amended to read:~~

35 ~~22901. The following definitions apply for purposes of this~~
36 ~~chapter:~~

37 (a) ~~“Act” means the Fair Practices of Equipment Manufacturers,~~
38 ~~Distributors, Wholesalers, and Dealers Act.~~

39 (b) ~~“Claim” means a dealer’s claim for reimbursement from a~~
40 ~~supplier for labor and materials expended by the dealer to meet~~

1 the requirements of the supplier's warranty agreement with a
2 consumer of the supplier's products if the dealer has complied
3 with the supplier's then-existing written policies and procedures
4 for warranties and warranty claims.

5 (e) "Current parts price" means, with respect to current parts,
6 the price for repair parts listed in the supplier's price list or catalog
7 in effect at the time the dealer contract is canceled or discontinued
8 or, for purposes of Section 22905, the price list or catalog in effect
9 at the time the repair parts were ordered. "Current parts price" also
10 means, with respect to superseded repair parts, the price listed in
11 the supplier's price list or catalog in effect at the time the dealer
12 contract is canceled or discontinued for the part that performs the
13 same function and purpose as the superseded part, but is simply
14 listed under a different part number.

15 (d) "Current net parts cost" means the current parts price less
16 any trade or cash discounts typically given to the dealer with
17 respect to that dealer's normal, ordinary course of orders of repair
18 parts. "Current net parts cost" also means, with respect to a
19 warranty, the current parts price of the supplier for the equipment
20 repaired less any trade or cash discounts typically given to the
21 dealer with respect to that dealer's normal, ordinary course of
22 orders of repair parts.

23 (e) "Dealer" means any person primarily engaged in the retail
24 sale of equipment as defined in subdivision (j). For the purposes
25 of this act, "dealer" does not include a "franchisee" as defined in
26 Section 331.1 of the Vehicle Code or a "new motor vehicle dealer"
27 as defined in Section 426 of the Vehicle Code.

28 (f) "Dealer contract" means either an oral or written contract,
29 agreement, or arrangement for a definite or indefinite period
30 between a dealer and a supplier that provides for the rights and
31 obligations of the parties with respect to the purchase or sale of
32 equipment or repair parts.

33 (g) "Dealership" means the retail sale business engaged in by
34 a dealer under a dealer contract.

35 (h) "Demonstrator" means equipment in a dealer's inventory
36 that has not been sold, but has had its usage demonstrated to
37 potential customers, either without charge or pursuant to a
38 short-term rental agreement, with the intent of encouraging the
39 potential customer to purchase the equipment.

- 1 (i) (1) ~~“Equipment” means all-terrain vehicles and other~~
2 ~~machinery, equipment, implements, or attachments used for, or in~~
3 ~~connection with, any of the following purposes:~~
- 4 (A) ~~Lawn, garden, golf course, landscaping, or grounds~~
5 ~~maintenance.~~
- 6 (B) ~~Planting, cultivating, irrigating, harvesting, and producing~~
7 ~~agricultural or forestry products.~~
- 8 (C) ~~Raising, feeding, or tending to, or harvesting products from,~~
9 ~~livestock and any other activity in connection with those activities.~~
- 10 (D) ~~Industrial, construction, maintenance, mining, or utility~~
11 ~~activities or applications, including, but not limited to, material~~
12 ~~handling equipment.~~
- 13 (2) ~~Self-propelled vehicles designed primarily for the~~
14 ~~transportation of persons or property on a street or highway are~~
15 ~~specifically excluded from the definition of equipment.~~
- 16 (j) ~~“Family member” means a spouse, parent, sibling, child,~~
17 ~~son-in-law, daughter-in-law, and lineal descendant, including those~~
18 ~~by adoption.~~
- 19 (k) ~~“Good cause” means failure by a dealer to comply with the~~
20 ~~requirements imposed on the dealer by the dealer contract, if those~~
21 ~~requirements are not different from those requirements imposed~~
22 ~~on other similarly situated dealers in this state.~~
- 23 (l) ~~“Index” means the United States Department of Labor,~~
24 ~~Bureau of Labor Statistics purchase price index for construction~~
25 ~~machinery series identification number peuc333120333120, or any~~
26 ~~successor index measuring substantially similar information.~~
- 27 (m) ~~“Inventory” means equipment, repair parts, data-processing~~
28 ~~hardware or software, and specialized service or repair parts.~~
- 29 (n) ~~“Major shareholder” means a shareholder with 51-percent~~
30 ~~or greater interest in a dealership.~~
- 31 (o) ~~“Manufacturer created incentive program” means a program~~
32 ~~in which the dealer’s inventory has not been sold but has been~~
33 ~~used for specialized purposes, including, but not limited to, harvest~~
34 ~~rental programs, dealer purchase rentals, and short-term rentals.~~
35 ~~The warranty that is transferred to the consumer upon sale, which~~
36 ~~shall be disclosed prior to sale, is the manufacturer-provided base~~
37 ~~warranty, less hours and time used while in a manufacturer created~~
38 ~~incentive program.~~
- 39 (p) ~~“Net equipment cost” means the price the dealer actually~~
40 ~~paid to the supplier for equipment, plus (1) freight, at truckload~~

1 rates in effect as of the effective date of the termination of a dealer
2 contract, if freight was paid by the dealer from the supplier's
3 location to the dealer's location and (2) reimbursement for labor
4 incurred in preparing the equipment for retail sale or rental, which
5 labor will be reimbursed at the dealer's standard labor rate charged
6 by the dealer to its customers for nonwarranty repair work;
7 provided, however, if a supplier has established a reasonable setup
8 time, that labor will be reimbursed at an amount equal to the
9 reasonable setup time in effect as of the date of delivery multiplied
10 by the dealer's standard labor rate.

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

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

19 (s) "Single-line dealer" means a dealer that has (1) purchased
20 construction, industrial, forestry, and mining equipment from a
21 single supplier constituting 75 percent of the dealer's new
22 equipment, calculated on the basis of net cost; and (2) a total annual
23 average sales volume in excess of forty million dollars
24 (\$40,000,000) for the three calendar years immediately preceding
25 the applicable determination date; provided, however, the sales
26 threshold shall be increased each year by an amount equal to the
27 current sales threshold multiplied by the percentage increase in
28 the index from January 1 of the immediately preceding year to
29 January 1 of the current year.

30 (t) "Single-line supplier" means the supplier that is selling the
31 single-line dealer construction, industrial, forestry, and mining
32 equipment constituting 75 percent of the dealer's new equipment.

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

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

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

6 22903. (a) This section shall only apply to a dealer contract
7 between a dealer who is not a single-line dealer and a supplier who
8 is not a single-line supplier.

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

26 (c) No supplier, directly or through an officer, agent, or
27 employee, may terminate, cancel, fail to renew, or materially
28 change the competitive circumstances of a dealer contract without
29 good cause. In addition to the definition in subdivision (k) of
30 Section 22901, good cause exists whenever the dealer has taken
31 any of the following actions:

32 (1) Transferred a controlling ownership interest in the dealership
33 without the consent of the supplier, who shall not withhold consent
34 unreasonably.

35 (2) Made a material misrepresentation or falsification of any
36 record.

37 (3) Filed a voluntary petition in bankruptcy or has had an
38 involuntary petition in bankruptcy filed against the dealer that has
39 not been dismissed within 60 days after the filing or is insolvent
40 or in receivership.

- 1 ~~(4) Plead guilty to or has been convicted of a felony involving~~
2 ~~an act of moral turpitude.~~
- 3 ~~(5) Failed to operate in the normal course of business for seven~~
4 ~~consecutive business days, without the consent of the supplier, or~~
5 ~~has terminated the business.~~
- 6 ~~(6) Relocated or established a new or additional dealer's place~~
7 ~~of business without the supplier's consent.~~
- 8 ~~(7) Materially defaulted under any chattel mortgage or other~~
9 ~~security agreement between the dealer and the supplier, or there~~
10 ~~has been a revocation of any guarantee of the dealer's present or~~
11 ~~future obligations to the supplier. However, good cause does not~~
12 ~~exist if a person revokes any guarantee in connection with or~~
13 ~~following the transfer of that person's entire ownership interest in~~
14 ~~the dealer unless the supplier requires that person to execute a new~~
15 ~~guarantee of the dealer's present or future obligations in connection~~
16 ~~with that transfer of ownership interest.~~
- 17 ~~(8) Failed to satisfy any payment obligation as it became due~~
18 ~~and payable to the supplier, failed to promptly account to the~~
19 ~~supplier for any proceeds from the sale of equipment, or failed to~~
20 ~~hold those proceeds in trust for the benefit of the supplier.~~
- 21 ~~(9) Engaged in conduct that is injurious or detrimental to any~~
22 ~~of the following:~~
 - 23 ~~(A) The dealer's customers. This includes, but is not limited to,~~
24 ~~the following conduct: excessive pricing, misleading advertising,~~
25 ~~failure to provide service and replacement parts, and failure to~~
26 ~~perform warranty obligations.~~
 - 27 ~~(B) The public welfare.~~
 - 28 ~~(C) The representation or reputation of the supplier's product.~~
- 29 ~~(10) Consistently failed to meet building and housekeeping~~
30 ~~requirements, or failed to provide adequate sales, service, or parts~~
31 ~~personnel commensurate with the dealer contract.~~
- 32 ~~(11) Consistently failed to comply with the applicable licensing~~
33 ~~laws pertaining to the products and services being represented for~~
34 ~~and on the supplier's behalf.~~
- 35 ~~(12) Consistently failed to meet and maintain the supplier's~~
36 ~~requirements for reasonable standards and performance objectives,~~
37 ~~if the supplier has given the dealer reasonable standards and~~
38 ~~performance objectives that are based on the manufacturer's~~
39 ~~experience in other comparable market areas.~~

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

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

23 ~~SEC. 3. Section 22903.2 of the Business and Professions Code~~
24 ~~is amended to read:~~

25 ~~22903.2. (a) This section shall only apply to dealer contracts~~
26 ~~between a single-line dealer and its single-line supplier.~~

27 ~~(b) No supplier may terminate a dealer contract without good~~
28 ~~cause. In addition to the definition in subdivision (k) of Section~~
29 ~~22901, good cause exists whenever any one of the following is~~
30 ~~applicable:~~

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

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

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

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

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

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

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

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

36 ~~(e) Notwithstanding subdivision (d), if a supplier and dealer~~
37 ~~have previously executed an agreement concerning succession~~
38 ~~rights prior to the dealer's death, and if that agreement is still in~~
39 ~~effect, the agreement shall be observed even if it designated~~

1 someone other than the surviving spouse or heirs of the decedent
2 as the successor.

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

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

7 22905. Except as provided in subdivision (p), whenever a dealer
8 contract is terminated by cancellation or nonrenewal, the supplier
9 shall repurchase the inventory as provided in this section.

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

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

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

35 (d) The supplier shall pay a sum equal to 100 percent of the net
36 equipment cost of all unsold and undamaged equipment used in a
37 manufacturer created incentive program, as defined in subdivision
38 (c) of Section 22901, less depreciation due to usage and bonus or
39 volume incentive received by the dealer for the equipment. The
40 depreciation adjustment shall be based on published industry rental

1 rates to the extent these rates are available. For purposes of this
2 subdivision, equipment with hour meters used in a manufacturer
3 created incentive program with less than 50 hours of use will be
4 considered new, unsold equipment subject to repurchase under
5 this section.

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

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

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

28 (h) ~~Upon the payment or allowance of credit to the dealer's~~
29 ~~account of the sums required by this section, the title to all~~
30 ~~inventory purchased shall pass to the supplier making payment,~~
31 ~~and the supplier shall be entitled to the possession of the inventory.~~
32 ~~All payments or allowances of credit due to dealers shall be paid~~
33 ~~or credited within 90 days after receipt by the supplier of property~~
34 ~~required to be repurchased. Any payments or allowances of credit~~
35 ~~due to dealers that are not paid within the 90-day period will accrue~~
36 ~~interest at the statutory rate. The supplier may withhold payments~~
37 ~~due under this section during the period of time in which the dealer~~
38 ~~fails to comply with its contractual obligations to remove any~~
39 ~~signage indicating that the dealer is an authorized dealer of the~~
40 ~~supplier.~~

- 1 (i) ~~The supplier and dealer shall each pay 50 percent of the costs~~
2 ~~of freight to ship equipment to the nearest retail outlet or to ship~~
3 ~~repair parts to the nearest supplier distribution center.~~
- 4 (j) ~~The provisions of this section shall not require the repurchase~~
5 ~~from the dealer of any of the following:~~
- 6 (1) ~~Any repair part that is in a broken or damaged package.~~
7 ~~However, the supplier shall be required to repurchase a repair part~~
8 ~~in a broken or damaged package, for a repurchase price that is~~
9 ~~equal to 85 percent of the current net parts cost for the repair part,~~
10 ~~if the aggregate current price for the entire package of repair parts~~
11 ~~is seventy-five dollars (\$75) or higher.~~
- 12 (2) ~~Any repair part that, because of its condition, is not resalable~~
13 ~~as a new part without reconditioning.~~
- 14 (3) ~~Any inventory for which the dealer is unable to furnish~~
15 ~~evidence, satisfactory to the supplier, of clear title, free and clear~~
16 ~~of all claims, liens, and encumbrances.~~
- 17 (4) ~~Any inventory that the dealer desires to keep if the dealer~~
18 ~~has a contractual right to do so.~~
- 19 (5) ~~Any equipment or repair parts that are not in new, unsold,~~
20 ~~undamaged, complete condition; subject to the provisions of this~~
21 ~~act relating to demonstrators.~~
- 22 (6) ~~Any equipment or repair parts acquired by the dealer from~~
23 ~~any source other than the supplier unless that equipment or those~~
24 ~~repair parts were ordered from, or invoiced to, the dealer by the~~
25 ~~supplier.~~
- 26 (7) ~~Any equipment or repair parts that are not returned to the~~
27 ~~supplier within 90 days after the latter of (A) the effective date of~~
28 ~~termination of a dealer contract or (B) the date the dealer receives~~
29 ~~from the supplier all information, documents, or supporting~~
30 ~~materials required by the supplier to comply with the supplier's~~
31 ~~return policy. However, this paragraph shall not be applicable to~~
32 ~~a dealer if the supplier did not give the dealer notice of the 90-day~~
33 ~~deadline at the time the applicable notice of termination was sent~~
34 ~~to the dealer.~~
- 35 (k) ~~If any supplier fails or refuses to repurchase any inventory~~
36 ~~covered under this section within 90 days after termination of a~~
37 ~~dealer contract, the supplier shall be liable for the total amount of~~
38 ~~110 percent of the current net equipment cost of the inventory,~~
39 ~~plus any freight charges paid by the dealer, interest accrued at the~~
40 ~~statutory rate from the date of shipment to the supplier until the~~

1 ~~date of payment, 5 percent for handling, packing, and loading, and~~
2 ~~actual costs for any court or arbitration proceedings, including~~
3 ~~costs for attorney's fees and arbitrators.~~

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

9 ~~(m) This section shall not be construed to affect any security~~
10 ~~interest that the supplier may have in the inventory of the dealer,~~
11 ~~and any repurchase shall not be subject to the claims of any secured~~
12 ~~or unsecured creditors of the supplier or any assignee of the~~
13 ~~supplier until such time as the dealer has received full payment or~~
14 ~~credit.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ~~SEC. 5. Section 22906 of the Business and Professions Code~~
20 ~~is amended to read:~~

21 ~~22906. (a) A dealer, as defined in subdivision (c) of Section~~
22 ~~22901, is not entitled to establish a lien pursuant to this act, unless~~
23 ~~that person has first sent to the lien debtor a written notice, by~~
24 ~~certified mail, which states all of the following:~~

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

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

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

32 ~~(A) Allow the lien to be filed.~~

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

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

36 ~~(4) The lien debtor has 10 days from receipt of the notice to~~
37 ~~select an alternative, notify the lien claimant of the alternative~~
38 ~~selected, and satisfy all of the requirements of the selected~~
39 ~~alternative. This part of the notice to the lien debtor shall be in~~
40 ~~10-point type or bolder.~~

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

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

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

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

13 ~~SEC. 6. Section 22924 of the Business and Professions Code~~
14 ~~is amended to read:~~

15 ~~22924. (a) In the event of the death or incapacity of the dealer,~~
16 ~~which in this context shall mean an owner, equal or majority~~
17 ~~partner, or the majority stockholder of a corporation, operating as~~
18 ~~a dealer, the supplier shall, at the option of the heirs at law, if the~~
19 ~~dealer died intestate, or the executor under the terms of the~~
20 ~~deceased dealer's last will and testament, if the dealer died testate,~~
21 ~~repurchase the inventory from the estate as if the supplier had~~
22 ~~terminated the dealer contract and the inventory repurchase~~
23 ~~provisions of Section 22905 are applicable. The heirs or executor~~
24 ~~shall have 180 days from the date of the death of the dealer or~~
25 ~~majority stockholder to exercise the option under this section.~~
26 ~~However, nothing in this section shall require the repurchase of~~
27 ~~inventory, if the heirs or executor and the supplier enter into a new~~
28 ~~dealer agreement, or if a successor to the dealer is established~~
29 ~~pursuant to subdivision (b) of Section 22903.1. This section shall~~
30 ~~be subject to that portion of the dealer contract pertaining to death~~
31 ~~of the dealer or succession, to the extent the contract is not~~
32 ~~inconsistent. Nothing in this section shall entitle an heir or personal~~
33 ~~representative of a deceased dealer or majority stockholder to~~
34 ~~operate the dealership beyond the 180 days provided for in this~~
35 ~~subdivision without the consent of the supplier.~~

36 ~~(b) The provisions of this section shall be supplemental to any~~
37 ~~agreement between the dealer and the supplier covering the return~~
38 ~~of equipment, attachments, and repair parts. Notwithstanding~~
39 ~~anything contained in this section, the rights of a supplier to charge~~
40 ~~back to the dealer's account amounts previously paid or credited~~

1 as a discount incident to the dealer's purchase of inventory shall
2 not be affected.

3 ~~SEC. 7. Section 24044.5 of the Business and Professions Code~~
4 ~~is amended to read:~~

5 ~~24044.5. (a) The department, in its discretion, may issue an~~
6 ~~interim operating permit to an applicant for any license to operate~~
7 ~~the premises during the period an application for a license at the~~
8 ~~premises is pending and when all of the following conditions exist:~~

9 ~~(1) The application has been protested pursuant to Article 3~~
10 ~~(commencing with Section 24011).~~

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

13 ~~(3) The applicant for the interim operating permit has filed with~~
14 ~~the department an application for issuance of a license at the~~
15 ~~premises to himself or herself.~~

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

18 ~~(b) An interim operating permit issued by the department~~
19 ~~pursuant to this section shall be for a period not to exceed 120~~
20 ~~days. An interim operating permit may be extended at the discretion~~
21 ~~of the department for additional 120-day periods as necessary upon~~
22 ~~payment of an additional fee of one hundred dollars (\$100) and~~
23 ~~upon compliance with all conditions required by this section. Any~~
24 ~~interim operating permit issued by the department shall be~~
25 ~~automatically canceled when a final determination made by the~~
26 ~~department regarding the protests becomes effective or when the~~
27 ~~application for the license is withdrawn, whichever occurs first.~~
28 ~~An interim operating permit is a conditional permit and authorizes~~
29 ~~the holder to whom issued to exercise the rights and privileges of~~
30 ~~the license for which the application has been filed with the~~
31 ~~department. Any conditions for which the applicant has petitioned~~
32 ~~pursuant to Article 1.5 (commencing with Section 23800) of~~
33 ~~Chapter 5 shall apply to any interim operating permit issued by~~
34 ~~the department.~~

35 ~~(c) Purchase of beer and wine by the holder of an interim~~
36 ~~operating permit issued to an applicant for a retail license shall be~~
37 ~~made only upon payment before or at the time of delivery in~~
38 ~~currency or by check. Purchase of distilled spirits by the holder of~~
39 ~~an interim operating permit issued to an applicant for a retail~~
40 ~~license shall be made only upon payment before or at the time of~~

1 delivery in currency or by certified check. However, the holder of
2 an interim operating permit issued to an applicant for a retail
3 license, who also holds one or more retail licenses and is operating
4 under the retail license or licenses in addition to the interim
5 operating permit, and who is not delinquent under the provisions
6 of Section 25509 as to any retail license under which he or she
7 operates, may purchase alcoholic beverages on credit under the
8 interim operating permit.

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

13 A check dishonored on presentation shall not be deemed
14 payment. The receipt by the seller or his or her agent in good faith
15 from a holder of an interim operating permit of a check dishonored
16 on presentation shall not be cause for disciplinary action against
17 the seller.

18 (e) Issuance of the license for which the holder of an interim
19 operating permit issued to an applicant for a retail license has filed
20 an application shall not be approved by the department until the
21 holder of the interim operating permit has filed with the department
22 a statement executed under penalty of perjury that all current
23 obligations have been discharged, and that all outstanding checks
24 issued by him or her in payment for alcoholic beverages will be
25 honored on presentation.

26 (f) It shall not be a violation of this section or grounds for
27 disciplinary action for any licensee to extend credit to the holder
28 of an interim operating permit issued to an applicant for a retail
29 license or to receive payment from the holder of an interim
30 operating permit in a manner other than authorized herein unless
31 the seller has knowledge of the fact that the purchaser was
32 operating under an interim operating permit. Knowledge of the
33 fact may be established by evidence, including, but not limited to,
34 evidence that, at the time of receipt of payment or the extension
35 of credit, the premises operated under an interim operating permit
36 were posted with the notice required by Section 23985, or the
37 holder of the interim operating permit has recorded notice as
38 required by Section 24073, or the holder of the interim operating
39 permit has published notice as required by Section 23986.

1 ~~(g) Refusal by the department to issue or extend an interim~~
2 ~~operating permit shall not entitle the applicant to petition for the~~
3 ~~permit pursuant to Section 24011, or to a hearing pursuant to~~
4 ~~Section 24012. Articles 2 (commencing with Section 23985) and~~
5 ~~3 (commencing with Section 24011) shall not apply to interim~~
6 ~~operating permits.~~

7 ~~(h) Notwithstanding any other provision of law, the department~~
8 ~~may, in its discretion, cancel or suspend summarily at any time an~~
9 ~~interim operating permit if the department determines that good~~
10 ~~cause for the cancellation or suspension exists. Chapter 8~~
11 ~~(commencing with Section 24300) shall not apply to interim~~
12 ~~operating permits.~~

13 ~~(i) Application for an interim operating permit shall be on any~~
14 ~~form the department shall prescribe. If an application for an interim~~
15 ~~operating permit is withdrawn before issuance or is refused by the~~
16 ~~department, the fee that accompanied the application shall be~~
17 ~~refunded in full, and Section 23959 shall not apply. Fees received~~
18 ~~by the department for issuance of interim operating permits shall~~
19 ~~be deposited in the Alcohol Beverage Control Fund as provided~~
20 ~~in Section 25761.~~

21 ~~SEC. 8. Section 24045.5 of the Business and Professions Code~~
22 ~~is amended to read:~~

23 ~~24045.5. The department in its discretion may issue a temporary~~
24 ~~permit to the transferee of any license to continue the operation of~~
25 ~~the premises during the period a transfer application for the license~~
26 ~~from person to person at the same premises is pending and when~~
27 ~~all the following conditions exist:~~

28 ~~(a) The premises shall have been operated under a license within~~
29 ~~30 days of the date of filing the application for a temporary permit.~~

30 ~~(b) The license for the premises shall have been surrendered~~
31 ~~pursuant to rules of the department.~~

32 ~~(c) The applicant for the temporary permit shall have filed with~~
33 ~~the department an application for transfer of the license at the~~
34 ~~premises to himself or herself.~~

35 ~~(d) The application for the temporary permit shall be~~
36 ~~accompanied by a temporary permit fee of one hundred dollars~~
37 ~~(\$100).~~

38 ~~A temporary permit issued by the department pursuant to this~~
39 ~~section shall be for a period not to exceed four calendar months.~~

40 ~~A temporary permit may be extended at the discretion of the~~

1 department for an additional four calendar months upon payment
2 of an additional fee of one hundred dollars (\$100) and upon
3 compliance with all conditions required herein. A temporary permit
4 is a conditional permit and authorizes the holder thereof to sell the
5 alcoholic beverages as would be permitted to be sold under the
6 privileges of the license for which the transfer application has been
7 filed with the department.

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

17 All checks received by a seller for alcoholic beverages purchased
18 by the holder of a temporary retail permit shall be deposited not
19 later than the second business day following the date the alcoholic
20 beverages are delivered.

21 A check dishonored on presentation shall not be deemed
22 payment. The receipt by the seller or his or her agent in good faith
23 from a holder of a temporary permit of a check dishonored on
24 presentation shall not be cause for disciplinary action against the
25 seller.

26 Transfer of the license for which the holder of a temporary permit
27 has filed an application shall not be approved by the department
28 until the holder of the temporary permit has filed with the
29 department a statement executed under penalty of perjury that all
30 current obligations have been discharged, and that all outstanding
31 checks issued by him or her in payment for alcoholic beverages
32 will be honored on presentation.

33 It shall not be a violation of this section or otherwise grounds
34 for disciplinary action for any licensee to extend credit to the holder
35 of a temporary permit or to receive payment from the permittee
36 in a manner other than authorized herein unless the seller had
37 knowledge of the fact that the purchaser was operating under a
38 temporary permit. Knowledge of the fact may be established by
39 evidence, including, but not limited to, evidence that, at the time
40 of receipt of payment or the extension of credit, the premises

1 operated under a temporary permit were posted with the notice
2 required by Section 23985, or the holder of the temporary permit
3 had recorded notice as required by Section 24073, or the holder
4 of the temporary permit had published notice as required by Section
5 23986.

6 Refusal by the department to issue or extend a temporary permit
7 shall not entitle the applicant to petition for the permit pursuant to
8 Section 24011, or to a hearing pursuant to Section 24012. Articles
9 2 (commencing with Section 23985) and 3 (commencing with
10 Section 24011) shall not apply to temporary permits.

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

16 Application for a temporary permit shall be on any form the
17 department shall prescribe. If an application for a temporary permit
18 is withdrawn before issuance or is refused by the department, the
19 fee which accompanied the application shall be refunded in full,
20 and Section 23959 shall not apply. Fees received by the department
21 for issuance of temporary permits shall be deposited in the Alcohol
22 Beverage Control Fund as provided in Section 25761.

23 SEC. 9. Section 485.010 of the Code of Civil Procedure is
24 amended to read:

25 485.010. (a) Except as otherwise provided by statute, no right
26 to attach order or writ of attachment may be issued pursuant to
27 this chapter unless it appears from facts shown by affidavit that
28 great or irreparable injury would result to the plaintiff if issuance
29 of the order were delayed until the matter could be heard on notice.

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

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

37 (2) Under the circumstances of the case, it may be inferred that
38 the defendant has failed to pay the debt underlying the requested
39 attachment and the defendant is insolvent in the sense that the
40 defendant is generally not paying his or her debts as those debts

1 ~~become due, unless the debts are subject to a bona fide dispute.~~
2 ~~Plaintiff's affidavit filed in support of the ex parte attachment shall~~
3 ~~state, in addition to the requirements of Section 485.530, the known~~
4 ~~undisputed debts of the defendant, that the debts are not subject~~
5 ~~to bona fide dispute, and the basis for plaintiff's determination that~~
6 ~~the defendant's debts are undisputed.~~

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

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

13 ~~(e) Upon a writ being issued solely on a showing under~~
14 ~~paragraph (2) of subdivision (b), if the defendant requests the court~~
15 ~~to review the issuance of the writ, the court shall conduct a hearing~~
16 ~~within five court days after the plaintiff is served with notice of~~
17 ~~the defendant's request. A writ issued solely on a showing under~~
18 ~~paragraph (3) of subdivision (b) shall be limited to the plaintiff's~~
19 ~~pro rata share of the proceeds of the sale in escrow.~~

20 ~~SEC. 10. Section 2403 of the Commercial Code is amended~~
21 ~~to read:~~

22 ~~2403. (1) A purchaser of goods acquires all title which his~~
23 ~~transferor had or had power to transfer except that a purchaser of~~
24 ~~a limited interest acquires rights only to the extent of the interest~~
25 ~~purchased. A person with voidable title has power to transfer a~~
26 ~~good title to a good faith purchaser for value. When goods have~~
27 ~~been delivered under a transaction of purchase the purchaser has~~
28 ~~such power even though~~

29 ~~(a) The transferor was deceived as to the identity of the~~
30 ~~purchaser, or~~

31 ~~(b) The delivery was in exchange for a check which is later~~
32 ~~dishonored, or~~

33 ~~(c) It was agreed that the transaction was to be a "cash sale," or~~

34 ~~(d) The delivery was procured through fraud punishable as~~
35 ~~larcenous under the criminal law.~~

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

39 ~~(3) "Entrusting" includes any delivery and any acquiescence in~~
40 ~~retention of possession for the purpose of sale, obtaining offers to~~

1 purchase, locating a buyer, or the like; regardless of any condition
2 expressed between the parties to the delivery or acquiescence and
3 regardless of whether the procurement of the entrusting or the
4 possessor's disposition of the goods have been such as to be
5 larcenous under the criminal law.

6 ~~(4) The rights of other purchasers of goods and of lien creditors~~
7 ~~are governed by the divisions on secured transactions (Division~~
8 ~~9) and documents of title (Division 7):~~

9 SEC. 11. ~~Division 6 (commencing with Section 6101) of the~~
10 ~~Commercial Code is repealed.~~

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

13 ~~2953.1. Notwithstanding the provisions of Section 2953, any~~
14 ~~property that is assessed on the unsecured roll and either is~~
15 ~~advertised to be sold at public auction or has been seized for prior~~
16 ~~year's delinquent taxes, may be seized by the tax collector prior~~
17 ~~to delinquency without filing a declaration with the clerk of the~~
18 ~~board of supervisors.~~