

IN THE SENATE

SENATE BILL NO. 1358

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE IDAHO EQUIPMENT DEALER PROTECTION LAW; AMENDING SECTION  
2 28-24-103, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE CLARI-  
3 FICATION REGARDING COMPETITIVE CIRCUMSTANCES; AND AMENDING SECTION  
4 28-24-104, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS RE-  
5 GARDING NOTICE, AND TO MAKE TECHNICAL CORRECTIONS.  
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 28-24-103, Idaho Code, be, and the same is  
9 hereby amended to read as follows:

10 28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall  
11 be a violation of the provisions of this chapter for a supplier to:

12 (1) Require or attempt to require any equipment dealer to order or ac-  
13 cept delivery of any equipment or parts or any equipment with special fea-  
14 tures or accessories not included in the base list price of such equipment as  
15 publicly advertised by the supplier which the equipment dealer has not vol-  
16 untarily ordered;

17 (2) Require or attempt to require any equipment dealer to enter into any  
18 agreement, whether written or oral, supplementing or amending an existing  
19 dealer agreement with such supplier unless such amendment or supplementary  
20 agreement is imposed on other similarly situated dealers in the state;

21 (3) Refuse to deliver in reasonable quantities and within a reason-  
22 able time after receipt of the equipment dealer's order, to any equipment  
23 dealer having a dealer agreement for the retail sale of new equipment sold  
24 or distributed by such supplier, equipment covered by such dealer agreement  
25 specifically advertised or represented by such supplier to be available for  
26 immediate delivery. The failure to deliver any such equipment shall not be  
27 considered a violation of the provisions of this chapter when deliveries are  
28 based on prior retail sales ordering histories, the priority given to the  
29 sequence in which the orders are received or manufacturing schedules or if  
30 such failure is due to prudent and reasonable restriction on extension of  
31 credit by the supplier to the equipment dealer, an act of God, work stoppage  
32 or delay due to a strike or labor difficulty, a bona fide shortage of materi-  
33 als, freight embargo or other cause over which the supplier has no control;

34 (4) Terminate, cancel or fail to renew the dealer agreement of any  
35 equipment dealer or substantially change the dealer's competitive circum-  
36 stances ~~of the dealer agreement~~, attempt to terminate or cancel, or threaten  
37 not to renew the dealer agreement or attempt or threaten to substantially  
38 change the dealer's competitive circumstances ~~of the dealer agreement~~  
39 without good cause. For purposes of this chapter, the fact that a dealer  
40 agreement allows an event, act or omission does not determine whether such  
41 event, act or omission resulted in a substantial change in the dealer's com-  
42 petitive circumstances. Nothing in this paragraph shall be interpreted to

1 apply to a discontinuation of or change in the product line of an equipment  
2 dealer or a supplier;

3 (5) Condition the renewal, continuation or extension of a dealer agree-  
4 ment on the equipment dealer's substantial renovation of the equipment  
5 dealer's place of business or on the construction, purchase, acquisition or  
6 rental of a new place of business by the equipment dealer, unless:

7 (a) The supplier has advised the equipment dealer in writing of its  
8 demand for such renovation, construction, purchase, acquisition or  
9 rental within a reasonable time prior to the effective date of the pro-  
10 posed date of renewal or extension, but in no case less than one (1)  
11 year; and

12 (b) The supplier demonstrates the need for such change in the place of  
13 business and the reasonableness of the demand with respect to marketing  
14 and servicing the supplier's products and any significant economic con-  
15 ditions existing at the time in the equipment dealer's trade area, and  
16 the equipment dealer does not make a good faith effort to complete such  
17 construction or renovation plans within one (1) year.

18 (6) Discriminate in the prices charged for equipment of like grade and  
19 quality sold by the supplier to similarly situated dealers in this state  
20 where the effect of such discrimination may be to substantially lessen com-  
21 petition or tend to create a monopoly in a line of commerce. The provisions  
22 of this subsection do not prevent the use of differentials which make only  
23 due allowance for differences in the cost of manufacture, sale or delivery  
24 of equipment resulting from the differing methods or quantities in which  
25 such equipment is sold or delivered; provided that nothing shall prevent a  
26 supplier from offering a lower price in order to meet an equally low price of  
27 a competitor, or the services or facilities furnished by a competitor;

28 (7) Unreasonably withhold consent for an equipment dealer to change the  
29 capital structure of the equipment dealership or the means by which it is fi-  
30 nanced, provided that the equipment dealer meets the reasonable capital re-  
31 quirements of the supplier;

32 (8) Prevent, by contract or otherwise, any equipment dealer or any of-  
33 ficer, member, partner or stockholder of an equipment dealership from sell-  
34 ing, assigning, or transferring any interest or portion thereof held by any  
35 of them in the equipment dealership to any other person or party; provided,  
36 however, that no equipment dealer, officer, partner, member or stockholder  
37 shall have the right to sell, transfer, or assign the equipment dealership  
38 or the power of management or control thereof without the written consent of  
39 the supplier, except that such consent shall not be unreasonably withheld if  
40 the buyer, transferee, or assignee meets the reasonable financial, business  
41 experience and character standards of the supplier. Should a supplier de-  
42 termine that the designated transferee is not acceptable, the supplier shall  
43 provide the equipment dealer with written notice of the supplier's objec-  
44 tions and specific reasons for withholding its consent within thirty (30)  
45 calendar days of receipt of notice from the equipment dealer;

46 (9) Require an equipment dealer to assent to a release, assignment, no-  
47 vation, waiver or estoppel which would relieve any person from liability im-  
48 posed by this chapter;

49 (10) (a) Unreasonably withhold consent, in the event of the death of the  
50 equipment dealer or the principal owner of the equipment dealership, to

1 the transfer of the equipment dealer's or the principal owner's inter-  
2 est in the equipment dealership to another individual, if the individ-  
3 ual meets the reasonable financial, business experience and character  
4 standards of the supplier. A supplier shall have sixty (60) days to con-  
5 sider a request to make a transfer to an individual. If, within that pe-  
6 riod, the supplier determines that the individual does not meet the rea-  
7 sonable financial, business experience and character standards of the  
8 supplier, it shall provide the dealership, heirs to the dealership, or  
9 the estate of the dealer with written notice of its objection and the  
10 specific reasons for withholding its consent. If the individual rea-  
11 sonably satisfies the supplier's objections within sixty (60) days af-  
12 ter notice thereof, the supplier shall approve the transfer. Nothing in  
13 this paragraph shall entitle a qualified individual to continue to op-  
14 erate the dealership without the consent of the supplier.

15 (b) Notwithstanding the provisions of paragraph (a) of this sub-  
16 section, in the event that a supplier and equipment dealer have duly  
17 executed an agreement concerning succession rights prior to the equip-  
18 ment dealer's death, and if such agreement has not been revoked, such  
19 agreement shall be observed.

20 (11) Cause the equipment dealer to refrain from participation in the  
21 management, investment, acquisition or sale of any other related product or  
22 product line of equipment, parts or accessories, from the same or separate  
23 locations;

24 (12) Fail to compensate a dealer for preparation and delivery of equip-  
25 ment that the supplier sells or leases for use within this state and that the  
26 dealer prepares for delivery and delivers.

27 SECTION 2. That Section 28-24-104, Idaho Code, be, and the same is  
28 hereby amended to read as follows:

29 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT  
30 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier  
31 shall provide written notice to the equipment dealer of any proposed ter-  
32 mination or nonrenewal of a dealer agreement or substantial change in the  
33 dealer's competitive circumstances of a dealer agreement. The notice shall  
34 state the reason(s) constituting good cause for the action proposed to be  
35 taken. Except where good cause is alleged under the provisions of para-  
36 graphs (a) through (e) of subsection (2) of this section, such notice shall  
37 be provided to the equipment dealer not less than ninety (90) days before  
38 the proposed action is to become effective. Except where good cause is al-  
39 leged under paragraphs (a) through (d) of subsection (2) of this section,  
40 the equipment dealer shall be given ninety (90) days within which to cure  
41 any claimed deficiency, and the notice shall advise the dealer of his right  
42 to cure. If the claimed deficiency is rectified within ninety (90) days,  
43 the notice shall be void and the proposed action shall not become effective.  
44 Notwithstanding the equipment dealer's failure to cure the deficiency or  
45 deficiencies claimed, where a ninety (90) day notice is required to be given  
46 by the supplier, the contractual term of the dealer agreement shall not ex-  
47 pire, nor shall the dealer agreement be otherwise terminated or canceled,  
48 nor shall the equipment dealer's competitive circumstances be substantially

1 changed prior to the expiration of at least ninety (90) days following such  
2 notice without the written consent of the equipment dealer.

3 (2) As used in this chapter, "good cause" shall exist, but not be lim-  
4 ited to the following circumstances when the equipment dealer has:

5 (a) Transferred a controlling ownership interest in the equipment  
6 dealership without the supplier's consent;

7 (b) Made a material misrepresentation to the supplier;

8 (c) Filed a voluntary petition in bankruptcy or has had an involuntary  
9 petition in bankruptcy filed against the equipment dealer which has not  
10 been discharged within ninety (90) days after the filing; is in default  
11 under the provisions of a security agreement in effect with the sup-  
12 plier; or is insolvent or in receivership;

13 (d) Been convicted of a crime, punishable for a term of imprisonment for  
14 one (1) year or more;

15 (e) Failed to operate in the normal course of business for ten (10) con-  
16 secutive business days or has terminated said business;

17 (f) Relocated the equipment dealer's place of business without the sup-  
18 plier's consent;

19 (g) Inadequately represented the supplier over a one (1) year period of  
20 time or length of time or a time mutually agreed upon between the sup-  
21 plier and dealer to reflect the ongoing market conditions;

22 (h) Consistently failed to meet building and housekeeping require-  
23 ments, or has failed to provide adequate sales, service or parts person-  
24 nel commensurate with the dealer agreement;

25 (i) Failed to comply with the applicable licensing laws pertaining to  
26 the products and services being represented for and on the supplier's  
27 behalf;

28 (j) Materially failed to comply with the terms of the dealer agreement.

29 (3) Notwithstanding the provisions of subsection (2) of this section,  
30 before the termination or nonrenewal of a dealer agreement or substantially  
31 changing the dealer's competitive circumstances in each case, based upon a  
32 supplier's claim that the dealer has failed to achieve market penetration at  
33 levels consistent with similarly situated dealerships in the state, the sup-  
34 plier shall provide written notice of its intention at least one (1) year in  
35 advance.

36 (a) After issuance of such a notice, the supplier shall provide fair and  
37 reasonable efforts to work with the dealer to assist the dealer in gain-  
38 ing the required market penetration including, but not limited to, mak-  
39 ing available to the dealer an adequate inventory of new equipment and  
40 parts, and not withhold programs available to all dealers.

41 (b) Upon the end of the one (1) year period established in ~~this~~ sub-  
42 section (3) of this section, the supplier may terminate or elect not to  
43 renew the dealer agreement or substantially change the dealer's com-  
44 petitive circumstances only upon written notice specifying the reasons  
45 for determining that the dealer failed to meet reasonable market pen-  
46 etration. The notice must specify that termination or nonrenewal of the  
47 dealer agreement or the substantial change in the dealer's competitive  
48 circumstances is effective one hundred eighty (180) days from the date  
49 of the notice and that either party may petition the court.

1 (c) A supplier bears the burden of proving that a retailer's area of  
2 responsibility or trade area does not afford sufficient sales potential  
3 to reasonably support the retailer. The supplier's proof must be in  
4 writing.