

IN THE SENATE

SENATE BILL NO. 1313

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT;
2 AMENDING SECTION 28-24-103, IDAHO CODE, TO REVISE PROVISIONS RELATING
3 TO PROHIBITED CONDUCT BY SUPPLIERS IN REGARD TO SUBSTANTIAL CHANGES IN
4 COMPETITIVE CIRCUMSTANCES OF DEALER AGREEMENTS OR DEALER RELATIONSHIPS
5 WITH SUPPLIERS, TO REMOVE AN APPLICABILITY PROVISION AND TO CLARIFY THE
6 FACT THAT A DEALER AGREEMENT ALLOWS AN EVENT, ACT OR OMISSION DOES NOT
7 AFFECT CERTAIN DETERMINATIONS; AND AMENDING SECTION 28-24-104, IDAHO
8 CODE, TO REQUIRE SUPPLIERS TO PROVIDE CERTAIN NOTICE TO DEALERS IN THE
9 EVENT OF SUBSTANTIAL CHANGES IN THE COMPETITIVE CIRCUMSTANCES OF DEALER
10 AGREEMENTS OR DEALER RELATIONSHIPS WITH SUPPLIERS, TO PROVIDE THAT
11 SUPPLIERS MAY SUBSTANTIALLY CHANGE THE COMPETITIVE CIRCUMSTANCES OF
12 DEALER AGREEMENTS OR DEALER RELATIONSHIPS WITH SUPPLIERS AFTER A SPEC-
13 IFIED PERIOD OF TIME AND TO PROVIDE FOR CONTENT OF CERTAIN NOTICE AND TO
14 MAKE A TECHNICAL CORRECTION.
15

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

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

19 28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall
20 be a violation of the provisions of this chapter for a supplier to:

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

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

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

1 (4) Terminate, cancel or fail to renew the dealer agreement of any
2 equipment dealer or substantially change the competitive circumstances of
3 the dealer agreement or the dealer's relationship with the supplier, attempt
4 to terminate or cancel, or threaten not to renew the dealer agreement or at-
5 tempt or threaten to substantially change the competitive circumstances of
6 the dealer agreement or the dealer's relationship with the supplier, in each
7 case, without good cause. ~~Nothing in this paragraph shall be interpreted to~~
8 ~~apply to a discontinuation of or change in the product line of an equipment~~
9 ~~dealer~~ For purposes of this chapter, the fact that a dealer agreement allows
10 an event, act or omission does not affect the determination as to whether
11 such event, act or omission resulted in a substantial change in the competi-
12 tive circumstances of the dealer agreement or the dealer's relationship with
13 its supplier;

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

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

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

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

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

43 (8) Prevent, by contract or otherwise, any equipment dealer or any of-
44 ficer, member, partner or stockholder of an equipment dealership from sell-
45 ing, assigning, or transferring any interest or portion thereof held by any
46 of them in the equipment dealership to any other person or party; provided,
47 however, that no equipment dealer, officer, partner, member or stockholder
48 shall have the right to sell, transfer, or assign the equipment dealership
49 or the power of management or control thereof without the written consent of
50 the supplier, except that such consent shall not be unreasonably withheld if

1 the buyer, transferee, or assignee meets the reasonable financial, business
 2 experience and character standards of the supplier. Should a supplier de-
 3 termine that the designated transferee is not acceptable, the supplier shall
 4 provide the equipment dealer with written notice of the supplier's objec-
 5 tions and specific reasons for withholding its consent within thirty (30)
 6 calendar days of receipt of notice from the equipment dealer;

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

10 (10) (a) Unreasonably withhold consent, in the event of the death of the
 11 equipment dealer or the principal owner of the equipment dealership, to
 12 the transfer of the equipment dealer's or the principal owner's inter-
 13 est in the equipment dealership to another individual, if the individ-
 14 ual meets the reasonable financial, business experience and character
 15 standards of the supplier. A supplier shall have sixty (60) days to con-
 16 sider a request to make a transfer to an individual. If, within that pe-
 17 riod, the supplier determines that the individual does not meet the rea-
 18 sonable financial, business experience and character standards of the
 19 supplier, it shall provide the dealership, heirs to the dealership, or
 20 the estate of the dealer with written notice of its objection and the
 21 specific reasons for withholding its consent. If the individual rea-
 22 sonably satisfies the supplier's objections within sixty (60) days af-
 23 ter notice thereof, the supplier shall approve the transfer. Nothing in
 24 this paragraph shall entitle a qualified individual to continue to op-
 25 erate the dealership without the consent of the supplier.

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

31 (11) Cause the equipment dealer to refrain from participation in the
 32 management, investment, acquisition or sale of any other related product or
 33 product line of equipment, parts or accessories, from the same or separate
 34 locations;

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

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

40 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT
 41 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier
 42 shall provide written notice to the equipment dealer of any proposed ter-
 43 mination or nonrenewal of a dealer agreement or substantial change in the
 44 competitive circumstances of a dealer agreement or a dealer's relationship
 45 with the supplier. The notice shall state the reason(s) constituting good
 46 cause for the action proposed to be taken. Except where good cause is alleged
 47 under the provisions of paragraphs (a) through (e) of subsection (2) of this
 48 section, such notice shall be provided to the equipment dealer not less than
 49 ninety (90) days before the proposed action is to become effective. Except

1 where good cause is alleged under paragraphs (a) through (d) of subsection
 2 (2) of this section, the equipment dealer shall be given ninety (90) days
 3 within which to cure any claimed deficiency, and the notice shall advise
 4 the dealer of his right to cure. If the claimed deficiency is rectified
 5 within ninety (90) days, the notice shall be void and the proposed action
 6 shall not become effective. Notwithstanding the equipment dealer's fail-
 7 ure to cure the deficiency or deficiencies claimed, where a ninety (90) day
 8 notice is required to be given by the supplier, the contractual term of the
 9 dealer agreement shall not expire, nor shall the dealer agreement be other-
 10 wise terminated or canceled, nor shall the equipment dealer's competitive
 11 circumstances be substantially changed prior to the expiration of at least
 12 ninety (90) days following such notice without the written consent of the
 13 equipment dealer.

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

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

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

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

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

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

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

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

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

36 (i) Failed to comply with the applicable licensing laws pertaining to
 37 the products and services being represented for and on supplier's be-
 38 half;

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

40 (3) Notwithstanding the provisions of subsection (2) of this section,
 41 before the termination or nonrenewal of a dealer agreement or substantial
 42 change in the competitive circumstances of the dealer agreement or the
 43 dealer's relationship with the supplier, in each case, based upon a sup-
 44 plier's claim that the dealer has failed to achieve market penetration at
 45 levels consistent with similarly situated dealerships in the state, the sup-
 46 plier shall provide written notice of its intention at least one (1) year in
 47 advance.

48 (a) After issuance of such a notice, the supplier shall provide fair and
 49 reasonable efforts to work with the dealer to assist the dealer in gain-
 50 ing the required market penetration including, but not limited to, mak-

1 ing available to the dealer an adequate inventory of new equipment and
2 parts, and not withhold programs available to all dealers.

3 (b) Upon the end of the one (1) year period established in this subsec-
4 tion ~~(3)~~, the supplier may terminate or elect not to renew the dealer
5 agreement or substantially change the competitive circumstances of the
6 dealer agreement or the dealer's relationship with the supplier only
7 upon written notice specifying the reasons for determining that the
8 dealer failed to meet reasonable market penetration. The notice must
9 specify that termination or nonrenewal of the dealer agreement or the
10 substantial change in competitive circumstances of the dealer agree-
11 ment or the dealer's relationship with the supplier is effective one
12 hundred eighty (180) days from the date of the notice and that either
13 party may petition the court.

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