

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 135

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT;
2 AMENDING SECTION 28-24-103, IDAHO CODE, TO REVISE CERTAIN SUPPLIER VIO-
3 LATION PROVISIONS, TO PROVIDE THAT THE FACT A DEALER AGREEMENT ALLOWS AN
4 EVENT, ACT OR OMISSION DOES NOT CONTROL WHETHER SUCH EVENT, ACT OR OMIS-
5 SION RESULTED IN A SUBSTANTIAL CHANGE IN THE DEALER'S COMPETITIVE CIR-
6 CUMSTANCES, TO CLARIFY THE APPLICABILITY OF SPECIFIED LAW AND TO MAKE
7 A TECHNICAL CORRECTION; AND AMENDING SECTION 28-24-104, IDAHO CODE, TO
8 PROVIDE THAT A SUPPLIER SHALL PROVIDE WRITTEN NOTICE TO AN EQUIPMENT
9 DEALER OF ANY SUBSTANTIAL CHANGE IN THE DEALER'S COMPETITIVE CIRCUM-
10 STANCES, TO CLARIFY VERBIAGE AND TO PROVIDE FOR CONTENT OF THE NOTICE.
11

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

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

15 28-24-103. DEALER AGREEMENTS -- UNLAWFUL ACTS AND PRACTICES. It shall
16 be a violation of the provisions of this chapter for a supplier to:

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

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

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

39 (4) Terminate, cancel or fail to renew the dealer agreement of any
40 equipment dealer or substantially change the dealer's competitive circum-
41 stances ~~of the dealer agreement~~, attempt to terminate or cancel, or threaten
42 not to renew the dealer agreement or attempt or threaten to substantially

1 change the dealer's competitive circumstances of the dealer agreement
2 without good cause. For purposes of this chapter, the fact that a dealer
3 agreement allows an event, act or omission does not control whether such
4 event, act or omission resulted in a substantial change in the dealer's
5 competitive circumstances. Nothing in this ~~paragraph~~ subsection shall be
6 interpreted to apply to a discontinuation of or change in the product line of
7 an ~~equipment dealer~~ a supplier;

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

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

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

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

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

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

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

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

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

25 (11) Cause the equipment dealer to refrain from participation in the
26 management, investment, acquisition or sale of any other related product or
27 product line of equipment, parts or accessories, from the same or separate
28 locations;

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

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

34 28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT
35 DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier
36 shall provide written notice to the equipment dealer of any proposed ter-
37 mination or nonrenewal of a dealer agreement or substantial change in the
38 dealer's competitive circumstances of a dealer agreement. The notice shall
39 state the reason(s) constituting good cause for the action proposed to be
40 taken. Except where good cause is alleged under the provisions of para-
41 graphs (a) through (e) of subsection (2) of this section, such notice shall
42 be provided to the equipment dealer not less than ninety (90) days before
43 the proposed action is to become effective. Except where good cause is al-
44 leged under paragraphs (a) through (d) of subsection (2) of this section,
45 the equipment dealer shall be given ninety (90) days within which to cure
46 any claimed deficiency, and the notice shall advise the dealer of his right
47 to cure. If the claimed deficiency is rectified within ninety (90) days,
48 the notice shall be void and the proposed action shall not become effective.
49 Notwithstanding the equipment dealer's failure to cure the deficiency or

1 deficiencies claimed, where a ninety (90) day notice is required to be given
2 by the supplier, the contractual term of the dealer agreement shall not ex-
3 pire, nor shall the dealer agreement be otherwise terminated or canceled,
4 nor shall the equipment dealer's competitive circumstances be substantially
5 changed prior to the expiration of at least ninety (90) days following such
6 notice without the written consent of the equipment dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) Upon the end of the one (1) year period established in this sub-
46 section ~~(3)~~, the supplier may terminate or elect not to renew the
47 dealer agreement or substantially change the dealer's competitive
48 circumstances only upon written notice specifying the reasons for de-
49 termining that the dealer failed to meet reasonable market penetration.
50 The notice must specify that termination or nonrenewal of the dealer

1 agreement or the substantial change in the dealer's competitive circum-
2 stances is effective one hundred eighty (180) days from the date of the
3 notice and that either party may petition the court.

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