

TITLE 28
COMMERCIAL TRANSACTIONS

CHAPTER 24
AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

PART 1.
AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM EQUIPMENT

28-24-101. LEGISLATIVE FINDINGS AND INTENT. The legislature of this state finds that the retail distribution and sale of agricultural equipment, outdoor power equipment, industrial equipment and construction equipment utilizing independent retail businesses operating under agreements with the manufacturers and distributors thereof, vitally affects the general economy of the state, public interests and public welfare and that it is necessary to regulate the business relations between independent dealers and the equipment manufacturers, wholesalers and distributors.

[28-24-101, added 1990, ch. 267, sec. 1, p. 750; am. 2011, ch. 270, sec. 13, p. 734.]

28-24-102. DEFINITIONS. As used in this chapter:

(1) "Assigned area of responsibility" means the geographic region for which a particular dealer is responsible for the marketing, selling, leasing or servicing of equipment pursuant to a dealer agreement as assigned by the supplier.

(2) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by supplier.

(3) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute or service the supplier's equipment, where there is a continuing commercial relationship between the supplier and the equipment dealer.

(4) "Demonstration and/or rental equipment" is equipment that has been used but has not been sold to an end user.

(5) "Equipment" means machines designed for or adapted and used for agriculture, horticulture, livestock and grazing and related industries but not exclusive to agricultural use. Equipment also includes:

(a) "All-terrain vehicles" or "ATVs," including three-wheeled and four-wheeled motorized vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering. All-terrain vehicles are intended for off-road use.

(b) "Outdoor power equipment" means equipment powered by a two-cycle or four-cycle gas or diesel engine, or electric motor, which is used to maintain commercial, public or residential lawns and gardens or used in landscape, turf, golf course or plant nursery maintenance.

(c) "Industrial and construction equipment" means equipment used in building and maintaining structures and roads including, but not limited to, loaders, loader backhoes, wheel loaders, crawlers, graders and excavators.

(6) "Equipment dealer," "dealer" or "equipment dealership" means any person, partnership, corporation, association or other form of business en-

terprise, primarily engaged in the retail sale and/or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services. "Equipment dealer," "dealer" or "equipment dealership" does not include an individual, partnership or corporation that:

(a) Is primarily engaged in the retail sale and service of industrial and construction equipment;

(b) Has purchased seventy-five percent (75%) or more of the dealer's total new product inventory from a single supplier under all agreements with that supplier; and

(c) Has a total annual average sales volume in excess of twenty million dollars (\$20,000,000) for the preceding three (3) years with that single supplier for the territory for which the dealer is responsible.

(7) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided, such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement.

(8) "Supplier" means the manufacturer, wholesaler or distributor of the equipment to be sold by the equipment dealer, or any successor in interest to or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, any receiver or any trustee of the original supplier.

(9) "Used equipment" means equipment that has been sold or retailed to an end user and money has been exchanged between the end user and the equipment dealer.

(10) "Warranty claim" means a claim for payment submitted by an equipment dealer to a supplier for service, parts or complete components, or any or all of the three (3), provided to a customer under a:

(a) Warranty issued by the supplier; or

(b) Recall or modification order issued by the supplier.

[28-24-102, added 1990, ch. 267, sec. 1, p. 751; am. 2005, ch. 238, sec. 6, p. 734; am. 2011, ch. 270, sec. 14, p. 735.]

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

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

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

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment shall not be

considered a violation of the provisions of this chapter when deliveries are based on prior retail sales ordering histories, the priority given to the sequence in which the orders are received or manufacturing schedules or if such failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo or other cause over which the supplier has no control;

(4) Terminate, cancel or fail to renew the dealer agreement of any equipment dealer or substantially change the dealer's competitive circumstances, attempt to terminate or cancel, or threaten not to renew the dealer agreement or attempt or threaten to substantially change the dealer's competitive circumstances without good cause. For purposes of this chapter, the fact that a dealer agreement allows an event, act or omission does not control whether such event, act or omission resulted in a substantial change in the dealer's competitive circumstances. Nothing in this subsection shall be interpreted to apply to a discontinuation of or change in the product line of a supplier;

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

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

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

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

(7) Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed, provided that the equipment dealer meets the reasonable capital requirements of the supplier;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner or stockholder of an equipment dealership from selling, assigning, or transferring any interest or portion thereof held by any of them in the equipment dealership to any other person or party; provided, however, that no equipment dealer, officer, partner, member or stockholder shall have the right to sell, transfer, or assign the equipment dealership or the power of management or control thereof without the written consent of

the supplier, except that such consent shall not be unreasonably withheld if the buyer, transferee, or assignee meets the reasonable financial, business experience and character standards of the supplier. Should a supplier determine that the designated transferee is not acceptable, the supplier shall provide the equipment dealer with written notice of the supplier's objections and specific reasons for withholding its consent within thirty (30) calendar days of receipt of notice from the equipment dealer;

(9) Require an equipment dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter;

(10) (a) Unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's or the principal owner's interest in the equipment dealership to another individual, if the individual meets the reasonable financial, business experience and character standards of the supplier. A supplier shall have sixty (60) days to consider a request to make a transfer to an individual. If, within that period, the supplier determines that the individual does not meet the reasonable financial, business experience and character standards of the supplier, it shall provide the dealership, heirs to the dealership, or the estate of the dealer with written notice of its objection and the specific reasons for withholding its consent. If the individual reasonably satisfies the supplier's objections within sixty (60) days after notice thereof, the supplier shall approve the transfer. Nothing in this paragraph shall entitle a qualified individual to continue to operate the dealership without the consent of the supplier;

(b) Notwithstanding the provisions of paragraph (a) of this subsection, in the event that a supplier and equipment dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death, and if such agreement has not been revoked, such agreement shall be observed;

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

(12) Fail to compensate a dealer for preparation and delivery of equipment that the supplier sells or leases for use within this state and that the dealer prepares for delivery and delivers.

[28-24-103, added 1990, ch. 267, sec. 1, p. 751; am. 2005, ch. 238, sec. 7, p. 735; am. 2018, ch. 224, sec. 1, p. 504.]

28-24-104. TERMINATION OF DEALER AGREEMENT OR CHANGE OF EQUIPMENT DEALER'S COMPETITIVE CIRCUMSTANCES -- NOTICE -- GOOD CAUSE. (1) A supplier shall provide written notice to the equipment dealer of any proposed termination or nonrenewal of a dealer agreement or substantial change in the dealer's competitive circumstances. The notice shall state the reason(s) constituting good cause for the action proposed to be taken. Except where good cause is alleged under the provisions of paragraphs (a) through (e) of subsection (2) of this section, such notice shall be provided to the equipment dealer not less than ninety (90) days before the proposed action is to become effective. Except where good cause is alleged under paragraphs (a) through (d) of subsection (2) of this section, the equipment dealer shall be given ninety (90) days within which to cure any claimed deficiency,

and the notice shall advise the dealer of his right to cure. If the claimed deficiency is rectified within ninety (90) days, the notice shall be void and the proposed action shall not become effective. Notwithstanding the equipment dealer's failure to cure the deficiency or deficiencies claimed, where a ninety (90) day notice is required to be given by the supplier, the contractual term of the dealer agreement shall not expire, nor shall the dealer agreement be otherwise terminated or canceled, nor shall the equipment dealer's competitive circumstances be substantially changed prior to the expiration of at least ninety (90) days following such notice without the written consent of the equipment dealer.

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

- (a) Transferred a controlling ownership interest in the equipment dealership without the supplier's consent;
- (b) Made a material misrepresentation to the supplier;
- (c) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within ninety (90) days after the filing; is in default under the provisions of a security agreement in effect with the supplier; or is insolvent or in receivership;
- (d) Been convicted of a crime, punishable for a term of imprisonment for one (1) year or more;
- (e) Failed to operate in the normal course of business for ten (10) consecutive business days or has terminated said business;
- (f) Relocated the equipment dealer's place of business without the supplier's consent;
- (g) Inadequately represented the supplier over a one (1) year period of time or length of time or a time mutually agreed upon between the supplier and dealer to reflect the ongoing market conditions;
- (h) Consistently failed to meet building and housekeeping requirements, or has failed to provide adequate sales, service or parts personnel commensurate with the dealer agreement;
- (i) Failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on the supplier's behalf;
- (j) Materially failed to comply with the terms of the dealer agreement.

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

- (a) After issuance of such a notice, the supplier shall provide fair and reasonable efforts to work with the dealer to assist the dealer in gaining the required market penetration including, but not limited to, making available to the dealer an adequate inventory of new equipment and parts, and not withhold programs available to all dealers.
- (b) Upon the end of the one (1) year period established in this subsection, the supplier may terminate or elect not to renew the dealer agreement or substantially change the dealer's competitive circumstances only upon written notice specifying the reasons for determining that the dealer failed to meet reasonable market penetration. The

notice must specify that termination or nonrenewal of the dealer agreement or the substantial change in the dealer's competitive circumstances is effective one hundred eighty (180) days from the date of the notice and that either party may petition the court.

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

(4) "Change in competitive circumstances" for purposes of this chapter means an event, act or omission that has a material detrimental effect on a retailer's ability to compete with another retailer that sells the same brand of farm implements.

[28-24-104, added 1990, ch. 267, sec. 1, p. 753; am. 2005, ch. 238, sec. 8, p. 737; am. 2018, ch. 224, sec. 2, p. 506.]

28-24-104A. ESTABLISHMENT OF NEW DEALERSHIP -- SUPPLIER'S DUTIES. When a supplier enters into an agreement to establish a new dealer or dealership or to relocate a current dealer or dealership for a particular product line or make of equipment, the supplier must give written notice of such an agreement by certified mail to all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships within a seventy-five (75) mile radius of the new dealer location. The supplier must provide in its written notice the following information about the proposed new or relocated dealer or dealership:

- (1) The proposed location;
- (2) The proposed date for commencement of operation at the new location; and
- (3) The identities of all existing dealers or dealerships whose assigned area of responsibility is contiguous to the new dealer or dealership location. If no area of responsibility has been assigned then the supplier must give written notice of such an agreement by certified mail to the dealers or dealerships located within a seventy-five (75) mile radius of the new dealer location.

[28-24-104A, added 2005, ch. 238, sec. 9, p. 739.]

28-24-104B. WARRANTY CLAIMS. (1) An equipment dealer may submit a warranty claim to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty:

- (a) While a dealer agreement is in effect; or
- (b) After the termination of a dealer agreement if the claim is for work performed while the dealer agreement was in effect.

(2) A supplier shall accept or reject a warranty claim submitted under subsection (1) of this section, within thirty (30) days of the date the supplier received the claim. A warranty claim not rejected within thirty (30) days of the date the supplier received the claim is considered to be accepted by the supplier.

(3) No later than thirty (30) days after the date a warranty claim is accepted or rejected under subsection (2) of this section, the supplier shall:

- (a) Pay an accepted warranty claim; or

(b) Send the dealer written notice of the reason the warranty claim was rejected.

(4) A supplier shall compensate the dealer for the warranty claim as follows:

(a) The dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work by similarly situated dealers, including diagnostic time, and cleanup time, expressed in hours and fractions of an hour;

(b) The dealer's current net price on repair parts reimbursed at not less than net plus twenty percent (20%) of the cost for warranty service performed on behalf of the supplier to compensate for reasonable costs of doing business; and

(c) Extraordinary freight and handling costs. For purposes of this subsection (4) (c), "extraordinary freight and handling costs" means costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work;

(d) When the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

(5) After payment of a warranty claim, a supplier may not charge back, off-set or otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

(a) The warranty claim was submitted in error;

(b) The services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or

(c) The dealer did not substantiate the warranty claim according to the written requirements of the supplier that were in effect when the equipment was delivered to the dealer by the customer for warranty repairs.

(6) If a supplier denies a warranty claim due to a particular item or part of the claim, the denial shall only affect the items or parts in question and not the complete warranty claim.

(7) A supplier may not pass the cost of covering warranty claims under this chapter on to a dealer through any means including:

(a) Surcharges;

(b) Reduction of discounts; or

(c) Certification standards.

[28-24-104B, added 2005, ch. 238, sec. 9, p. 739; am. 2011, ch. 270, sec. 15, p. 736.]

28-24-104C. AUDIT OF WARRANTY CLAIMS. A supplier may not audit a dealer's records with respect to any warranty claim submitted more than two (2) years before the date of the audit.

[28-24-104C, added 2005, ch. 238, sec. 9, p. 740.]

28-24-104D. ARBITRATION. Any party to a retailer agreement aggrieved by the conduct of the other party to the agreement under sections [28-23-101](#) through [28-23-111](#), Idaho Code, or under part 1, [chapter 24, title 28](#), Idaho Code, may seek arbitration of the issues under sections [7-901](#) through [7-922](#), Idaho Code. Unless the parties agree to different arbitration rules, the arbitration shall be conducted in Idaho pursuant to the commercial arbitration rules of the American arbitration association. When the parties agree, the arbitration shall be the parties' only remedy and the findings and conclu-

sions of the arbitrator or panel of arbitrators shall be binding upon both parties.

(1) The arbitrator or arbitrators may award the prevailing party:

(a) The costs of witness fees and other fees in the case;

(b) Reasonable attorney's fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(2) Any retailer has a civil cause of action in district court in this state against a supplier for damages sustained by the retailer as a consequence of the supplier's violation of part 1, [chapter 24, title 28](#), Idaho Code, or sections [28-23-101](#) through [28-23-111](#), Idaho Code, together with:

(a) The actual costs of the action;

(b) Reasonable attorney's fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(3) No dealer shall be required to waive his rights to judicial recourse by contractual agreements through penalty of loss of trade discounts or changes in the competitive circumstances of the dealer by the supplier deemed to be punitive in nature or effect. The remedies set forth in this section are not exclusive and are in addition to any other remedies permitted by law, unless the parties have mutually agreed to binding arbitration under this section.

[28-24-104D, added 2005, ch. 238, sec. 9, p. 740.]

28-24-104E. SUCCESSORS IN INTEREST. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier.

[28-24-104E, added 2005, ch. 238, sec. 9, p. 741.]

28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recovered for losses sustained as a consequence of any violation of the provisions of this chapter. Such recovery may also include a requirement that the supplier repurchase at fair market value any data processing hardware, software and specialized repair tools and equipment previously purchased from the supplier or approved vendor of the supplier pursuant to requirements of the supplier. Additionally, any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include damages in the amount of two (2) times the compensatory damages found due and owing. Injunctive relief may also be granted against any actual or threatened violation of the provisions of this chapter. In any action brought under this chapter the prevailing party shall be entitled to recover reasonable attorney's fees and costs. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. A person, firm or corporation which brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located.

[28-24-105, added 1990, ch. 267, sec. 1, p. 754; am. 2005, ch. 238, sec. 10, p. 741; am. 2011, ch. 270, sec. 16, p. 737.]

28-24-106. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

[28-24-106, added 1990, ch. 267, sec. 1, p. 755.]

28-24-107. EFFECTIVE DATE -- APPLICATION TO AGREEMENTS. This act shall take effect on July 1, 1990, and shall apply to any dealer agreement then in effect which has no expiration date and which is a continuing agreement and all other dealer agreements entered into or renewed on or after such effective date.

[28-24-107, added 1990, ch. 267, sec. 1, p. 755.]

28-24-108. JURISDICTION -- VENUE. (1) The courts of this state shall have jurisdiction over any legal dispute between a wholesaler, manufacturer or distributor of farm implements or equipment, machinery, repair parts, stock parts and attachments located in or outside this state and an equipment dealer located in this state. The laws of the state of Idaho shall exclusively apply to such disputes.

(2) Venue for a dispute as provided in subsection (1) of this section shall be in the judicial district wherein the dealer's principal place of business is located.

[28-24-108, added 2011, ch. 270, sec. 17, p. 737.]

CHAPTER 25
-- [RESERVED]