

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 134

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO FARM EQUIPMENT; AMENDING THE HEADING FOR CHAPTER 23, TITLE 28,
2 IDAHO CODE, TO PROVIDE FOR THE REPURCHASE OF FARM EQUIPMENT UPON THE
3 TERMINATION OF CONTRACTS; AMENDING SECTION 28-23-101, IDAHO CODE, TO
4 PROVIDE FOR CERTAIN PAYMENT OR CREDIT TO A RETAILER RELATING TO EQUIP-
5 MENT, TO PROVIDE FOR PAYMENT OF THE NET COST OF UNSOLD AND UNDAMAGED COM-
6 PLETE FARM IMPLEMENTS AND EQUIPMENT, TO REMOVE A TIME CONDITION, TO PRO-
7 VIDE THAT CERTAIN PROVISIONS SHALL APPLY TO PURCHASES BY RETAILERS FROM
8 PERSONS, FIRMS OR CORPORATIONS IN THE BUSINESS OF SELLING OR RETAILING
9 FARM EQUIPMENT, IMPLEMENTS AND PARTS, TO REVISE PROVISIONS RELATING
10 TO THE AMOUNT OF THE PAYMENT OR CREDIT FOR DEMONSTRATION OR RENTAL
11 EQUIPMENT, TO PROVIDE THAT THE SUPPLIER ASSUMES OWNERSHIP OF EQUIPMENT
12 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-23-102, IDAHO
13 CODE, TO PROVIDE FOR CERTAIN PAYMENT OR CREDIT TO A RETAILER RELATING
14 TO EQUIPMENT, TO REMOVE A TIME CONDITION, TO PROVIDE FOR THE PASSAGE OF
15 TITLE RELATING TO EQUIPMENT, TO PROVIDE FOR POSSESSION OF EQUIPMENT,
16 TO PROVIDE FOR PAYMENT WITHIN NINETY DAYS FROM THE TERMINATION DATE OF
17 THE DEALER AGREEMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-
18 TION 28-23-103, IDAHO CODE, TO PROVIDE THAT SPECIFIED PROVISIONS ARE
19 SUPPLEMENTAL TO CERTAIN AGREEMENTS RELATING TO EQUIPMENT AND TO PROVIDE
20 THAT DESIGNATED REMEDIES SHALL APPLY TO CERTAIN EQUIPMENT; AMENDING
21 SECTION 28-23-104, IDAHO CODE, TO PROVIDE FOR THE REPURCHASE OF EQUIP-
22 MENT FROM HEIRS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
23 28-23-105, IDAHO CODE, TO PROVIDE FOR CIVIL LIABILITY RELATING TO VIO-
24 LATIONS OF SPECIFIED PROVISIONS, TO PROVIDE FOR LIABILITY UPON FAILURE
25 TO PAY FOLLOWING CANCELLATION OF CONTRACTS RELATING TO EQUIPMENT, TO
26 PROVIDE THAT JUDGMENTS MAY INCLUDE DAMAGES IN THE AMOUNT OF TWO TIMES
27 THE COMPENSATORY DAMAGES AND TO MAKE A TECHNICAL CORRECTION; AMENDING
28 SECTION 28-23-107, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECH-
29 NICAL CORRECTIONS; AMENDING SECTION 28-23-108, IDAHO CODE, TO PROVIDE
30 CERTAIN NOTICE REQUIREMENTS RELATING TO WHOLESALERS, MANUFACTURERS AND
31 DISTRIBUTORS OF EQUIPMENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING
32 SECTION 28-23-110, IDAHO CODE, TO PROVIDE FOR PENALTIES FOR FAILURE
33 TO GIVE CERTAIN NOTICE OR OBTAIN CONSENT RELATING TO MANUFACTURERS,
34 WHOLESALERS AND DISTRIBUTORS OF FARM EQUIPMENT AND TO MAKE TECHNICAL
35 CORRECTIONS; AMENDING CHAPTER 23, TITLE 28, IDAHO CODE, BY THE ADDITION
36 OF A NEW SECTION 28-23-112, IDAHO CODE, TO PROVIDE FOR JURISDICTION AND
37 VENUE; AMENDING CHAPTER 23, TITLE 28, IDAHO CODE, BY THE ADDITION OF A
38 NEW SECTION 28-23-113, IDAHO CODE, TO PROVIDE THAT SPECIFIED DEFINI-
39 TIONS SHALL APPLY; AMENDING THE HEADING FOR CHAPTER 24, TITLE 28, IDAHO
40 CODE, TO PROVIDE FOR AGREEMENTS BETWEEN SUPPLIERS AND DEALERS OF FARM
41 EQUIPMENT; AMENDING SECTION 28-24-101, IDAHO CODE, TO REVISE LEGISLA-
42 TIVE FINDINGS AND INTENT; AMENDING SECTION 28-24-102, IDAHO CODE, TO
43 REVISE DEFINITIONS AND TO DEFINE A TERM; AMENDING SECTION 28-24-104B,
44 IDAHO CODE, TO REMOVE A PROVISION RELATING TO DEALER OPTIONS TO ACCEPT
45

1 THE SUPPLIERS' REIMBURSEMENT TERMS AND CONDITIONS IN LIEU OF THE TERMS
 2 AND CONDITIONS SET FORTH IN SPECIFIED LAW; AMENDING CHAPTER 24, TITLE
 3 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-24-104C, IDAHO CODE,
 4 TO PROVIDE COMPENSATION REQUIREMENTS FOR SUPPLIERS RELATING TO DEALERS
 5 DELIVERING OR SERVICING CERTAIN EQUIPMENT, TO PROVIDE FOR THE UTILIZA-
 6 TION OF SPECIFIED DEALERS, TO PROVIDE FOR THE DETERMINATION OF DEALERS'
 7 MARKET SHARE PERFORMANCE, TO PROVIDE AN EXCEPTION TO APPLICABILITY AND
 8 TO PROVIDE FOR SUBSTITUTE REIMBURSEMENT TERMS AND CONDITIONS; AMENDING
 9 SECTION 28-24-104C, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING
 10 SECTION 28-24-104D, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING
 11 SECTION 28-24-104E, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING
 12 SECTION 28-24-105, IDAHO CODE, TO PROVIDE THAT JUDGMENTS MAY INCLUDE
 13 DAMAGES IN THE AMOUNT OF TWO TIMES THE COMPENSATORY DAMAGES; AND AMEND-
 14 ING CHAPTER 24, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
 15 28-24-108, IDAHO CODE, TO PROVIDE FOR JURISDICTION AND VENUE.

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

17 SECTION 1. That the Heading for Chapter 23, Title 28, Idaho Code, be,
 18 and the same is hereby amended to read as follows:

19 CHAPTER 23
 20 REPURCHASE OF FARM MACHINERY AND EQUIPMENT UPON TERMINATION OF CONTRACT

21 SECTION 2. That Section 28-23-101, Idaho Code, be, and the same is
 22 hereby amended to read as follows:

23 28-23-101. REPURCHASE OF FARM MACHINERY, EQUIPMENT, CONSTRUCTION
 24 EQUIPMENT, IMPLEMENTS, ATTACHMENTS, ACCESSORIES AND PARTS UPON TERMINATION
 25 OF CONTRACT AND OBLIGATION TO REPURCHASE. Whenever any person, firm, or
 26 corporation engaged in the business of selling and retailing farm implements
 27 and or equipment, or repair parts for farm implements or equipment, enters
 28 into a written or parol contract, sales agreement or security agreement
 29 whereby the retailer agrees with any wholesaler, manufacturer, or distrib-
 30 utor of farm implements or equipment, machinery, attachments, accessories
 31 or repair parts to maintain a stock of parts which may include, but is not
 32 limited to, complete or whole machines, attachments, or demonstration and
 33 rental equipment and thereafter the written or parol contract, sales agree-
 34 ment or security agreement is terminated, canceled or discontinued, then the
 35 wholesaler, manufacturer, or distributor shall pay to the retailer or credit
 36 to the retailer's account, if the retailer has outstanding any sums owing
 37 the wholesaler, manufacturer, or distributor, unless the retailer should
 38 desire and has a contractual right to keep such merchandise, a sum equal to
 39 one hundred percent (100%) of the net cost of all unused, unsold and undam-
 40 aged complete farm implements or equipment, machinery and or repair parts
 41 and stock of parts, attachments in new condition which have been purchased
 42 by the retailer from the wholesaler, manufacturer or distributor within the
 43 thirty-six (36) months immediately, or any person, firm or corporation en-
 44 gaged in the business of selling or retailing such farm implement, equipment
 45 or repair parts for such farm implements or equipment preceding notification
 46 by either party of intent to cancel or discontinue the contract, including

1 the transportation charges to the retailer. The payment or credit for demon-
 2 stration or rental equipment that has not been retailed to an end user is a
 3 sum equal to the depreciated value of the equipment ~~to which the supplier~~
 4 ~~and the retailer have agreed.~~ The wholesaler, manufacturer, or distributor
 5 shall pay to the retailer a reasonable reimbursement for services performed
 6 in connection with the assembly and predelivery inspections of the farm
 7 equipment and attachments. The supplier assumes ownership of farm imple-
 8 ments or equipment, machinery and or repair parts and stock FOB the dealer
 9 location.

10 A supplier must repurchase any specific data processing hardware, soft-
 11 ware, telecommunications equipment and computer communications hardware
 12 specifically required by the supplier to meet the supplier's minimum re-
 13 quirements and purchased by the dealer in the prior five (5) years and held by
 14 the dealer on the date of termination. The purchase price is the original net
 15 cost to the dealer, less twenty percent (20%) per year.

16 SECTION 3. That Section 28-23-102, Idaho Code, be, and the same is
 17 hereby amended to read as follows:

18 28-23-102. REPURCHASE OF REPAIR PARTS. Whenever any person, firm, or
 19 corporation engaged in the business of selling and retailing farm implements
 20 and or equipment, or repair parts for farm implements or equipment, enters
 21 into a written or parol contract, sales agreement or security agreement
 22 whereby the retailer agrees with any wholesaler, manufacturer, or distribu-
 23 tor of farm implements or equipment, machinery, attachments, accessories or
 24 repair parts to maintain a stock of parts or complete or whole machines, or
 25 attachments, manuals and repair manuals and thereafter the written or parol
 26 contract, sales agreement or security agreement is terminated, canceled
 27 or discontinued, then the wholesaler, manufacturer, or distributor shall
 28 pay to the retailer or credit to the retailer's account, if the retailer has
 29 outstanding any sums owing the wholesaler, manufacturer, or distributor,
 30 unless the retailer should desire and has a contractual right to keep such
 31 merchandise, a sum equal to one hundred percent (100%) of the current net
 32 prices, including the transportation charges from the retailer to the whole-
 33 saler, manufacturer or distributor which have been paid by the retailer, or
 34 invoiced to a retailer's account by the wholesaler, manufacturer or dis-
 35 tributor, on manuals and repair manuals, repair parts, including superseded
 36 or previously included parts listed in current price lists or catalogs or
 37 electronic catalogs in use, or previously used ~~within thirty-six (36) months~~
 38 ~~prior to the latest parts price list issue date~~ by the wholesaler, manufac-
 39 turer or distributor on the date of cancellation or discontinuance of the
 40 contract, which parts had previously been purchased by the retailer from the
 41 wholesaler, manufacturer, or distributor and are held by the retailer on the
 42 date of the cancellation or discontinuance of the contract or thereafter
 43 received by the retailer from the wholesaler, manufacturer or distributor.

44 The wholesaler, manufacturer, or distributor shall also pay the re-
 45 tailer or credit to his account a sum equal to five percent (5%) of the
 46 current net price of all parts returned for the handling, packing, and load-
 47 ing of the parts back to the wholesaler, manufacturer, or distributor unless
 48 the wholesaler, manufacturer or distributor elects to perform inventorying,
 49 packing and loading of the parts themselves.

1 Upon the payment or allowance of credit to the retailer's account of the
2 sum required by this section and section 28-23-101, Idaho Code, the title to
3 the farm implements, ~~farm equipment~~, machinery, attachments, accessories
4 or repair parts shall pass to the manufacturer, wholesaler or distributor
5 making the payment or allowing the credit and the manufacturer, wholesaler
6 or distributor shall be entitled to the possession of the farm implements,
7 equipment, machinery, attachments, accessories or repair parts. Title to
8 farm implements, equipment, attachments, accessories and repair parts is
9 transferred to the supplier FOB the dealer location. The provisions of this
10 section shall apply to any part return adjustment agreement made between a
11 dealer and a supplier. All payments or allowances of credit due retailers
12 under this section shall be paid or credited by the manufacturer, whole-
13 saler, or distributor within ninety (90) days ~~after the return of the farm~~
14 ~~implements, farm machinery, attachments, accessories or repair parts from~~
15 the termination date of the dealer agreement. After the ninety (90) days all
16 sums of credits due shall include interest at the rate specified in section
17 28-22-104(1), Idaho Code. However, this section and section 28-23-101,
18 Idaho Code, shall not in any way affect any security interest which the
19 wholesaler, manufacturer or distributor may have in the inventory of the
20 retailer.

21 A supplier shall repurchase at one hundred percent (100%) of net dealer
22 cost, manuals and repair manuals purchased in the previous six (6) years and
23 at fifty percent (50%) for manuals and repair manuals purchased in the previ-
24 ous seven (7) through twelve (12) years as required by the supplier and held
25 by the dealer on the date of termination. Manuals and repair manuals must be
26 unique to the supplier's product line and must be in complete and in readable
27 condition.

28 A supplier must repurchase, and the dealer must sell to the supplier,
29 specialized repair tools. As applied in this section, "specialized repair
30 tools" is defined as those tools required by the supplier and unique to the
31 diagnosis or repair of the supplier's products. For specialized repair
32 tools that are in new, unused condition and are applicable to the supplier's
33 current products, the purchase price is one hundred percent (100%) of the
34 original net cost to the dealer. For all other specialized repair tools,
35 in complete and resalable condition, the purchase price is the original net
36 cost to the dealer less twenty percent (20%) per year depreciation, but not
37 less than fifty percent (50%) of the original purchase price.

38 A supplier must repurchase, and the dealer must sell to the supplier,
39 current signage. As used in this section, "current signage" means the prin-
40 cipal outdoor signage required by the supplier that displays the supplier's
41 current logo or similar exclusive identifier, and that identifies the dealer
42 as representing either the supplier or the supplier's products, or both. The
43 purchase price shall be the original net cost to the dealer less twenty per-
44 cent (20%) per year, but may in no case be less than fifty percent (50%) of the
45 original cost to the dealer.

46 SECTION 4. That Section 28-23-103, Idaho Code, be, and the same is
47 hereby amended to read as follows:

48 28-23-103. PROVISIONS OF CONTRACT SUPPLEMENTED. The provisions of
49 this section shall be supplemental to any agreement between the retailer

1 and the manufacturer, wholesaler or distributor covering the return of farm
 2 implements, equipment, machinery, attachments and or repair parts. The re-
 3 tailer can elect to pursue either his contract remedy or the remedy provided
 4 herein, and an election by the retailer to pursue his contract remedy shall
 5 not bar his right to the remedy provided herein as to those farm implements,
 6 equipment, machinery, attachments and or repair parts not affected by the
 7 contract remedy. Notwithstanding anything contained herein, the rights of
 8 a manufacturer, wholesaler or distributor to charge back to the retailer's
 9 account amounts previously paid or credited as a discount incident to the
 10 retailer's purchase of goods shall not be affected. Further, any repurchase
 11 hereunder shall not be subject to the provisions of the bulk sales law.

12 SECTION 5. That Section 28-23-104, Idaho Code, be, and the same is
 13 hereby amended to read as follows:

14 28-23-104. DEATH OF DEALER -- REPURCHASE FROM HEIRS. In the event of
 15 the death of the retail dealer or a stockholder in a corporation operating a
 16 retail dealership in the business of selling and retailing farm implements,
 17 equipment, machinery, attachments or repair parts therefor, at the election
 18 of the dealer or corporation, the manufacturer, wholesaler or distributor
 19 shall, unless the heir or heirs of the deceased elect to continue to oper-
 20 ate the dealership, repurchase the merchandise from the heir or heirs upon
 21 the same terms and conditions as are otherwise provided in this act chapter.
 22 In the event the heir or heirs do not agree to continue to operate the retail
 23 dealership, it shall be deemed a cancellation or discontinuance of the con-
 24 tract by the retailer under the provisions of sections 28-23-101 and 28-23-
 25 102, Idaho Code.

26 SECTION 6. That Section 28-23-105, Idaho Code, be, and the same is
 27 hereby amended to read as follows:

28 28-23-105. FAILURE TO PAY SUMS SPECIFIED ON CANCELLATION OF CONTRACTS
 29 -- LIABILITY. In the event that any manufacturer, wholesaler, or distribu-
 30 tor of farm implements, equipment, machinery, attachments, accessories and
 31 or repair parts, upon the cancellation of a contract by either a retailer or
 32 such manufacturer, wholesaler or distributor, fails or refuses to make pay-
 33 ment to the dealer or his heir or heirs as required by ~~this section~~ the pro-
 34 visions of this chapter, or any other violations of the provisions of this
 35 chapter, the manufacturer, wholesaler or distributor shall be liable in a
 36 civil action to be brought by the retailer or his heir or heirs for (a) one
 37 hundred percent (100%) of the net cost of the farm implements, equipment, ma-
 38 chinery, attachments and accessories, (b) transportation charges required
 39 in section 28-23-102, Idaho Code, which have been paid by the retailer, or
 40 invoiced to the retailer's account, (c) one hundred percent (100%) of the
 41 current net price of repair parts, (d) five percent (5%) for handling, pack-
 42 ing and loading, if applicable, (e) one hundred percent (100%) of the current
 43 net price for manuals and repair manuals, ~~and~~ (f) reasonable reimbursement
 44 for services performed in connection with assembly and predelivery inspec-
 45 tions of the equipment and (g) additionally, any judgment rendered by a court
 46 of competent jurisdiction for the plaintiff in a suit filed pursuant to this
 47 section may include damages in the amount of two (2) times the compensatory

1 damages found due and owing. A person, firm or corporation which brings an
 2 action under this section must commence the action in the county in which the
 3 principal place of business of the retailer is located.

4 SECTION 7. That Section 28-23-107, Idaho Code, be, and the same is
 5 hereby amended to read as follows:

6 28-23-107. DEFINITION. For the purposes of this ~~act~~ chapter, "farm
 7 implements" means every vehicle designed or adapted and used exclusively
 8 for agricultural operations and only incidentally operated or used upon
 9 the highways and all other consumer products supplied by the wholesaler,
 10 manufacturer or distributor of farm implements, equipment, machinery, at-
 11 tachments or repair parts to the retailer pursuant to a written contract,
 12 sales agreement or security agreement.

13 SECTION 8. That Section 28-23-108, Idaho Code, be, and the same is
 14 hereby amended to read as follows:

15 28-23-108. GUARANTY AND SECURITY AGREEMENT NOTICE REQUIREMENTS. All
 16 wholesalers, manufacturers, or distributors of farm implements, equipment,
 17 machinery, attachments, accessories or repair parts shall give the retailer
 18 a minimum of ninety (90) days' notice in writing and obtain consent from the
 19 dealer before changing the time and manner of payment of any indebtedness
 20 owed by retailer to manufacturer, distributor or wholesaler, and before tak-
 21 ing and making any changes in notes or security for any indebtedness, and
 22 before releasing or adding additional guarantors, and before granting re-
 23 newals or extensions of such indebtedness.

24 SECTION 9. That Section 28-23-110, Idaho Code, be, and the same is
 25 hereby amended to read as follows:

26 28-23-110. PENALTY FOR FAILURE TO GIVE NOTICE OR OBTAIN CONSENT. In
 27 the event that any manufacturer, wholesaler or distributor of farm imple-
 28 ments, equipment, machinery, attachments and repair parts fails to give no-
 29 tice or obtain consent pursuant to section 28-23-108, Idaho Code, or fails or
 30 refuses to comply with section 28-23-109, Idaho Code, the guaranty or secu-
 31 rity agreement thereby affected will be deemed canceled and terminated.

32 SECTION 10. That Chapter 23, Title 28, Idaho Code, be, and the same is
 33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 34 ignated as Section 28-23-112, Idaho Code, and to read as follows:

35 28-23-112. JURISDICTION -- VENUE. (1) The courts of this state shall
 36 have jurisdiction over any legal dispute between a wholesaler, manufacturer
 37 or distributor of farm implements or equipment, machinery, repair parts,
 38 stock parts and attachments located in or outside this state and an equipment
 39 dealer located in this state. The laws of the state of Idaho shall exclu-
 40 sively apply to such disputes.

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

1 SECTION 11. That Chapter 23, Title 28, Idaho Code, be, and the same is
 2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 3 ignated as Section 28-23-113, Idaho Code, and to read as follows:

4 28-23-113. DEFINITIONS. The definitions set forth in section 28-24-
 5 102, Idaho Code, shall apply to the provisions of this chapter.

6 SECTION 12. That the Heading for Chapter 24, Title 28, Idaho Code, be,
 7 and the same is hereby amended to read as follows:

8 CHAPTER 24

9 AGREEMENTS BETWEEN SUPPLIERS AND DEALERS IN AGRICULTURE OF FARM EQUIPMENT

10 SECTION 13. That Section 28-24-101, Idaho Code, be, and the same is
 11 hereby amended to read as follows:

12 28-24-101. LEGISLATIVE FINDINGS AND INTENT. The legislature of this
 13 state finds that the retail distribution and sale of agricultural equipment,
 14 outdoor power equipment, industrial equipment and construction equip-
 15 ment utilizing independent retail businesses operating under agreements
 16 with the manufacturers and distributors thereof, vitally affects the gen-
 17 eral economy of the state, public interests and public welfare and that it
 18 is necessary to regulate the business relations between independent dealers
 19 and the equipment manufacturers, wholesalers and distributors.

20 SECTION 14. That Section 28-24-102, Idaho Code, be, and the same is
 21 hereby amended to read as follows:

22 28-24-102. DEFINITIONS. As used in this chapter:

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

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

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

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

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

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

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

5 (c) "Industrial and construction equipment" means equipment used in
 6 building and maintaining structures and roads including, but not lim-
 7 ited to, loaders, loader backhoes, wheel loaders, crawlers, graders and
 8 excavators.

9 (6) "Equipment dealer" or "equipment dealership" means any person,
 10 partnership, corporation, association or other form of business enterprise,
 11 primarily engaged in the retail sale and/or service of equipment in this
 12 state, pursuant to any oral or written agreement for a definite or indefi-
 13 nite period of time in which there is a continuing commercial relationship
 14 in the marketing of the equipment or related services. "Equipment dealer"
 15 or "equipment dealership" does not include an individual, partnership or
 16 corporation that:

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

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

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

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

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

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

39 (10) "Warranty claim" means a claim for payment submitted by an equip-
 40 ment dealer to a supplier for service, ~~or~~ parts or complete components, or
 41 both any or all of the three (3), provided to a customer under a:

42 (a) Warranty issued by the supplier; or

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

44 SECTION 15. That Section 28-24-104B, Idaho Code, be, and the same is
 45 hereby amended to read as follows:

46 28-24-104B. WARRANTY CLAIMS. (1) An equipment dealer may submit a war-
 47 ranty claim to a supplier if a warranty defect is identified and documented
 48 prior to the expiration of a supplier's warranty:

49 (a) While a dealer agreement is in effect; or

1 (b) After the termination of a dealer agreement if the claim is for work
2 performed while the dealer agreement was in effect.

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

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

10 (a) Pay an accepted warranty claim; or

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

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

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

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

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

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

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

33 (a) The warranty claim was submitted in error;

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

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

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

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

44 (a) Surcharges;

45 (b) Reduction of discounts; or

46 (c) Certification standards.

47 ~~(8) Notwithstanding the provisions of subsection (4) of this section, a~~
48 ~~dealer may accept the supplier's reimbursement terms and conditions in lieu~~
49 ~~of the terms and conditions set forth in subsection (4) of this section.~~

1 SECTION 16. That Chapter 24, Title 28, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 28-24-104C, Idaho Code, and to read as follows:

4 28-24-104C. MANUFACTURER DIRECT SALES. (1) If a supplier sells,
5 leases or rents new equipment directly to end users located in this state or
6 for use in this state and the equipment is prepared for delivery or serviced
7 by a dealer, the supplier shall:

8 (a) Compensate the dealer for the hours necessary to prepare or service
9 the equipment for delivery at the dealer's customary retail labor rate;

10 (b) Compensate the dealer at the dealer's customary delivery rate to
11 deliver the equipment; and

12 (c) Pay to the dealer a reasonable commission on the sale, rental or
13 lease of the new equipment. A reasonable commission shall not be less
14 than:

15 (i) In the case of a sale, ten percent (10%) of the sales price;

16 (ii) In the case of a lease that is not classified as a financing
17 lease under generally accepted accounting principles, ten percent
18 (10%) of the aggregate rent due under the terms of the lease; or

19 (iii) In the case of a lease treated as a financing lease under gen-
20 erally accepted accounting principles, ten percent (10%) of the
21 capitalized lease value of the equipment.

22 All sales tax or other taxes shall be excluded from the applicable con-
23 sideration for purposes of determining the commission.

24 (2) The supplier, if practicable, shall utilize the dealer with the as-
25 signed area of responsibility for the location at which the new equipment
26 shall be located once delivered to the customer.

27 (3) All compensation due under this section shall be paid or credited to
28 the equipment dealer within sixty (60) days of receipt of billing for service
29 by the dealer to the supplier. For the purpose of determining a dealer's mar-
30 ket share performance, to the extent such performance is a requirement in the
31 dealer agreement, the supplier direct unit sales numbers shall be included
32 in market share calculation for the dealer with the applicable assigned area
33 of responsibility for the location at which the new equipment shall be lo-
34 cated once delivered to the customer. The provisions of this section shall
35 not be applicable to any liquidation or sale of equipment which has been or-
36 dered by any court.

37 (4) Notwithstanding the provisions of this section, a dealer may ac-
38 cept the supplier's substitute reimbursement terms and conditions in lieu of
39 the terms and conditions set forth in this section when the substitute terms
40 and conditions compensation is equal to, or greater than, the reimbursement
41 terms as provided in this section.

42 SECTION 17. That Section 28-24-104C, Idaho Code, be, and the same is
43 hereby amended to read as follows:

44 28-24-104CD. AUDIT OF WARRANTY CLAIMS. A supplier may not audit a
45 dealer's records with respect to any warranty claim submitted more than two
46 (2) years before the date of the audit.

1 SECTION 18. That Section 28-24-104D, Idaho Code, be, and the same is
2 hereby amended to read as follows:

3 28-24-104DE. ARBITRATION. Any party to a retailer agreement aggrieved
4 by the conduct of the other party to the agreement under sections 28-23-101
5 through 28-23-111, Idaho Code, or under part 1, chapter 24, title 28, Idaho
6 Code, may seek arbitration of the issues under sections 7-901 through 7-922,
7 Idaho Code. Unless the parties agree to different arbitration rules, the ar-
8 bitration shall be conducted in Idaho pursuant to the commercial arbitration
9 rules of the American arbitration association. When the parties agree, the
10 arbitration shall be the parties' only remedy and the findings and conclu-
11 sions of the arbitrator or panel of arbitrators shall be binding upon both
12 parties.

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

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

15 (b) Reasonable attorney's fees; and

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

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

22 (a) The actual costs of the action;

23 (b) Reasonable attorney's fees; and

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

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

33 SECTION 19. That Section 28-24-104E, Idaho Code, be, and the same is
34 hereby amended to read as follows:

35 28-24-104EF. SUCCESSORS IN INTEREST. The obligations of any supplier
36 under this chapter are applied to any successor in interest or assignee of
37 the supplier. A successor in interest includes any purchaser of assets or
38 stock, any surviving corporation resulting from merger or liquidation, and
39 any receiver or any trustee of the original supplier.

40 SECTION 20. That Section 28-24-105, Idaho Code, be, and the same is
41 hereby amended to read as follows:

42 28-24-105. REMEDIES AND ENFORCEMENT. Monetary damages may be recov-
43 ered for losses sustained as a consequence of any violation of the provisions
44 of this chapter. Such recovery may also include a requirement that the sup-
45 plier repurchase at fair market value any data processing hardware, software
46 and specialized repair tools and equipment previously purchased from the

1 supplier or approved vendor of the supplier pursuant to requirements of
2 the supplier. Additionally, any judgment rendered by a court of competent
3 jurisdiction for the plaintiff in a suit filed pursuant to this section may
4 include damages in the amount of two (2) times the compensatory damages found
5 due and owing. Injunctive relief may also be granted against any actual
6 or threatened violation of the provisions of this chapter. In any action
7 brought under this chapter the prevailing party shall be entitled to recover
8 reasonable attorney's fees and costs. The remedies set forth in this section
9 shall not be deemed exclusive and shall be in addition to any other remedies
10 permitted by law. A person, firm or corporation which brings an action under
11 this section must commence the action in the county in which the principal
12 place of business of the retailer is located.

13 SECTION 21. That Chapter 24, Title 28, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 28-24-108, Idaho Code, and to read as follows:

16 28-24-108. JURISDICTION -- VENUE. (1) The courts of this state shall
17 have jurisdiction over any legal dispute between a wholesaler, manufacturer
18 or distributor of farm implements or equipment, machinery, repair parts,
19 stock parts and attachments located in or outside this state and an equipment
20 dealer located in this state. The laws of the state of Idaho shall exclu-
21 sively apply to such disputes.

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