

SENATE FILE NO. SF0110

Fair practices of equipment dealers.

Sponsored by: Senator(s) Geis

A BILL

for

1 AN ACT relating to trade and commerce; providing for the
2 regulation of trade practices within the farm equipment
3 industry as specified; repealing conflicting provisions;
4 and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 40-20-113 through 40-20-123 are
9 created to read:

10

11 **40-20-113. Definitions.**

12

13 (a) As used in this chapter:

14

15 (i) "Current net parts price" means:

16

1 (A) For current parts, the price for
2 repair parts listed in the supplier's price list or
3 catalogue in effect at the time the dealer agreement is
4 cancelled or discontinued, or for purposes of W.S.
5 40-20-119, the price list or catalogue in effect at the
6 time the repair parts were ordered;

7

8 (B) For superseded repair parts, the price
9 listed in the supplier's price list or catalogue in effect
10 at the time the dealer agreement is cancelled or
11 discontinued for the part that performs the same function
12 and purpose as the superseded part, but is listed under a
13 different part number.

14

15 (ii) "Current net parts cost" means the current
16 net parts price less any trade or cash discounts typically
17 given to the dealer with respect to the dealer's normal,
18 ordinary course orders of repair parts;

19

20 (iii) "Dealer" means any person, not including
21 mass retailers, engaged in the business of:

22

23 (A) Selling or leasing equipment or repair
24 parts to the consumer; and

1

2

(B) Repairing or servicing equipment.

3

4

(iv) "Dealer agreement" means either an oral or written agreement or an agreement between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts. If a dealer has more than one

5

(1) business location covered by the same dealer agreement, the requirements of this chapter shall be applied to the repurchase of a dealer's inventory at a particular location upon the closing of that location;

6

7

(v) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement;

8

9

(vi) "Demonstrator" means equipment in a dealer's inventory that has never been sold at retail, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short term rental agreement, with the intent of encouraging the person to purchase the equipment;

10

11

(vii) "Equipment" means:

1

2

(A) All-terrain vehicles regardless of how
used; and

4

5

(B) Other machinery, equipment, implements
or attachments used for or in connection with the
following purposes:

8

9

(I) Lawn, garden, golf course,
landscaping or grounds maintenance;

11

12

(II) Planting, cultivating,
irrigating, grazing, harvesting and producing of
agricultural products;

15

16

(III) Raising, feeding, tending to or
harvesting products from, livestock or any related
activity; or

19

20

(IV) Industrial, construction,
maintenance, or utility activities or applications;

22

23

(V) "Equipment" does not include
self-propelled vehicles designed primarily for the

24

1 transportation of persons or property on a street or
2 highway.

3

4 (viii) "Family member" means a spouse, child,
5 parent, sibling, stepchild, son-in-law, daughter-in-law or
6 lineal descendant;

7

8 (ix) "Good cause" has the meaning set forth in
9 W.S. 40-20-115 or 40-20-116, as applicable;

10

11 (x) "Index" means the United States bureau of
12 labor statistics producer price index or industry data,
13 for construction machinery, series identification number
14 pcu333120333120 or any successor index measuring
15 substantially similar information;

16

17 (xi) "Inventory" means new equipment, repair
18 parts, data processing hardware or software, and
19 specialized service or repair tools;

20

21 (xii) "Net equipment cost" means the price the
22 dealer actually paid to the supplier for equipment, plus:

23

1 (A) Freight, at truckload rates in effect
2 as of the effective date of the termination of a dealer
3 agreement, if freight was paid by the dealer from the
4 supplier's location to the dealer's location; and

5
6 (B) Reimbursement for labor incurred in
7 preparing the equipment for retail sale or rental, or set
8 up costs, which labor shall be reimbursed at the dealer's
9 standard labor rate charged by the dealer to its customers
10 for nonwarranty repair work. If a supplier has
11 established a reasonable set up time, the labor shall be
12 reimbursed at an amount equal to the reasonable set up
13 time in effect as of the date of delivery multiplied by
14 the dealer's standard labor rate.

15
16 (xiii) "New equipment" means, for purposes of
17 determining whether a dealer is a single line dealer, any
18 equipment that could be returned to the supplier upon a
19 termination of a dealer agreement pursuant to W.S.
20 40-20-120 and 40-20-121;

21
22 (xiv) "Person" means a natural person,
23 corporation, partnership, limited liability company,
24 company, trust, or any other form of business enterprise,

1 including any other entity in which the "person" has a
2 majority interest or of which the "person" has control, as
3 well as the individual officers, directors and other
4 persons in active control of the activities of each
5 entity;

6

7 (xv) "Repair parts" means all parts related to
8 the repair of equipment, including superseded parts;

9

10 (xvi) "Single line dealer" means a dealer that
11 has:

12

13 (A) Purchased construction or industrial
14 equipment from a single supplier constituting seventy-five
15 percent (75%) of the dealer's new equipment, calculated on
16 the basis of net cost; and

17

18 (B) A total annual average sales volume in
19 excess of twenty million dollars (\$20,000,000.00) for the
20 three (3) calendar years immediately preceding the
21 applicable determination date. The twenty million dollar
22 (\$20,000,000.00) threshold shall be increased each year by
23 an amount equal to the then current threshold multiplied
24 by the percentage increase in the index from January of

1 the immediately preceding year to January of the current
2 year.

3

4 (xvii) "Single line supplier" means the
5 supplier that is selling the single line dealer
6 construction and industrial equipment constituting
7 seventy-five percent (75%) of the dealer's new equipment;

8

9 (xviii) "Supplier" means any person engaged in
10 the business of manufacturing, assembly or wholesale
11 distribution of equipment or repair parts. The term
12 "supplier" and the provisions of this chapter shall be
13 interpreted liberally and shall not be limited to
14 traditional doctrines of corporate successor liability or
15 take into account whether:

16

17 (A) A successor expressly assumed the
18 liabilities of the supplier; or

19

20 (B) There has been one (1) or more
21 intermediate successors to the initial supplier. The
22 obligations of a supplier hereunder shall consequently
23 apply to any actual or effective successor in interest to
24 a supplier, including but not limited to, a purchaser of

1 all or substantially all of the assets of a supplier or
2 all or substantially all of the assets of any division or
3 product line of a supplier, any receiver, trustee,
4 liquidator or assignee of the supplier or any surviving
5 corporation resulting from a merger, liquidation or
6 reorganization of the original or any intermediate
7 successor supplier. Purchasers of all or substantially
8 all of the inventory of a supplier or a supplier's
9 division or product line shall constitute a purchaser of
10 all or substantially all of the supplier's assets.

11

12 (xix) "Terminate" means to terminate, cancel,
13 fail to renew or substantially change the competitive
14 circumstances of a dealer agreement.

15

16 **40-20-114. Violations of chapter.**

17

18 (a) It shall be a violation of this chapter for a
19 supplier to take any one (1) or more of the following
20 actions:

21

22 (i) To coerce, compel or require any dealer to
23 accept delivery of any equipment or repair parts which the
24 dealer has not voluntarily ordered, except as required by

1 any applicable law or unless the equipment or repair parts
2 are safety features required by a supplier;

3

4 (ii) To require any dealer to purchase goods or
5 services as a condition to the sale by the supplier to the
6 dealer of any equipment, repair parts or other goods or
7 services, except that nothing herein shall prohibit a
8 supplier from requiring the dealer to purchase all repair
9 parts, special tools and training reasonably necessary to
10 maintain the safe operation or quality of operation in the
11 field of any equipment offered for sale by the dealer;

12

13 (iii) To coerce any dealer into a refusal to
14 purchase equipment manufactured by another supplier.
15 However, it shall not be a violation of this section to
16 require separate facilities, financial statements, or sales
17 staff for major competing lines so long as the dealer is
18 given at least three (3) years notice of such requirement;

19

20 (iv) To refuse to deliver in reasonable
21 quantities and within a reasonable time, after receipt of
22 the dealer's order, to any dealer having a dealer agreement
23 for the retail sale of new equipment sold or distributed by
24 the supplier, equipment covered by the dealer agreement

1 specifically advertised or represented by the supplier to
2 be available for immediate delivery. The failure to
3 deliver the equipment shall not be considered a violation
4 of this chapter if the failure is due to prudent and
5 reasonable restrictions on extensions of credit by the
6 supplier to the dealer, an act of God, work stoppage or
7 delay due to a strike or labor difficulty, a bona fide
8 shortage of materials, freight embargo, or other cause over
9 which the supplier has no control or a business decision by
10 the supplier to limit the production volume of the
11 equipment;

12

13 (v) To discriminate, directly or indirectly, in
14 filling an order placed by a dealer for retail sale or
15 lease of new equipment under a dealer agreement as between
16 dealers of the same product line;

17

18 (vi) To discriminate, directly or indirectly, in
19 price between different dealers with respect to purchases
20 of equipment or repair parts of like grade and quality and
21 identical brand, where the effect of the discrimination may
22 be to substantially lessen competition, tend to create a
23 monopoly in any line of commerce or injure, destroy or
24 prevent competition with any dealer who either grants or

1 knowingly receives the benefit of the discrimination.

2 Different prices may be charged if:

3

4 (A) The differences are due to differences
5 in the cost of manufacture, sale or delivery of the
6 equipment or repair parts;

7

8 (B) The supplier can show that the lower
9 price was made in good faith to meet an equally low price
10 of a competitor; or

11

12 (C) The differences are related to the
13 volume of equipment purchased by dealers.

14

15 (vii) To prevent by contract or otherwise, any
16 dealer, from changing its capital structure, ownership or
17 the means by or through which the dealer finances its
18 operations, so long as the dealer gives prior notice to
19 the supplier and provided the dealer at all times meets
20 any reasonable capital standards agreed to between the
21 dealer and the supplier and imposed on similarly situated
22 dealers and provided the change by the dealer does not
23 result in a change in the person with actual or effective

1 control of a majority of the voting interests of the
2 dealer;

3

4 (viii) To require a dealer to assent to a
5 release, assignment, novation, waiver or estoppel which
6 would relieve any person from liability imposed by this
7 chapter;

8

9 (ix) Require as a condition of renewal or
10 extension of a dealer agreement that the dealer complete
11 substantial renovation to the dealer's place of business
12 or to acquire new or additional space to serve as the
13 dealer's place of business unless the supplier provides:

14

15 (A) At least one (1) year written notice
16 of the condition;

17

18 (B) All the grounds supporting the
19 condition; and

20

21 (C) A reasonable period of time in which
22 to complete the renovation or acquisition after the one
23 (1) year notice period expires.

24

1 **40-20-115. Termination of dealer agreements.**

2

3 (a) A dealer may terminate a dealer agreement
4 without cause. The dealer shall give the supplier at
5 least thirty (30) days prior written notice of
6 termination. No supplier may terminate a dealer agreement
7 without good cause. Notice from the supplier to the
8 dealer shall be as provided in W.S. 40-20-116 and
9 40-20-117. Except as otherwise specifically provided in
10 this chapter, good cause means the failure by a dealer to
11 substantially comply with essential and reasonable
12 requirements imposed upon the dealer by the dealer
13 agreement, provided the requirements are not different
14 from those requirements imposed on other similarly
15 situated dealers either by their terms or in the manner of
16 their enforcement. In addition, good cause shall exist
17 whenever:

18

19 (i) The dealer or dealership has transferred a
20 controlling ownership interest in its business without the
21 supplier's consent;

22

23 (ii) The dealer has filed a voluntary petition
24 in bankruptcy or has had an involuntary petition in

1 bankruptcy filed against it which has not been discharged
2 within thirty (30) days after the filing, there has been a
3 closeout or sale of a substantial part of the dealer's
4 assets related to the business or there has been a
5 commencement of dissolution or liquidation of the dealer;

6

7 (iii) There has been a deletion, addition or
8 change in dealer or dealership locations without the prior
9 written approval of the supplier;

10

11 (iv) The dealer has defaulted under any chattel
12 mortgage or other security agreement between the dealer
13 and the supplier or there has been a revocation of any
14 guarantee of the dealer's present or future obligations to
15 the supplier. Good cause shall not exist if a person
16 revokes any guarantee in connection with or following the
17 transfer of the person's entire ownership interest in the
18 dealer unless the supplier requires the new person to
19 execute a new guarantee of the dealer's present or future
20 obligations in connection with the transfer of ownership
21 interest;

22

1 (v) The dealer has failed to operate in the
2 normal course of business for seven (7) consecutive days
3 or has otherwise abandoned its business;

4
5 (vi) The dealer has pleaded guilty to or has
6 been convicted of a felony affecting the relationship
7 between the dealer and supplier;

8
9 (vii) The dealer has engaged in conduct which
10 is injurious or detrimental to the dealer's customers or
11 to the public welfare or the representation or reputation
12 of the supplier's product;

13
14 (viii) The dealer has consistently failed to
15 meet and maintain the supplier's requirements for
16 reasonable standards and performance objectives, so long
17 as the supplier has given the dealer reasonable standards
18 and performance objectives that are based on the
19 manufacturer's experience in other comparable market
20 areas.

21
22 (b) The provisions of this section shall not apply to
23 the dealer agreements between a single line dealer and the
24 single line supplier.

1

2 **40-20-116. Termination of dealer agreements; single**
3 **line dealers.**

4

5 (a) This section shall only apply to the dealer
6 agreements between a single line dealer and a single line
7 supplier.

8

9 (b) No supplier may terminate a dealer agreement
10 without good cause. For purposes of this section and W.S.
11 40-20-118 only, good cause means failure by a dealer to
12 comply with requirements imposed upon the dealer by the
13 dealer agreement if the requirements are not different
14 from those imposed on other similarly situated dealers.
15 In addition, good cause exists when:

16

17 (i) There has been a closeout or sale of a
18 substantial part of the dealer's assets related to the
19 equipment business or there has been a commencement of a
20 dissolution or liquidation of the dealer;

21

22 (ii) The dealer has changed its principal place
23 of business or added additional locations without prior

1 approval of the supplier, which shall not be unreasonably
2 withheld;

3

4 (iii) The dealer has substantially defaulted
5 under a chattel mortgage or other security agreement
6 between the dealer and the supplier or there has been a
7 revocation or discontinuance of a guarantee of a present
8 or future obligation of the dealer to the supplier;

9

10 (iv) The dealer has failed to operate in the
11 normal course of business for seven (7) consecutive days
12 or has otherwise abandoned its business;

13

14 (v) The dealer has pleaded guilty to or has
15 been convicted of a felony affecting the relationship
16 between the dealer and the supplier; or

17

18 (vi) The dealer transfers an interest in the
19 dealership, or a person with a substantial interest in the
20 ownership or control of the dealership, including an
21 individual proprietor, partner or major shareholder
22 withdraws from the dealership, dies or a substantial
23 reduction occurs in the interest of a partner or major
24 shareholder in the dealership. Good cause does not exist

1 if the supplier consents to an action described in this
2 paragraph.

3

4 (c) Except as otherwise provided in this subsection,
5 a supplier shall provide a dealer with at least ninety
6 (90) days written notice of termination. The notice shall
7 state all reasons constituting good cause for the
8 termination and shall state the dealer has sixty (60) days
9 in which to cure any claimed deficiency. If the
10 deficiency is cured within sixty (60) days, the notice
11 shall be void. Notwithstanding the foregoing, if the good
12 cause for termination is due to the dealer's failure to
13 meet or maintain the supplier's requirements for market
14 penetration, a reasonable period of time shall have
15 existed where the supplier has worked with the dealer to
16 gain the desired market share. The notice and right to
17 cure provisions under this subsection shall not apply if
18 the reason for termination is for any reason set forth in
19 paragraphs (b)(i) through (vi) of this section.

20

21 **40-20-117. Notice of termination of dealer**
22 **agreement; cure of deficiency; approval of dealer**
23 **ownership transfer; death of dealer.**

24

1 (a) Except as otherwise provided in this section, a
2 supplier shall provide a dealer at least one hundred
3 eighty (180) days prior written notice of termination of a
4 dealer agreement. The notice shall state all reasons
5 constituting good cause for the termination and shall
6 state the dealer has sixty (60) days in which to cure any
7 claimed deficiency. If the deficiency is cured within
8 sixty (60) days, the notice shall be void. A supplier may
9 not terminate a dealer agreement for the reason set forth
10 in W.S. 40-20-115(a)(viii) unless the supplier gives the
11 dealer notice of the action at least two (2) years before
12 the effective date of the action. If the dealer achieves
13 the supplier's requirements for reasonable standards or
14 performance objectives before the expiration of the two
15 (2) year notice period, the notice shall be void and the
16 dealer agreement shall continue in full force and effect.
17 The notice and right to cure provisions under this section
18 shall not apply if the reason for termination is for any
19 reason set forth in W.S. 40-20-115(a)(i) through (vii).

20

21 (b) If a supplier has contractual authority to
22 approve or deny a request for a sale or transfer of a
23 dealer's business or an equity ownership interest, the
24 supplier shall approve or deny the request within sixty

1 (60) days after receiving a written request from the
2 dealer. If the supplier has neither approved nor denied
3 the request within the sixty (60) day period, the request
4 shall be deemed approved. The dealer's request shall
5 include reasonable financial, personal background,
6 character references and work history information for the
7 acquiring persons. If a supplier denies a request made
8 pursuant to this subsection, the supplier shall provide
9 the dealer with a written notice of the denial that states
10 the reasons for the denial. A supplier may only deny a
11 request based on the failure of the proposed transferee to
12 meet the reasonable requirements consistently imposed by
13 the supplier in determining approval of the transfer or
14 approval of a new dealer.

15

16 (c) If a dealer dies and the supplier has
17 contractual authority to approve or deny a request for a
18 sale or transfer of the dealer's business or his equity
19 ownership interest, the dealer's estate or other person
20 with authority to transfer assets of the dealer, shall
21 have one hundred eighty (180) days to submit to the
22 supplier a written request for a sale or transfer of the
23 business or equity ownership interest. If the request is
24 timely submitted, the supplier shall approve or deny the

1 request in accordance with subsection (b) of this section.
2 Notwithstanding anything to the contrary contained in this
3 chapter, any attempt by the supplier to terminate the
4 dealer or the dealership as a result of the death of a
5 dealer shall be delayed until there has been compliance
6 with the terms of this subsection or the one hundred
7 eighty (180) day period has expired, as applicable.

8

9 (d) If a supplier and dealer have executed an
10 agreement concerning succession rights before the dealer's
11 death and that agreement has not been revoked or otherwise
12 terminated by either party, the agreement shall control
13 the terms of succession even if it designates someone
14 other than the surviving spouse or heirs of the decedent
15 as the successor.

16

17 (e) The provisions of this section shall not apply
18 to the dealer agreements between a single line dealer and
19 the single line supplier.

20

21 **40-20-118. Death of single line dealer.**

22

1 (a) This section shall only apply to the dealer
2 agreements between a single line dealer and a single line
3 supplier.

4
5 (b) If a dealer dies, a supplier shall have ninety
6 (90) days in which to consider and make a determination on
7 a request by a family member to enter into a new dealer
8 agreement to operate the dealership. If the supplier
9 determines that the requesting family member is not
10 acceptable, the supplier shall provide the family member
11 with a written notice of its determination with the stated
12 reasons for nonacceptance. This subsection does not
13 entitle an heir, personal representative or family member
14 to operate a dealership without the specific written
15 consent of the supplier.

16
17 (c) If a supplier and dealer have executed an
18 agreement concerning succession rights prior to the
19 dealer's death and that agreement is still in effect, the
20 agreement shall control the terms of succession even if it
21 designates someone other than the surviving spouse or
22 heirs of the decedent as the successor.

23

24 **40-20-119. Reimbursement for warranty work.**

1

2 (a) If a dealer submits a warranty claim to a
3 supplier while the dealer agreement is in effect or within
4 sixty (60) days after the termination of the dealer
5 agreement and if the claim is for work performed before
6 the termination or expiration of the dealer agreement, the
7 supplier shall accept or reject the warranty claim by
8 written notice to the dealer within thirty (30) days after
9 the supplier's receipt of the claim. If the supplier does
10 not reject the warranty claim in the time period specified
11 above, the claim shall be deemed accepted. If the
12 supplier accepts the warranty claim, the supplier shall
13 pay or credit to the dealer's account all amounts owed
14 with respect to the claim to the dealer within thirty (30)
15 days after it is accepted. If the supplier rejects a
16 warranty claim, the supplier shall give the dealer written
17 or electronic notice of the grounds for rejection, which
18 reasons shall be consistent with the supplier's reasons
19 for rejecting warranty claims of other dealers, both in
20 their terms and manner of enforcement. If no grounds for
21 rejection are given, the claim shall be deemed accepted.

22

23 (b) Any claim which is disapproved by the supplier
24 based upon the dealer's failure to properly follow the

1 procedural or technical requirements for submission of
2 warranty claims may be resubmitted in proper form by the
3 dealer within thirty (30) days of receipt by the dealer of
4 the supplier's notification of the disapproval.

5

6 (c) Warranty work performed by the dealer shall be
7 compensated in accordance with the reasonable and
8 customary amount of time required to complete the work,
9 expressed in hours and fractions multiplied by the
10 dealer's established customer hourly retail labor rate,
11 which shall have previously been made known to the
12 supplier. Parts used in warranty repair work shall be
13 reimbursed at the current net price plus fifteen percent
14 (15%).

15

16 (d) For purposes of this chapter, any repair work or
17 installation of replacement parts performed with respect
18 to the dealer's equipment in inventory or equipment of the
19 dealer's customers at the request of the supplier,
20 including work performed pursuant to a product improvement
21 program, shall be deemed to create a warranty claim for
22 which the dealer shall be paid pursuant to this section.

23

1 (e) A supplier may audit warranty claims submitted
2 by its dealers for a period of up to one (1) year
3 following payment of the claims, and may charge back to
4 its dealers any amounts paid based upon claims shown by
5 the audit to be misrepresented. If a warranty claim is
6 misrepresented, then warranty claims submitted within the
7 three (3) year period ending with the date a claim is
8 shown by the audit to be misrepresented may be audited.

9

10 (f) The requirements of subsections (a) through (c)
11 of this section apply to all warranty claims submitted by
12 a dealer to a supplier in which the dealer has complied
13 with the supplier's reasonable policies and procedures for
14 warranty reimbursement. A supplier's warranty
15 reimbursement policies and procedures shall be deemed
16 unreasonable to the extent they conflict with any of the
17 provisions of this section.

18

19 (g) A dealer may choose to accept alternate
20 reimbursement terms and conditions in lieu of the
21 requirements of subsections (a) through (c) of this section
22 if there is a written dealer agreement between the supplier
23 and the dealer that requires the supplier to compensate the
24 dealer for warranty labor costs either as:

1

2 (i) A discount in the pricing of the equipment
3 to the dealer; or

4

5 (ii) A lump sum payment to the dealer that is
6 made to the dealer within ninety (90) days of the sale of
7 the supplier's new equipment.

8

9 (h) The discount or lump sum described in subsection
10 (g) of this section shall be no less than five percent (5%)
11 of the suggested retail price of the equipment. If the
12 requirements of subsections (g) and (h) of this section are
13 met and alternate terms and conditions are in place,
14 subsections (a) through (c) of this section do not apply
15 and the alternate terms and conditions are enforceable.
16 Nothing contained in this subsection or subsection (g) of
17 this section shall be deemed to effect the supplier's
18 obligation to reimburse the dealer for parts in accordance
19 with subsection (c) of this section.

20

21 **40-20-120. Repurchase obligations of supplier on**
22 **cancellation or discontinuance of dealer agreement.**

23

1 (a) Whenever any dealer enters into a dealer
2 agreement with a supplier and either the supplier or the
3 dealer desires to cancel, not renew or otherwise
4 discontinue the dealer agreement, the supplier shall pay
5 to the dealer or credit to the dealer's account, if the
6 dealer has outstanding any sums owing the supplier, unless
7 the dealer should desire to keep the equipment or repair
8 parts:

9
10 (i) A sum equal to one hundred percent (100%)
11 of the net equipment cost of all new, unsold, undamaged
12 equipment, one hundred percent (100%) of the net equipment
13 cost of all unsold, undamaged demonstrators, less a
14 downward adjustment to reflect a reasonable allowance for
15 depreciation due to usage of the demonstrators, which
16 adjustment shall be based on published industry rental
17 rates to the extent such rates are available and ninety
18 five percent (95%) of the current net parts prices on new,
19 unsold, undamaged repair parts that had previously been
20 purchased from the supplier and held by the dealer on the
21 date the dealer agreement terminates or expires.
22 Demonstrators with less than fifty (50) hours of use for
23 machines with hour meters, shall be considered new, unsold

1 or undamaged equipment subject to repurchase under this
2 paragraph;

3

4 (ii) A sum equal to five percent (5%) of the
5 current net parts price of all repair parts returned to
6 compensate the dealer for the handling, packing and
7 loading of the repair parts for return to the supplier.
8 The five percent (5%) shall not be paid or credited to the
9 dealer if the supplier elects to perform the handling,
10 packing and loading of the repair parts;

11

12 (iii) The fair market value of any specific
13 data processing hardware or software the supplier required
14 the dealer to acquire or purchase to satisfy the
15 requirements of the supplier, including computer equipment
16 required and approved by the supplier to communicate with
17 the supplier. Fair market value of property subject to
18 repurchase pursuant to this paragraph shall be deemed to
19 be the acquisition cost, including any shipping, handling
20 and setup fees, less straight line depreciation of the
21 acquisition cost over three (3) years. If the dealer
22 purchased data processing hardware or software that
23 exceeded the supplier's minimum requirements, the
24 acquisition cost of the data processing hardware or

1 software shall be deemed to be the acquisition cost of
2 hardware or software of similar quality that did not
3 exceed the minimum requirements of the supplier;

4

5 (iv) A supplier shall repurchase specialized
6 repair tools at a price equal to seventy-five percent
7 (75%) of the total invoice amount charged by the supplier
8 to the dealer.

9

10 (b) Upon the payment or allowance of credit to the
11 dealer's account of the sums required by this section, the
12 title to all inventory purchased hereunder shall pass to
13 the supplier making the payment and the supplier shall be
14 entitled to the possession of the inventory. All payments
15 or allowances of credit due dealers shall be paid or
16 credited within ninety (90) days after receipt by the
17 supplier of property required to be repurchased. Any
18 payments or allowances of credit due dealers that are not
19 paid within the ninety (90) day period shall accrue
20 interest at the maximum rate allowed by law. The supplier
21 may withhold payments due under this subsection during the
22 period of time in which the dealer fails to comply with
23 its contractual obligations to remove any signage

1 indicating the dealer is an authorized dealer of the
2 supplier.

3

4 (c) If any supplier refuses to repurchase any
5 inventory covered under the provisions of this chapter
6 after cancellation, nonrenewal or discontinuance of the
7 dealer agreement, the supplier shall be civilly liable to
8 the dealer for one hundred ten percent (110%) of the
9 amount that would have been due for the inventory if the
10 supplier had timely complied with this chapter, any
11 freight charges paid by the dealer, interest accrued and
12 the dealer's actual costs of any court or arbitration
13 proceeding, including costs for attorney fees and costs of
14 arbitrators.

15

16 (d) The supplier and dealer shall each pay fifty
17 percent (50%) of the costs of freight, at truckload rates,
18 to ship any equipment or repair parts returned to the
19 supplier pursuant to this chapter.

20

21 (e) Notwithstanding any provision to the contrary in
22 the uniform commercial code adopted by this state, the
23 dealer shall retain a first and prior lien against all
24 inventory returned by the dealer to the supplier under the

1 provisions of this chapter until the dealer is paid all
2 amounts owed by the supplier for the repurchase of the
3 inventory required under the provisions of this chapter.
4 The dealer's lien under this subsection shall constitute a
5 perfected security interest for a period of six (6) years
6 without the filing of a financing statement.

7

8 (f) The provisions of this section shall not be
9 construed to affect in any way any security interest which
10 the supplier may have in the inventory of the dealer, and
11 any repurchase hereunder shall not be subject to the
12 provisions of the bulk sales law or to the claims of any
13 secured or unsecured creditors of the supplier or any
14 assignee of the supplier until the time the dealer has
15 received full payment or credit, as applicable.

16

17 **40-20-121. Repurchase not required.**

18

19 (a) The provisions of this chapter shall not require
20 the repurchase from a dealer of:

21

22 (i) Any repair part in a broken or damaged
23 package. The supplier shall be required to repurchase a
24 repair part in a broken or damaged package, for a

1 repurchase price that is equal to eighty-five (85%) of the
2 current net price for the repair part, if the aggregate
3 current net price for the entire package of repair parts
4 is seventy-five dollars (\$75.00) or higher;

5

6 (ii) Any repair part which because of its
7 condition is not resalable as a new part without
8 repackaging or reconditioning;

9

10 (iii) Any inventory the dealer is unable to
11 furnish evidence, satisfactory to the supplier, of clear
12 title, free and clear of all claims, liens and
13 encumbrances;

14

15 (iv) Any inventory the dealer desires to keep,
16 provided the dealer has a contractual right to do so;

17

18 (v) Any equipment or repair parts not in new,
19 unsold, undamaged or complete condition, subject to the
20 provisions of this chapter relating to demonstrators;

21

22 (vi) Any equipment delivered to the dealer
23 prior to the beginning of the thirty-six (36) month period

1 immediately preceding the date of notification of
2 termination;

3

4 (vii) Any equipment or repair parts ordered by
5 the dealer on or after the date of notification of
6 termination;

7

8 (viii) Any equipment or repair parts acquired
9 by the dealer from any source other than the supplier
10 unless the equipment or repair parts were ordered from or
11 invoiced to the dealer by the supplier; or

12

13 (ix) Any equipment or repair parts not returned
14 to the supplier within ninety (90) days after the later
15 of:

16

17 (A) The effective date of termination of a
18 dealer agreement; and

19

20 (B) The date the dealer receives from the
21 supplier all information, documents or supporting
22 materials required by the supplier to comply with the
23 supplier's return policy. This subparagraph shall not be
24 applicable to a dealer if the supplier did not give the

1 dealer notice of the ninety (90) day deadline at the time
2 the applicable notice of termination was sent to the
3 dealer.

4

5 **40-20-122. Remedies and enforcement.**

6

7 If the supplier violates any provision of this chapter,
8 the dealer may bring an action against the supplier in a
9 court of competent jurisdiction for damages sustained by
10 the dealer as a consequence of the supplier's violation,
11 including, but not limited to, damages for lost profits,
12 together with the actual costs of the action, including
13 the attorney fees and costs of arbitrators. The dealer
14 may also be granted injunctive relief against unlawful
15 termination. The remedies set forth in this section shall
16 not be deemed exclusive and shall be in addition to any
17 other remedies permitted by law.

18

19 **40-20-123. Choice of remedies; exemption from tax.**

20

21 (a) The provisions of this chapter shall be
22 supplemental to any dealer agreement between the dealer
23 and the supplier which provides the dealer with greater
24 protection. The dealer can elect to pursue its contract

1 remedy or the remedy provided by state law, or both. An
2 election by the dealer to pursue these remedies shall not
3 bar its right to exercise any other remedies that may be
4 granted at law or in equity.

5

6 (b) Any repurchase under this chapter is not subject
7 to sales or use tax.

8

9 **Section 2.** W.S. 40-20-101 and 40-20-110 are amended
10 to read:

11

12 CHAPTER 20

13 WYOMING FAIR PRACTICES OF EQUIPMENT MANUFACTURERS,
14 DISTRIBUTORS, WHOLESALERS AND DEALERS ACT

15

16 **40-20-101. Short title.**

17

18 This chapter shall be known and may be cited as the
19 "Wyoming ~~Farm Equipment Fair Dealership~~ Fair Practices of
20 Equipment Manufacturers, Distributors, Wholesalers, and
21 Dealers Act".

22

23 **40-20-110. Current agreements; effect of law; void**
24 **provisions.**

1

2 (a) Effective ~~July 1, 1998~~ July 1, 2005, this chapter
3 shall apply to all dealer agreements now in effect which
4 have no expiration date and are a continuing contract and
5 all other dealer agreements ~~at the time such agreements are~~
6 entered into, renewed, extended, revised, modified or
7 changed in any manner ~~and shall apply to all dealer~~
8 ~~agreements entered into or renewed~~ on or after ~~July 1, 1998~~
9 July 1, 2005.

10

11 (b) A provision in any contract or agreement with
12 respect to a supplier that requires jurisdiction or venue
13 outside of this state or requires the application of the
14 laws of another state or country is void with respect to a
15 claim otherwise enforceable under this chapter. Except as
16 provided in W.S. 40-20-105(a), any attempt to waive a
17 provision of this chapter or application of this chapter
18 shall be void. Any provision in a dealer agreement that
19 requires a dealer to pay attorney fees incurred by a
20 supplier shall be void.

21

22 **Section 3.** W.S. 40-20-102 through 40-20-104,
23 40-20-106, 40-20-108, 40-20-109, 40-20-111 and 40-20-112
24 are repealed.

1

2 **Section 4.** This act is effective July 1, 2005.

3

4

(END)