HOUSE BILL NO. HB0141

Fair practices of equipment dealers.

Sponsored by: Representative(s) Cohee, Alden and Hageman and Senator(s) Geis

A BILL

for

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

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

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

40-20-113. Definitions.

(a) As used in this chapter:

(i) "Current net parts price" means:

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

(B) For superseded repair parts, the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is cancelled or discontinued for the part that performs the same function and purpose as the superseded part, but is listed under a different part number.

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

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

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

(B) Repairing or servicing equipment.

(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 (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;

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

(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;

(vii) "Equipment" means:

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

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

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

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

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

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

(V) "Equipment" does not include self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway.

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

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

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

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

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

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

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

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

(xiv) "Person" means a natural person, corporation, partnership, limited liability company, company, trust, or any other form of business enterprise, including any other entity in which the "person" has a majority interest or of which the "person" has control, as well as the individual officers, directors and other persons in active control of the activities of each entity;

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

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

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

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

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

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

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

(B) There has been one (1) or more intermediate successors to the initial supplier. The obligations of a supplier hereunder shall consequently apply to any actual or effective successor in interest to a supplier, including but not limited to, a purchaser of all or substantially all of the assets of a supplier or all or substantially all of the assets of any division or product line of a supplier, any receiver, trustee, liquidator or assignee of the supplier or any surviving corporation resulting from a merger, liquidation or reorganization of the original or any intermediate successor supplier. Purchasers of all or substantially all of the inventory of a supplier or a supplier's division or product line shall constitute a purchaser of all or substantially all of the supplier's assets.

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

40-20-114. Violations of chapter.

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

(i) To coerce, compel or require any dealer to accept delivery of any equipment or repair parts which the dealer has not voluntarily ordered, except as required by any applicable law or unless the equipment or repair parts are safety features required by a supplier;

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

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

(iv) To refuse to deliver in reasonable quantities and within a reasonable time, after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. The failure to deliver the equipment shall not be considered a violation of this chapter if the failure is due to prudent and reasonable restrictions on extensions of credit by the supplier to the 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 or a business decision by the supplier to limit the production volume of the equipment;

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

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

Different prices may be charged if:

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

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

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

(vii) To prevent by contract or otherwise, any dealer, from changing its capital structure, ownership or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier and provided the dealer at all times meets any reasonable capital standards agreed to between the dealer and the supplier and imposed on similarly situated dealers and provided the change by the dealer does not result in a change in the person with actual or effective control of a majority of the voting interests of the dealer;

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

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

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

(B) All the grounds supporting the condition; and

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

40-20-115. Termination of dealer agreements.

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

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

(ii) The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, there has been a closeout or sale of a substantial part of the dealer's assets related to the business or there has been a commencement of dissolution or liquidation of the dealer;

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

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

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

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

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

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

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

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

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

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

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

(ii) The dealer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

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

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

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

(vi) The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder withdraws from the dealership, dies or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. Good cause does not exist if the supplier consents to an action described in this paragraph.

(c) Except as otherwise provided in this subsection, a supplier shall provide a dealer with at least ninety

(90) days written notice of termination. The notice shall state all reasons constituting good cause for the termination and shall state the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is cured within sixty (60) days, the notice shall be void. Notwithstanding the foregoing, if the good cause for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this subsection shall not apply if the reason for termination is for any reason set forth in paragraphs (b)(i) through (vi) of this section.

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

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

(b) If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest, the supplier shall approve or deny the request within sixty (60) days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the sixty (60) day period, the request shall be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subsection, the supplier shall provide the dealer with a written notice of the denial that states the reasons for the denial. A supplier may only deny a request based on the failure of the proposed transferee to meet the reasonable requirements consistently imposed by the supplier in determining approval of the transfer or approval of a new dealer.

(c) If a dealer dies and the supplier has contractual authority to approve or deny a request for a sale or transfer of the dealer's business or his equity ownership interest, the dealer's estate or other person with authority to transfer assets of the dealer, shall have one hundred eighty (180) days to submit to the supplier a written request for a sale or transfer of the business or equity ownership interest. If the request is timely submitted, the supplier shall approve or deny the request in accordance with subsection (b) of this section. Notwithstanding anything to the contrary contained in this chapter, any attempt by the supplier to terminate the dealer or the dealership as a result of the death of a dealer shall be delayed until there has been compliance with the terms of this subsection or the one hundred eighty (180) day period has expired, as applicable.

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

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

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

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

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

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

40-20-119. Reimbursement for warranty work.

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

(b) Any claim which is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty (30) days of receipt by the dealer of the supplier's notification of the disapproval.

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

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

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

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

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

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

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

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

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

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

(i) A sum equal to one hundred percent (100%) of the net equipment cost of all new, unsold, undamaged equipment, one hundred percent (100%) of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for depreciation due to usage of the demonstrators, which adjustment shall be based on published industry rental rates to the extent such rates are available and ninety-five percent (95%) of the current net parts prices on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date the dealer agreement terminates or expires. Demonstrators with less than fifty (50) hours of use for machines with hour meters, shall be considered new, unsold or undamaged equipment subject to repurchase under this paragraph;

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

(iii) The fair market value of any specific data processing hardware or software the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including computer equipment required and approved by the supplier to communicate with the supplier. Fair market value of property subject to repurchase pursuant to this paragraph shall be deemed to be the acquisition cost, including any shipping, handling and setup fees, less straight line depreciation of the acquisition cost over three (3) years. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier;

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

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

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

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

(e) Notwithstanding any provision to the contrary in the uniform commercial code adopted by this state, the dealer shall retain a first and prior lien against all inventory returned by the dealer to the supplier under the provisions of this chapter until the dealer is paid all amounts owed by the supplier for the repurchase of the inventory required under the provisions of this chapter. The dealer's lien under this subsection shall constitute a perfected security interest for a period of six (6) years without the filing of a financing statement.

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

40-20-121. Repurchase not required.

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

(i) Any repair part in a broken or damaged package. The supplier shall be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to eighty-five percent (85%) of the current net price for the repair part, if the aggregate current net price for the entire package of repair parts is seventy-five dollars ($75.00) or higher;

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

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

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

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

(vi) Any equipment delivered to the dealer prior to the beginning of the thirty-six (36) month period immediately preceding the date of notification of termination;

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

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

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

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

(B) The date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return policy. This subparagraph shall not be applicable to a dealer if the supplier did not give the dealer notice of the ninety (90) day deadline at the time the applicable notice of termination was sent to the dealer.

40-20-122. Remedies and enforcement.

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

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

(a) The provisions of this chapter shall be supplemental to any dealer agreement between the dealer and the supplier which provides the dealer with greater protection. The dealer can elect to pursue its contract remedy or the remedy provided by state law, or both. An election by the dealer to pursue these remedies shall not bar its right to exercise any other remedies that may be granted at law or in equity.

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

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

CHAPTER 20

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

40-20-101. Short title.

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

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

(a) Effective July 1, ~~1998~~ 2006, this chapter shall apply to all dealer agreements now in effect which have no expiration date and are a continuing contract and all other dealer agreements ~~at the time such agreements are~~ entered into, renewed, extended, revised, modified or changed in any manner ~~and shall apply to all dealer agreements entered into or renewed~~ on or after July 1, ~~1998~~ 2006.

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

Section 3. W.S. 40-20-102 through 40-20-104, 40-20-106 through 40-20-109, 40-20-111 and 40-20-112 are repealed.

Section 4. This act is effective July 1, 2006.

(END)