

ASSEMBLY BILL NO. 369—ASSEMBLYMEN GRADY, ATKINSON,  
COLLINS, GOICOECHEA, KNECHT, MCCLEARY, PIERCE,  
SHERER AND WILLIAMS

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing trade practices  
between suppliers and dealers of certain equipment  
and machinery. (BDR 52-1059)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade practices; requiring a supplier of certain  
equipment and machinery to repurchase the equipment  
and machinery from a dealer to whom it was sold under  
certain circumstances; providing for the payment of  
claims for reimbursement for work performed by such a  
dealer under a warranty; and providing other matters  
properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     **Section 1.** Chapter 597 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 20, inclusive, of this  
3 act.

4     **Sec. 2.** *As used in sections 2 to 20, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 8, inclusive, of this act have the meanings ascribed*  
7 *to them in those sections.*

8     **Sec. 3.** *“Dealer” means any person who engages in the*  
9 *business of selling inventory. The term does not include a single-*  
10 *line dealer who engages primarily in the retail sale and servicing*  
11 *of off-road construction and earth-moving equipment and:*



\* A B 3 6 9 R 1 \*

- 1     1. *Who purchases at least 75 percent of the new inventory of*
- 2 *one supplier pursuant to a dealer agreement with the supplier; and*
- 3     2. *Whose annual average sales are more than \$10,000,000 of*
- 4 *inventory purchased from the supplier for the immediately*
- 5 *preceding 3 years.*

6     **Sec. 4.** *“Dealer agreement” means an oral or written*

7 *agreement between a supplier and a dealer by which:*

8     1. *A commercial relationship of definite duration or*

9 *continuing indefinite duration is established;*

10    2. *The dealer is granted the right to offer and sell inventory at*

11 *retail;*

12    3. *The dealer constitutes a component of a system for the*

13 *distribution of inventory; and*

14    4. *The operation of a portion of the dealer’s business is*

15 *substantially dependent upon the supplier for a continued supply*

16 *of inventory.*

17     **Sec. 5.** *“Inventory” means machinery, farm equipment,*

18 *utility equipment, industrial equipment, construction equipment,*

19 *outdoor power equipment or any attachments or repair parts for*

20 *that machinery or equipment.*

21     **Sec. 6.** *“Net price” means the price set forth in the price list*

22 *or catalog of a supplier which is in effect when a dealer agreement*

23 *is terminated, less any applicable trade or cash discounts.*

24     **Sec. 7.** *“Superseded part” or “superseded repair part” means*

25 *a part which has an equivalent function of a part which is*

26 *available on the date of the termination of a dealer agreement.*

27     **Sec. 8.** *“Supplier” means:*

28     1. *A manufacturer, wholesaler or wholesale distributor of*

29 *new inventory;*

30     2. *A purchaser of the assets or shares of a surviving*

31 *corporation resulting from a merger or liquidation of a supplier;*

32 *or*

33     3. *A receiver, assignee or trustee of such a manufacturer,*

34 *wholesaler or wholesale distributor.*

35     **Sec. 9.** 1. *A supplier shall not terminate, fail to renew or*

36 *substantially change the terms of a dealer agreement without good*

37 *cause.*

38     2. *Except as otherwise provided in this section, a supplier*

39 *may terminate or refuse to renew a dealer agreement for good*

40 *cause if the supplier provides to the dealer a written notice setting*

41 *forth the reasons for the termination or nonrenewal of the dealer*

42 *agreement at least 180 days before the termination or nonrenewal*

43 *of the dealer agreement.*

44     3. *A supplier shall include in the written notice required by*

45 *subsection 2 an explanation of the deficiencies of the dealer and*



1 *the manner in which those deficiencies must be corrected. If the*  
2 *dealer corrects the deficiencies set forth in the notice within 60*  
3 *days after he receives the notice, the supplier shall not terminate*  
4 *or fail to renew the dealer agreement for the reasons set forth in*  
5 *the notice.*

6 *4. A supplier shall not terminate or refuse to renew a dealer*  
7 *agreement based solely on the failure of the dealer to comply with*  
8 *the requirements of the dealer agreement concerning the share of*  
9 *the market the dealer was required to obtain unless the supplier*  
10 *has, for not less than 1 year, provided assistance to the dealer in*  
11 *the dealer's effort to obtain the required share of the market.*

12 *5. A supplier is not required to comply with the provisions of*  
13 *subsections 2 and 3 if the supplier terminates or refuses to renew a*  
14 *dealer agreement for any reason set forth in paragraphs (b) to (i),*  
15 *inclusive, of subsection 6.*

16 *6. As used in this section, "good cause" means:*

17 *(a) A dealer fails to comply with the terms of a dealer*  
18 *agreement, if the terms are not substantially different from the*  
19 *terms required for other dealers in this state or any other state;*

20 *(b) A closeout or sale of a substantial part of the business*  
21 *assets of a dealer or a commencement of the dissolution or*  
22 *liquidation of the business assets of the dealer;*

23 *(c) A dealer changes its principal place of business or adds*  
24 *other places of business without the prior approval of the supplier,*  
25 *which may not be unreasonably withheld;*

26 *(d) A dealer substantially defaults under a chattel mortgage or*  
27 *other security agreement between the dealer and the supplier;*

28 *(e) A guarantee of a present or future obligation of a dealer to*  
29 *the supplier is revoked or discontinued;*

30 *(f) A dealer fails to operate in the normal course of business*  
31 *for at least 7 consecutive days;*

32 *(g) A dealer abandons the dealership;*

33 *(h) A dealer pleads guilty to or is convicted of a felony*  
34 *affecting the business relationship between the dealer and*  
35 *supplier; or*

36 *(i) A dealer transfers a financial interest in the dealership, a*  
37 *person who has a substantial financial interest in the ownership or*  
38 *control of the dealership dies or withdraws from the dealership, or*  
39 *the financial interest of a partner or major shareholder in the*  
40 *dealership is substantially reduced.*

41 *For the purposes of this section, good cause does not exist if the*  
42 *supplier consents to any action described in this section.*

43 **Sec. 10. 1.** *Each year a supplier shall allow each dealer*  
44 *with whom it has entered into a dealer agreement to return to the*



1 *supplier for credit a portion of the surplus parts in the dealer's*  
2 *inventory.*

3 2. *A supplier shall notify each dealer of the period it has*  
4 *designated for that dealer to submit a list of the surplus parts the*  
5 *dealer wishes to return and for that dealer to return the surplus*  
6 *parts to the supplier. The period designated for each dealer for the*  
7 *return of surplus parts must not be less than 90 days.*

8 3. *If a supplier fails to notify a dealer of the period during*  
9 *which the dealer may return surplus parts within the preceding 12*  
10 *months, the supplier shall authorize the return of a dealer's*  
11 *surplus parts within 60 days after the supplier receives a request*  
12 *from the dealer to return the surplus parts.*

13 4. *A dealer may return surplus parts equal to not more than*  
14 *10 percent of the value of the parts purchased by the dealer from*  
15 *the supplier during:*

16 (a) *The 12-month period immediately preceding the notice*  
17 *provided to the dealer by the supplier pursuant to subsection 2; or*

18 (b) *The month the supplier receives a request from a dealer*  
19 *pursuant to subsection 3 to return surplus parts to the*  
20 *supplier,*  
21 *whichever is applicable.*

22 5. *Any part included in the supplier's list of returnable parts*  
23 *or any superseded part that is not eligible for return to the supplier*  
24 *on the date the supplier provides notice to the dealer pursuant to*  
25 *subsection 2 or the date the supplier receives the dealer's request*  
26 *pursuant to subsection 3, whichever is applicable, is eligible for*  
27 *credit as a returned surplus part. A part which is returned must be*  
28 *in new and undamaged condition and must have been purchased*  
29 *by the dealer from the supplier to whom it is returned.*

30 6. *The minimum credit allowed for a returned part is 95*  
31 *percent of the net price, as set forth in the supplier's list of*  
32 *returnable parts on the date the supplier provides notice to the*  
33 *dealer pursuant to subsection 2 or the date the supplier receives*  
34 *the dealer's request pursuant to subsection 3, whichever is*  
35 *applicable.*

36 7. *All applicable credit for the returned parts must be issued*  
37 *or provided to the dealer within 90 days after the supplier receives*  
38 *the dealer's returned surplus parts.*

39 8. *The provisions of this section:*

40 (a) *Do not apply to a supplier that has established a program*  
41 *for its dealers for the return of surplus repair parts if the program*  
42 *provides credit of not less than 85 percent of the net price for the*  
43 *returned repair parts;*

44 (b) *Do not prohibit a supplier from charging a dealer's*  
45 *account for the amounts previously paid or credited by the*



1 *supplier as a discount incident to the dealer's purchase of goods;*  
2 *and*

3 *(c) Do not require a dealer to return for credit surplus parts to*  
4 *a supplier.*

5 **Sec. 11.** *A supplier shall not:*

6 *1. Require a dealer to accept delivery of equipment, parts or*  
7 *accessories which the dealer has not ordered unless the*  
8 *equipment, parts or accessories are required by the supplier for*  
9 *the safe use of any inventory provided to the dealer by the*  
10 *supplier;*

11 *2. Condition the sale of any equipment to a dealer upon the*  
12 *purchase of additional goods or services, except that a supplier*  
13 *may require a dealer to purchase those parts which are necessary*  
14 *to maintain the equipment used in the area where the dealership is*  
15 *located;*

16 *3. Prohibit a dealer from purchasing equipment*  
17 *manufactured by another supplier; or*

18 *4. Terminate, fail to renew or substantially change the terms*  
19 *of a dealer agreement because of a natural disaster, including a*  
20 *drought in the market area of the dealership, a labor dispute or*  
21 *any other similar circumstances which are beyond the control of*  
22 *the dealer.*

23 **Sec. 12.** *1. Except as otherwise provided in this section,*  
24 *upon the termination of a dealer agreement by a supplier or*  
25 *dealer, the supplier shall repurchase the inventory held by the*  
26 *dealer on the date of the termination of the dealer agreement.*

27 *2. A supplier who repurchases the inventory of a dealer*  
28 *pursuant to subsection 1 shall:*

29 *(a) Pay the dealer:*

30 *(1) One hundred percent of the net price of all new and*  
31 *undamaged inventory; and*

32 *(2) Ninety-five percent of the net price of new and*  
33 *undamaged superseded repair parts.*

34 *(b) Except as otherwise provided in this paragraph, pay the*  
35 *dealer an amount equal to 5 percent of the net price of all new and*  
36 *undamaged repair parts returned to the supplier to cover the cost*  
37 *incurred by the dealer for handling, packing and shipping the*  
38 *superseded repair parts to the supplier. If the supplier handles,*  
39 *packs and ships the superseded repair parts, the dealer is not*  
40 *entitled to receive any money for those services which the supplier*  
41 *performed.*

42 *(c) Purchase, at its depreciated value, any computers, software*  
43 *or telecommunications equipment that the supplier required the*  
44 *dealer to purchase within the previous 5 years.*



- 1       (d) *Repurchase, at 75 percent of the net cost, any specialized*
- 2 *repair tools purchased if those tools are:*
- 3       (1) *Included in the tool catalog of the supplier;*
- 4       (2) *Purchased in accordance with the requirements of the*
- 5 *supplier;*
- 6       (3) *Held by the dealer on the date of the termination of the*
- 7 *dealer agreement; and*
- 8       (4) *Complete and in resalable condition.*
- 9       (e) *Repurchase any inventory which is owned by the supplier*
- 10 *and leased, rented or used in demonstrations by the dealer if the*
- 11 *supplier receives an allowance based on the use of such inventory.*
- 12 *Inventory which is used in demonstrations for not more than a*
- 13 *total of 50 hours shall be deemed new inventory. Inventory which*
- 14 *is used in demonstrations for more than 50 hours and purchased*
- 15 *from the supplier less than 36 months before the termination of*
- 16 *the dealer's agreement must be repurchased at its depreciated*
- 17 *value, as determined by the supplier and dealer.*
- 18       3. *If the dealer agreement authorizes the dealer to retain the*
- 19 *inventory upon the termination of the dealer agreement, the dealer*
- 20 *may retain any portion of the inventory, except any specialized*
- 21 *tools described in paragraph (d) of subsection 2 which the supplier*
- 22 *wishes to repurchase from the dealer.*
- 23       4. *If the dealer owes any outstanding debts to the supplier,*
- 24 *the amount of the repurchase of the inventory may be set off or*
- 25 *credited to the account of the dealer.*
- 26       5. *Upon payment to the dealer of the amount for the*
- 27 *repurchase of the inventory pursuant to this section, the title and*
- 28 *right of possession to the inventory transfers to the supplier.*
- 29       **Sec. 13.** 1. *At the end of each year after the termination of*
- 30 *a dealer agreement, a dealer's reserve account for recourse, retail*
- 31 *sale or lease contracts may not be debited by a supplier or lender*
- 32 *for any deficiency unless the dealer is given written notice of at*
- 33 *least 7 business days by certified or registered mail, return receipt*
- 34 *requested, of any proposed sale of the inventory which was*
- 35 *financed and an opportunity to purchase the inventory.*
- 36       2. *The dealer must be given quarterly reports concerning any*
- 37 *remaining outstanding recourse contracts. As the recourse*
- 38 *contracts are reduced, any money in the reserve account must be*
- 39 *returned to the dealer in direct proportion to the liabilities*
- 40 *outstanding.*
- 41       **Sec. 14.** *The provisions of sections 2 to 20, inclusive, of this*
- 42 *act do not require a supplier to repurchase from a dealer:*
- 43       1. *Any repair part which is not in new and undamaged*
- 44 *condition or, because of its condition, is not resalable as a new*
- 45 *part;*



1       2. Any inventory which the dealer retains pursuant to  
2 subsection 3 of section 12 of this act;

3       3. Any inventory which is not in new, undamaged and  
4 complete condition;

5       4. Any inventory which was ordered by the dealer on or after  
6 the date of the termination of the dealer agreement; or

7       5. Any inventory which was purchased more than 36 months  
8 before the notice of the termination of the dealer agreement is  
9 provided.

10       **Sec. 15.** *If a supplier fails or refuses to repurchase and pay a*  
11 *dealer for any inventory the supplier is required to repurchase in*  
12 *accordance with the provisions of sections 2 to 20, inclusive, of*  
13 *this act within 60 days after shipment of the inventory to the*  
14 *supplier, the supplier is liable for:*

15       1. An amount equal to 100 percent of the net price of the  
16 inventory;

17       2. Any shipping charges paid by the dealer;

18       3. Attorney's fees and court costs; and

19       4. An amount equal to the interest on the amount of the net  
20 price calculated at the legal rate of interest from the 61st day after  
21 the date of the shipment of the inventory to the supplier.

22       **Sec. 16. 1.** *Upon the death of a dealer or the majority*  
23 *shareholder of a corporation which operates as a dealer, the*  
24 *supplier shall, upon the approval or request of the devisee or heir*  
25 *of the dealer or majority shareholder, repurchase the inventory of*  
26 *the dealer in the manner prescribed in section 12 of this act.*

27       2. *The devisee or heir shall, within 1 year after the death of*  
28 *the dealer or majority stockholder, notify the supplier whether the*  
29 *supplier will be required to repurchase the inventory of the dealer.*

30       3. *A supplier is not required to repurchase the inventory of*  
31 *the dealer if the devisee or heir and the supplier enter into a new*  
32 *dealer agreement to operate the dealership.*

33       4. *This section does not authorize any person, including a*  
34 *devisee or heir, to operate a dealership without the written*  
35 *approval of the supplier.*

36       5. *An agreement executed by the supplier and dealer that sets*  
37 *forth the rights relating to succession to the operation of the*  
38 *dealership is enforceable without regard to the person who is*  
39 *designated as the successor to the dealership.*

40       6. *As used in this section:*

41       (a) *"Devisee" has the meaning ascribed to it in NRS 132.100.*

42       (b) *"Heir" has the meaning ascribed to it in NRS 132.165.*

43       **Sec. 17.** *The provisions of sections 2 to 20, inclusive, of this*  
44 *act do not affect any security interest which a supplier has in the*  
45 *inventory of a dealer. The dealer and supplier shall each provide a*



1 *representative to inspect the inventory and certify its acceptability*  
2 *when packaged for shipment. The failure of the supplier to*  
3 *provide a representative for the inspection within 60 days shall be*  
4 *deemed acceptance by the supplier of the inventory returned to the*  
5 *supplier.*

6 **Sec. 18. 1.** *A dealer may bring a civil action for damages in*  
7 *a court of competent jurisdiction against a supplier who violates*  
8 *any of the provisions of sections 2 to 20, inclusive, of this act and*  
9 *may recover damages incurred as a result of any violation*  
10 *committed by the supplier, including costs and attorney's fees.*

11 **2.** *A dealer may apply for injunctive relief for the unlawful*  
12 *termination, nonrenewal or substantial change of the terms of a*  
13 *dealer agreement.*

14 **3.** *The remedies provided in this section are in addition to any*  
15 *other remedies provided by law.*

16 **Sec. 19. 1.** *Except as otherwise provided in this section, any*  
17 *agreement entered into by a supplier and a dealer concerning*  
18 *reimbursement for work performed under a warranty, including,*  
19 *without limitation, a dealer agreement, must comply with the*  
20 *provisions set forth in this section.*

21 **2.** *A supplier who authorizes a dealer to perform work under a*  
22 *warranty shall reimburse a dealer who submits a warranty claim*  
23 *for such work. A dealer may submit a warranty claim to a*  
24 *supplier:*

25 *(a) During the period the dealer agreement is in effect; or*

26 *(b) After the termination of a dealer agreement if the warranty*  
27 *claim concerns work performed under a warranty during the*  
28 *period the dealer agreement was in effect.*

29 **3.** *A warranty claim which is submitted to a supplier must be*  
30 *paid within 30 days after the claim is approved by the supplier.*  
31 *The supplier shall approve or disapprove a warranty claim or any*  
32 *part thereof within 30 days after it receives the warranty claim. If*  
33 *the warranty claim is disapproved, the supplier shall, not later*  
34 *than 30 days after it receives the warranty claim, send written*  
35 *notice to the dealer setting forth the reasons for disapproval of the*  
36 *warranty claim. A warranty claim which is not disapproved by the*  
37 *supplier within the prescribed period shall be deemed approved.*

38 **4.** *The amount of a warranty claim must not be less than the*  
39 *amount equal to the sum of:*

40 *(a) The reasonable and customary time required by the dealer*  
41 *to complete the work, including diagnostic time, expressed in*  
42 *hours and fractions of hours, multiplied by the dealer's hourly*  
43 *retail rate for labor;*

44 *(b) The dealer's net price for any repair parts replaced, plus 20*  
45 *percent of the net price for those parts; and*





1 (c) *If a warranty claim concerns repair work for any*  
2 *machinery or equipment which is performed by the dealer in*  
3 *accordance with a safety or modification order issued by a*  
4 *supplier, the costs incurred by the dealer to transport to the*  
5 *dealer's place of business for repair any machinery or equipment*  
6 *which is within the dealer's service area and subject to a safety or*  
7 *modification order.*

8 5. *After a supplier has paid a warranty claim, the supplier*  
9 *shall not charge back, set off or otherwise attempt to recover from*  
10 *a dealer any amount of the warranty claim unless:*

11 (a) *The warranty claim is fraudulent;*

12 (b) *The work was not performed properly or was not necessary*  
13 *to comply with the requirements of the warranty; or*

14 (c) *The dealer did not provide the records for the warranty*  
15 *claim as required by the agreement for work performed under the*  
16 *warranty.*

17 6. *A supplier shall not require a dealer to pay the costs*  
18 *incurred by the supplier in paying warranty claims by:*

19 (a) *Imposing a surcharge;*

20 (b) *Reducing any discounts provided to a dealer; or*

21 (c) *Imposing additional requirements for the certification of a*  
22 *dealer authorized to perform work under a warranty.*

23 7. *Except for a warranty claim where fraud is alleged, a*  
24 *supplier may not audit the records of a dealer relating to a*  
25 *warranty claim more than 1 year after the warranty claim is*  
26 *submitted to the supplier. A supplier may not audit a warranty*  
27 *claim more than once. The provisions of this subsection do not*  
28 *prohibit a supplier from requesting additional information from a*  
29 *dealer if the initial audit of the warranty claim indicates any*  
30 *errors, inconsistencies or fraud.*

31 8. *The provisions of this section do not apply to a written*  
32 *dealer agreement which provides compensation to a dealer for any*  
33 *labor required to be performed under a warranty before the labor*  
34 *is performed if the compensation is based on:*

35 (a) *A reduction of the price of the equipment sold to the*  
36 *dealer; or*

37 (b) *A lump-sum payment of not less than 5 percent of the*  
38 *suggested retail price of the equipment.*

39 9. *As used in this section:*

40 (a) *"Audit" means an examination by a supplier of the records*  
41 *of a warranty claim submitted by a dealer.*

42 (b) *"Net price" means the price a supplier charges a dealer for*  
43 *a repair part.*



1       (c) *“Warranty claim” means a request submitted by a dealer to*  
2 *a supplier for payment for work performed under a warranty or a*  
3 *safety or modification order issued by the supplier.*

4       **Sec. 20.** 1. *A person may not waive or modify a right,*  
5 *obligation or liability set forth in the provisions of sections 2 to 20,*  
6 *inclusive, of this act.*

7       2. *A condition, stipulation or provision of a dealer agreement*  
8 *or any other agreement that:*

9       (a) *Limits the procedural or substantive rights of a dealer*  
10 *pursuant to the provisions of sections 2 to 20, inclusive, of this act;*

11       (b) *Requires a person to waive a right set forth in the*  
12 *provisions of sections 2 to 20, inclusive, of this act; or*

13       (c) *Relieves a person of an obligation or liability imposed by*  
14 *the provisions of sections 2 to 20, inclusive, of this act,*  
15 *is void.*

16       **Sec. 21.** 1. This act applies to a dealer agreement or any  
17 agreement for the payment of claims for reimbursement for work  
18 performed by a dealer under a warranty provided by a supplier  
19 which is entered into between a supplier and dealer before, on or  
20 after October 1, 2003.

21       2. As used in this section:

22       (a) “Dealer” has the meaning ascribed to it in section 3 of this  
23 act.

24       (b) “Dealer agreement” has the meaning ascribed to it in section  
25 4 of this act.

26       (c) “Supplier” has the meaning ascribed to it in section 8 of this  
27 act.

