AN ACT

ENTITLED, An Act to revise certain provisions with regard to the rights of industrial and construction equipment dealers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as follows:

Any dealer, as defined in § 37-5-12.1 or subdivision 37-5-13(1), whose business or property is injured by a violation of chapter 37-5 may bring a civil action to recover all court costs and reasonable attorney's fees in addition to all other remedies of law.

Section 2. That § 37-5-11 be amended to read as follows:

37-5-11. Any provision in any agreement evidenced by a franchise agreement, sales agreement, security agreement, or other form of agreement or arrangement of like effect between any wholesaler, manufacturer, distributor of farm machinery or implements, or distributor of industrial or construction equipment and a retail dealer restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state to disputes arising under the agreement is void as a matter of public policy.

Section 3. That § 37-5-12.1 be amended to read as follows:

37-5-12.1. For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, dealer, means any person, or the person's successor who, for commission or with intent to make a profit or gain, sells, exchanges, rents, leases with the option to purchase, or offers or attempts to negotiate a sale or exchange any merchandise as defined by this chapter from manufacturer authorized facilities in this state, or who is engaged wholly or in part in the business of selling any such merchandise from manufacturer authorized facilities in this state. The term does not include any person with total annual gross sales in this state and elsewhere of one hundred million dollars or more of industrial and construction equipment, attachments, replacement parts, and service related to the equipment,

from any one manufacturer or supplier of such equipment.

Section 4. That § 37-5-13 be amended to read as follows:

37-5-13. Terms used in §§ 37-5-13 to 37-5-15, inclusive, mean:

(1) "Dealer," any person who receives machinery from a manufacturer under a dealership contract and who offers and sells the machinery to the general public from manufacturer authorized facilities in this state. The term, dealer, does not include a single-line dealer or any person with total annual gross sales in this state and elsewhere of one hundred million dollars or more of industrial and construction equipment, attachments, replacement parts, and service related to the equipment, from any one manufacturer or supplier of such equipment;

(2) "Dealership contract," a written agreement or contract between a manufacturer and dealer which fixes the legal rights and liabilities of the parties to such agreement or contract;

(3) "Machinery," any farm vehicle as defined by § 32-3-2.4 or any off-road vehicle as defined by subdivision 32-3-1(15) or merchandise as defined in subdivision 37-5-12.2(3);

(4) "Manufacturer," any person engaged in the manufacturing or distribution of machinery including any person who acts for the manufacturer;

(5) "Single-line dealer," any person that has purchased seventy-five percent or more of the dealer's total new product inventory from a single manufacturer of industrial and construction equipment under agreements with that manufacturer and has a total annual average sales of industrial and construction equipment volume for the three previous years with that single manufacturer in excess of fifty million dollars for the territory for which that dealer is responsible.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1227

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Chief Clerk

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_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1227
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State