

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

176B0662

HOUSE BILL NO. 1103

Introduced by: Representative Pischke

1 FOR AN ACT ENTITLED, An Act to establish a lemon law for certain farm machinery.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 Term used in this Act mean:

5 (1) "Consumer," the purchaser, other than for purposes of resale, of new farm machinery
6 used for agricultural purposes, who is entitled by the terms of the warranty to enforce
7 the obligations of the warranty;

8 (2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of new
9 farm machinery, including any terms or conditions precedent to the enforcement of
10 obligations under that warranty;

11 (3) "Farm machinery," any self-propelled equipment or machinery used for agricultural
12 purposes being transferred for the first time from a manufacturer, distributor, or new
13 farm machinery dealer which is offered for sale, barter, or exchange by a dealer who
14 is franchised to sell, barter, or exchange that particular make of new farm machinery.

15 The term includes farm machinery propelled by power other than muscular power but



1 does not include off-road vehicles other than self-propelled equipment and machinery
2 used for agricultural purposes;

3 (4) "Lemon law rights period," the period ending one year after the date of the original
4 delivery of new farm machinery to a consumer;

5 (5) "Manufacturer," the person, firm, corporation, or limited liability company engaged
6 in the business of manufacturing, importing, or distributing farm machinery to be
7 made available to a farm machinery dealer for retail sale;

8 (7) "Nonconforming condition," any condition of new farm machinery that is not in
9 conformity with the terms of any express warranty issued by the manufacturer to a
10 consumer and that significantly impairs the use, value, or safety of the farm
11 machinery and occurs or arises solely in the course of the ordinary use of the farm
12 machinery, and that does not arise or occur as a result of abuse, neglect, modification,
13 or alteration of the farm machinery not authorized by the manufacturer, nor from any
14 accident or other damage to the farm machinery that occurs or arises after the farm
15 machinery was delivered by an authorized dealer to the consumer;

16 (8) "Notice of a nonconforming condition," a written statement delivered to the
17 manufacturer and that describes the farm machinery, the nonconforming condition,
18 and all previous attempts to correct the nonconforming condition by identifying the
19 person who made the attempt and the time the attempt was made.

20 Section 2. That the code be amended by adding a NEW SECTION to read:

21 If new farm machinery does not conform to any applicable express warranty and the
22 consumer delivers the farm machinery to the manufacturer or its authorized dealer and gives
23 notice of the nonconforming condition during the lemon law rights period, the manufacturer of
24 the farm machinery shall make the necessary repairs to the farm machinery to remedy any such

1 nonconforming condition. The repairs are required even after the expiration of the lemon law
2 rights period if notice of the nonconforming condition was first given during the lemon law
3 rights period. However, the manufacturer's obligation to repair the nonconforming condition
4 does not extend beyond the period of twenty-four months following delivery of the farm
5 machinery.

6 Section 3. That the code be amended by adding a NEW SECTION to read:

7 If, after reasonable attempts, the manufacturer or its authorized dealer is unable to conform
8 the farm machinery to any express warranty by repairing or correcting a nonconforming
9 condition of the farm machinery which first occurred during the lemon law rights period, the
10 manufacturer shall, through its authorized dealer, at the option of the consumer, replace the farm
11 machinery with comparable new farm machinery and shall refund the customer all collateral
12 charges, including any excise tax, or shall accept return of the farm machinery from the
13 consumer and refund to the consumer the following:

- 14 (1) The full contract price including charges for dealer preparation, transportation
15 charges, and installed options, plus the nonrefundable portions of extended
16 warranties and service contracts;
- 17 (2) All collateral charges, including excise tax;
- 18 (3) All finance charges incurred by the consumer after the consumer first reported the
19 nonconformity to the manufacturer or its authorized dealer; and
- 20 (4) Any incidental damages which shall include the reasonable cost of alternative farm
21 machinery during the period that the consumer is without the use of the farm
22 machinery because of the nonconforming condition.

23 Section 4. That the code be amended by adding a NEW SECTION to read:

24 Refunds shall be made to the consumer and any lien holders, as their interests may appear.

1 There shall be offset against any monetary recovery of the consumer a reasonable allowance for
2 the consumer's use of the farm machinery. A reasonable allowance for use is that amount
3 directly attributable to use by the consumer before the consumer's first report of the
4 nonconformity to the manufacturer or authorized dealer.

5 Section 5. That the code be amended by adding a NEW SECTION to read:

6 It is presumed that reasonable attempts to correct a nonconforming condition have been
7 allowed by the consumer if, during the period of twenty-four months following delivery of the
8 farm machinery, either of the following events occurred:

9 (1) The same nonconforming condition was subject to repair attempts four or more times
10 by the manufacturer, or its authorized dealers, at least one of which occurred during
11 the lemon law rights period, plus a final attempt by the manufacturer, and the same
12 nonconforming condition continues to exist; or

13 (2) The farm machinery was out of service and in the custody of the manufacturer or an
14 authorized dealer due to repair attempts including the final repair attempt, one of
15 which occurred during the lemon law rights period, for a cumulative total of thirty
16 calendar days, unless the repair could not be performed because of conditions beyond
17 the control of the manufacturer or authorized dealers, such as war, invasion, strike,
18 fire, flood, or other natural disaster.

19 Section 6. That the code be amended by adding a NEW SECTION to read:

20 A consumer sustaining damages as a proximate consequence of the failure by a
21 manufacturer to perform the manufacturer's obligations imposed under this Act may bring a civil
22 action against the manufacturer to enforce the provisions of this Act. Prior to the
23 commencement of any such proceeding a consumer shall give notice of a nonconforming
24 condition by certified mail to the manufacturer and demand correction or repair of the

1 nonconforming condition. If at the time the notice of a nonconforming condition is given to the
2 manufacturer, a presumption has arisen that reasonable attempts to correct a nonconforming
3 condition have been allowed, the manufacturer shall be given a final opportunity to cure the
4 nonconforming condition. The manufacturer shall within seven calendar days of receiving the
5 written notice of nonconforming condition notify the consumer of a reasonably accessible repair
6 facility. After delivery of the farm machinery to the authorized repair facility by the consumer,
7 the manufacturer shall attempt to correct the nonconforming condition and conform the farm
8 machinery to the express warranty within a period not to exceed fourteen calendar days. If a
9 manufacturer has established an informal dispute settlement procedure conducted within the
10 state which is in compliance with federal rules and regulations, a consumer shall first exhaust
11 any remedy afforded to the consumer under the informal dispute procedure of the manufacturer
12 before a cause of action may be instituted under the provisions of this Act.

13 Section 7. That the code be amended by adding a NEW SECTION to read:

14 It is an affirmative defense to any claim against the manufacturer under this Act that:

- 15 (1) An alleged nonconforming condition does not significantly impair the use, market
16 value, or safety of the farm machinery; or
17 (2) A nonconforming condition is a result of abuse, neglect, or any modification or
18 alteration of farm machinery by a consumer that is not authorized by the
19 manufacturer.

20 Section 8. That the code be amended by adding a NEW SECTION to read:

21 If the manufacturer has breached the manufacturer's obligations imposed under this Act, the
22 consumer may recover an award for reasonable attorney fees.

23 Section 9. That the code be amended by adding a NEW SECTION to read:

24 If farm machinery has been returned to the manufacturer under the provisions of this Act or

1 a similar statute of another state, whether as the result of a legal action or as the result of an
2 informal dispute settlement proceeding, it may not be resold in this state unless the manufacturer
3 discloses in writing to the subsequent purchaser the fact that the farm machinery was returned
4 under the provisions of this Act and the nature of the nonconformity to the farm machinery
5 warranty.

6 Section 10. That the code be amended by adding a NEW SECTION to read:

7 Nothing in this Act imposes any liability upon a farm machinery dealer or authorized dealer
8 or creates a cause of action by a consumer against a farm machinery dealer or authorized dealer.

9 No manufacturer may charge back or require reimbursement by a farm machinery dealer or
10 authorized dealer for any costs, including any refunds or farm machinery replacements, incurred
11 by the manufacturer arising out of this Act.

12 Section 11. That the code be amended by adding a NEW SECTION to read:

13 Any action brought under this Act against the manufacturer shall be commenced within
14 three years following the date of original delivery of the farm machinery to the consumer.