

AN ACT

ENTITLED, An Act to establish a lemon law for certain farm machinery.

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

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

Term used in this Act mean:

- (1) "Consumer," the purchaser, other than for purposes of resale, of new farm machinery used for agricultural purposes, who is entitled by the terms of the warranty to enforce the obligations of the warranty;
- (2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of new farm machinery, including any terms or conditions precedent to the enforcement of obligations under that warranty;
- (3) "Farm machinery," any self-propelled equipment or machinery used for agricultural purposes being transferred for the first time from a manufacturer, distributor, or new farm machinery dealer which is offered for sale, barter, or exchange by a dealer who is franchised to sell, barter, or exchange that particular make of new farm machinery. The term includes farm machinery propelled by power other than muscular power but does not include off-road vehicles other than self-propelled equipment and machinery used for agricultural purposes;
- (4) "Lemon law rights period," the period ending one year after the date of the original delivery of new farm machinery to a consumer;
- (5) "Manufacturer," the person, firm, corporation, or limited liability company engaged in the business of manufacturing, importing, or distributing farm machinery to be made available to a farm machinery dealer for retail sale;
- (7) "Nonconforming condition," any condition of new farm machinery that is not in

conformity with the terms of any express warranty issued by the manufacturer to a consumer and that significantly impairs the use, value, or safety of the farm machinery and occurs or arises solely in the course of the ordinary use of the farm machinery, and that does not arise or occur as a result of abuse, neglect, modification, or alteration of the farm machinery not authorized by the manufacturer, nor from any accident or other damage to the farm machinery that occurs or arises after the farm machinery was delivered by an authorized dealer to the consumer;

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

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

If new farm machinery does not conform to any applicable express warranty and the consumer delivers the farm machinery to the manufacturer or its authorized dealer and gives notice of the nonconforming condition during the lemon law rights period, the manufacturer of the farm machinery shall make the necessary repairs to the farm machinery to remedy any such nonconforming condition. The repairs are required even after the expiration of the lemon law rights period if notice of the nonconforming condition was first given during the lemon law rights period. However, the manufacturer's obligation to repair the nonconforming condition does not extend beyond the period of twenty-four months following delivery of the farm machinery.

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

If, after reasonable attempts, the manufacturer or its authorized dealer is unable to conform the farm machinery to any express warranty by repairing or correcting a nonconforming condition of the farm machinery which first occurred during the lemon law rights period, the manufacturer shall,

through its authorized dealer, at the option of the consumer, replace the farm machinery with comparable new farm machinery and shall refund the customer all collateral charges, including any excise tax, or shall accept return of the farm machinery from the consumer and refund to the consumer the following:

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

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

Refunds shall be made to the consumer and any lien holders, as their interests may appear. There shall be offset against any monetary recovery of the consumer a reasonable allowance for the consumer's use of the farm machinery. A reasonable allowance for use is that amount directly attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer or authorized dealer.

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

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

- (1) The same nonconforming condition was subject to repair attempts four or more times by

the manufacturer, or its authorized dealers, at least one of which occurred during the lemon law rights period, plus a final attempt by the manufacturer, and the same nonconforming condition continues to exist; or

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

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

A consumer sustaining damages as a proximate consequence of the failure by a manufacturer to perform the manufacturer's obligations imposed under this Act may bring a civil action against the manufacturer to enforce the provisions of this Act. Prior to the commencement of any such proceeding a consumer shall give notice of a nonconforming condition by certified mail to the manufacturer and demand correction or repair of the nonconforming condition. If at the time the notice of a nonconforming condition is given to the manufacturer, a presumption has arisen that reasonable attempts to correct a nonconforming condition have been allowed, the manufacturer shall be given a final opportunity to cure the nonconforming condition. The manufacturer shall within seven calendar days of receiving the written notice of nonconforming condition notify the consumer of a reasonably accessible repair facility. After delivery of the farm machinery to the authorized repair facility by the consumer, the manufacturer shall attempt to correct the nonconforming condition and conform the farm machinery to the express warranty within a period not to exceed fourteen calendar days. If a manufacturer has established an informal dispute settlement procedure conducted within the state which is in compliance with federal rules and regulations, a consumer

shall first exhaust any remedy afforded to the consumer under the informal dispute procedure of the manufacturer before a cause of action may be instituted under the provisions of this Act.

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

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

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

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

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

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

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

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

Nothing in this Act imposes any liability upon a farm machinery dealer or authorized dealer or creates a cause of action by a consumer against a farm machinery dealer or authorized dealer. No manufacturer may charge back or require reimbursement by a farm machinery dealer or authorized dealer for any costs, including any refunds or farm machinery replacements, incurred by the manufacturer arising out of this Act.

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

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

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1103

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. 1103

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