

# State of South Dakota

SEVENTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2001

472E0638

## HOUSE BILL NO. 1253

Introduced by: Representatives Begalka, Fryslie, Jaspers, Konold, Lange, and Pummel and  
Senators Koskan, Brosz, Brown (Arnold), Greenfield, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding dealer franchises and  
2 to include outdoor power equipment.

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

4 Section 1. That § 37-5-5 be amended to read as follows:

5 37-5-5. If any person, firm, or corporation, or their successors, engaged in the business of  
6 selling and retailing farm implements or machinery and repair parts for farm implements or  
7 machinery, or in the business of selling and retailing industrial and construction equipment and  
8 repair parts for industrial and construction equipment, or in the business of selling and retailing  
9 outdoor power equipment and repair parts for outdoor power equipment, or in the business of  
10 selling and retailing office furniture, equipment, and supplies and repair parts for office furniture,  
11 equipment, and supplies, or in the business of selling and retailing automobiles, trucks,  
12 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles or repair parts for  
13 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles  
14 enters into a written or oral contract evidenced by franchised agreement, sales agreement, dealer  
15 agreement, or security agreement, or other form of agreement or arrangement of like effect, the

1 term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the foregoing and their  
2 successors. If such person, firm, or corporation, or their successors maintains a stock of parts  
3 or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor  
4 of farm implements or machinery or repair parts therefor, or industrial and construction  
5 equipment or repair parts therefor, or outdoor power equipment or repair parts therefor, or  
6 office furniture, equipment, and supplies or repair parts therefor, or automobiles, trucks,  
7 motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts  
8 therefor, and either the wholesaler, manufacturer, or distributor, or their successors, or the  
9 retailer, or successor, desires to cancel or discontinue the contract, such wholesaler,  
10 manufacturer, or distributor, or successor, shall pay to the retailer, or successor, unless the  
11 retailer, or successor, should desire to keep the merchandise, a sum equal to one hundred percent  
12 of the net cost of all current unused complete farm implements, machinery and attachments,  
13 industrial and construction equipment and attachments, outdoor power equipment and  
14 attachments, office furniture, equipment, and supplies, and attachments, and automobiles, trucks,  
15 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including  
16 transportation and reasonable assembly charges which have been paid by the retailer and ~~eighty-~~  
17 ~~five~~ one hundred percent of the current net prices on repair parts, including superseded parts,  
18 listed in a current price list or catalog which parts had previously been purchased from the  
19 wholesaler, manufacturer, or distributor, or predecessor, and held by the retailer on the date of  
20 the cancellation or discontinuance of the contract. ~~The wholesaler, manufacturer, or distributor,~~  
21 ~~or successor, shall also pay the retailer a sum equal to five percent of the current net price of all~~  
22 ~~parts returned for the handling, packing, and loading of the parts back to the wholesaler,~~  
23 ~~manufacturer, or distributor.~~ Upon the payment of the sum equal to one hundred percent of the  
24 net cost of the farm implements, machinery and attachments, industrial and construction

1 equipment and attachments, outdoor power equipment and attachments, office furniture,  
2 equipment, and supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal  
3 watercraft, all-terrain vehicles, and snowmobiles, plus transportation and reasonable assembly  
4 charges and ~~eighty-five~~ one hundred percent of the current net prices on repair parts, ~~plus five~~  
5 ~~percent handling and loading costs on repair parts only~~, plus freight charges which have been  
6 paid by the retailer, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain  
7 vehicles, or snowmobiles, plus freight charges, or repair parts therefor, ~~plus five percent handling~~  
8 ~~and loading costs on repair parts only~~, the title to the farm implements, farm machinery, industrial  
9 and construction equipment, outdoor power equipment, office furniture, equipment, and  
10 supplies, and repair parts, or automobiles, trucks, motorcycles, boats, personal watercraft,  
11 all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the manufacturer, wholesaler,  
12 or distributor making the payment, and the manufacturer, wholesaler, or distributor, is entitled  
13 to the possession of the farm implements, industrial and construction equipment, outdoor power  
14 equipment, office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,  
15 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor.

16 Section 2. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 A wholesaler, manufacturer, or distributor shall also repurchase from the retailer any  
19 specialized computer hardware or software, specialized tool, or signage which the wholesaler,  
20 manufacturer, or distributor required the retailer to purchase or lease as part of the retail  
21 agreement. Upon delivery to the wholesaler, manufacturer, or distributor of any such specialized  
22 computer hardware or software, tool, or signage, the wholesaler, manufacturer, or distributor  
23 shall pay to the retailer:

24 (1) For such computer hardware and software purchased within the last four years, the

1 net cost less twenty percent per year depreciation;

2 (2) For such computer hardware and software required by the wholesaler, manufacturer,  
3 or distributor and purchased more than four but less than ten years before the  
4 termination, twenty percent of net cost;

5 (3) For any specialized repair tool or signage purchased by the retailer, an amount equal  
6 to seventy-five percent of the cost to the retailer or one hundred percent of the  
7 retailer's cost if the tool or signage was never used.

8 Section 3. That § 37-5-7 be amended to read as follows:

9 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial  
10 and construction equipment and repair parts therefor, and outdoor power equipment and repair  
11 parts thereof, and of office furniture, equipment, and supplies and repair parts therefor, and of  
12 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or  
13 snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in  
14 § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements,  
15 machinery, and attachments, industrial and construction equipment; and attachments, outdoor  
16 power equipment and attachments, office furniture, equipment, and supplies; and attachments,  
17 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and  
18 snowmobiles, and ~~eighty-five~~ one hundred percent of the current net price of repair parts therefor  
19 as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect  
20 at the time the contract is canceled or discontinued and specialized computer hardware and  
21 software, specialized tools, or signage as specified in section 2 of this Act. For purposes of  
22 §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts  
23 therefor, industrial and construction equipment and repair parts therefor, and outdoor power  
24 equipment and repair parts therefor, has actual proof of purchase of any repair parts or other

1 merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair  
2 parts even though not currently listed in any price list or catalog and all other merchandise,  
3 purchased within ten years of the dealership cancellation or termination shall be repurchased at  
4 the original purchase price.

5 Section 4. That § 37-5-7.1 be amended to read as follows:

6 37-5-7.1. The payments to be made to the retailer pursuant to §§ 37-5-5 to 37-5-9, inclusive,  
7 shall be made ~~not~~ no later than ~~six months~~ sixty days from the date the ~~contract is canceled or~~  
8 ~~discontinued,~~ merchandise is returned by the retailer and shall be accompanied by a final detailed  
9 statement of account thereon.

10 Section 5. That § 37-5-8 be amended to read as follows:

11 37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements,  
12 and repair parts for farm machinery, and farm implements, or of industrial and construction  
13 equipment and repair parts for industrial and construction equipment, outdoor power equipment  
14 and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies  
15 and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks,  
16 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts  
17 therefor, or their successors, upon cancellation of a contract by either a retailer or a  
18 manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to  
19 the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and  
20 repair parts for farm machinery and farm implements, or industrial and construction equipment,  
21 and repair parts for industrial and construction equipment, outdoor power equipment and repair  
22 parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair  
23 parts for office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,  
24 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer

1 of the products, who may have a retail sales contract dated after July 1, 1969, in the case of  
2 contracts covering farm machinery, implements and attachments or automobiles and trucks, or  
3 after July 1, 1970, in the case of contracts covering industrial and construction equipment and  
4 attachments, or after July 1, 2001, in the case of the contracts covering outdoor power  
5 equipment and attachments, or after July 1, 1995, in the case of contracts covering office  
6 furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering  
7 motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft,  
8 all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing  
9 contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery,  
10 implements and attachments or automobiles and trucks, or in force and effect on July 1, 1970,  
11 in the case of contracts covering industrial and construction equipment and attachments, or in  
12 force and effect on July 1, 1995, in the case of contracts covering office furniture, equipment,  
13 and supplies, or in force and effect on July 1, 2001, in the case of the contracts covering outdoor  
14 power equipment and attachments, or in force and effect on July 1, 1973, in the case of contracts  
15 covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal  
16 watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or  
17 distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil  
18 action to be brought by the retailer for one hundred percent of the net cost of the farm  
19 implements, machinery and attachments, industrial and construction equipment and attachments,  
20 outdoor power equipment and attachments, office furniture, equipment, and supplies and  
21 attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of  
22 contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus  
23 transportation charges which have been paid by the retailer and ~~eighty-five~~ one hundred percent  
24 of the current net price of repair parts, ~~plus five percent for handling and loading~~ plus freight

1 charges which have been paid by the retailer, plus charges for any specialized computer hardware  
2 and software, specialized tool, and signage as specified in section 2 of this Act.

3 Section 6. That § 37-5-9 be amended to read as follows:

4 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation  
5 operating a retail dealership in the business of selling and retailing farm implements or repair  
6 parts for farm implements, or in the business of selling industrial and construction equipment or  
7 repair parts therefor, or in the business of selling outdoor power equipment or repair parts  
8 therefor, or in the business of selling and retailing office furniture, equipment, and supplies or  
9 repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles,  
10 boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the  
11 wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall  
12 repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at  
13 a sum equal to one hundred percent of the net cost of all current unused complete farm  
14 implements, machinery and attachments, industrial and construction equipment and attachments,  
15 outdoor power equipment and attachments, office furniture, equipment, and supplies and  
16 attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain  
17 vehicles, and snowmobiles, including transportation and reasonable assembly charges which have  
18 been paid by the retailer, and ~~eighty-five~~ one hundred percent of the current net prices on repair  
19 parts, including superseded parts, listed in current price lists or catalogues, ~~plus a sum equal to~~  
20 ~~five percent of the current net price of all parts returned for handling, packing, and loading of~~  
21 ~~the parts~~, and any specialized computer hardware or software, specialized tool, or signage as  
22 specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail  
23 dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is  
24 deemed a cancellation or discontinuance of contract by the retailer under the provisions of

1 § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5  
2 to 37-5-9, inclusive.

3 Section 7. That § 37-5-9 be amended to read as follows:

4 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation  
5 operating a retail dealership in the business of selling and retailing farm implements or repair  
6 parts for farm implements, or in the business of selling industrial and construction equipment or  
7 repair parts therefor, or in the business of selling outdoor power equipment or repairs therefor,  
8 or in the business of selling and retailing office furniture, equipment, and supplies or repair parts  
9 therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats,  
10 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler,  
11 distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase  
12 from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal  
13 to one hundred percent of the net cost of all current unused complete farm implements,  
14 machinery and attachments, industrial and construction equipment and attachments, outdoor  
15 power equipment and attachments, office furniture, equipment, and supplies and attachments,  
16 and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and  
17 snowmobiles, including transportation and reasonable assembly charges which have been paid  
18 by the retailer, and ~~eighty-five~~ one hundred percent of the current net prices on repair parts,  
19 including superseded parts, listed in current price lists or catalogues, plus ~~a sum equal to five~~  
20 ~~percent of the current net price of all parts returned for handling, packing, and loading of the~~  
21 ~~parts~~ any specialized computer hardware or software, specialized tool, or signage as specified  
22 in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership.  
23 If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a  
24 cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and



- 1 as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9,
- 2 inclusive.