

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

472E0638

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

HB 1253 - 02/15/2001

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

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18 ~~five~~ ninety-five percent of the current net prices on repair parts, including superseded parts, listed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

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

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

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

- 1 (1) For such computer hardware and software specifically required by the wholesaler,
2 manufacturer, or distributor purchased within the last five years, the net cost less
3 twenty percent per year depreciation. For purposes of this subdivision, the term,
4 software, means software that is sourced from the wholesaler, manufacturer, or
5 distributor, or its approved vendor, to meet the minimum requirements of the
6 wholesaler, manufacturer, or distributor;
- 7 (2) For current logoed signage constituting the principal outdoor signage required by the
8 wholesaler, manufacturer, or distributor, identifying the retailer as its representative,
9 the original net cost to the dealer less fifteen percent per year, but in no case less than
10 twenty percent of the original net cost to the dealer;
- 11 (3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer,
12 or distributor which is unique to the product line and in complete, usable condition,
13 seventy-five percent of the original net cost to the dealer if within ten years of
14 purchase by the retailer, provided that new, unused specialized repair tools applicable
15 to the products of the wholesaler, manufacturer, or distributor shall be purchased at
16 one hundred percent of the original net cost to the dealer.

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

18 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial
19 and construction equipment and repair parts therefor, and outdoor power equipment and repair
20 parts thereof, and of office furniture, equipment, and supplies and repair parts therefor, and of
21 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or
22 snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in
23 § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements,
24 machinery, and attachments, industrial and construction equipment; and attachments, outdoor

1 power equipment and attachments, office furniture, equipment, and supplies; and attachments,
2 automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
3 snowmobiles, and ~~eighty-five~~ ninety-five percent of the current net price of repair parts therefor
4 as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect
5 at the time the contract is canceled or discontinued and specialized computer hardware and
6 software, specialized tools, or signage as specified in section 2 of this Act. For purposes of
7 §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts
8 therefor, industrial and construction equipment and repair parts therefor, and outdoor power
9 equipment and repair parts therefor, has actual proof of purchase of any repair parts or other
10 merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair
11 parts even though not currently listed in any price list or catalog and all other merchandise,
12 purchased within ten years of the dealership cancellation or termination shall be repurchased at
13 the original purchase price.

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

15 37-5-7.1. The payments to be made to the retailer pursuant to §§ 37-5-5 to 37-5-9, inclusive,
16 shall be made ~~not~~ no later than ~~six months~~ sixty days from the date the ~~contract is canceled or~~
17 ~~discontinued~~; merchandise is received by the wholesaler, manufacturer, or distributor and shall
18 be accompanied by a final detailed statement of account thereon.

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

20 37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements,
21 and repair parts for farm machinery, and farm implements, or of industrial and construction
22 equipment and repair parts for industrial and construction equipment, outdoor power equipment
23 and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies
24 and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks,

1 motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts
2 therefor, or their successors, upon cancellation of a contract by either a retailer or a
3 manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to
4 the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and
5 repair parts for farm machinery and farm implements, or industrial and construction equipment,
6 and repair parts for industrial and construction equipment, outdoor power equipment and repair
7 parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair
8 parts for office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats,
9 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer
10 of the products, who may have a retail sales contract dated after July 1, 1969, in the case of
11 contracts covering farm machinery, implements and attachments or automobiles and trucks, or
12 after July 1, 1970, in the case of contracts covering industrial and construction equipment and
13 attachments, or after July 1, 2001, in the case of the contracts covering outdoor power
14 equipment and attachments, or after July 1, 1995, in the case of contracts covering office
15 furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering
16 motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft,
17 all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing
18 contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery,
19 implements and attachments or automobiles and trucks, or in force and effect on July 1, 1970,
20 in the case of contracts covering industrial and construction equipment and attachments, or in
21 force and effect on July 1, 1995, in the case of contracts covering office furniture, equipment,
22 and supplies, or in force and effect on July 1, 2001, in the case of the contracts covering outdoor
23 power equipment and attachments, or in force and effect on July 1, 1973, in the case of contracts
24 covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal

1 watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or
2 distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil
3 action to be brought by the retailer for one hundred percent of the net cost of the farm
4 implements, machinery and attachments, industrial and construction equipment and attachments,
5 outdoor power equipment and attachments, office furniture, equipment, and supplies and
6 attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of
7 contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus
8 transportation charges which have been paid by the retailer and ~~eighty-five~~ ninety-five percent
9 of the current net price of repair parts, plus five percent for handling and loading plus freight
10 charges which have been paid by the retailer, plus charges for any specialized computer hardware
11 and software, specialized tool, and signage as specified in section 2 of this Act.

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

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repair parts
17 therefor, or in the business of selling and retailing office furniture, equipment, and supplies or
18 repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles,
19 boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the
20 wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall
21 repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at
22 a sum equal to one hundred percent of the net cost of all current unused complete farm
23 implements, machinery and attachments, industrial and construction equipment and attachments,
24 outdoor power equipment and attachments, office furniture, equipment, and supplies and

1 attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain
2 vehicles, and snowmobiles, including transportation and reasonable assembly charges which have
3 been paid by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair
4 parts, including superseded parts, listed in current price lists or catalogues, plus a sum equal to
5 five percent of the current net price of all parts returned for handling, packing, and loading of
6 the parts, and any specialized computer hardware or software, specialized tool, or signage as
7 specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail
8 dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is
9 deemed a cancellation or discontinuance of contract by the retailer under the provisions of
10 § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5
11 to 37-5-9, inclusive.

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

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling outdoor power equipment or repairs therefor,
17 or in the business of selling and retailing office furniture, equipment, and supplies or repair parts
18 therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats,
19 personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler,
20 distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase
21 from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal
22 to one hundred percent of the net cost of all current unused complete farm implements,
23 machinery and attachments, industrial and construction equipment and attachments, outdoor
24 power equipment and attachments, office furniture, equipment, and supplies and attachments,

1 and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and
2 snowmobiles, including transportation and reasonable assembly charges which have been paid
3 by the retailer, and ~~eighty-five~~ ninety-five percent of the current net prices on repair parts,
4 including superseded parts, listed in current price lists or catalogues, plus a sum equal to five
5 percent of the current net price of all parts returned for handling, packing, and loading of the
6 parts any specialized computer hardware or software, specialized tool, or signage as specified
7 in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership.
8 If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a
9 cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and
10 as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9,
11 inclusive.