

AN ACT

ENTITLED, An Act to revise certain provisions regarding dealer franchises and to include outdoor power equipment.

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

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

37-5-5. If any person, firm, or corporation, or their successors, engaged in the business of selling and retailing farm implements or machinery and repair parts for farm implements or machinery, or in the business of selling and retailing industrial and construction equipment and repair parts for industrial and construction equipment, or in the business of selling and retailing outdoor power equipment and repair parts for outdoor power equipment, or in the business of selling and retailing office furniture, equipment, and supplies and repair parts for office furniture, equipment, and supplies, or in the business of selling and retailing automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles or repair parts for automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles enters into a written contract evidenced by franchised agreement, sales agreement, dealer agreement, or security agreement, or other form of agreement or arrangement of like effect, the term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the foregoing and their successors. If such person, firm, or corporation, or their successors maintains a stock of parts or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor of farm implements or machinery or repair parts therefor, or industrial and construction equipment or repair parts therefor, or outdoor power equipment or repair parts therefor, or office furniture, equipment, and supplies or repair parts therefor, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, and either the wholesaler, manufacturer, or distributor, or their successors, or the retailer, or successor, desires to cancel or discontinue the contract, such wholesaler, manufacturer, or

distributor, or successor, shall pay to the retailer, or successor, unless the retailer, or successor, should desire to keep the merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including transportation and reasonable assembly charges which have been paid by the retailer and ninety-five percent of the current net prices on repair parts, including superseded parts, listed in a current price list or catalog which parts had previously been purchased from the wholesaler, manufacturer, or distributor, or predecessor, and held by the retailer on the date of the cancellation or discontinuance of the contract. The wholesaler, manufacturer, or distributor, or successor, shall also pay the retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of the farm implements, machinery and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, plus transportation and reasonable assembly charges and ninety-five percent of the current net prices on repair parts, plus five percent handling and loading costs on repair parts only, plus freight charges which have been paid by the retailer, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus freight charges, or repair parts therefor, plus five percent handling and loading costs on repair parts only, the title to the farm implements, farm machinery, industrial and construction equipment, outdoor power equipment, office furniture, equipment, and supplies, and repair parts, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the

manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor, is entitled to the possession of the farm implements, industrial and construction equipment, outdoor power equipment, office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor.

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

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

- (1) For such computer hardware and software specifically required by the wholesaler, manufacturer, or distributor purchased within the last five years, the net cost less twenty percent per year depreciation. For purposes of this subdivision, the term, software, means software that is sourced from the wholesaler, manufacturer, or distributor, or its approved vendor, to meet the minimum requirements of the wholesaler, manufacturer, or distributor;
- (2) For current logoed signage constituting the principal outdoor signage required by the wholesaler, manufacturer, or distributor, identifying the retailer as its representative, the original net cost to the dealer less fifteen percent per year, but in no case less than twenty percent of the original net cost to the dealer;
- (3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer, or distributor which is unique to the product line and in complete, usable condition, seventy-five percent of the original net cost to the dealer if within ten years of purchase by the

retailer, provided that new, unused specialized repair tools applicable to the products of the wholesaler, manufacturer, or distributor shall be purchased at one hundred percent of the original net cost to the dealer.

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

37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial and construction equipment and repair parts therefor, and outdoor power equipment and repair parts thereof, and of office furniture, equipment, and supplies and repair parts therefor, and of automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies and attachments, automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and ninety-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the time the contract is canceled or discontinued and specialized computer hardware and software, specialized tools, or signage as specified in section 2 of this Act. For purposes of §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts therefor, industrial and construction equipment and repair parts therefor, and outdoor power equipment and repair parts therefor, has actual proof of purchase of any repair parts or other merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair parts even though not currently listed in any price list or catalog and all other merchandise, purchased within ten years of the dealership cancellation or termination shall be repurchased at the original purchase price.

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

37-5-7.1. The payments to be made to the retailer pursuant to §§ 37-5-5 to 37-5-9, inclusive, shall be made no later than sixty days from the date the merchandise is received by the wholesaler, manufacturer, or distributor and shall be accompanied by a final detailed statement of account thereon.

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

37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery, and farm implements, or of industrial and construction equipment and repair parts for industrial and construction equipment, outdoor power equipment and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts therefor, or their successors, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements, or industrial and construction equipment, and repair parts for industrial and construction equipment, outdoor power equipment and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies and repair parts for office furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer of the products, who may have a retail sales contract dated after July 1, 1969, in the case of contracts covering farm machinery, implements and attachments or automobiles and trucks, or after July 1, 1970, in the case of contracts covering industrial and construction equipment and attachments, or after July 1, 2001, in the case of the contracts covering outdoor power equipment and attachments, or after July 1, 1995, in the case of contracts covering office furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering motorcycles, or after July 1,

2000, in the case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery, implements and attachments or automobiles and trucks, or in force and effect on July 1, 1970, in the case of contracts covering industrial and construction equipment and attachments, or in force and effect on July 1, 1995, in the case of contracts covering office furniture, equipment, and supplies, or in force and effect on July 1, 2001, in the case of the contracts covering outdoor power equipment and attachments, or in force and effect on July 1, 1973, in the case of contracts covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil action to be brought by the retailer for one hundred percent of the net cost of the farm implements, machinery and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies and attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus transportation charges which have been paid by the retailer and ninety-five percent of the current net price of repair parts, plus five percent for handling and loading plus freight charges which have been paid by the retailer, plus charges for any specialized computer hardware and software, specialized tool, and signage as specified in section 2 of this Act.

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

37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements or repair parts for farm implements, or in the business of selling industrial and construction equipment or repair parts therefor, or in the business of selling outdoor power equipment or repair parts therefor, or in the

business of selling and retailing office furniture, equipment, and supplies or repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies and attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including transportation and reasonable assembly charges which have been paid by the retailer, and ninety-five percent of the current net prices on repair parts, including superseded parts, listed in current price lists or catalogues, plus a sum equal to five percent of the current net price of all parts returned for handling, packing, and loading of the parts, and any specialized computer hardware or software, specialized tool, or signage as specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9, inclusive.

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

37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements or repair parts for farm implements, or in the business of selling industrial and construction equipment or repair parts therefor, or in the business of selling outdoor power equipment or repairs therefor, or in the business of selling and retailing office furniture, equipment, and supplies or repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles, boats, personal watercraft,

all-terrain vehicles, or snowmobiles, or repair parts therefor, the wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase from the heir or heirs of the retail dealer or majority stockholder the merchandise at a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery and attachments, industrial and construction equipment and attachments, outdoor power equipment and attachments, office furniture, equipment, and supplies and attachments, and automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, including transportation and reasonable assembly charges which have been paid by the retailer, and ninety-five percent of the current net prices on repair parts, including superseded parts, listed in current price lists or catalogues, plus a sum equal to five percent of the current net price of all parts returned for handling, packing, and loading of the parts any specialized computer hardware or software, specialized tool, or signage as specified in section 2 of this Act, unless the heir or heirs agree to continue to operate the retail dealership. If the heir or heirs do not agree to continue to operate the retail dealership, it is deemed a cancellation or discontinuance of contract by the retailer under the provisions of § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9, inclusive.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1253

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. 1253
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