

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

248D0565

HOUSE BILL NO. 1212

Introduced by: Representatives Young, Apa, and Napoli

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding dealer franchises to
2 include motorcycles, all-terrain vehicles, and snowmobiles.

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 office furniture, equipment, and supplies and repair parts for office furniture, equipment, and
10 supplies, or in the business of selling and retailing automobiles, trucks, ~~or~~ motorcycles, all-terrain
11 vehicles, or snowmobiles or repair parts for automobiles, trucks, ~~or~~ motorcycles, all-terrain
12 vehicles, or snowmobiles enters into a written contract evidenced by franchised agreement, sales
13 agreement, dealer agreement, or security agreement or other form of agreement or arrangement
14 of like effect, the term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the
15 foregoing and their successors. If such person, firm, or corporation, or their successors maintains
16 a stock of parts or complete or whole machines, or attachments with any wholesaler,
17 manufacturer, or distributor of farm implements or machinery or repair parts therefor, or

1 industrial and construction equipment or repair parts therefor, or office furniture, equipment, and
2 supplies or repair parts therefor, or automobiles ~~or~~, trucks, motorcycles, all-terrain vehicles, or
3 snowmobiles, or repair parts therefor, and either the wholesaler, manufacturer, or distributor,
4 or their successors, or the retailer, or successor, desires to cancel or discontinue the contract,
5 such wholesaler, manufacturer, or distributor, or successor, shall pay to the retailer, or successor,
6 unless the retailer, or successor, should desire to keep the merchandise, a sum equal to one
7 hundred percent of the net cost of all current unused complete farm implements, machinery and
8 attachments, industrial and construction equipment and attachments, office furniture, equipment,
9 and supplies, and attachments, and automobiles ~~and~~, trucks, motorcycles, all-terrain vehicles, and
10 snowmobiles, including transportation charges which have been paid by the retailer and
11 eighty-five percent of the current net prices on repair parts, including superseded parts, listed in
12 current price list or catalog which parts had previously been purchased from the wholesaler,
13 manufacturer, or distributor, or predecessor, and held by the retailer on the date of the
14 cancellation or discontinuance of the contract. The wholesaler, manufacturer, or distributor, or
15 successor, shall also pay the retailer a sum equal to five percent of the current net price of all
16 parts returned for the handling, packing and loading of the parts back to the wholesaler,
17 manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the
18 net cost of the farm implements, machinery and attachments, industrial and construction
19 equipment and attachments, office furniture, equipment, and supplies, and attachments, and
20 automobiles ~~and~~, trucks, motorcycles, all-terrain vehicles, and snowmobiles, plus transportation
21 charges and eighty-five percent of the current net prices on repair parts, plus five percent
22 handling and loading costs on repair parts only, plus freight charges which have been paid by the
23 retailer, or automobiles ~~or~~, trucks, motorcycles, all-terrain vehicles, or snowmobiles, plus freight
24 charges, or repair parts therefor, plus five percent handling and loading costs on repair parts
25 only, the title to the farm implements, farm machinery, industrial and construction equipment,

1 office furniture, equipment, and supplies, and repair parts, or automobiles, ~~or~~ trucks,
2 motorcycles, all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the
3 manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler,
4 or distributor, is entitled to the possession of the farm implements, industrial and construction
5 equipment, office furniture, equipment, and supplies, or automobiles ~~or~~, trucks, motorcycles, all-
6 terrain vehicles, or snowmobiles, or repair parts therefor.

7 Section 2. That § 37-5-7 be amended to read as follows:

8 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial
9 and construction equipment and repair parts therefor, and of office furniture, equipment, and
10 supplies and repair parts therefor, and of automobiles, trucks, motorcycles, all-terrain vehicles,
11 or snowmobiles, and repair parts therefor, required to be paid to any retail dealer as provided in
12 § 37-5-5, shall be determined by taking one hundred percent of the net cost on farm implements,
13 machinery, and attachments, industrial and construction equipment, and attachments, office
14 furniture, equipment, and supplies, and attachments, automobiles ~~and~~, trucks, ~~and~~ motorcycles,
15 all-terrain vehicles, and snowmobiles, and eighty-five percent of the current net price of repair
16 parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or
17 catalogues in effect at the time the contract is canceled or discontinued. For purposes of
18 §§ 37-5-5 to 37-5-9, inclusive, if any retailer, of farm implements or machinery or repair parts
19 therefor, has actual proof of purchase of any repair parts or other merchandise from any
20 manufacturer, wholesaler, or distributor, or its predecessor, the repair parts even though not
21 currently listed in any price list or catalog and all other merchandise, purchased within ten years
22 of the dealership cancellation or termination shall be repurchased at the original purchase price.

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

24 37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements,
25 and repair parts for farm machinery, and farm implements, or of industrial and construction

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

1 and construction equipment and attachments, office furniture, equipment, and supplies and
2 attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the case of
3 contracts covering all-terrain vehicles or snowmobiles, plus transportation charges which have
4 been paid by the retailer and eighty-five percent of the current net price of repair parts, plus five
5 percent for handling and loading plus freight charges which have been paid by the retailer.

6 Section 4. That § 37-5-9 be amended to read as follows:

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