

AN ACT

ENTITLED, An Act to revise certain provisions regarding the franchises of dealers in vehicles, implements, and equipment.

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

Section 1. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, dealer, means any person, or the person's successor who, for commission or with intent to make a profit or gain, sells, exchanges, rents, leases with the option to purchase, or offers or attempts to negotiate a sale or exchange any merchandise as defined by this chapter, or who is engaged wholly or in part in the business of selling any such merchandise.

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

For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, merchandise, means:

- (1) Automobiles, trucks, motorcycles, and accessories;
- (2) Farm tractors, farm implements, farm machinery, and attachments;
- (3) Industrial and construction equipment and attachments;
- (4) Boats and personal watercraft;
- (5) Snowmobiles and all-terrain vehicles;
- (6) Office furniture, equipment, supplies, and attachments; and
- (7) Outdoor power equipment and attachments.

Section 3. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, contract, means any written franchised agreement, sales agreement, dealer agreement, or security agreement, or other form of agreement or arrangement of like effect and its successor.

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

37-5-1. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or distributor-branch, or any field representative, officer, agent, or representative of any of them to coerce or attempt to coerce any dealer to purchase or accept delivery of any merchandise, repair parts for the merchandise, or any other commodity that has not been ordered by the dealer; by threatening to cancel or terminate any franchise, agency, arrangement, or agreement existing between such manufacturer, factory, branch, distributor, distributor-branch, or any field representative, officer, agent, or representative of any of them and the dealer or by any other unfair means or by duress of any kind.

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

37-5-2. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or distributor-branch, or any field representative, officer, agent, or representative of any of them to coerce or attempt to coerce any dealer to enter into any agreement with the manufacturer, factory, branch, distributor, or distributor-branch, or any field representative, officer, agent, or representative of any of them, or to assign, sell, or dispose of any contract or property in any way, or to expend any money or do any other act unfair to such dealer; by threatening to cancel or terminate any franchise, agency, arrangement, or agreement existing between such manufacturer, factory, branch, distributor, distributor-branch, or any field representative, officer, agent, or representative of any of them and the dealer or by any other unfair means or by duress of any kind.

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

37-5-3. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or distributor-branch, or any field representative, officer, agent, or representative of any of them, unfairly, without due regard to the equities of the dealer and without just provocation, to cancel the franchise of any dealer.

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

37-5-5. If any dealer enters into a written contract; if the dealer maintains a stock of merchandise or repair parts for the merchandise with any wholesaler, manufacturer, or distributor; and if either the wholesaler, manufacturer, or distributor, or their successors, or the dealer, desires to cancel or discontinue the contract; the wholesaler, manufacturer, or distributor, or successor, shall pay to the dealer, unless the dealer should desire to keep the merchandise, a sum equal to one hundred percent of the net cost of all current unused complete merchandise, including transportation and reasonable assembly charges which have been paid by the dealer 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 dealer on the date of the cancellation or discontinuance of the contract. The wholesaler, manufacturer, or distributor, or successor, shall also pay the dealer 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 and pay any freight charges that were paid by the dealer. Upon the payment of the sum required by this section, the title to any merchandise or repair parts for the merchandise shall pass to the manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor, is entitled to the possession of the merchandise or the repair parts for the merchandise.

Section 8. That § 37-5-5.5 be amended to read as follows:

37-5-5.5. A wholesaler, manufacturer, or distributor shall also repurchase from the dealer and the dealer shall sell any specialized computer hardware or software, specialized tool, or signage which the wholesaler, manufacturer, or distributor required the dealer to purchase or lease as part of the dealer 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 dealer:

- (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 dealer 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 dealer, provided that any new, unused specialized repair tool 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 9. That § 37-5-7 be amended to read as follows:

37-5-7. The prices of merchandise required to be paid to any dealer as provided in § 37-5-5, shall be determined by taking one hundred percent of the net cost of the merchandise, and ninety-five percent of the current net price of repair parts for the merchandise 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. The prices for any specialized computer hardware and software, specialized tool, or signage shall be as specified in § 37-5-5.5. For purposes of §§ 37-5-5 to 37-5-9, inclusive, if any dealer 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 10. That § 37-5-7.1 be amended to read as follows:

37-5-7.1. The payments to be made to the dealer 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 11. That § 37-5-8 be amended to read as follows:

37-5-8. If any manufacturer, wholesaler, or distributor of merchandise or repair parts for the merchandise, or their successors, upon cancellation of a contract by either a dealer 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 merchandise or repair parts for the merchandise to a dealer, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil action to be brought by the dealer for one hundred percent of the net cost of the merchandise, plus transportation charges which have been paid by the dealer and ninety-five percent of the current net price of repair parts for the merchandise, plus five percent for handling and loading plus freight charges which have been paid by the dealer, and plus charges for any specialized computer hardware and software, specialized tool, and signage as specified in § 37-5-5.5.

This section applies to the following contracts:

- (1) In the case of any contract covering farm implements, machinery, and attachments or automobiles and trucks, any contract dated after July 1, 1969, and any contract with no expiration date or any continuing contract in effect on July 1, 1969;
- (2) In the case of any contract covering industrial and construction equipment and

attachments, any contract dated after July 1, 1970, and any contract with no expiration date or any continuing contract in effect on July 1, 1970;

- (3) In the case of any contract covering motorcycles, any contract dated after July 1, 1973, and any contract with no expiration date or any continuing contract in effect on July 1, 1973;
- (4) In the case of contracts covering office furniture, equipment, and supplies, any contract dated after July 1, 1995, and any contract with no expiration date or any continuing contract in effect on July 1, 1995;
- (5) In the case of any contract covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, any contract dated after July 1, 2000, and any contract with no expiration date or any continuing contract in effect on July 1, 2000; and
- (6) In the case of any contract covering outdoor power equipment and attachments, any contract dated after July 1, 2001, and any contract with no expiration date or any continuing contract in effect on July 1, 2001.

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

37-5-9. In the event of the death of the dealer or majority stockholder in a corporation operating a dealership in the business of selling merchandise or repair parts for merchandise, the wholesaler, distributor, or manufacturer who supplied the merchandise, or its successor, shall repurchase from the heir or heirs of the dealer or majority stockholder the merchandise at a sum equal to one hundred percent of the net cost of all current unused complete merchandise, including transportation and reasonable assembly charges that have been paid by the dealer, and ninety-five percent of the current net prices on repair parts for the merchandise, 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 § 37-5-5.5, unless the heir or heirs agree to continue to operate the dealership. If the heir or heirs do not agree to continue to operate the dealership, it is deemed a cancellation or discontinuance of contract by the dealer 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. 1188

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. 1188
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