

State of South Dakota

EIGHTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2011

833S0319

HOUSE BILL NO. 1108

Introduced by: Representatives Abdallah, Cronin, Feickert, Gibson, Haggar, Hunhoff (Bernie), Hunt, Lust, Sly, Turbiville, Wick, and Willadsen and Senators Brown, Hundstad, Johnston, Kraus, Krebs, Maher, Nelson (Tom), Olson (Russell), and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions with regard to the rights of
2 industrial and construction equipment dealers.

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

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

6 For purposes of this chapter, the term, cancel, includes the failure to renew a dealer contract,
7 the substantial change of the competitive circumstances of any dealership franchise, and the
8 notification of a dealer of a cancellation to be effective in the future.

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

11 Any person or corporation that violates any provision of this chapter is liable to any dealer
12 damaged by the violation for all court costs and reasonable attorney's fees in addition to all other
13 remedies by law.

14 Section 3. That § 37-5-11 be amended to read as follows:



1 37-5-11. Any provision in any agreement evidenced by a franchise agreement, sales
2 agreement, security agreement, or other form of agreement or arrangement of like effect
3 between any wholesaler, manufacturer, ~~or~~ distributor of farm machinery or implements, or
4 distributor of industrial or construction equipment and a retail dealer restricting jurisdiction or
5 venue to a forum outside this state or requiring the application of the laws of another state to
6 disputes arising under the agreement is void as a matter of public policy.

7 Section 4. That § 37-5-12.4 be amended to read as follows:

8 37-5-12.4. Any manufacturer or supplier of merchandise as defined in ~~subdivision~~
9 subdivisions 37-5-12.2(3) and 37-5-12.2(5) that authorizes a dealer of such merchandise to
10 perform the warranty work is obligated to provide that dealer reasonable compensation for
11 diagnostic work, as well as repair service, parts, and labor to the dealer. Time allowances for
12 diagnostic and performance of warranty work and service shall be adequate for the work to be
13 performed. The hourly labor rate paid to the dealer for warranty services may not be less than
14 the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service.
15 Reimbursement for parts used in the performance of warranty repair may not be less than the
16 current retail rate customarily charged by the dealer for the part or parts.