

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

734P0419

## HOUSE COMMERCE ENGROSSED NO. **HB 1159** - 1/30/2008

Introduced by: Representatives Wick, Engels, Peters, and Putnam and Senators McCracken, Bartling, Dempster, and Garnos

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding franchise protection  
2 for certain types of merchandise.

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

4 Section 1. That § 37-5-8 be amended to read as follows:

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



1 5-5.5.

2 This section applies to the following contracts:

3 (1) In the case of any contract covering farm implements, machinery, and attachments  
4 or automobiles ~~and~~ trucks, motor homes, or travel trailers of the type and kind  
5 required to be titled and registered under chapters 32-3 and 32-5, any contract dated  
6 after July 1, 1969, and any contract with no expiration date or any continuing contract  
7 in effect on July 1, 1969;

8 (2) In the case of any contract covering industrial and construction equipment and  
9 attachments, any contract dated after July 1, 1970, and any contract with no  
10 expiration date or any continuing contract in effect on July 1, 1970;

11 (3) In the case of any contract covering motorcycles, any contract dated after July 1,  
12 1973, and any contract with no expiration date or any continuing contract in effect  
13 on July 1, 1973;

14 (4) In the case of contracts covering office furniture, equipment, and supplies, any  
15 contract dated after July 1, 1995, and any contract with no expiration date or any  
16 continuing contract in effect on July 1, 1995;

17 (5) In the case of any contract covering boats, personal watercraft, all- terrain vehicles,  
18 or snowmobiles, any contract dated after July 1, 2000, and any contract with no  
19 expiration date or any continuing contract in effect on July 1, 2000; ~~and~~

20 (6) In the case of any contract covering outdoor power equipment and attachments, any  
21 contract dated after July 1, 2001, and any contract with no expiration date or any  
22 continuing contract in effect on July 1, 2001; and

23 (7) In the case of any contract covering temperature control units and hybrid auxiliary  
24 idle reduction and temperature management systems, any contract dated after July 1,

1           2008, and any contract with no expiration date or any continuing contract in effect  
2           on July 1, 2008.

3           Section 2. That § 37-5-12.2 be amended to read as follows:

4           37-5-12.2. For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, merchandise,  
5 means:

6           (1)   Automobiles, trucks, motorcycles, motor homes or travel trailers of the type and kind  
7           required to be titled and registered pursuant to chapters 32-3 and 32-5, and  
8           accessories;

9           (2)   Farm tractors, farm implements, farm machinery, and attachments;

10          (3)   Industrial and construction equipment and attachments;

11          (4)   Boats and personal watercraft;

12          (5)   Snowmobiles and all-terrain vehicles;

13          (6)   Office furniture, equipment, supplies, and attachments; ~~and~~

14          (7)   Outdoor power equipment and attachments;

15          (8)   A temperature control unit; and

16          (9)   An auxiliary idle reduction and temperature management system or auxiliary power  
17          unit.

18          For the purposes of this section, the term, temperature control unit, means a piece of  
19          equipment that is mounted on a titled vehicle (trailer, rail car, or container) for the temperature  
20          management of temperature sensitive cargo.

21          For the purposes of this section, the term, auxiliary idle reduction and temperature  
22          management system, means a piece of equipment that is mounted on a titled vehicle, usually a  
23          semi-tractor, to enable the driver to turn off the engine yet have access to air conditioning, heat,  
24          and electric power inside the vehicle's cab.