

## CHAPTER 76—H.F.No. 989

*An act relating to trade practices; providing for payment to farm implement retailer by the manufacturer, wholesaler, or distributor who repurchases stock and inventory; amending Minnesota Statutes 1988, section 325E.06, subdivisions 1, 4, and 5.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 325E.06, subdivision 1, is amended to read:

Subdivision 1. **OBLIGATION TO REPURCHASE.** Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written or oral contract, sales agreement, or security agreement whereby the retailer agrees with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments or repair parts to maintain a stock of parts or complete or whole machines, or attachments, and thereafter the written or oral contract, sales agreement, or security agreement is terminated, canceled, or discontinued, then the wholesaler, manufacturer, or distributor shall pay to the retailer or credit to the retailer's account, if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, unless the retailer should desire and has a contractual right to keep such merchandise, a sum equal to 100 percent of the net cost of all unused complete farm implements, machinery, and attachments in new condition which have been purchased by the retailer from the wholesaler, manufacturer, or distributor within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the contract, including transportation charges which have been paid by the retailer, or invoiced to retailer's account by the wholesaler, manufacturer, or distributor and the following:

(a) 85 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the wholesaler, manufacturer, or distributor or its predecessor on the date of the termination, cancellation, or discontinuance of the contract;

(b) as to any parts not listed in current price lists or catalogs, 100 percent of the invoiced price of the repair part for which the retailer has an invoice which parts had previously been purchased by the retailer from the wholesaler, manufacturer, or distributor and are held by the retailer on the date of the termination, cancellation, or discontinuance of the contract or thereafter received by the retailer from the wholesaler, manufacturer, or distributor; and

(c) 50 percent of the most recently published price of all other parts provided the price list or catalog is not more than ten years old as of the date of the cancellation or discontinuance of the contract.

The wholesaler, manufacturer, or distributor shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the current net price of

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prices required to be paid or credited by this subdivision for all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the retailer's account of the sum required by this subdivision, the title to the farm implements, farm machinery, attachments or repair parts shall pass to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor shall be entitled to the possession of the farm implements, machinery, attachments or repair parts. However, this section shall not in any way affect any security interest which the wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Payment required to be made under this subdivision must be made not later than 90 days from the date the farm implements, machinery, attachments, and repair parts are returned by the retailer, and if not by then paid, the amount payable by the wholesaler, manufacturer, or distributor bears interest at the rate of 1-1/2 percent per month from the date the contract was terminated, canceled, or discontinued until the date payment is received by the retailer.

In lieu of the return of the farm implements, machinery, attachments, and repair parts to the wholesaler, manufacturer, or distributor, the retailer may advise the wholesaler, manufacturer, or distributor that the retailer has implements, machinery, attachments, or repair parts that the retailer intends to return. The notice of the dealer's intention to return must be in writing, sworn to before a notary public as to the accuracy of the listing of implements, machinery, attachments, or repair parts and that all of the items are in usable condition. The notice must include the name and business address of the person or business who has possession and custody of the machinery and parts and where the machinery and parts may be inspected and the list of farm implements, machinery, attachments, or repair parts may be verified. The notice must also state the name and business address of the person or business who has the authority to serve as the escrow agent of the retailer, to accept payment or a credit to the retailer's account on behalf of the retailer, and to release the machinery and parts to the wholesaler, manufacturer, or distributor. The notice constitutes the appointment of the escrow agent to act on the retailer's behalf. The wholesaler, manufacturer, or distributor has 30 days from the date of the mailing of the notice, which shall be by certified mail, in which to inspect the machinery and parts and verify the accuracy of the retailer's list. The wholesaler, manufacturer, or distributor shall, within ten days after inspection:

- (1) pay the escrow agent;
- (2) give evidence that a credit to the account of the retailer has been made if the retailer has outstanding sums due the wholesaler, manufacturer, or distributor; or
- (3) send to the escrow agent a "dummy credit list" and shipping labels for

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the return of the machinery or parts to the wholesaler, manufacturer, or distributor that are acceptable as returns.

If the wholesaler, manufacturer, or distributor sends a credit list to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns shall accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the retailer or the credit list with payment, the title to the farm implements, farm machinery, attachments, or repair parts acceptable as returns passes to the manufacturer, wholesaler, or distributor making the payment or allowing the credit and the manufacturer, wholesaler, or distributor is entitled to keep the farm implements, machinery, attachments, or repair parts. The escrow agent shall ship or cause to be shipped the machinery and parts acceptable as returns to the wholesaler, manufacturer, or distributor unless the wholesaler, manufacturer, or distributor elects to personally perform the inventorying, packing and loading of the machinery and parts. When the machinery or parts have been received by the wholesaler, manufacturer, or distributor, notice of the receipt of the machinery or parts shall be sent by certified mail to the escrow agent who shall then disburse 90 percent of the payment it has received, less its actual expenses and a reasonable fee for its services, to the retailer. The escrow agent shall keep the balance of the funds in the retailer's escrow account until it is notified that an agreement has been reached as to the nonreturnables after which the escrow agent shall disburse the remaining funds and dispose of any remaining parts or machinery as provided in the settlement. If no settlement is reached in a reasonable time, the escrow agent may refer the matter to an arbitrator who has authority to resolve all unsettled issues in the dispute.

Sec. 2. Minnesota Statutes 1988, section 325E.06, subdivision 4, is amended to read:

Subd. 4. **FAILURE TO PAY SUMS SPECIFIED ON CANCELLATION OF CONTRACTS; LIABILITY.** In the event that any manufacturer, wholesaler, or distributor of farm implements, machinery, attachments and repair parts, upon the cancellation of a contract by either a retailer or such manufacturer, wholesaler, or distributor, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by the retailer or the retailer's heir or heirs for (a) 100 percent of the net cost of the farm implements, machinery, and attachments, (b) transportation charges which have been paid by the retailer, (c) 85 percent of the current net price of repair parts, 100 percent of invoiced prices and 50 percent of the price of all other parts as provided in subdivision 1, and (d) five percent for handling, packing and loading, if applicable.

Sec. 3. Minnesota Statutes 1988, section 325E.06, subdivision 5, is amended to read:

Subd. 5. **EXCEPTIONS.** Unless a retailer has delivered parts to an escrow

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agent pursuant to subdivision 1, this section shall not require the repurchase from a retailer of a repair part where the retailer previously has failed to return the repair part to the wholesaler, manufacturer, or distributor after being offered a reasonable opportunity to return the repair part at a price not less than (a) 85 percent of the net price of the repair part as listed in the then current price list or catalog, (b) 100 percent of the invoiced price and (c) 50 percent of the most recent published price as provided in subdivision 1. This section shall not require the repurchase from a retailer of repair parts which have a limited storage life or are otherwise subject to deterioration, such as rubber items, gaskets and batteries; repair parts in broken or damaged packages; single repair parts priced as a set of two or more items; and repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day after final enactment and apply to contracts now in effect that have no expiration date and are a continuing contract and all other contracts entered into or renewed after the date of final enactment. Any contract in force and effect on the day of final enactment, which by its terms will terminate on a later date and which is not renewed, is governed by the law as it existed before the day of final enactment.

Presented to the governor May 5, 1989

Signed by the governor May 9, 1989, 1:30 p.m.

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**CHAPTER 77—H.F.No. 483**

*An act relating to crime; including controlled substance offenses in the evidentiary provision of the disorderly house crime; amending Minnesota Statutes 1988, section 609.33, subdivision 4.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 609.33, subdivision 4, is amended to read:

Subd. 4. **EVIDENCE.** Evidence of unlawful sales of intoxicating liquor or nonintoxicating malt liquor, of unlawful possession or sale of controlled substances, of prostitution or acts relating to prostitution, or of gambling or acts relating to gambling, is prima facie evidence of the existence of a disorderly house. Evidence of sales of intoxicating liquor or nonintoxicating malt liquor between the hours of 1:00 a.m. and 8:00 a.m., while a person is within a disorderly house, is prima facie evidence that the person knew it to be a disorderly house.

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