

## CHAPTER 71—H.F.No. 832

*An act relating to commerce; regulating heavy and utility equipment dealership agreements; providing for returns and repurchases under certain circumstances; providing remedies; amending Minnesota Statutes 1990, section 325E.0681, by adding subdivisions.*

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

Section 1. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 3. OBLIGATION TO REPURCHASE. If a dealership agreement is terminated, canceled, or discontinued, the equipment manufacturer shall pay to the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, an amount equal to 100 percent of the net cost of all unused heavy and utility equipment in new condition that has been purchased by the dealer from the manufacturer within the 24 months immediately preceding notification by either party of intent to terminate, cancel, or discontinue the agreement. This amount must include transportation charges that have been paid by the dealer, or invoiced to the dealer's account by the manufacturer. The dealer may elect to keep the merchandise instead of receiving payment, if the contract gives the dealer this right.

Sec. 2. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 4. REPAIR PARTS. (a) The manufacturer shall pay the dealer, or credit to the dealer's account if the dealer has an outstanding amount owed to the manufacturer, the following:

(1) 85 percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs in use by the manufacturer on the date of the termination, cancellation, or discontinuance of the agreement;

(2) 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 dealer has an invoice if the parts had previously been purchased by the dealer from the manufacturer and are held by the dealer on the date of the termination, cancellation, or discontinuance of the agreement or received by the dealer from the manufacturer after that date; and

(3) 50 percent of the most recently published price of all other parts if the price list or catalog is not more than ten years old as of the date of the termination, cancellation, or discontinuance of the agreement.

(b) The manufacturer shall pay the dealer, or credit to the dealer's account, if the dealer has an outstanding amount owed to the manufacturer, an amount equal to five percent of the prices required to be paid or credited by this subdivision for all parts returned for the handling, packing, and loading of the parts

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back to the manufacturer unless the manufacturer elects to perform inventorying, packing, and loading of the parts itself. Upon the payment or allowance of credit to the dealer's account of the sum required by this subdivision, the title to and right to possess the heavy and utility equipment passes to the manufacturer. However, this section does not affect any security interest that the manufacturer may have in the inventory of the dealer.

Sec. 3. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 5. PAYMENT; INTEREST. Payment required to be made under this section must be made not later than 90 days from the date the heavy and utility equipment is returned by the dealer, and if not by then paid, the amount payable by the manufacturer bears interest at the rate of 1-1/2 percent per month from the date the agreement was terminated, canceled, or discontinued until the date payment is received by the dealer.

Sec. 4. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 6. NOTICE OF INTENT TO RETURN. In lieu of returning the heavy and utility equipment to the manufacturer, the dealer may advise the manufacturer that the dealer has heavy and utility equipment that the dealer 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 heavy and utility equipment 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 them and where they may be inspected. The list may be verified by the manufacturer. 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 dealer, to accept payment or a credit to the dealer's account on behalf of the dealer, and to release the heavy and utility equipment to the manufacturer. The notice constitutes the appointment of the escrow agent to act on the dealer's behalf.

Sec. 5. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 7. MANUFACTURER INSPECTION. (a) The manufacturer has 30 days from the date of the mailing of the notice under subdivision 6, which must be by certified mail, in which to inspect the heavy and utility equipment and verify the accuracy of the dealer's list.

(b) The manufacturer shall, within ten days after inspection:

(1) pay the escrow agent;

(2) give evidence that a credit to the account of the dealer has been made if the dealer has an outstanding amount due the manufacturer; or

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(3) send to the escrow agent a "dummy credit list" and shipping labels for the return of the heavy and utility equipment to the manufacturer that are acceptable as returns.

Sec. 6. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

**Subd. 8. PAYMENT OR CREDIT REQUIREMENTS.** If the manufacturer sends a credit list as provided under subdivision 7 to the escrow agent, payment or a credit against the dealer's indebtedness in accordance with this subdivision for the acceptable returns must accompany the credit list. On the receipt of the payment, evidence of a credit to the account of the dealer, or the credit list with payment, the title to and the right to possess the heavy and utility equipment acceptable as returns passes to the manufacturer. The escrow agent shall ship or cause to be shipped the heavy and utility equipment acceptable as returns to the manufacturer unless the manufacturer elects to personally perform the inventorying, packing, and loading of the heavy and utility equipment. When they have been received by the manufacturer, notice of their receipt 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 dealer. The escrow agent shall keep the balance of the funds in the dealer's escrow account until it is notified that an agreement has been reached as to the nonreturnables. After being notified of the agreement, the escrow agent shall disburse the remaining funds and dispose of any remaining heavy and utility equipment as provided in the agreement. If no agreement 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. 7. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

**Subd. 9. PROVISIONS OF CONTRACT SUPPLEMENTED.** This section is supplemental to an agreement between the dealer and the manufacturer covering the return of heavy and utility equipment. The dealer may elect to pursue either the dealer's contract remedy or the remedy provided in this section. An election by the dealer to pursue the contract remedy does not bar the dealer's right to the remedy provided in this section as to the heavy and utility equipment not affected by the contract remedy. Notwithstanding anything contained in this section, the rights of a manufacturer to charge back to the dealer's account amounts previously paid or credited as a discount incident to the dealer's purchase of goods is not affected. A repurchase made under this section is not subject to the bulk transfers law, sections 336.6-101 to 336.6-111.

Sec. 8. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

**Subd. 10. DEATH OF DEALER; REPURCHASE FROM HEIRS.** In the

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event of the death of the dealer or majority stockholder in a corporation operating a dealership, the manufacturer shall, unless the heir or heirs of the deceased agree to continue to operate the dealership, repurchase the merchandise from the heir or heirs upon the same terms and conditions as are otherwise provided in this section. In the event the heir or heirs do not agree to continue to operate the dealership, it shall be deemed a cancellation or discontinuance of the contract by the dealer under subdivision 1.

Sec. 9. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 11. FAILURE TO PAY SUMS SPECIFIED ON CANCELLATION OF CONTRACTS; LIABILITY. In the event that a manufacturer, upon the cancellation of a dealership agreement, fails or refuses to make payment to the dealer or the dealer's heir or heirs as required by this section, the manufacturer is liable in a civil action to be brought by the dealer or the dealer's heir or heirs for: (1) 100 percent of the net cost of the heavy or utility equipment; (2) transportation charges which have been paid by the dealer; (3) 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 (4) five percent for handling, packing, and loading, if applicable.

Sec. 10. Minnesota Statutes 1990, section 325E.0681, is amended by adding a subdivision to read:

Subd. 12. EXCEPTIONS. Unless a dealer has delivered parts to an escrow agent pursuant to subdivision 1, this section does not require the repurchase from a dealer of a repair part where the dealer previously has failed to return the repair part to the manufacturer after being offered a reasonable opportunity to return the repair part at a price not less than: (1) 85 percent of the net price of the repair part as listed in the then current price list or catalog; (2) 100 percent of the invoiced price; and (3) 50 percent of the most recent published price as provided in subdivision 1.

This section does not require the repurchase from a dealer of repair parts that 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. 11. EFFECTIVE DATE.

Sections 1 to 10 are effective the day after final enactment and apply to contracts now in effect that have no expiration date and are continuing contracts and all other contracts entered into or renewed after the date of final enactment. A contract in force 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.

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Presented to the governor May 7, 1991

Signed by the governor May 10, 1991, 9:18 a.m.

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CHAPTER 72—H.F.No. 877

*An act relating to game and fish; authorizing the commissioner to establish special seasons for persons with a physical disability to take game with firearms and by archery; proposing coding for new law in Minnesota Statutes, chapter 97B.*

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

Section 1. **[97B.111] SPECIAL FIREARM HUNTING SEASONS FOR PHYSICALLY DISABLED.**

The commissioner may establish criteria, special seasons, and limits for persons who have a physical disability to take big game and small game with firearms and by archery in designated areas. A person hunting under this section who has a physical disability must have a verified statement of the disability by a licensed physician and must be participating in a program for physically disabled hunters sponsored by a nonprofit organization. A license is not required for a person to assist a physically disabled person hunting during a special season under this section.

Presented to the governor May 7, 1991

Signed by the governor May 9, 1991, 2:18 p.m.

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CHAPTER 73—H.F.No. 620

*An act relating to state lands; authorizing the sale of certain land in Cook county; authorizing the private sale of certain state lands in St. Louis county.*

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

Section 1. **COOK COUNTY; LAND SALE.**

(a) Notwithstanding Minnesota Statutes, section 282.018, Cook county may sell the lands bordering public waters described in paragraph (c) in accordance with the remaining provisions of Minnesota Statutes, chapter 282.

(b) The conveyance must be in a form approved by the attorney general.

(c) The lands that may be sold are located in Cook county and are described as:

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