

CHAPTER 1087
FARM IMPLEMENTS OR PARTS FRANCHISE
S.F. 2116

AN ACT to provide resale rights to a holder of a farm implements or parts franchise upon termination of the franchise.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 322D.1 DEFINITIONS.** When used in the chapter, unless the context otherwise requires:

1. "Attachments" means a machine or part of a machine designed to be used on and in conjunction with a farm implement.

2. "Farm implement" means a machine designed or adapted and used exclusively for agricultural or horticultural operations or livestock raising.

3. "Franchise" means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell farm implements or parts manufactured or distributed by the franchiser.

c. The franchisee, as an independent business, constitutes a component of the franchiser's distribution system.

d. The operation of the franchisee's business is substantially associated with the franchiser's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee's business is substantially reliant on the franchiser for the continued supply of farm implements, parts, and attachments.

4. "Franchisee" means a person who receives farm implements or parts for farm implements from the franchiser under a franchise and who offers and sells the farm implements or parts to the general public.

5. "Franchiser" means a person who manufactures, wholesales, or distributes farm implements or parts for farm implements and who enters into a franchise.

6. "Net cost" means the price the franchisee actually paid for the merchandise to the franchiser less any applicable trade, volume, cash or bonus discounts.

7. "Net price" means the price listed in the franchiser's price list in effect at the time the franchise is canceled, less any applicable trade, volume or cash discounts.

8. "Person" means a sole proprietor, partnership, corporation, or any other form of business organization.

Sec. 2. **NEW SECTION. 322D.2 FRANCHISEE'S RIGHTS TO PAYMENT.**

1. A franchisee who enters into a written franchise with a franchiser to maintain a stock of parts, attachments, or farm implements has the following rights to payment, at the option of the franchisee, if the franchise is terminated:

a. One hundred percent of the net cost of new unused complete farm implements, including attachments, which were purchased from the franchiser, and in addition, transportation charges on the farm implements which have been paid by the franchisee.

b. Eighty-five percent of the net prices of any repair parts, including superseded parts, which were purchased from the franchiser and held by the franchisee on the date of the termination of the franchise.

c. Five percent of the net prices of the parts resold under paragraph "b" for handling, packing, and loading of the parts except that this payment shall not be due to the franchisee if the franchiser elects to perform the handling, packing, and loading.

2. Upon receipt of the payments due under subsection 1, the franchiser is entitled to possession of and title to the farm implements, attachments, or parts.

3. The cost of farm implements or attachments and the price of repair parts shall be determined by reference to the franchiser's price list or catalog in effect at the time of the franchise termination.

4. The rights under subsection 1 apply to all franchise agreements now in effect which have no expiration date and are continuing agreements. In addition, subsection 1 applies to all franchise agreements entered into or renewed after the effective date of this Act. However, subsection 1 only applies to those farm implements, attachments, or parts that are purchased after the effective date of this Act.

Sec. 3. NEW SECTION. 322D.3 EXCEPTIONS. This chapter does not require repurchase from a franchisee of:

1. A repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries.

2. A repair part which is in a broken or damaged package.

3. A single repair part which is priced as a set of two or more items.

4. A repair part which because of its condition is not resaleable as a new part without repackaging or reconditioning.

5. Any inventory for which the franchisee is unable to furnish evidence of title and ownership in the retailer that is free and clear of all claims, liens and encumbrances to the satisfaction of the franchiser.

6. Any inventory which a franchisee desires to keep, provided the franchisee has a contractual right in the franchise agreement to do so.

7. A farm implement which is not in new, unused, undamaged, or complete condition.

8. A repair part which is not in new, unused or undamaged condition.

9. A farm implement which was purchased twenty-four months or more prior to the termination of the franchise.

10. Any inventory which was ordered by the franchisee on or after the date of notification of termination of the franchise.

11. Any inventory which was acquired by the franchisee from a source other than the franchiser with whom the franchise is being terminated.

12. A repair part not listed in the franchiser's current price list in effect on the date of notice of termination or classified as nonreturnable or obsolete by the franchiser as of the date of termination. However, this exception to the repurchase requirement applies only if the franchiser provided the franchisee with an opportunity to return the exempted part prior to notice of termination of the franchise.

Sec. 4. NEW SECTION. 322D.4 FRANCHISER FAILURE TO COMPLY—CIVIL PENALTY. In the event that any franchiser fails to make payment to the franchisee or the

franchisee's heir or heirs as required by this chapter within sixty days after the inventory has been received by the franchiser, the franchiser shall be civilly liable for one hundred percent of the current net price of farm implements; transportation charges which have been paid by the franchisee; eighty-five percent of the current net price of repair parts; five percent of the current net price of repair parts to cover handling, packing and loading, if applicable; and attorney fees incurred by the franchisee or the franchisee's heir or heirs.

Sec. 5. **NEW SECTION. 322D.5 DEATH OF A FRANCHISEE OR MAJORITY STOCKHOLDER.** If the franchisee is a natural person, the rights under this chapter may be exercised by the heirs of the franchisee upon the death of the franchisee. If the franchisee is a business organization, the rights may be exercised by the heirs of a majority stockholder of the franchisee upon the death of the majority stockholder.

Sec. 6. **NEW SECTION. 322D.6 SECURITY INTERESTS NOT AFFECTED.** The provisions of this chapter shall not be construed to affect, in any way, the existence or enforcement of any security interest which a supplier, any financial institution or any other person may have in the inventory of the retailer, and any repurchase of inventory which is made hereunder shall not be subject to the bulk sales provisions of chapter 554, article 6, of the uniform commercial code.

Approved April 16, 1984

CHAPTER 1088
CHILD CUSTODY
S.F. 2163

AN ACT relating to child custody.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 598.1, Code 1983, is amended by adding the following new subsection:
NEW SUBSECTION. 6. "Best interest of the child" includes, but is not limited to, the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child.

Sec. 2. Section 598.41, subsections 1 and 2, Code 1983, are amended to read as follows:
1. The court, insofar as is reasonable and in the best interest interests of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor the child frequent and the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such contact with one parent, and which will encourage parents to share the rights