

Commerce
Friebe, Chair
Tieden
Nystrom

SENATE FILE 2116

BY JENSEN

FILED JAN 31 1984

Passed Senate, Date 2-23-84 (p. 514) Passed House, Date 3-28-84 (p. 1391)
Vote: Ayes 40 Nays 6 Vote: Ayes 92 Nays 4
Approved April 16, 1984

A BILL FOR

1 An Act to provide resale rights to a holder of a farm implements
2 or parts franchise upon termination of the franchise.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

5.2116

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

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

6 2. "Farm implement" means a machine designed or adapted
7 and used exclusively for agricultural or horticultural opera-
8 tions or livestock raising.

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

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

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

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

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

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

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

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

32 6. "Net cost" means the price the franchisee actually
33 paid for the merchandise to the franchiser less any applic-
34 able trade, volume, cash or bonus discounts.

35 7. "Net price" means the price listed in the franchiser's

1 price list in effect at the time the franchise is cancelled,
2 less any applicable trade, volume or cash discounts.

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

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

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

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

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

20 c. Five percent of the net prices of the parts resold
21 under paragraph "b" for handling, packing, and loading of
22 the parts.

5132

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

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

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

1 are purchased after the effective date of this Act.

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

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

7 2. A repair part which is in a broken or damaged pack-
8 age.

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

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

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

17 6. Any inventory which a franchisee desires to keep, pro-
18 vided the franchisee has a contractual right in the franchise
19 agreement to do so.

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

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

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

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

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

32 12. A repair part not listed in the franchiser's current
33 price list in effect on the date of notice of termination
34 or classified as nonreturnable or obsolete by the franchiser
35 as of the date of termination. However, this exception to

1 the repurchase requirement applies only if the franchiser
2 provided the franchisee with an opportunity to return the
3 exempted part prior to notice of termination of the franchise.

5/82 4 Sec. 4. NEW SECTION. 322D.4 FRANCHISER FAILURE TO COMPLY-
5 -CIVIL PENALTY. A franchisee has a cause of action against
6 a franchiser who fails to comply with section 322D.2 within
7 sixty days after the franchisee has sent a written notice
8 to the franchiser indicating the franchisee's intentions
9 to exercise rights under section 322D.2. The franchiser is
10 liable for any sums due under section 322D.2 and the costs
11 incurred in bringing the action and reasonable attorney fees.

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

19 EXPLANATION

20 This bill provides certain resale rights to the holder
21 of a farm implement or parts franchise upon termination of
22 the franchisee by either party. The franchisee may exercise
23 the right to such resale. Until the payments are made, the
24 franchisee is entitled to possession of the property. A civil
25 cause of action is provided if the franchiser refuses to
26 repurchase the property.

27 This bill becomes effective July 1 following enactment.

28
29
30
31
32
33
34
35

S-5132

Amend Senate File 2116 as follows:

1. Page 2, line 22, by inserting after the word "parts" the words "except that this payment shall not be due to the franchisee if the franchisor elects to perform the handling, packing, and loading".
2. Page 4, by striking lines 5 through 11 and inserting in lieu thereof the following: "-CIVIL PENALTY. In the event that any franchisor 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 franchisor, the franchisor 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."
3. Page 4, by inserting after line 18, the following new section:
"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."

S-5132 FILED
FEBRUARY 16, 1984

BY COMMITTEE ON COMMERCE
GEORGE KINLEY, CHAIR

Adopted 2/23 (p 512)

Small Business and Commerce: Parker, Chair; Chiodo and Schroeder.

80 Pass 3/23 (p. 1252)

SENATE FILE

2116

BY JENSEN

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 23, 1984)

Passed Senate, Date 2-23-84 (p. 514) Passed House, Date 3-28-84 (p. 1391)

Vote: Ayes 40 Nays 6 Vote: Ayes 92 Nays 4

Approved April 16, 1984 (p. 1574)

A BILL FOR

1 An Act to provide resale rights to a holder of a farm implement
2 or parts franchise upon termination of the franchise.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

_____ = New Language
by the Senate

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

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

6 2. "Farm implement" means a machine designed or adapted
7 and used exclusively for agricultural or horticultural opera-
8 tions or livestock raising.

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

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

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

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

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

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

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

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

32 6. "Net cost" means the price the franchisee actually
33 paid for the merchandise to the franchiser less any applic-
34 able trade, volume, cash or bonus discounts.

35 7. "Net price" means the price listed in the franchiser's

1 price list in effect at the time the franchise is cancelled,
2 less any applicable trade, volume or cash discounts.

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

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

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

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

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

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

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

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

32 4. The rights under subsection 1 apply to all franchise
33 agreements now in effect which have no expiration date and
34 are continuing agreements. In addition, subsection 1 applies
35 to all franchise agreements entered into or renewed after

1 the effective date of this Act. However, subsection 1 only
2 applies to those farm implements, attachments, or parts that
3 are purchased after the effective date of this Act.

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

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

9 2. A repair part which is in a broken or damaged pack-
10 age.

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

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

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

19 6. Any inventory which a franchisee desires to keep, pro-
20 vided the franchisee has a contractual right in the franchise
21 agreement to do so.

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

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

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

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

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

34 12. A repair part not listed in the franchiser's current
35 price list in effect on the date of notice of termination

1 or classified as nonreturnable or obsolete by the franchiser
2 as of the date of termination. However, this exception to
3 the repurchase requirement applies only if the franchiser
4 provided the franchisee with an opportunity to return the
5 exempted part prior to notice of termination of the franchise.

6 Sec. 4. NEW SECTION. 322D.4 FRANCHISER FAILURE TO COMPLY-
7 -CIVIL PENALTY. In the event that any franchiser fails to
8 make payment to the franchisee or the franchisee's heir or
9 heirs as required by this chapter within sixty days after
10 the inventory has been received by the franchiser, the
11 franchiser shall be civilly liable for one hundred percent
12 of the current net price of farm implements; transportation
13 charges which have been paid by the franchisee; eighty-five
14 percent of the current net price of repair parts; five percent
15 of the current net price of repair parts to cover handling,
16 packing and loading, if applicable; and attorney fees incurred
17 by the franchisee or the franchisee's heir or heirs.

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

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

34

35

SF 2116
rr/slc/26c

SENATE FILE 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 this 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.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2116, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 16, 1984

TERRY E. BRANSTAD
Governor