

SENATE BILL NO. 432

INTRODUCED BY E. SMITH, KOLSTAD,  
LEE, GAGE, THOMAS, CONOVER,  
STEPHENS, OCHSNER

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Business and Industry.
February 18, 1983	Committee recommend bill do pass. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass.
February 22, 1983	Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Business and Industry.
March 11, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 19, 1983	Second reading, concurred in.
March 21, 1983	Third reading, concurred in.

IN THE SENATE

March 22, 1983

Returned to Senate with  
amendments.

March 23, 1983

Second reading, amendments  
concurred in.

March 24, 1983

Third reading, amendments  
concurred in. Ayes, 49; Noes,  
0.

Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. 432

INTRODUCED BY

*E. Smith Helstad Lee Dyer J. Brown*  
*Common STEPHENS Eubank*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Current net price" means the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts.

(3) "Net cost" means the price actually paid for an

inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

(4) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

Section 2. Repurchase of inventory items upon cancellation of dealership contract. (1) If a retailer enters into a written contract evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 95% of the current net price of each repair part held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the retailer's account of the sum required in subsection (1) must be made

1 upon return of the inventory items to the wholesaler,  
2 manufacturer, or distributor. Title to such inventory items  
3 passes to the wholesaler, manufacturer, or distributor upon  
4 making such payment.

5 Section 3. Excepted inventory. The following inventory  
6 is not subject to the repurchase requirements of [section  
7 2]:

8 (1) any repair part that has a limited storage life or  
9 is otherwise subject to deterioration, such as rubber items,  
10 gaskets, or wet-charge batteries;

11 (2) any repair part that is in a broken or damaged  
12 package;

13 (3) any single repair part that is priced as a set of  
14 two or more items;

15 (4) any repair part that because of its condition is  
16 not resaleable as a new part without repackaging or  
17 reconditioning;

18 (5) any inventory for which the retailer is unable to  
19 furnish evidence satisfactory to the wholesaler,  
20 manufacturer, or distributor of title, free and clear of all  
21 claims, liens, and encumbrances;

22 (6) any inventory the retailer desires to keep, if he  
23 has a contractual right to do so;

24 (7) any inventory item other than a repair part that  
25 is not in essentially new, unused, undamaged, and complete

1 condition;

2 (8) any repair part that is not in new, unused, or  
3 undamaged condition;

4 (9) any inventory item, other than a repair part, that  
5 has been stocked for 36 months or more prior to notice of  
6 termination of the contract;

7 (10) any inventory that was ordered by the retailer  
8 after the date of notification of termination of the  
9 contract; and

10 (11) any inventory that was acquired from any source  
11 other than the wholesaler, manufacturer, or distributor.

12 Section 4. Repurchase of inventory of deceased  
13 retailer. If the retailer or majority stockholder in a  
14 corporation operating as a retailer entitled to payment  
15 under [this act] dies, the wholesaler, manufacturer, or  
16 distributor shall, unless the heirs or devisees of the  
17 deceased agree to continue to operate the dealership,  
18 repurchase the inventory from the heirs or devisees in the  
19 manner prescribed in [section 2].

20 Section 5. Rights not affected. (1) [This act] does  
21 not affect any contractual right of a wholesaler,  
22 manufacturer, or distributor to charge back to the  
23 retailer's account any amount previously credited or paid as  
24 a discount incident to the retailer's purchase of the goods.

25 (2) [This act] does not affect any security interest

1 that any financial institution, person, wholesaler,  
2 manufacturer, or distributor may have in the inventory of  
3 the retailer.

4 Section 6. Civil liability. If any wholesaler,  
5 manufacturer, or distributor fails or refuses to repurchase  
6 any inventory as required by [section 2], the wholesaler,  
7 manufacturer, or distributor is liable in a civil action for  
8 100% of the current net price of the inventory, plus any  
9 freight charges paid by the retailer, the retailer's  
10 attorney fees, and court costs.

11 Section 7. Remedy as supplemental. The provisions of  
12 [this act] are supplemental to any agreement between the  
13 retailer and wholesaler, manufacturer, or distributor  
14 governing the inventory. The retailer may elect to pursue  
15 either his contract remedies or the remedy provided in  
16 [section 2]. An election to pursue his contract remedies  
17 does not bar the retailer's right to the remedy provided in  
18 [section 2] as to any inventory not covered by contract.

19 Section 8. Severability. If a part of this act is  
20 invalid, all valid parts that are severable from the invalid  
21 part remain in effect. If a part of this act is invalid in  
22 one or more of its applications, the part remains in effect  
23 in all valid applications that are severable from the  
24 invalid applications.

25 Section 9. Effective date. This act is effective on

1 passage and approval.

-End-

Approved by Committee  
on Business and Industry

1 *Senate* BILL NO. *432*  
2 INTRODUCED BY *E. Smith Helstad Lee Duff J. Korman*  
3 *Common STEPHENS Osburn*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS,  
5 MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS,  
6 INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO  
7 REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION  
8 OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE  
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16 catalog in effect at the time a dealership contract is  
17 discontinued or, if none is then in effect, the last  
18 available price so listed.

19 (2) "Inventory" means:

20 (a) farm implements, machinery, attachments, and  
21 repair parts;

22 (b) industrial and construction equipment and repair  
23 parts; and

24 (c) automobiles, trucks, and repair parts.

25 (3) "Net cost" means the price actually paid for an

1 inventory item by the retailer to the wholesaler,  
2 manufacturer, or distributor, plus applicable freight costs  
3 paid by or charged to the retailer.

4 (4) "Retailer" or "retail dealer" means any  
5 individual, partnership, association, or corporation engaged  
6 in the business of selling inventory, as defined in this  
7 section, to the general public.

8 Section 2. Repurchase of inventory items upon  
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12 similar agreement or arrangement and either the wholesaler,  
13 manufacturer, distributor, or retailer cancels the contract,  
14 such wholesaler, manufacturer, or distributor shall, at the  
15 retailer's request, pay to the retailer, or credit to the  
16 retailer's account if the retailer has outstanding any sums  
17 owing the wholesaler, manufacturer, or distributor, an  
18 amount equal to:

19 (a) 100% of the net cost of all new, unused,  
20 undamaged, and complete inventory items, except repair  
21 parts, held by the dealer at the time of cancellation; and

22 (b) 85% of the current net price of each repair part  
23 held by the dealer at the time of cancellation.

24 (2) Payment or allowance of credit to the retailer's  
25 account of the sum required in subsection (1) must be made

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2 manufacturer, or distributor. Title to such inventory items  
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5 Section 3. Excepted inventory. The following inventory  
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19 furnish evidence satisfactory to the wholesaler,  
20 manufacturer, or distributor of title, free and clear of all  
21 claims, liens, and encumbrances;

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23 has a contractual right to do so;

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6 termination of the contract;

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11 other than the wholesaler, manufacturer, or distributor.

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13 retailer. If the retailer or majority stockholder in a  
14 corporation operating as a retailer entitled to payment  
15 under [this act] dies, the wholesaler, manufacturer, or  
16 distributor shall, unless the heirs or devisees of the  
17 deceased agree to continue to operate the dealership,  
18 repurchase the inventory from the heirs or devisees in the  
19 manner prescribed in [section 2].

20 Section 5. Rights not affected. (1) [This act] does  
21 not affect any contractual right of a wholesaler,  
22 manufacturer, or distributor to charge back to the  
23 retailer's account any amount previously credited or paid as  
24 a discount incident to the retailer's purchase of the goods.

25 (2) [This act] does not affect any security interest

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5 manufacturer, or distributor fails or refuses to repurchase  
6 any inventory as required by [section 2], the wholesaler,  
7 manufacturer, or distributor is liable in a civil action for  
8 100% of the current net price of the inventory, plus any  
9 freight charges paid by the retailer, the retailer's  
10 attorney fees, and court costs.

11 Section 7. Remedy as supplemental. The provisions of  
12 [this act] are supplemental to any agreement between the  
13 retailer and wholesaler, manufacturer, or distributor  
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18 [section 2] as to any inventory not covered by contract.

19 Section 8. Severability. If a part of this act is  
20 invalid, all valid parts that are severable from the invalid  
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24 invalid applications.

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1 passage and approval.

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*Senate* BILL NO. *432*

INTRODUCED BY *E. Smith, Helstad, Lee, Dager, 2 hours*

*Cornwall STEPHENS Debever*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(3) "Net cost" means the price actually paid for an

inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

(4) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

Section 2. Repurchase of inventory items upon cancellation of dealership contract. (1) If a retailer enters into a written contract evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

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(b) 95% of the current net price of each repair part held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the retailer's account of the sum required in subsection (1) must be made

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14 two or more items;

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16 not resaleable as a new part without repackaging or  
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23 has a contractual right to do so;

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1 condition;

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4 (9) any inventory item, other than a repair part, that  
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13 retailer. If the retailer or majority stockholder in a  
14 corporation operating as a retailer entitled to payment  
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16 distributor shall, unless the heirs or devisees of the  
17 deceased agree to continue to operate the dealership,  
18 repurchase the inventory from the heirs or devisees in the  
19 manner prescribed in [section 2].

20 Section 5. Rights not affected. (1) [This act] does  
21 not affect any contractual right of a wholesaler,  
22 manufacturer, or distributor to charge back to the  
23 retailer's account any amount previously credited or paid as  
24 a discount incident to the retailer's purchase of the goods.

25 (2) [This act] does not affect any security interest

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2 manufacturer, or distributor may have in the inventory of  
3 the retailer.

4 Section 6. Civil liability. If any wholesaler,  
5 manufacturer, or distributor fails or refuses to repurchase  
6 any inventory as required by [section 2], the wholesaler,  
7 manufacturer, or distributor is liable in a civil action for  
8 100% of the current net price of the inventory, plus any  
9 freight charges paid by the retailer, the retailer's  
10 attorney fees, and court costs.

11 Section 7. Remedy as supplemental. The provisions of  
12 [this act] are supplemental to any agreement between the  
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25 Section 9. Effective date. This act is effective on

1 passage and approval.

-End-

HOUSE BUSINESS & INDUSTRY COMMITTEE  
AMENDMENTS TO SENATE BILL 432 THIRD READING COPY COLOR BLUE  
MARCH 10, 1983

1. Page 1, line 24

Following: "parts"

Insert: "sold by an automobile or truck dealer as defined  
in 61-1-314"

2. Page 2, line 10

Following: "written"

Insert: "dealership"

3. Page 2, line 22

Following: "part"

Insert: "carried on the most recent price list or catalog  
provided by the manufacturer or distributor and"

AND AS AMENDED  
BE CONCURRED IN

## SENATE BILL NO. 432

INTRODUCED BY E. SMITH, KOLSTAD,

LEE, GAGE, THOMAS, CONOVER,

STEPHENS, OCHSNER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(2) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts ~~SOLD BY AN AUTOMOBILE OR TRUCK DEALER AS DEFINED IN 61-1-314.~~

(3) "Net cost" means the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

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(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part

1 CARRIED ON THE MOST RECENT PRICE LIST OR CATALOG PROVIDED BY  
 2 THE MANUFACTURER OR DISTRIBUTOR AND held by the dealer at  
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 5 account of the sum required in subsection (1) must be made  
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