

SENATE BILL NO. 363

INTRODUCED BY E. SMITH, GAGE, KOLSTAD,
TVEIT, AKLESTAD, CRIPPEN, KEATING

IN THE SENATE

February 8, 1985	Introduced and referred to Committee on Business and Industry.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted.
February 21, 1985	Bill printed and placed on members' desks.
February 22, 1985	Second reading, do pass.
February 23, 1985	Considered correctly engrossed.
February 25, 1985	Third reading, passed. Ayes, 48; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 20, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 25, 1985	Third reading, concurred in.
	Returned to Senate.

IN THE SENATE

March 25, 1985

Received from House.

March 26, 1985

Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. 363

INTRODUCED BY *E. Smith* *W. F. ...* *...*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE
5 REPURCHASE OF INVENTORY REQUIREMENTS OF CANCELED DEALERSHIP
6 CONTRACTS TO INCLUDE CANCELED DISTRIBUTION CONTRACTS;
7 DEFINING "DISTRIBUTION CONTRACT", "DEALERSHIP CONTRACT", AND
8 "WHOLESALER"; AMENDING SECTIONS 30-11-701, 30-11-702,
9 30-11-704, AND 30-11-711 THROUGH 30-11-713, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 30-11-701, MCA, is amended to read:
13 "30-11-701. Definitions. As used in this part, the
14 following definitions apply:

- 15 (1) "Current net price" means:
16 (a) with respect to a dealership contract, the price
17 listed in the wholesaler's, manufacturer's, or distributor's
18 price list or catalog in effect at the time a dealership
19 contract is discontinued or, if none is then in effect, the
20 last available price so listed; and
21 (b) with respect to a distribution contract, the price
22 listed in the manufacturer's or distributor's price list or
23 catalog in effect at the time a distribution contract is
24 discontinued or, if none is then in effect, the last
25 available price so listed.

1 (2) "Dealership contract" means a written contract
2 between a retailer and a wholesaler, manufacturer, or
3 distributor in which the retailer becomes a dealer in goods
4 sold by the wholesaler, manufacturer, or distributor,
5 evidenced by a franchise agreement, sales agreement,
6 security agreement, or other similar agreement or
7 arrangement.

8 (3) "Distribution contract" means a written contract
9 between a wholesaler and a manufacturer or distributor in
10 which the wholesaler becomes a dealer in goods sold by the
11 manufacturer or distributor, evidenced by a franchise
12 agreement, sales agreement, security agreement, or other
13 similar agreement or arrangement.

- 14 (4) "Inventory" means:
15 (a) farm implements, machinery, attachments, and
16 repair parts;
17 (b) industrial and construction equipment and repair
18 parts; and
19 (c) automobiles, trucks, and repair parts sold by an
20 automobile or truck dealer as defined in 61-1-314.

21 (5) "Net cost" means:
22 (a) with respect to a dealership contract, the price
23 actually paid for an inventory item by the retailer to the
24 wholesaler, manufacturer, or distributor, plus applicable
25 freight costs paid by or charged to the retailer; and



1 (b) with respect to a distribution contract, the price
 2 actually paid for an inventory item by the wholesaler to a
 3 manufacturer or distributor, plus applicable freight costs
 4 paid by or charged to the wholesaler.

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

9 (7) "Wholesaler" means any individual, partnership,
 10 association, or corporation engaged in the business of
 11 selling inventory, as defined in this section, to
 12 retailers."

13 Section 2. Section 30-11-702, MCA, is amended to read:

14 "30-11-702. Repurchase of inventory items upon
 15 cancellation of dealership or distribution contract. (1) If
 16 a retailer enters into a written dealership contract
 17 evidenced by franchise agreement, sales agreement, security
 18 agreement, or other similar agreement or arrangement and
 19 either the wholesaler, manufacturer, distributor, or
 20 retailer cancels the contract, such wholesaler,
 21 manufacturer, or distributor shall, at the retailer's
 22 request, pay to the retailer, or credit to the retailer's
 23 account if the retailer has outstanding any sums owing the
 24 wholesaler, manufacturer, or distributor, an amount equal
 25 to:

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

4 (b) 85% of the current net price of each repair part
 5 carried on the most recent price list or catalog provided by
 6 the manufacturer or distributor and held by the dealer at
 7 the time of cancellation.

8 (2) If a wholesaler enters into a written distribution
 9 contract and either the wholesaler, manufacturer, or
 10 distributor cancels the contract, the manufacturer or
 11 distributor shall, at the wholesaler's request, pay to the
 12 wholesaler, or credit to the wholesaler's account if the
 13 wholesaler has outstanding any sums owing to the
 14 manufacturer or distributor, an amount equal to:

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

19 (b) 85% of the current net price of each repair part
 20 carried on the most recent price list or catalog provided by
 21 the manufacturer or distributor and held by the wholesaler
 22 at the time of cancellation.

23 ~~†2~~(3) Payment or allowance of credit to the
 24 retailer's or wholesaler's account of the sum required in
 25 subsection (1) or (2) must be made upon return of the

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

5 Section 3. Section 30-11-704, MCA, is amended to read:

6 "30-11-704. Repurchase of inventory of deceased
7 retailer or wholesaler. If the retailer, wholesaler, or
8 majority stockholder in a corporation operating as a
9 retailer or wholesaler entitled to payment under this part
10 dies, the wholesaler, manufacturer, or distributor shall,
11 unless the heirs or devisees of the deceased agree to
12 continue to operate the dealership, repurchase the inventory
13 from the heirs or devisees in the manner prescribed in
14 30-11-702."

15 Section 4. Section 30-11-711, MCA, is amended to read:

16 "30-11-711. Rights not affected. (1) This part does
17 not affect any contractual right of a wholesaler,
18 manufacturer, or distributor to charge back to the
19 retailer's or wholesaler's account any amount previously
20 credited or paid as a discount incident to the retailer's or
21 wholesaler's purchase of the goods.

22 (2) This part does not affect any security interest
23 that any financial institution, person, wholesaler,
24 manufacturer, or distributor may have in the inventory of
25 the retailer or wholesaler."

1 Section 5. Section 30-11-712, MCA, is amended to read:

2 "30-11-712. Civil liability. If any wholesaler,
3 manufacturer, or distributor fails or refuses to repurchase
4 any inventory as required by 30-11-702, the wholesaler,
5 manufacturer, or distributor is liable in a civil action for
6 100% of the current net price of the inventory, plus any
7 freight charges paid by the retailer or wholesaler, the
8 retailer's or wholesaler's attorney fees, and court costs."

9 Section 6. Section 30-11-713, MCA, is amended to read:

10 "30-11-713. Remedy as supplemental. (1) The
11 provisions of this part are supplemental to any agreement
12 between:

13 (a) the retailer and wholesaler, manufacturer, or
14 distributor governing the inventory; or

15 (b) the wholesaler and manufacturer or distributor
16 governing the inventory.

17 (2) The retailer or wholesaler may elect to pursue
18 either his contract remedies or the remedy provided in
19 30-11-702. An election to pursue his contract remedies does
20 not bar the retailer's right to the remedy provided in
21 30-11-702 as to any inventory not covered by contract."

22 NEW SECTION. Section 7. Saving clause. This act does
23 not affect rights and duties that matured, penalties that
24 were incurred, or proceedings that were begun before the
25 effective date of this act.

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 363

INTRODUCED BY E. SMITH, GAGE, KOLSTAD,
TVEIT, AKLESTAD, CRIPPEN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE
REPURCHASE OF INVENTORY REQUIREMENTS OF CANCELED DEALERSHIP
CONTRACTS TO INCLUDE CANCELED DISTRIBUTION CONTRACTS;
DEFINING "DISTRIBUTION CONTRACT", "DEALERSHIP CONTRACT", AND
"WHOLESALER"; AMENDING SECTIONS 30-11-701, 30-11-702,
30-11-704, AND 30-11-711 THROUGH 30-11-713, MCA."

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

Section 1. Section 30-11-701, MCA, is amended to read:

"30-11-701. Definitions. As used in this part, the
following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, 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; and

(b) with respect to a distribution contract, the price
listed in the manufacturer's or distributor's price list or
catalog in effect at the time a distribution contract is
discontinued or, if none is then in effect, the last

available price so listed.

(2) "Dealership contract" means a written contract
between a retailer and a wholesaler, manufacturer, or
distributor in which the retailer becomes a dealer in goods
sold by the wholesaler, manufacturer, or distributor,
evidenced by a franchise agreement, sales agreement,
security agreement, or other similar agreement or
arrangement.

(3) "Distribution contract" means a written contract
between a wholesaler and a manufacturer or distributor in
which the wholesaler becomes a dealer in goods sold by the
manufacturer or distributor, evidenced by a franchise
agreement, sales agreement, security agreement, or other
similar agreement or arrangement.

~~(2)~~(4) "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)~~(5) "Net cost" means:

(a) with respect to a dealership contract, the price
actually paid for an inventory item by the retailer to the
wholesaler, manufacturer, or distributor, plus applicable



1 freight costs paid by or charged to the retailer; and
 2 (b) with respect to a distribution contract, the price
 3 actually paid for an inventory item by the wholesaler to a
 4 manufacturer or distributor, plus applicable freight costs
 5 paid by or charged to the wholesaler.

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

10 (7) "Wholesaler" means any individual, partnership,
 11 association, or corporation engaged in the business of
 12 selling inventory, as defined in this section, to
 13 retailers."

14 Section 2. Section 30-11-702, MCA, is amended to read:

15 "30-11-702. Repurchase of inventory items upon
 16 cancellation of dealership or distribution contract. (1) If
 17 a retailer enters into a written dealership contract
 18 ~~evidenced-by-franchise-agreement, sales-agreement, security~~
 19 ~~agreement, or other similar agreement or arrangement~~ and
 20 either the wholesaler, manufacturer, distributor, or
 21 retailer cancels the contract, such wholesaler,
 22 manufacturer, or distributor shall, at the retailer's
 23 request, pay to the retailer, or credit to the retailer's
 24 account if the retailer has outstanding any sums owing the
 25 wholesaler, manufacturer, or distributor, an amount equal

1 to:

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

5 (b) 85% of the current net price of each repair part
 6 carried on the most recent price list or catalog provided by
 7 the manufacturer or distributor and held by the dealer at
 8 the time of cancellation.

9 (2) If a wholesaler enters into a written distribution
 10 contract and either the wholesaler, manufacturer, or
 11 distributor cancels the contract, the manufacturer or
 12 distributor shall, at the wholesaler's request, pay to the
 13 wholesaler, or credit to the wholesaler's account if the
 14 wholesaler has outstanding any sums owing to the
 15 manufacturer or distributor, an amount equal to:

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

20 (b) 85% of the current net price of each repair part
 21 carried on the most recent price list or catalog provided by
 22 the manufacturer or distributor and held by the wholesaler
 23 at the time of cancellation.

24 ~~(2)~~(3) Payment or allowance of credit to the
 25 retailer's or wholesaler's account of the sum required in

1 subsection SUBSECTIONS (1) or (2) must be made upon return
 2 of the inventory items to the wholesaler, manufacturer, or
 3 distributor. Title to such inventory items passes to the
 4 wholesaler, manufacturer, or distributor upon making such
 5 payment."

6 Section 3. Section 30-11-704, MCA, is amended to read:

7 "30-11-704. Repurchase of inventory of deceased
 8 retailer or wholesaler. If the retailer, wholesaler, or
 9 majority stockholder in a corporation operating as a
 10 retailer or wholesaler entitled to payment under this part
 11 dies, the wholesaler, manufacturer, or distributor shall,
 12 unless the heirs or devisees of the deceased agree to
 13 continue to operate the dealership, repurchase the inventory
 14 from the heirs or devisees in the manner prescribed in
 15 30-11-702."

16 Section 4. Section 30-11-711, MCA, is amended to read:

17 "30-11-711. Rights not affected. (1) This part does
 18 not affect any contractual right of a wholesaler,
 19 manufacturer, or distributor to charge back to the
 20 retailer's or wholesaler's account any amount previously
 21 credited or paid as a discount incident to the retailer's or
 22 wholesaler's purchase of the goods.

23 (2) This part does not affect any security interest
 24 that any financial institution, person, wholesaler,
 25 manufacturer, or distributor may have in the inventory of

1 the retailer or wholesaler."

2 Section 5. Section 30-11-712, MCA, is amended to read:

3 "30-11-712. Civil liability. If any wholesaler,
 4 manufacturer, or distributor fails or refuses to repurchase
 5 any inventory as required by 30-11-702, the wholesaler,
 6 manufacturer, or distributor is liable in a civil action for
 7 100% of the current net price of the inventory, plus any
 8 freight charges paid by the retailer or wholesaler, the
 9 retailer's or wholesaler's attorney fees, and court costs."

10 Section 6. Section 30-11-713, MCA, is amended to read:

11 "30-11-713. Remedy as supplemental. (1) The
 12 provisions of this part are supplemental to any agreement
 13 between:

14 (a) the retailer and wholesaler, manufacturer, or
 15 distributor governing the inventory; or

16 (b) the wholesaler and manufacturer or distributor
 17 governing the inventory.

18 (2) The retailer or wholesaler may elect to pursue
 19 either his contract remedies or the remedy provided in
 20 30-11-702. An election to pursue his contract remedies does
 21 not bar the retailer's OR WHOLESALER'S right to the remedy
 22 provided in 30-11-702 as to any inventory not covered by
 23 contract."

24 NEW SECTION. Section 7. Saving clause. This act does
 25 not affect rights and duties that matured, penalties that

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1 were incurred, or proceedings that were begun before the
2 effective date of this act.

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(2) "Dealership contract" means a written contract
 between a retailer and a wholesaler, manufacturer, or
 distributor in which the retailer becomes a dealer in goods
 sold by the wholesaler, manufacturer, or distributor,
 evidenced by a franchise agreement, sales agreement,
 security agreement, or other similar agreement or
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 between a wholesaler and a manufacturer or distributor in
 which the wholesaler becomes a dealer in goods sold by the
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 agreement, sales agreement, security agreement, or other
 similar agreement or arrangement.

(4) "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.

(5) "Net cost" means:

(a) with respect to a dealership contract, the price
 actually paid for an inventory item by the retailer to the
 wholesaler, manufacturer, or distributor, plus applicable

1 freight costs paid by or charged to the retailer; and

2 (b) with respect to a distribution contract, the price
3 actually paid for an inventory item by the wholesaler to a
4 manufacturer or distributor, plus applicable freight costs
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11 association, or corporation engaged in the business of
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14 Section 2. Section 30-11-702, MCA, is amended to read:

15 "30-11-702. Repurchase of inventory items upon
16 cancellation of dealership or distribution contract. (1) If
17 a retailer enters into a written dealership contract
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19 ~~agreement, or other similar agreement or arrangement~~ and
20 either the wholesaler, manufacturer, distributor, or
21 retailer cancels the contract, such wholesaler,
22 manufacturer, or distributor shall, at the retailer's
23 request, pay to the retailer, or credit to the retailer's
24 account if the retailer has outstanding any sums owing the
25 wholesaler, manufacturer, or distributor, an amount equal

1 to:

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

5 (b) 85% of the current net price of each repair part
6 carried on the most recent price list or catalog provided by
7 the manufacturer or distributor and held by the dealer at
8 the time of cancellation.

9 (2) If a wholesaler enters into a written distribution
10 contract and either the wholesaler, manufacturer, or
11 distributor cancels the contract, the manufacturer or
12 distributor shall, at the wholesaler's request, pay to the
13 wholesaler, or credit to the wholesaler's account if the
14 wholesaler has outstanding any sums owing to the
15 manufacturer or distributor, an amount equal to:

16 (a) 100% of the net cost of all new, unused,
17 undamaged, and complete inventory items, except repair
18 parts, held by the wholesaler at the time of cancellation;
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20 (b) 85% of the current net price of each repair part
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22 the manufacturer or distributor and held by the wholesaler
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25 retailer's or wholesaler's account of the sum required in

1 subsection SUBSECTIONS (1) or (2) must be made upon return
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3 distributor. Title to such inventory items passes to the
4 wholesaler, manufacturer, or distributor upon making such
5 payment."

6 Section 3. Section 30-11-704, MCA, is amended to read:

7 "30-11-704. Repurchase of inventory of deceased
8 retailer or wholesaler. If the retailer, wholesaler, or
9 majority stockholder in a corporation operating as a
10 retailer or wholesaler entitled to payment under this part
11 dies, the wholesaler, manufacturer, or distributor shall,
12 unless the heirs or devisees of the deceased agree to
13 continue to operate the dealership, repurchase the inventory
14 from the heirs or devisees in the manner prescribed in
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16 Section 4. Section 30-11-711, MCA, is amended to read:

17 "30-11-711. Rights not affected. (1) This part does
18 not affect any contractual right of a wholesaler,
19 manufacturer, or distributor to charge back to the
20 retailer's or wholesaler's account any amount previously
21 credited or paid as a discount incident to the retailer's or
22 wholesaler's purchase of the goods.

23 (2) This part does not affect any security interest
24 that any financial institution, person, wholesaler,
25 manufacturer, or distributor may have in the inventory of

1 the retailer or wholesaler."

2 Section 5. Section 30-11-712, MCA, is amended to read:

3 "30-11-712. Civil liability. If any wholesaler,
4 manufacturer, or distributor fails or refuses to repurchase
5 any inventory as required by 30-11-702, the wholesaler,
6 manufacturer, or distributor is liable in a civil action for
7 100% of the current net price of the inventory, plus any
8 freight charges paid by the retailer or wholesaler, the
9 retailer's or wholesaler's attorney fees, and court costs."

10 Section 6. Section 30-11-713, MCA, is amended to read:

11 "30-11-713. Remedy as supplemental. (1) The
12 provisions of this part are supplemental to any agreement
13 between:

14 (a) the retailer and wholesaler, manufacturer, or
15 distributor governing the inventory; or

16 (b) the wholesaler and manufacturer or distributor
17 governing the inventory.

18 (2) The retailer or wholesaler may elect to pursue
19 either his contract remedies or the remedy provided in
20 30-11-702. An election to pursue his contract remedies does
21 not bar the retailer's OR WHOLESALER'S right to the remedy
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 24 account if the retailer has outstanding any sums owing the
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 10 contract and either the wholesaler, manufacturer, or
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 15 30-11-702."

16 Section 4. Section 30-11-711, MCA, is amended to read:

17 "30-11-711. Rights not affected. (1) This part does
 18 not affect any contractual right of a wholesaler,
 19 manufacturer, or distributor to charge back to the
 20 retailer's or wholesaler's account any amount previously
 21 credited or paid as a discount incident to the retailer's or
 22 wholesaler's purchase of the goods.

23 (2) This part does not affect any security interest
 24 that any financial institution, person, wholesaler,
 25 manufacturer, or distributor may have in the inventory of

1 the retailer or wholesaler."

2 Section 5. Section 30-11-712, MCA, is amended to read:

3 "30-11-712. Civil liability. If any wholesaler,
 4 manufacturer, or distributor fails or refuses to repurchase
 5 any inventory as required by 30-11-702, the wholesaler,
 6 manufacturer, or distributor is liable in a civil action for
 7 100% of the current net price of the inventory, plus any
 8 freight charges paid by the retailer or wholesaler, the
 9 retailer's or wholesaler's attorney fees, and court costs."

10 Section 6. Section 30-11-713, MCA, is amended to read:

11 "30-11-713. Remedy as supplemental. (1) The
 12 provisions of this part are supplemental to any agreement
 13 between:

14 (a) the retailer and wholesaler, manufacturer, or
 15 distributor governing the inventory; or

16 (b) the wholesaler and manufacturer or distributor
 17 governing the inventory.

18 (2) The retailer or wholesaler may elect to pursue
 19 either his contract remedies or the remedy provided in
 20 30-11-702. An election to pursue his contract remedies does
 21 not bar the retailer's OR WHOLESALER'S right to the remedy
 22 provided in 30-11-702 as to any inventory not covered by
 23 contract."

24 NEW SECTION. Section 7. Saving clause. This act does
 25 not affect rights and duties that matured, penalties that

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1 were incurred, or proceedings that were begun before the
2 effective date of this act.

-End-