

Introduced by

Senators Armstrong, Cook, Klein

Representatives Howe, Vigesaa, Delmore

1 A BILL for an Act to amend and reenact sections 51-07-01.2, 51-07-02.2, and 51-26-06 of the
2 North Dakota Century Code, relating to prohibited practices under farm equipment dealership
3 contracts, dealership transfers, and reimbursement for warranty repair.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 51-07-01.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **51-07-01.2. Prohibited practices under farm equipment dealership contracts.**

8 ~~A~~Notwithstanding the terms of any contract, a manufacturer, wholesaler, or distributor of
9 farm implements, machinery, or repair parts who enters into a contract with any person engaged
10 in the business of selling and retailing farm implements and repair parts for farm implements
11 may not:

- 12 1. ~~Goeree~~Require or attempt to ~~coeree~~ ~~there~~require a farm equipment dealer to accept
13 delivery of farm equipment, parts, or accessories that the farm equipment dealer has
14 not voluntarily ordered or require the farm equipment dealer to maintain or stock a
15 level of equipment, parts, or accessories except as provided in subsection 2.
- 16 2. Condition or attempt to condition the sale of farm equipment, parts, or accessories on
17 a requirement that the farm equipment dealer also purchase other goods or services,
18 or purchase a minimum quantity of farm equipment as a condition of filling an order for
19 farm equipment, except that a farm equipment manufacturer may require the dealer to
20 purchase all parts reasonably necessary to maintain the quality of operation in the field
21 of any farm equipment used in the trade area and telecommunication necessary to
22 communicate with the farm equipment manufacturer.
- 23 3. ~~Goeree~~Require or attempt to ~~coere~~require a farm equipment dealer into a refusal to
24 purchase farm equipment manufactured by another farm equipment manufacturer.

- 1 4. Require a farm equipment dealer to separate the line-makes operating within the
2 dealer's facility by requiring the separation of personnel, inventory, service areas,
3 display space, or otherwise dictate the method, manner, number of units, or the
4 location of farm equipment displays at the dealer's facility. This subsection does not
5 prevent a farm equipment dealer and manufacturer from agreeing to those terms if the
6 agreement was supported by separate and valuable consideration. The issuance,
7 reissuance, or extension of a dealership contract alone is not separate and valuable
8 consideration.
- 9 5. Require a farm equipment dealer to either establish or maintain exclusive facilities,
10 personnel, or display space or to abandon an existing relationship with another
11 manufacturer in order to continue, renew, reinstate, or enter a dealer agreement or to
12 participate in any program discount, credit, rebate, or sales incentive. This subsection
13 does not prevent a farm equipment dealer and manufacturer from agreeing to
14 establish or maintain exclusive facilities for separate and valuable consideration. The
15 issuance, re-issuance, or extension of a dealership contract alone is not separate and
16 valuable consideration.
- 17 6. Discriminate in the prices charged for farm equipment of ~~likesimilar~~ grade and quality
18 sold by the farm equipment manufacturer to similarly situated farm equipment dealers.
19 This subsection does not prevent the use of differentials that make only due allowance
20 for differences in the cost of manufacture, sale, or delivery or for the differing methods
21 or quantities in which the farm equipment is sold or delivered by the farm equipment
22 manufacturer. ~~This section~~subsection does not diminish the manufacturer's,
23 wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special
24 machine ordering programs commonly used in the industry.
- 25 ~~5-7.~~ Attempt or threaten to terminate, cancel, fail to renew, or substantially change the
26 competitive circumstances of the dealership contract for any reason other than failure
27 of the farm equipment dealer to substantially comply with the material terms of the
28 written contract between the parties or if the attempt or threat is based on the results
29 of a circumstance beyond the farm equipment dealer's control, including a sustained
30 drought or other natural disaster in the dealership market area or a labor dispute. A
31 substantial change in the competitive circumstances includes the removal of

1 authorization to operate at a location from where the dealer is currently operating or
2 the unreasonable removal of a product line or segment.

3 8. Require a farm equipment dealer to unreasonably remodel, renovate, or recondition
4 the dealer's facilities, change the location of the facilities, or make unreasonable
5 alterations to the dealership premises. A request for a dealer to remodel, renovate, or
6 recondition the dealer's facilities, change the location of the facilities, or make
7 alterations to the dealership premises must be considered in light of current and
8 reasonably foreseeable projections of economic conditions, financial expectations, and
9 the dealer's market for the sale of farm equipment. A facility modification request is
10 unreasonable if the request is within seven years of a farm equipment dealer's most
11 recent facility remodel, renovation, or reconditioning.

12 9. Unreasonably prevent or refuse to approve the relocation of a dealership to another
13 site within the dealer's relevant market area. The dealer shall provide the
14 manufacturer or distributor with notice of the proposed address and a reasonable site
15 plan of the proposed location. The manufacturer or distributor shall approve or deny
16 the request in writing within sixty days after receipt of the request. Failure to deny the
17 request within sixty days is deemed an approval.

18 10. Conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive
19 payment more than one year after the date of the warranty or incentive payment. A
20 manufacturer may not charge back a dealer for an incentive or warranty payment
21 unless the manufacturer can satisfy its burden of proof that the dealer's claim was
22 false, fraudulent, or the dealer did not substantially comply with the reasonable written
23 procedures of the manufacturer. The audit and chargeback provisions in this
24 subsection apply to all incentive and reimbursement programs that are subject to audit
25 by a manufacturer. Before imposing a chargeback, a manufacturer shall identify each
26 claim at issue and provide the dealer with written explanation for the proposed
27 chargeback for each claim. The cumulative value of any chargeback, fees, penalties,
28 or adverse action for an individual claim may not exceed the total direct compensation
29 received by the dealer for the claim at issue. Thereafter, the manufacturer shall
30 provide the dealer a reasonable time, no less than forty-five days, to present additional
31 information regarding a claim at issue.

- 1 11. Use an unreasonable, arbitrary, or unfair sales, service, or other performance standard
2 in determining a farm equipment dealer's compliance with a contract or program.
3 Before applying any sales, service, or other performance standard to a farm
4 equipment dealer, a manufacturer shall communicate the performance standard in
5 writing in a clear and concise manner, including a detailed explanation of the criteria,
6 calculations, methodology, and data used to establish the standard.
- 7 12. Require a farm equipment dealer in this state to enter an agreement with the
8 manufacturer or any other party which requires:
- 9 a. The law of another jurisdiction to apply to a dispute between the dealer and
10 manufacturer;
- 11 b. The dealer to bring an action against the manufacturer in a venue outside of this
12 state;
- 13 c. The dealer waive the right to have all of this state's statutory and common law
14 apply;
- 15 d. Reducing, modifying, or eliminating the dealer's right to resolve a dispute in a
16 state or federal court in this state; or
- 17 e. The dealer to agree to arbitration or waive their rights to bring a cause of action
18 against the manufacturer, unless done in connection with a settlement agreement
19 to resolve a matter between a manufacturer and the dealer. The settlement
20 agreement must be entered voluntarily for separate and valuable consideration.
21 Renewal, reinstatement, or continuation of a dealer agreement alone is not
22 separate and valuable consideration.

23 **SECTION 2. AMENDMENT.** Section 51-07-02.2 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **51-07-02.2. Dealership transfers.**

26 A ~~retailerdealer~~ of automobiles or trucks, farm equipment, or parts for the automobiles or,
27 trucks, or farm equipment may not transfer, assign, or sell a ~~franchisedealer~~ agreement to
28 another person unless the ~~retailerdealer~~ first provides written notice to the
29 ~~franchisor~~manufacturer or distributor of the intended action. Within sixty days of receiving the
30 notice, the ~~franchisor~~manufacturer or distributor must approve or deny the action. If the
31 ~~franchisor~~manufacturer or distributor denies the action, the ~~franchisor~~manufacturer or distributor

1 shall provide material reasons for the denial to the franchisee dealer. If the
2 franchisor manufacturer or distributor does not respond within the sixty-day period, the action is
3 deemed approved. ~~The refusal~~ A denial by the franchisor manufacturer or distributor to accept a
4 proposed transferee who meets the written, reasonable, and uniformly applied standards of
5 qualifications of the franchisor manufacturer or distributor relating to the financial qualifications of
6 the transferee and business experience of the transferee is presumed to be unreasonable. If an
7 action is ~~rejected~~ denied by the franchisor manufacturer or distributor, the franchisee dealer may
8 file an action for determination of a violation of this section. The retailer dealer may elect to
9 pursue either the retailer's dealer's remedy under the contract or the remedy provided in this
10 section. The franchisor manufacturer or distributor has the burden of proof with respect
11 ~~to~~ regarding all issues raised in the action. The court shall approve the transfer unless the
12 franchisor manufacturer or distributor can prove the proposed transferee does not meet the
13 written, reasonable, and uniformly applied standards regarding financial qualifications and
14 business experience.

15 **SECTION 3. AMENDMENT.** Section 51-26-06 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **51-26-06. Application - ~~Not to affect prior contracts~~ - Dealers reimbursed for**
18 **labor warranty repair.**

19 This chapter applies to any new farm machinery sold after July 31, 2001, and does not
20 invalidate, impair, or otherwise infringe upon the specific requirements of any contract between
21 a dealer and a manufacturer entered before August 1, 2001. However, if

22 1. If warranty repair work or service is performed for a consumer by a farm equipment
23 dealer under a manufacturer's express warranty, the manufacturer shall reimburse the
24 dealer at an hourly labor rate that is the same or greater than the hourly labor rate the
25 dealer currently charges consumers for nonwarranty repair work. provide the dealer
26 with reasonable and adequate compensation for diagnostic work, as well as repair
27 service, parts, and labor, for warranty work compensation, a product improvement
28 program, a maintenance plan, an extended warranty, a certified preowned warranty or
29 a service contract, issued by the manufacturer or distributor or its common entity. In
30 addition, a manufacturer shall provide reasonable and adequate time allowances for
31 the diagnosis and performance of warranty work and service for the work performed

1 and the time allowances may not be less than the average time spent by the dealer on
2 similar work for nonwarranty customers. The hourly labor rate and parts
3 reimbursement rate paid by a manufacturer to the dealer under this subsection may
4 not be less than the average rate charged by the dealer for similar service or sales to
5 nonwarranty customers. A manufacturer or distributor may not pay its dealers an
6 amount of money for warranty work, parts, or service that is less than the average rate
7 charged by the dealer for similar service or sales to nonwarranty customers. The
8 dealer may accept the manufacturer's or supplier's warranty reimbursement terms and
9 conditions in lieu of the above.

10 2. The compensation required under subsection 1 includes transportation services,
11 including labor and equipment, necessary to transport equipment under warranty to
12 perform the service and to return the equipment to the customer. If transporting the
13 equipment to the dealership to perform the service is not mechanically or financially
14 feasible, the compensation required under subsection 1 includes travel to and from the
15 location of the equipment if the service or repairs are performed at the location of the
16 equipment. Reimbursement for travel time required under this subsection may not
17 exceed six hours.

18 3. A manufacturer shall pay a dealer on a claim made by a dealer under this section
19 within thirty days of the approval of the claim. The manufacturer shall either approve or
20 disapprove a claim within thirty days after the claim is submitted to the manufacturer.
21 The manufacturer may prescribe the manner in which and the forms on which the
22 dealer must present the claim. A claim not specifically disapproved in writing within
23 thirty days after the manufacturer receives the claim must be construed to be
24 approved and the manufacturer shall pay the claim within thirty days.