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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

ANotwithstanding the terms of any contract, a manufacturer, wholesaler, or distributor of farm implements, machinery, or repair parts who enters into a contract with any person engaged in the business of selling and retailing farm implements and repair parts for farm implements may not:

1. Coerce or attempt to coerce a farm equipment dealer to accept delivery of farm equipment, parts, or accessories that the farm equipment dealer has not voluntarily ordered or require the farm equipment dealer to maintain or stock a level of equipment, parts, or accessories except as provided in subsection 2.

2. Condition or attempt to condition the sale of farm equipment, parts, or accessories on a requirement that the farm equipment dealer also purchase other goods or services, or purchase a minimum quantity of farm equipment as a condition of filling an order for farm equipment, except that a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer.

3. Coerce or attempt to coerce a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.
4. Require a farm equipment dealer to separate the line-makes operating within the
dealer's facility by requiring the separation of personnel, inventory, service areas,
and display space, or otherwise dictate the method, manner, number of units, or the
location of farm equipment displays at the dealer's facility. This subsection does not
prevent a farm equipment dealer and manufacturer from agreeing to those terms if the
agreement was supported by separate and valuable consideration. The issuance,
reissuance, or extension of a dealership contract alone is not separate and valuable
consideration.

5. Require a farm equipment dealer to either establish or maintain exclusive facilities,
personnel, or display space or to abandon an existing relationship with another
manufacturer in order to continue, renew, reinstate, or enter a dealer agreement or to
participate in any program discount, credit, rebate, or sales incentive. This subsection
does not prevent a farm equipment dealer and manufacturer from agreeing to
establish or maintain exclusive facilities for separate and valuable consideration. The
issuance, reissuance, or extension of a dealership contract alone is not separate and
valuable consideration.

6. Discriminate in the prices charged for farm equipment of like/similar grade and quality
sold by the farm equipment manufacturer to similarly situated farm equipment dealers.
This subsection does not prevent the use of differentials that make only due allowance
for differences in the cost of manufacture, sale, or delivery or for the differing methods
or quantities in which the farm equipment is sold or delivered by the farm equipment
manufacturer. This subsection does not diminish the manufacturer's,
wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special
machine ordering programs commonly used in the industry.

5-7. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the
competitive circumstances of the dealership contract for any reason other than failure
of the farm equipment dealer to substantially comply with the material terms of the
written contract between the parties or if the attempt or threat is based on the results
of a circumstance beyond the farm equipment dealer's control, including a sustained
drought or other natural disaster in the dealership market area or a labor dispute. A
substantial change in the competitive circumstances includes the removal of
authorization to operate at a location from where the dealer is currently operating or
the unreasonable removal of a product line or segment.

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

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

10. Conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive
payment more than one year after the date of the warranty or incentive payment. A
manufacturer may not charge back a dealer for an incentive or warranty payment
unless the manufacturer can satisfy its burden of proof that the dealer's claim was
false, fraudulent, or the dealer did not substantially comply with the reasonable written
procedures of the manufacturer. The audit and chargeback provisions in this
subsection apply to all incentive and reimbursement programs that are subject to audit
by a manufacturer. Before imposing a chargeback, a manufacturer shall identify each
claim at issue and provide the dealer with written explanation for the proposed
chargeback for each claim. The cumulative value of any chargeback, fees, penalties,
or adverse action for an individual claim may not exceed the total direct compensation
received by the dealer for the claim at issue. Thereafter, the manufacturer shall
provide the dealer a reasonable time, no less than forty-five days, to present additional
information regarding a claim at issue.
11. Use an unreasonable, arbitrary, or unfair sales, service, or other performance standard in determining a farm equipment dealer's compliance with a contract or program.

Before applying any sales, service, or other performance standard to a farm equipment dealer, a manufacturer shall communicate the performance standard in writing in a clear and concise manner, including a detailed explanation of the criteria, calculations, methodology, and data used to establish the standard.

12. Require a farm equipment dealer in this state to enter an agreement with the manufacturer or any other party which requires:

a. The law of another jurisdiction to apply to a dispute between the dealer and manufacturer;

b. The dealer to bring an action against the manufacturer in a venue outside of this state;

c. The dealer waive the right to have all of this state's statutory and common law apply;

d. Reducing, modifying, or eliminating the dealer's right to resolve a dispute in a state or federal court in this state; or

e. The dealer to agree to arbitration or waive their rights to bring a cause of action against the manufacturer, unless done in connection with a settlement agreement to resolve a matter between a manufacturer and the dealer. The settlement agreement must be entered voluntarily for separate and valuable consideration.

Renewal, reinstatement, or continuation of a dealer agreement alone is not separate and valuable consideration.

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

51-07-02.2. Dealership transfers.

A retailer dealer of automobiles or trucks, farm equipment, or parts for the automobiles or trucks, or farm equipment may not transfer, assign, or sell a franchise dealer agreement to another person unless the retailer dealer first provides written notice to the franchisor manufacturer or distributor of the intended action. Within sixty days of receiving the notice, the franchisor manufacturer or distributor must approve or deny the action. If the franchisor manufacturer or distributor denies the action, the franchisor manufacturer or distributor
Sixty-fifth
Legislative Assembly

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

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

51-26-06. Application - Not to affect prior contracts—Dealers reimbursed for 
labor warranty repair.

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

1. If warranty repair work or service is performed for a consumer by a farm equipment 
dealer under a manufacturer's express warranty, the manufacturer shall reimburse the 
dealer at an hourly labor rate that is the same or greater than the hourly labor rate the 
dealer currently charges consumers for nonwarranty repair work. Provide the dealer 
with reasonable and adequate compensation for diagnostic work, as well as repair 
service, parts, and labor, for warranty work compensation, a product improvement 
program, a maintenance plan, an extended warranty, a certified preowned warranty or 
a service contract, issued by the manufacturer or distributor or its common entity. In 
addition, a manufacturer shall provide reasonable and adequate time allowances for 
the diagnosis and performance of warranty work and service for the work performed.
and the time allowances may not be less than the average time spent by the dealer on
similar work for nonwarranty customers. The hourly labor rate and parts
reimbursement rate paid by a manufacturer to the dealer under this subsection may
not be less than the average rate charged by the dealer for similar service or sales to
nonwarranty customers. A manufacturer or distributor may not pay its dealers an
amount of money for warranty work, parts, or service that is less than the average rate
charged by the dealer for similar service or sales to nonwarranty customers. The
dealer may accept the manufacturer's or supplier's warranty reimbursement terms and
conditions in lieu of the above.

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

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