

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2289

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

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

13 ~~1-a.~~ Coerce~~Require~~ or attempt to ~~coerce~~ ~~therequire~~ a farm equipment dealer to
14 accept delivery of farm equipment, parts, or accessories that the farm equipment
15 dealer has not voluntarily ordered or require the farm equipment dealer to
16 maintain or stock a level of equipment, parts, or accessories except as provided
17 in subdivision b.

18 ~~2-b.~~ Condition or attempt to condition the sale of farm equipment, parts, or
19 accessories on a requirement that the farm equipment dealer also purchase
20 other goods or services, or purchase a minimum quantity of farm equipment as a
21 condition of filling an order for farm equipment, except that a farm equipment
22 manufacturer may require the dealer to purchase all parts reasonably necessary
23 to maintain the quality of operation in the field of any farm equipment used in the

1 trade area and telecommunication necessary to communicate with the farm
2 equipment manufacturer.

3 ~~3-c.~~ ~~Require~~ or attempt to ~~require~~ a farm equipment dealer into a
4 refusal to purchase farm equipment manufactured by another farm equipment
5 manufacturer.

6 4-d. Require a farm equipment dealer to separate the line-makes operating within the
7 dealer's facility by requiring the separation of personnel, inventory, service areas,
8 display space, or otherwise dictate the method, manner, number of units, or the
9 location of farm equipment displays at the dealer's facility. This subdivision does
10 not prevent a farm equipment dealer and manufacturer from agreeing to those
11 terms if the agreement was supported by separate and valuable consideration.
12 The issuance, reissuance, or extension of a dealership contract alone is not
13 separate and valuable consideration.

14 e. Require a farm equipment dealer to either establish or maintain exclusive
15 facilities, personnel, or display space or to abandon an existing relationship with
16 another manufacturer in order to continue, renew, reinstate, or enter a dealer
17 agreement or to participate in any program discount, credit, rebate, or sales
18 incentive. This subdivision does not prevent a farm equipment dealer and
19 manufacturer from agreeing to establish or maintain exclusive facilities for
20 separate and valuable consideration. The issuance, re-issuance, or extension of
21 a dealership contract alone is not separate and valuable consideration.

22 f. Discriminate in the prices charged for farm equipment of likesimilar grade and
23 quality sold by the farm equipment manufacturer to similarly situated farm
24 equipment dealers. This ~~subsection~~subdivision does not prevent the use of
25 differentials that make only due allowance for differences in the cost of
26 manufacture, sale, or delivery or for the differing methods or quantities in which
27 the farm equipment is sold or delivered by the farm equipment manufacturer. This
28 ~~section~~subdivision does not diminish the manufacturer's, wholesaler's, or
29 distributor's ability to provide volume discounts, bonuses, or special machine
30 ordering programs commonly used in the industry.

- 1 5-g. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the
2 competitive circumstances of the dealership contract for any reason other than
3 failure of the farm equipment dealer to substantially comply with the material
4 terms of the written contract between the parties or if the attempt or threat is
5 based on the results of a circumstance beyond the farm equipment dealer's
6 control, including a sustained drought or other natural disaster in the dealership
7 market area or a labor dispute. A substantial change in the competitive
8 circumstances includes the removal of authorization to operate at a location from
9 where the dealer is currently operating or the unreasonable removal of a product
10 line or segment.
- 11 h. Require a farm equipment dealer to unreasonably remodel, renovate, or
12 recondition the dealer's facilities, change the location of the facilities, or make
13 unreasonable alterations to the dealership premises. A request for a dealer to
14 remodel, renovate, or recondition the dealer's facilities, change the location of the
15 facilities, or make alterations to the dealership premises must be considered in
16 light of current and reasonably foreseeable projections of economic conditions,
17 financial expectations, and the dealer's market for the sale of farm equipment. A
18 facility modification request is unreasonable if the request is within seven years of
19 a farm equipment dealer's most recent facility remodel, renovation, or
20 reconditioning.
- 21 i. Unreasonably prevent or refuse to approve the relocation of a dealership to
22 another site within the dealer's relevant market area. The dealer shall provide the
23 manufacturer or distributor with notice of the proposed address and a reasonable
24 site plan of the proposed location. The manufacturer or distributor shall approve
25 or deny the request in writing within sixty days after receipt of the request. Failure
26 to deny the request within sixty days is deemed an approval.
- 27 j. Conduct a warranty or incentive audit or seek a chargeback on a warranty or
28 incentive payment more than one year after the date of the warranty or incentive
29 payment. A manufacturer may not charge back a dealer for an incentive or
30 warranty payment unless the manufacturer can satisfy its burden of proof that the
31 dealer's claim was false, fraudulent, or the dealer did not substantially comply

1 with the reasonable written procedures of the manufacturer. The audit and
2 chargeback provisions in this subdivision apply to all incentive and
3 reimbursement programs that are subject to audit by a manufacturer. Before
4 imposing a chargeback, a manufacturer shall identify each claim at issue and
5 provide the dealer with written explanation for the proposed chargeback for each
6 claim. The cumulative value of any chargeback, fees, penalties, or adverse action
7 for an individual claim may not exceed the total direct compensation received by
8 the dealer for the claim at issue. Thereafter, the manufacturer shall provide the
9 dealer a reasonable time, no less than forty-five days, to present additional
10 information regarding a claim at issue.

11 k. Use an unreasonable, arbitrary, or unfair sales, service, or other performance
12 standard in determining a farm equipment dealer's compliance with a contract or
13 program. Before applying any sales, service, or other performance standard to a
14 farm equipment dealer, a manufacturer shall communicate the performance
15 standard in writing in a clear and concise manner, including a detailed
16 explanation of the criteria, calculations, methodology, and data used to establish
17 the standard.

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

- 20 (1) The law of another jurisdiction to apply to a dispute between the dealer and
21 manufacturer;
22 (2) The dealer to bring an action against the manufacturer in a venue outside of
23 this state;
24 (3) The dealer waive the right to have all of this state's statutory and common
25 law apply;
26 (4) Reducing, modifying, or eliminating the dealer's right to resolve a dispute in
27 a state or federal court in this state; or
28 (5) The dealer to agree to arbitration or waive their rights to bring a cause of
29 action against the manufacturer, unless done in connection with a
30 settlement agreement to resolve a matter between a manufacturer and the
31 dealer. The settlement agreement must be entered voluntarily for separate

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

3 2. As used in this section "farm equipment" and "farm implements" means all vehicular
4 implements and attachment units, designed and used primarily for planting, cultivating,
5 or harvesting farm products or used primarily in connection with the production of
6 agricultural produce or products, livestock, or poultry on farms, and which are
7 operated, drawn, or propelled by motor or animal power.

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

10 **51-07-02.2. Dealership transfers.**

11 1. A retailerdealer of automobiles or trucks, farm equipment, or parts for the automobiles
12 or trucks, or farm equipment may not transfer, assign, or sell a franchisedealer
13 agreement to another person unless the retailerdealer first provides written notice to
14 the franchisormanufacturer or distributor of the intended action. Within sixty days of
15 receiving the notice, the franchisormanufacturer or distributor must approve or deny
16 the action. If the franchisormanufacturer or distributor denies the action, the
17 franchisormanufacturer or distributor shall provide material reasons for the denial to
18 the franchiseedealer. If the franchisormanufacturer or distributor does not respond
19 within the sixty-day period, the action is deemed approved. The refusal

20 2. A denial by the franchisormanufacturer or distributor to accept a proposed transferee
21 who meets the written, reasonable, and uniformly applied standards of qualifications of
22 the franchisormanufacturer or distributor relating to the financial qualifications of the
23 transferee and business experience of the transferee is presumed to be unreasonable.
24 If an action is rejecteddenied by the franchisormanufacturer or distributor, the
25 franchiseedealer may file an action for determination of a violation of this
26 sectionssubsection. The retailerdealer may elect to pursue either the retailer'sdealer's
27 remedy under the contract or the remedy provided in this sectionssubsection. The
28 franchisormanufacturer or distributor has the burden of proof with respect to regarding
29 all issues raised in the action. The court shall approve the transfer unless the
30 franchisormanufacturer or distributor can prove the proposed transferee does not meet

1 the written, reasonable, and uniformly applied standards regarding financial
2 qualifications and business experience.

3 3. As used in this section, "farm equipment" has the same meaning as in section
4 51-07-01.2.

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

7 **51-26-06. Application - ~~Not to affect prior contracts~~ - Dealers reimbursed for**
8 **~~laborwarranty repair.~~**

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

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

- 1 2. The compensation required under subsection 1 includes transportation services,
2 including labor and equipment, necessary to transport equipment under warranty to
3 perform the service and to return the equipment to the customer. If transporting the
4 equipment to the dealership to perform the service is not mechanically or financially
5 feasible, the compensation required under subsection 1 includes travel to and from the
6 location of the equipment if the service or repairs are performed at the location of the
7 equipment. Reimbursement for travel time required under this subsection may not
8 exceed six hours.
- 9 3. A manufacturer shall pay a dealer on a claim made by a dealer under this section
10 within thirty days of the approval of the claim. The manufacturer shall either approve or
11 disapprove a claim within thirty days after the claim is submitted to the manufacturer.
12 The manufacturer may prescribe the manner in which and the forms on which the
13 dealer must present the claim. A claim not specifically disapproved in writing within
14 thirty days after the manufacturer receives the claim must be construed to be
15 approved and the manufacturer shall pay the claim within thirty days.
- 16 4. As used in this section, "farm equipment" has the same meaning as in section
17 51-07-01.2.