

SALES AND EXCHANGES

CHAPTER 440

HOUSE BILL NO. 1067

(Agriculture Committee)

(At the request of the Public Service Commission)

AUCTIONEER AND CLERK LICENSES AND FEES

AN ACT to amend and reenact section 51-05.1-01.1 of the North Dakota Century Code, relating to auctioneer's and auction clerk's license renewals and fees; and to repeal section 51-05.1-06 of the North Dakota Century Code, relating to auctioneer and auction clerk license renewal requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not submitted by January thirty-first must be assessed an additional twenty-five dollar fee.

Before a license is issued to ~~any~~ an auctioneer or auction clerk, the applicant ~~shall~~ must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for an auction clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. When a licensee states that it is bonded, the size of the bond must be stated.

SECTION 2. REPEAL. Section 51-05.1-06 of the North Dakota Century Code is repealed.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 441

HOUSE BILL NO. 1324

(Representatives Hawken, Timm)

(Senators Fischer, G. Nelson)

SEMITRAILER WHOLESALER AND RETAILER RELATIONSHIP

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, 51-07-02, and 51-07-03 of the North Dakota Century Code, relating to the relationship between semitrailer wholesalers and retailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01. Retail implement or car dealer may recover price of articles upon discontinuance of contract by wholesaler or retail dealer. ~~Whenever any~~ If ~~a person, firm, corporation, or limited liability company~~ engaged in the business of selling and retailing farm implements and ~~repair~~ parts for farm implements, or in the business of selling and retailing automobiles ~~or~~, trucks, or semitrailers, or ~~repair~~ parts for ~~automobiles or trucks~~, the same, enters into a written contract ~~whereby~~ such ~~under which the~~ retailer agrees to maintain a stock of parts or complete or whole machines, or attachments with ~~any~~ a wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, or ~~repair~~ parts for the same, or automobiles, trucks, or semitrailers, or ~~repair~~ parts for the same, and ~~either such the~~ wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, ~~such the~~ wholesaler, manufacturer, or distributor shall pay to ~~such the~~ retailer, unless the retailer should desire to keep ~~such the~~ merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers, including transportation charges ~~which that~~ have been paid by ~~such the~~ retailer, and eighty-five percent of the current net prices on ~~repair~~ parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from ~~such the~~ wholesaler, manufacturer, or distributor, and held by ~~such the~~ retailer on the date of the cancellation or discontinuance of ~~such the~~ contract or thereafter received by ~~such the~~ retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay ~~such the~~ retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of ~~such the~~ parts back to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of ~~such the~~ farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers plus transportation charges ~~which that~~ have been paid by the retailer and eighty-five percent of the current net prices on ~~repair~~ parts, plus freight charges ~~which that~~ have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on ~~repair~~ parts only, the retailer shall pass the title to such the farm implements, farm machinery, attachments, automobiles, trucks, semitrailers, or ~~repair~~ parts ~~shall pass~~ to the manufacturer, wholesaler, or distributor making ~~such the~~ payment, and ~~such the~~ manufacturer, wholesaler, or distributor is entitled to the possession of ~~such the~~ farm implements, machinery, attachments, automobiles, trucks, semitrailers, or ~~repair~~

parts. All payments required to be made under this section must be made within thirty days after the final settlement between the retailer and the wholesaler, manufacturer, or distributor.

The provisions of this section are supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, automobiles, trucks, semitrailers, and ~~repair~~ parts so that the retailer can elect to pursue either the retailer's contract remedy or the remedy provided ~~herein~~, and an in this section. An election by the retailer to pursue the retailer's contract remedy does not bar the retailer's right to the remedy provided ~~herein~~ in this section as to those farm implements, machinery, attachments, automobiles, trucks, semitrailers, and ~~repair~~ parts not affected by the contract remedy.

The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

The provisions of this section apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered ~~into~~ or renewed after June 30, 1987. Any contract in force and effect on July 1, 1987, which by its own terms will terminate on a date subsequent thereto is governed by the law as it existed before July 1, 1987.

SECTION 2. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01.1. Termination of franchises to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of farm implements, machinery, and ~~repair parts therefor~~ for the same, or of automobiles, trucks, semitrailers, and ~~repair parts therefor~~ for the same, who enters into a contract with any person, ~~firm, corporation, or limited liability company~~ engaged in the business of selling and retailing farm implements and ~~repair parts for farm implements~~, or in the business of selling and retailing automobiles ~~or~~, trucks, or semitrailers, or ~~repair parts for automobiles or trucks whereby such~~ the same by which the retailer agrees to maintain a stock of parts or complete or whole machines or attachments, automobiles, or trucks, or semitrailers may not terminate, cancel, or fail to renew ~~any such~~ the contract with the person, ~~firm, corporation, or limited liability company~~ without good cause.
2. For the purpose of this section, good cause for terminating, canceling, or failing to renew a contract is limited to failure by the person, ~~firm, corporation, or limited liability company~~ in the business of selling and retailing to substantially comply with those essential and reasonable requirements imposed by the written contract between the parties if the requirements are not different from those requirements imposed on other similarly situated dealers. Further, the determination by the manufacturer, wholesaler, or distributor of good cause for ~~such the~~ termination, cancellation, or failure to renew must be made in good faith.

In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor shall establish that the termination, cancellation, or failure to renew was made in good faith for good cause as that term is defined in this section. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, it is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorneys' fees for prosecuting the action and the plaintiff, when appropriate, is entitled to injunctive relief. The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor. The provisions of this section apply to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after June 30, 1987. Any contract in force and effect on July 1, 1987, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before July 1, 1987.

SECTION 3. AMENDMENT. Section 51-07-02 of the North Dakota Century Code is amended and reenacted as follows:

51-07-02. Prices of implements, machinery, automobiles, and parts - How determined. The prices of farm implements, machinery, and ~~repair~~ parts ~~therefor~~ for the same, and of automobiles, trucks, semitrailers, and ~~repair~~ parts ~~therefor~~ for the same, required to be paid to any retail dealer as provided in section 51-07-01, must be determined by taking one hundred percent of the net cost on farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers and eighty-five percent of the current net price of ~~repair~~ parts ~~therefor~~ for the same as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogs in effect at the time ~~such~~ the contract is canceled or discontinued.

SECTION 4. AMENDMENT. Section 51-07-03 of the North Dakota Century Code is amended and reenacted as follows:

51-07-03. Failure to pay sum specified on cancellation of contract - Liability. In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and ~~repair~~ parts for farm machinery and farm implements, or of automobiles, trucks, semitrailers, and ~~repair~~ parts ~~therefor~~ for the same, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to ~~such~~ the dealer as is required by section 51-07-01, or refuses to supply farm machinery, farm implements, and ~~repair~~ parts for farm machinery and farm implements or automobiles ~~or~~ trucks, or semitrailers, or ~~repair~~ parts ~~therefor~~ for the same, to any retailer of ~~such~~ the products, who may have a retail sales contract dated after June 30, 1987, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1987, with ~~such~~ the manufacturer, wholesaler, or distributor, ~~such~~ the manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by ~~such~~ the retailer for one hundred percent of the net cost of ~~such~~ the farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges ~~which~~ that have been paid by the retailer and eighty-five percent of the current net price of ~~repair~~ parts, plus five percent for handling and loading plus freight charges ~~which~~ that have been paid by the retailer. The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a

merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 442

HOUSE BILL NO. 1427

(Representatives Nicholas, Nottestad, Wald, Warner)
(Senators Kelsh, Tollefson)

INSURANCE CLAIMS FOR EXCESSIVE CHARGES PROHIBITED

AN ACT to amend and reenact section 51-07-24 of the North Dakota Century Code, relating to prohibition of insurance claims for excessive charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-24 of the North Dakota Century Code is amended and reenacted as follows:

51-07-24. Insurance claims for excessive charges - Penalty.

1. A person who sells goods or services paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles may not:
 - a. Advertise or promise to provide a good or service; ~~paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles, and to as an incentive,~~ pay or waive all or part of any applicable insurance deductible, ~~or to pay a rebate in an amount equal to all or part of any applicable insurance deductible; and~~ or
 - b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by that person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by that person on behalf of an insured or remitted to an insured by that person as a rebate.
2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not knowingly submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.
3. A violation of this section is a class B misdemeanor.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 443

HOUSE BILL NO. 1033

(Legislative Council)
(Agriculture Committee)

ANTITRUST INVESTIGATIONS

AN ACT to amend and reenact section 51-08.1-06 of the North Dakota Century Code, relating to an investigation of an antitrust violation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

51-08.1-06. Official investigation.

1. If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this chapter, the attorney general may serve upon the person, before bringing any action in the district court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand must:
 - a. Be served upon the person in the manner required for service of process in this state;
 - b. Describe the nature of the conduct constituting the violation under investigation;
 - c. Describe the document or object with sufficient definiteness to permit it to be fairly identified;
 - d. Contain a copy of the written interrogatories;
 - e. Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the attorney general at or before the designated time;
 - f. Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and
 - g. Contain a copy of subsection 2.

2. If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides, or in which the person maintains a principal place of business within this state, a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, there is reasonable cause to believe there has been a violation of this chapter, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.
3. Any procedure, testimony taken, or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.
4. ~~The investigatory authority provided by this section may be invoked by the attorney general only after a district court has reviewed the information gathered by the attorney general and has determined that there is reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to a possible violation of this chapter. The submission of the information by the attorney general to the district court must be made ex parte and must be kept confidential until such time as the matter may be the subject of an action filed pursuant to section 51-08.1-08.~~

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 444

SENATE BILL NO. 2370

(Representatives Kliniske, Weisz)
(Senators G. Nelson, Krebsbach, Stenehjem)

CURRENCY EXCHANGE BUSINESSES AUTHORIZED

AN ACT to provide for authorization of currency exchange businesses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Currency exchange - Penalty.

1. A nonbanking institution may engage in the business of a currency exchange if:
 - a. The institution does not contract with another person to manage the currency exchange business; however, this does not prohibit the business from employing individuals to operate a currency exchange business;
 - b. The institution displays in a prominent manner on the premises of the business the fees charged to exchange currency;
 - c. The maximum fees charged to exchange currency are limited to any direct cost of verification fees and:
 - (1) The greater of five percent of the face amount or five dollars, for cashing a draft, personal check, payroll check, traveler's check, or money order; and
 - (2) The greater of three percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check;
 - d. The institution does not accept money or currency for deposit or act as bailee or agent of persons to hold money or currency in escrow for others for any purpose; and
 - e. The institution does not exchange currency on the premises of a charitable gaming site.
2. For purposes of this section, "currency exchange" means cashing a check, draft, money order, or traveler's check or issuing a money order or traveler's check as an agent for another, for a fee. The term does not include providing these services incidental to a primary business if there is not a charge for cashing a check or draft.
3. This section does not authorize a business to make any type of loan, including a deferred presentment service transaction, payday loan, cash advance, payday cash advance, or motor vehicle title loan.

4. A nonbanking institution may not accept a postdated check in a currency exchange transaction.
5. A person violating this section is guilty of a class B misdemeanor.

Approved April 12, 2001

Filed April 12, 2001

CHAPTER 445

SENATE BILL NO. 2091

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

FRANCHISE EXEMPTIONS AND SECURITIES ORDERS

AN ACT to amend and reenact subsection 2 of section 51-19-04 and subdivisions f and g of subsection 2 of section 51-19-13 of the North Dakota Century Code, relating to franchise registration exemptions and the powers of the securities commissioner regarding the issuance of orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 51-19-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The offer or sale of a franchise by a franchisee for the franchisee's own account or the offer or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account is exempted from the provisions of section 51-19-03 if the sale is not effected by or through a franchisor; provided, however, that no ~~franchisee or~~ subfranchisor may offer or sell a franchise under this subsection without first obtaining the written approval of the commissioner. The commissioner may require that the ~~franchisee or~~ subfranchisor and the franchisor provide the prospective purchaser and the commissioner with such information and disclosures as the commissioner deems necessary or appropriate to carry out the purposes of this chapter. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

SECTION 2. AMENDMENT. Subdivisions f and g of subsection 2 of section 51-19-13 of the North Dakota Century Code are amended and reenacted as follows:

- f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this chapter and it is being or has been offered for sale without the offer first being registered, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until the offer has been duly registered under this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been ~~made~~ served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held. ~~Unless the hearing is commenced~~ within fifteen business days after the request is made ~~or unless the person~~ persons affected ~~consents~~ consent to a later date; the order is rescinded. If a request for

hearing is not made within the fifteen days permitted herein, the order is final.

- g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with section 51-19-04 or subsection 2 of section 51-19-11, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until an offer is made in compliance with this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been ~~made~~ served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held: ~~Unless the hearing is commenced within fifteen business days after the date, the order is rescinded. If a request for hearing is not made within the fifteen days permitted herein, the order is final.~~

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 446

SENATE BILL NO. 2290

(Senators Klein, Schobinger)
(Representatives Hunskor, Severson, Weisz)

RECREATION VEHICLE FRANCHISES

AN ACT to amend and reenact sections 51-20-01 and 51-20-02 of the North Dakota Century Code, relating to recreation vehicle franchises.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-20-01 of the North Dakota Century Code is amended and reenacted as follows:

51-20-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.
2. "Dealer" means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new recreation vehicles.
3. "Distributor" means any manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; all-terrain vehicles as defined in section 39-29-01; motorcycles as defined in subsection 39 of section 39-01-01; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed ~~thirty-five~~ forty feet [~~40.67~~ 12.19 meters] in length; and motorboats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.
5. "Repair parts" includes accessories.

SECTION 2. AMENDMENT. Section 51-20-02 of the North Dakota Century Code is amended and reenacted as follows:

51-20-02. Recreation vehicle dealers may recover value of vehicles or parts from distributor in certain cases.

1. Whenever:

- a. A distributor cancels or discontinues a contractual arrangement; or
- b. A dealer cancels or discontinues a contractual arrangement because the distributor entered into a contractual arrangement with another dealer to sell in the same geographical area for which the first dealer had an exclusive dealership;

the dealer may recover from the distributor the net cost to the dealer of all new and unused recreation vehicles, and parts for such vehicles, held by the dealer at the time of cancellation or discontinuance of the contractual arrangement. The dealer may enforce the right given under this section by civil action commenced in the district court in the county where the dealer has the dealer's principal place of business in North Dakota. If a dealer has entered a written contract with a distributor wherein the dealer agrees to maintain a stock of recreation vehicles, repair parts, or both recreation vehicles and repair parts, and either the dealer or the distributor desires to cancel or discontinue the contract, the distributor shall pay to the dealer, unless the dealer desires to keep the recreation vehicles or repair parts, the following amounts:

- a. A sum equal to one hundred percent of the net cost of all current year, unused, and complete recreation vehicles;
 - b. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor and were in the dealer's inventory on the date of cancellation or discontinuance of the contract or were thereafter received by the dealer from the distributor;
 - c. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts; and
 - d. Any freight charges on the equipment or repair parts paid by the dealer.
2. When a distributor has made payment in accordance with this section, title to the recreation vehicles and repair parts must pass to the distributor and the distributor is entitled to possession of the recreation vehicles and repair parts. The provisions of this section are supplemental to any contractual rights which the dealer may have with respect to reimbursement for ~~equipment~~ recreation vehicles and parts inventory held by the dealer at cancellation or discontinuance of a contractual arrangement. The dealer may elect to pursue the dealer's rights under the contractual arrangement and under this section, but the dealer's total recovery may not exceed the net cost of the equipment and parts remaining in the dealer's hands at the time of cancellation or discontinuance, plus legal costs awarded by the court. An election by a dealer to pursue a contractual remedy does not bar the dealer's right to the remedy provided by this section with respect to those pieces of recreation vehicles and repair parts not affected by the contract remedy.

3. This section applies to every contract now in effect which has no stated expiration date and to all other contracts entered after July 31, 2001. Contracts in force and effect on July 31, 2001, which by their terms will terminate on a date subsequent to July 31, 2001, are governed by the law existing before August 1, 2001.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 447

HOUSE BILL NO. 1203

(Representatives Wald, Aarsvold, Monson)
(Senators Bowman, Tomac)

FARM EQUIPMENT NONCONFORMITY REMEDIES

AN ACT to provide for remedies for nonconformities in farm equipment; and to repeal section 51-07-07 of the North Dakota Century Code, relating to voiding or rescinding contracts for the purchase of farm machinery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Collateral charges" means those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for farm machinery.
2. "Comparable farm machinery" means an identical or reasonably equivalent piece of farm machinery.
3. "Consumer" means the purchaser, other than for the purposes of resale of new farm machinery primarily used for agricultural purposes; any person to whom the new farm machinery is transferred for the same purposes during the duration of an express warranty applicable to that new farm machinery; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
4. "Express warranty" means any written affirmation of fact or promise made by a manufacturer to a consumer in connection with the sale of new farm machinery which relates to the nature of the material or workmanship or will meet a specified level of performance over a specified period of time. The term does not include an implied warranty.
5. "Farm machinery" means any self-propelled equipment or machinery used for agricultural purposes being transferred for the first time from a manufacturer, distributor, or new farm machinery dealer which has not been registered or titled and which is offered for sale, barter, or exchange by a dealer who is franchised to sell, barter, or exchange that particular make of new farm machinery. The term includes farm machinery propelled by power other than muscular power but does not include off-road vehicles other than self-propelled equipment and machinery used for agricultural purposes.
6. "Manufacturer" means any person engaged in the manufacturing or assembling of new farm machinery as a regular business.
7. "Nonconformity" means any condition of the farm machinery which makes it impossible to use for the purpose for which it was intended.
8. "Reasonable allowance for consumer use" means:

- a. That amount attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer or its authorized dealers;
- b. That amount attributable to use by the consumer during any period subsequent to the first report of nonconformity when the farm machinery is not out of service by reason of repair of the reported nonconformity; and
- c. That amount attributable to use by the consumer of the farm machinery provided by the manufacturer or its authorized dealer while the machine is out of service by reason of repair of the reported nonconformity, but not less than the fair rental value of the farm machinery.

SECTION 2. Law applicable to breach of new farm machinery warranties

- Report of nonconformity required - Repairs - Duty of manufacturer or agent.

Notwithstanding any other provision of law, a sale of new farm machinery is governed by this Act. For the purposes of this Act, if new farm machinery does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer or its agent during the term of the express warranties or during the period of one year following the date of original delivery of the new farm machinery to the consumer, whichever period expires earlier, the manufacturer or its agent shall make any necessary repairs to conform the new machinery to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the term or the one-year period.

SECTION 3. Replacement of farm machinery or refund of purchase price - Allowance deducted for consumer's use - Refund.

If the manufacturer or its agent cannot conform the new farm machinery to any applicable express warranty by repairing or correcting any default or condition that substantially impairs the use or market value of the new farm machinery to the consumer after a reasonable number of attempts, the manufacturer shall give the consumer the option of having the manufacturer either replace the new farm machinery with a comparable new farm machinery acceptable to the consumer, or take title of the machine from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the machine. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new farm machinery occurs. Refunds must be made to the consumer and lienholder of record, if any, as their interests may appear.

SECTION 4. Affirmative defenses.

1. It is an affirmative defense to any claim under this Act that:
 - a. An alleged nonconformity does not substantially impair the use, market value, or safety of the farm machinery;
 - b. A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of farm machinery by a consumer;
 - c. A claim by a consumer was not filed in good faith; or
 - d. Any other affirmative defense allowed by law.

2. It is presumed that a reasonable number of attempts have been undertaken to conform new farm machinery to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of one year following the date of original delivery of the new farm machinery to a consumer, whichever expires earlier, either:
 - a. The same nonconformity has been subject to repair five or more times by the manufacturer or its agents and the nonconformity continues to exist; or
 - b. The new farm machinery is out of service by reason of repair of the nonconformity by the manufacturer or its agents for a cumulative total of thirty or more working days, exclusive of downtime for routine maintenance as prescribed by the manufacturer, since delivery of the new farm machinery to the consumer. The thirty-day period may be extended by a period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

SECTION 5. Information on remedies to be furnished consumer - Notice of complaint to manufacturer required - Manufacturer's duties.

1. The manufacturer shall provide information for consumer complaint remedies with each new farm machinery. Before taking action under this Act, a consumer shall give written notification to the manufacturer of the need for the repair of the nonconformity to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer immediately shall notify the consumer of a reasonably accessible repair facility of a franchised new farm machinery dealer to conform the new farm machinery to the express warranty. After delivery of the new farm machinery to an authorized repair facility by the consumer, the manufacturer shall conform the new farm machinery to the express warranty within thirty calendar days in appropriate seasonal use times and within sixty days in other times. The agriculture commissioner shall designate appropriate seasonal use times for all machinery covered by this Act. Upon notification from the consumer that the new farm machinery has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer. If prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If any repair that may be required under any warranty takes more than fourteen working days to complete, the manufacturer shall supply at no cost a like piece of farm machinery for use by the consumer if requested by the consumer during the time of repair. The manufacturer shall reimburse any costs incurred by a dealer under this Act.
2. An action brought under this Act must be commenced within six months following expiration of the terms, conditions, or limitations of the express warranty or within eighteen months following the date of original delivery of the new farm machinery to a consumer, whichever is earlier. However, if a consumer resorts to an informal dispute settlement procedure, any action must be commenced within ninety days following the final action of any panel established pursuant to the procedure. If an

action is brought under this Act, the prevailing party may recover any court costs and reasonable attorney's fees.

SECTION 6. Application - Not to affect prior contracts - Dealers reimbursed for labor. This Act 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 warranty repair work 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. The dealer may accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above.

SECTION 7. REPEAL. Section 51-07-07 of the North Dakota Century Code is repealed.

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