

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1266
(Representatives Delzer, Kempenich)
(Senator Krebsbach)

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, and 51-07-03 of the North Dakota Century Code, relating to contract remedies for termination of certain retail contracts; and to repeal section 51-07-02 of the North Dakota Century Code, relating to calculation of costs for merchandise of certain retail contracts.

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 farm implement; lawn and garden equipment; or ear vehicle dealer may recover price of articles merchandise upon discontinuance of contract by wholesaler or retail dealer.

1. If a person engaged in the business of ~~selling and~~ retailing farm implements and machinery, or attachments, or parts for ~~farm implements, the same; lawn and garden equipment, or parts for the same; or in the business of selling and retailing~~ automobiles, trucks, or semitrailers, or parts for the same, enters a ~~written~~ contract under which the retailer agrees to maintain a stock of ~~parts or complete or whole machines, or attachments~~ the merchandise covered under this section with a wholesaler, manufacturer, or distributor ~~of farm implements, machinery, attachments, or parts for the same, or automobiles, trucks, or semitrailers, or parts for the same, of the covered merchandise and tools~~ and the wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, the wholesaler, manufacturer, or distributor shall pay to the retailer, unless the retailer ~~should desire~~ desires to keep the merchandise, a sum equal to ~~one~~:
 - a. One hundred percent of the net cost of all current unused complete farm implements, machinery, and attachments; lawn and garden equipment; and automobiles, trucks, and semitrailers, ~~including~~.
 - b. One hundred percent of the actual merchandise and tool transportation charges that have been paid by the retailer, ~~and eighty five~~.
 - c. Ninety percent of the ~~current~~ net prices on parts, including superseded parts ~~listed in current~~, as shown in the manufacturer's, wholesaler's, or distributor's current price lists or catalogs ~~which~~ in effect at the time the contract is canceled, discontinued, or not renewed. These parts ~~had~~ must have previously been purchased from the wholesaler, manufacturer, or distributor, and must have been either held by the retailer on the date of the cancellation ~~or of~~, discontinuance of, or failure to renew the contract or ~~thereafter~~ received by the retailer from the wholesaler, manufacturer, or distributor ~~after the date of the cancellation, discontinuance, or failure to renew. The wholesaler, manufacturer, or distributor shall also pay the retailer a sum equal to five~~.
 - d. Fifty percent of the net cost of all complete specialized tools for the covered merchandise.
 - e. Five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor.

2. Upon the payment of the ~~sum equal to one hundred percent of the net cost of the farm implements, machinery, attachments, automobiles, trucks, and semitrailers plus transportation charges that have been paid by the retailer and eighty five percent of the current net prices on parts, plus freight charges that have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on parts only~~ amounts under subsection 1, the retailer shall pass the title to the farm implements, farm machinery, attachments, automobiles, trucks, semitrailer, or parts covered merchandise and tools to the manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor is entitled to the possession of the farm implements, machinery, attachments, automobiles, trucks, semitrailers, or parts covered merchandise and tools. 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.
3. 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 parts so that the~~ any merchandise and tools covered under this section. The retailer can elect to pursue either the retailer's contract remedy or the remedy provided 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 in this section as to ~~those farm implements, machinery, attachments, automobiles, trucks, semitrailers, and parts~~ any merchandise and tools covered under this section which is not affected by the contract remedy.
4. The obligations of any wholesaler, manufacturer, or distributor under this section and sections 51-07-01.1 and 51-07-03 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.
5. 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 or renewed after ~~June 30, 1987~~ July 31, 2003. Any contract in force and effect on ~~July 1, 1987~~ August 1, 2003, which by its own terms will terminate on a date subsequent thereto is governed by the law as it existed before ~~July 1, 1987~~ August 1, 2003.

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~~ retail contract to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of ~~farm implements, machinery, and parts for the same, or of automobiles, trucks, semitrailers, and parts for the same~~ merchandise and tools covered under section 51-07-01, who enters into a contract with any person engaged in the business of ~~selling and retailing farm implements and parts for farm implements, or in the business of selling and retailing automobiles, trucks, or semitrailers, or parts for the same~~ the covered merchandise by which the retailer agrees to maintain a stock of ~~parts or complete or whole machines or attachments, automobiles, trucks, or semitrailers~~ the covered merchandise may not terminate, cancel, or fail to renew the contract with the ~~person~~ retailer 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 in the business of selling and retailing~~ retailer 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~~ retailers. Further, the

determination by the manufacturer, wholesaler, or distributor of good cause for the termination, cancellation, or failure to renew must be made in good faith.

3. 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~~ the manufacturer, wholesaler, or distributor is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorney's fees for prosecuting the action and the plaintiff, ~~when if~~ 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~~ July 31, 2003. Any contract in force and effect on ~~July 1, 1987~~ August 1, 2003, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before ~~July 1, 1987~~ August 1, 2003.

SECTION 3. 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~~ If a manufacturer, wholesaler, or distributor of ~~farm machinery, farm implements, and parts for farm machinery and farm implements, or of automobiles, trucks, semitrailers, and parts for the same~~ merchandise and tools covered under section 51-07-01, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to the ~~dealer~~ retailer as is required by section 51-07-01, or refuses to supply ~~farm machinery, farm implements, and parts for farm machinery and farm implements or automobiles, trucks, or semitrailers, or parts for the same, covered merchandise or tools~~ to any retailer of the ~~products merchandise~~, who may have a retail sales contract dated after ~~June 30, 1987~~ July 31, 2003, or a contract with no expiration date or a continuing contract in force or effect on ~~July 1, 1987~~ August 1, 2003, with the manufacturer, wholesaler, or distributor, the manufacturer, wholesaler, or distributor ~~shall be~~ is liable in a civil action to be brought by the retailer for ~~one hundred percent of the net cost of the farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges that have been paid by the retailer and eighty five percent of the current net price of parts, plus five percent for handling and loading plus freight charges that have been paid by the retailer~~ the amounts provided under subsection 1 of section 51-07-03. 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.

SECTION 4. REPEAL. Section 51-07-02 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1266.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State