

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1266

Introduced by

Representatives Delzer, Kempenich

Senator Krebsbach

1 A BILL for an Act to amend and reenact sections 51-07-01, 51-07-01.1, and 51-07-03 of the
2 North Dakota Century Code, relating to contract remedies for termination of certain retail
3 contracts; and to repeal section 51-07-02 of the North Dakota Century Code, relating to
4 calculation of costs for merchandise of certain retail contracts.

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

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

8 **51-07-01. Retail farm implement; lawn and garden equipment; or ear vehicle**
9 **dealer may recover price of articles merchandise upon discontinuance of contract by**
10 **wholesaler or retail dealer.**

11 1. If a person engaged in the business of ~~selling and retailing farm implements and,~~
12 machinery, or attachments, or parts for farm implements, the same; lawn and
13 garden equipment, or parts for the same; or in the business of selling and retailing
14 automobiles, trucks, or semitrailers, or parts for the same, enters a ~~written~~ contract
15 under which the retailer agrees to maintain a stock of ~~parts or complete or whole~~
16 ~~machines, or attachments~~ the merchandise covered under this section with a
17 wholesaler, manufacturer, or distributor ~~of farm implements, machinery,~~
18 ~~attachments, or parts for the same, or automobiles, trucks, or semitrailers, or parts~~
19 ~~for the same, of the covered merchandise and tools~~ and the wholesaler,
20 manufacturer, or distributor or the retailer desires to cancel or discontinue the
21 contract, the wholesaler, manufacturer, or distributor shall pay to the retailer,
22 unless the retailer ~~should desire~~ desires to keep the merchandise, a sum equal to
23 one;

- 1 a. One hundred percent of the net cost of all current unused complete farm
2 implements, machinery, and attachments; lawn and garden equipment; and
3 automobiles, trucks, and semitrailers, ~~including.~~
- 4 b. One hundred percent of the actual merchandise and tool transportation
5 charges that have been paid by the retailer, ~~and eighty five.~~
- 6 c. Ninety percent of the ~~current~~ net prices on parts, including superseded parts
7 ~~listed in current,~~ as shown in the manufacturer's, wholesaler's, or distributor's
8 current price lists or catalogs which in effect at the time the contract is
9 canceled, discontinued, or not renewed. These parts ~~had~~ must have
10 previously been purchased from the wholesaler, manufacturer, or distributor,
11 and must have been either held by the retailer on the date of the cancellation
12 or of, discontinuance of, or failure to renew the contract or thereafter received
13 by the retailer from the wholesaler, manufacturer, or distributor after the date
14 of the cancellation, discontinuance, or failure to renew. The wholesaler,
15 manufacturer, or distributor shall also pay the retailer a sum equal to five
- 16 d. Fifty percent of the net cost of all complete specialized tools for the covered
17 merchandise.
- 18 e. Five percent of the current net price of all parts returned for the handling,
19 packing, and loading of the parts back to the wholesaler, manufacturer, or
20 distributor.
- 21 2. ~~Upon the payment of the sum equal to one hundred percent of the net cost of the~~
22 ~~farm implements, machinery, attachments, automobiles, trucks, and semitrailers~~
23 ~~plus transportation charges that have been paid by the retailer and eighty five~~
24 ~~percent of the current net prices on parts, plus freight charges that have been paid~~
25 ~~by the retailer, plus five percent of the current net prices for handling and loading~~
26 ~~costs on parts only~~ amounts under subsection 1, the retailer shall pass the title to
27 the ~~farm implements, farm machinery, attachments, automobiles, trucks,~~
28 ~~semitrailer, or parts~~ covered merchandise and tools to the manufacturer,
29 wholesaler, or distributor making the payment, and the manufacturer, wholesaler,
30 or distributor is entitled to the possession of the ~~farm implements, machinery,~~
31 ~~attachments, automobiles, trucks, semitrailers, or parts~~ covered merchandise and

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

4 3. The provisions of this section are supplemental to any agreement between the
5 retailer and the manufacturer, wholesaler, or distributor covering the return of ~~farm~~
6 ~~implements, machinery, attachments, automobiles, trucks, semitrailers, and parts~~
7 ~~so that the~~ any merchandise and tools covered under this section. The retailer can
8 elect to pursue either the retailer's contract remedy or the remedy provided in this
9 section. An election by the retailer to pursue the retailer's contract remedy does
10 not bar the retailer's right to the remedy provided in this section as to ~~these farm~~
11 ~~implements, machinery, attachments, automobiles, trucks, semitrailers, and parts~~
12 any merchandise and tools covered under this section which is not affected by the
13 contract remedy.

14 4. The obligations of any wholesaler, manufacturer, or distributor under this section
15 and sections 51-07-01.1 and 51-07-03 apply to any successor in interest or
16 assignee of that wholesaler, manufacturer, or distributor. A successor in interest
17 includes any purchaser of assets or stock, any surviving corporation or limited
18 liability company resulting from a merger or liquidation, any receiver, or any trustee
19 of the original wholesaler, manufacturer, or distributor.

20 5. The provisions of this section apply to all contracts now in effect which have no
21 expiration date and are a continuing contract, and all other contracts entered or
22 renewed after ~~June 30, 1987~~ July 31, 2003. Any contract in force and effect on
23 ~~July 1, 1987~~ August 1, 2003, which by its own terms will terminate on a date
24 subsequent thereto is governed by the law as it existed before ~~July 1, 1987~~
25 August 1, 2003.

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

28 **51-07-01.1. Termination of franchises retail contract to be done in good faith -**
29 **Definition of good cause.**

30 1. Any manufacturer, wholesaler, or distributor of ~~farm implements, machinery, and~~
31 ~~parts for the same, or of automobiles, trucks, semitrailers, and parts for the same~~

1 merchandise and tools covered under section 51-07-01, who enters into a contract
2 with any person engaged in the business of ~~selling and retailing farm implements~~
3 ~~and parts for farm implements, or in the business of selling and retailing~~
4 ~~automobiles, trucks, or semitrailers, or parts for the same~~ the covered
5 merchandise by which the retailer agrees to maintain a stock of ~~parts or complete~~
6 ~~or whole machines or attachments, automobiles, trucks, or semitrailers~~ the
7 covered merchandise may not terminate, cancel, or fail to renew the contract with
8 the ~~person~~ retailer without good cause.

9 2. For the purpose of this section, good cause for terminating, canceling, or failing to
10 renew a contract is limited to failure by the ~~person in the business of selling and~~
11 ~~retailing~~ retailer to substantially comply with those essential and reasonable
12 requirements imposed by the ~~written~~ contract between the parties if the
13 requirements are not different from those requirements imposed on other similarly
14 situated ~~dealers~~ retailers. Further, the determination by the manufacturer,
15 wholesaler, or distributor of good cause for the termination, cancellation, or failure
16 to renew must be made in good faith.

17 3. In any action against a manufacturer, wholesaler, or distributor for violation of this
18 section, the manufacturer, wholesaler, or distributor shall establish that the
19 termination, cancellation, or failure to renew was made in good faith for good
20 cause ~~as that term is defined in this section~~. If the manufacturer, wholesaler, or
21 distributor fails to establish good cause for its action, ~~it~~ the manufacturer,
22 wholesaler, or distributor is liable for all special and general damages sustained by
23 the plaintiff, including the costs of the litigation and reasonable attorney's fees for
24 prosecuting the action and the plaintiff, ~~when~~ if appropriate, is entitled to injunctive
25 relief. ~~The obligations of any wholesaler, manufacturer, or distributor apply to any~~
26 ~~successor in interest or assignee of that wholesaler, manufacturer, or distributor.~~
27 ~~A successor in interest includes any purchaser of assets or stock, any surviving~~
28 ~~corporation or limited liability company resulting from a merger or liquidation, any~~
29 ~~receiver, or any trustee of the original wholesaler, manufacturer, or distributor.~~ The
30 provisions of this section apply to all contracts now in effect which have no
31 expiration date and are continuing contracts and all other contracts entered into,

1 amended, or renewed after ~~June 30, 1987~~ July 31, 2003. Any contract in force
2 and effect on ~~July 1, 1987~~ August 1, 2003, which by its terms will terminate on a
3 date subsequent thereto is governed by the law as it existed before ~~July 1, 1987~~
4 August 1, 2003.

5 **SECTION 3. AMENDMENT.** Section 51-07-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **51-07-03. Failure to pay sum specified on cancellation of contract - Liability.** ~~It~~
8 ~~the event that any~~ If a manufacturer, wholesaler, or distributor of ~~farm machinery, farm~~
9 ~~implements, and parts for farm machinery and farm implements, or of automobiles, trucks,~~
10 ~~semitrailers, and parts for the same~~ merchandise and tools covered under section 51-07-01,
11 upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor,
12 fails or refuses to make payment to the ~~dealer~~ retailer as is required by section 51-07-01, or
13 refuses to supply ~~farm machinery, farm implements, and parts for farm machinery and farm~~
14 ~~implements or automobiles, trucks, or semitrailers, or parts for the same,~~ covered merchandise
15 or tools to any retailer of the ~~products~~ merchandise, who may have a retail sales contract dated
16 after ~~June 30, 1987~~ July 31, 2003, or a contract with no expiration date or a continuing contract
17 in force or effect on ~~July 1, 1987~~ August 1, 2003, with the manufacturer, wholesaler, or
18 distributor, the manufacturer, wholesaler, or distributor ~~shall be~~ is liable in a civil action to be
19 brought by the retailer for ~~one hundred percent of the net cost of the farm implements,~~
20 ~~machinery, attachments, automobiles, and trucks, plus transportation charges that have been~~
21 ~~paid by the retailer and eighty five percent of the current net price of parts, plus five percent for~~
22 ~~handling and loading plus freight charges that have been paid by the retailer~~ the amounts
23 provided under subsection 1 of section 51-07-03. The obligations of any wholesaler,
24 manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler,
25 manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock,
26 any surviving corporation or limited liability company resulting from a merger or liquidation, any
27 receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

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