

**MICROFILM DIVIDER**

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

19266

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La Costa Rickford  
Operator's Signature

10/3/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1266

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1266

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
3		x	31.2-end
4	x		0.00-6.7
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Keiser opened the hearing on HB 1266.

Rep. Delzer, District 8, introduced HB 1266. (See attachments 1 & 2) This bill will make changes in return policies for retail implement dealers.

Rep. Ekstrom: Why is gardening machinery included?

Rep. Delzer: This is what the manufacturer has to allow the retailer who is going out of business to return as unsold goods. Currently, lawn and garden equipment is not included in that category of merchandise.

Rep. Froseth: What are Minnesota and South Dakota doing in situations like this?

Rep. Delzer: I can't answer that.

Rep. Severson: Most manufacturers dictate a quota that must be sold or stocked in order to be a distributor for that line. The original isn't out anything because they've been paid for those wholesale goods. Yet an individual who goes out of business with all the parts and tools have no recourse. This law provides an opportunity to reclaim some of what they've paid for but not sold.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1266

Hearing Date 1/27/03

**Rep. Delzer:** Remember, there is a situation where big dealers (Case I-H, John Deere) are tempting to decrease the number of dealers in the state. 51% of a business has to be owned by a family in order for that dealership to stay in business.

**Chairman Keiser:** When you calculated your percentages, did you consider what the original price was to the wholesaler/retailer, restocking fees, or return shipping and transportation costs?

**Rep. Delzer:** Some of the discussion was that it should be half all way across the board, I put this together just so I could get it in front of the IBL committee.

**Elmer Schwartz,** testified in support of HB 1266 ( See attached)

**Rep. Thorpe:** Is this similar to what we did in legislation last session for recreation industry?

Was lawn and garden under a separate merchandising contract from farm contracts?

**Schwartz:** Yes. The lawn & garden in with the agricultural equipment is a good move. We had up to 50 vendors and a franchise contract for the lawn and garden equipment which we were expected to carry in order to support their product.

**Rep. Ruby:** Does this encompass all areas, all the short lines? Is there rewording you can suggest that would improve this bill?

**Schwartz:** Yes, in the last paragraph of my letter there we are requesting a do pass but to include *the suppliers of commodity items* and also dealer discontinuation language needs to be added.

**Rep. Johnson:** In the contracts that you have with a franchising group where you were required to purchase so much equipment and parts, were there provisions or could areas be added that would delineate what the buyback would be in case of a termination contract or bankruptcy?

**Schwartz:** We weren't forced to try any particular product or any particular parts other than the fact what was expected to do a good job in handling their product. They maintained a list of

Page 3  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1266  
Hearing Date 1/27/03

recommended parts and accessories you should carry. With 50 vendors you have 50 contracts with different terms. They only look at what is required of them by state law when they terminated my contract.

**Bob Lamb, ND Implement Dealer's Association:** Current law states that it applies whether the dealer is terminated by the manufacturer or the dealer voluntarily terminates. In most sales and service agreements the manufacturers do have provisions regarding what happens if a dealer goes out of business. Unfortunately, it's slanted toward the manufacturer, not the dealer. Under present law, the dealer has the right to choose whatever remedy is in their best interest: a sales and service agreement or North Dakota law, they can use that. The problem with the contracts is that they are not negotiated between the dealer and the manufacturer. The manufacturer provides a contract and the dealer can agree or not carry that line of machinery. Lots of dealers have merchandise on their lots that they are not required to carry but they are governed by market share requirements.

**Rep. Ruby:** What do you think about the percentages of payback? Do you see any necessary changes?

**Lamb:** Are you referring to the specialized tools or general?

**Rep. Ruby:** General.

**Lamb:** This bill has been on the books since 1961 or so. In many other states, that requirement is 100% buyback. Relative to the percentages on tools, that's more difficult. If they are new and used, that percentage is probably too low (50%) If they are used, what is the true value?

**Rep. Froseth:** Are they expected to pay 100% of hold over merchandise?

**Lamb:** If it's in their current price catalogue, it's 100%.

Page 4  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1266  
Hearing Date 1/27/03

**Rep. Severson:** Do you think it would behoove us to look at an amendment to avoid the scenario that happened with Evinrud etc.

**Lamb:** There is a provision in current law relating to successor ship and what it says is this: Any successor in interest to those bankrupt companies or those who have gone out of business, if someone else acquires that company, they have the same obligations to the dealer as the previous company did. In this case, this bill relates to farm equipment and automobiles. It's been amended over the years. A different section of the code would address the issue you're talking about.

**Rep. Thorpe:** Shouldn't it be incumbent on a manufacturer to make sure a dealer is a viable business when a contract is mandated?

**Lamb:** This law has been on the books for a long time. Over 200 dealerships have gone under or out of business in the past two decades. The legislature has passed laws that have worked well.

**Alvin Schwartz,** testified in support of HB 1266 (See attached) I continue to sell parts, on a yearly contract basis. We need to add some other language. Short line companies will not give you a written contract. And yet you have to stock some pretty expensive sprayers etc. I believe that invoices should constitute as legal contracts.

As there was no one present to testify in opposition to HB 1266, the hearing was closed.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1266

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
2		x	2.0-10.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Keiser called for committee work on HB 1266.

Rep. Ruby: Amendments were prepared by Legislative Council. I'll walk you through them. I met with Rep. Delzer and Schwartz and they asked that "or verbal" be included on line 1. A contract can imply either verbal or written so we are over striking "written". They also asked that the percentage should be changed to 90% from 85% on page 2, line 16. "Current unused" was changed to "complete". Lines 19 & 20 are deleted. On page 4, "manufacturer, wholesaler or distributor" is replaced with "retailer". Dates on page 5 are changed from June 30 & July 1, 1987 to July 31, and August 1, 2003, respectively. Rep. Froseth and Chairman Keiser noted two minor corrections to be added to the proposed amendments.

Rep. Nottestad moved to adopt the amendments. Rep. Klein seconded this motion. A voice vote carried the amendments.

Rep. Klein moved a Do Pass As Amended. Rep. Ruby seconded the motion.

The roll call vote was unanimous: 14-0-0. Rep. Ruby will carry HB 1266 on the floor.

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*10/3/03*  
Date

30242.0101  
Title.0200

Prepared by the Legislative Council staff for  
Representative Ruby  
January 29, 2003

VR  
1/30/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1266 IBL 1-30-03

Page 1, line 14, overstrike "written"

HOUSE AMENDMENTS TO HB 1266 IBL 1-30-03

Page 2, line 6, replace "Eighty-five" with "Ninety"

Page 2, line 17, replace "current unused" with "complete"

Page 2, remove lines 19 and 20

Page 2, line 21, replace "f." with "e."

HOUSE AMENDMENTS TO HB 1266 IBL 1-30-03

Page 4, line 12, replace "manufacturer, wholesaler, or distributor" with "retailer"

Page 4, line 16, overstrike "written"

HOUSE AMENDMENTS TO HB 1266 IBL 1-30-03

Page 5, line 20, overstrike "June 30, 1987" and insert immediately thereafter "July 31, 2003"

Page 5, line 21, overstrike "July 1, 1987" and insert immediately thereafter "August 1, 2003"

Renumber accordingly

Page No. 1

30242.0101

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Operator's Signature

10/3/03  
Date



Date: 1/29/03  
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1264

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 30242-0101/.0200

Action Taken Do Pass As Amended

Motion Made By Klein Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 30, 2003 3:09 p.m.

Module No: HR-18-1405  
Carrier: Ruby  
Insert LC: 30242.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**  
HB 1266: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1266 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "written"

Page 2, line 6, replace "Eighty-five" with "Ninety"

Page 2, line 17, replace "current unused" with "complete"

Page 2, remove lines 19 and 20

Page 2, line 21, replace "f." with "e."

Page 4, line 12, replace "manufacturer, wholesaler, or distributor" with "retailer"

Page 4, line 16, overstrike "written"

Page 5, line 20, overstrike "June 30, 1987" and insert immediately thereafter "July 31, 2003"

Page 5, line 21, overstrike "July 1, 1987" and insert immediately thereafter "August 1, 2003"

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1266

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10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1266

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 03-05-03

Tape Number	Side A	Side B	Meter #
2	xxx		3260-3700
Committee Clerk Signature <i>Lisa Van Berkom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1266. All Senators were present. Senator Every and Senator Espgaard were absent for roll call vote. HB 1266 relates to contract remedies for the termination of certain retail contracts.

**Testimony in support of HB 1266**

**Representative Jeff Delzer** introduced the bill. See written testimony. HB 1266 was introduced to make some changes to the return policies when a retail implement dealer quits doing business with a manufacturer.

**Bob Lamp**, ND Implement Dealers Association, spoke in support as well. See attached testimony.

**There was no opposition.**

**The hearing was closed.**

**Senator Krebsbach moved a DO PASS. Senator Klein seconded.**

**Roll Call Vote: 5 yes. 0 no. 2 absent. Carrier: Senator Heitkamp**

5

Date: 3-08-03  
Roll Call Vote #: )

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1266 Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Krebsbach Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heitkamp	X				
Sen. Every	A				
Sen. Epegard	A				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Heitkamp

If the vote is on an amendment, briefly indicate intent:

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10/3/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 5, 2003 2:15 p.m.

Module No: SR-39-4016  
Carrier: Heitkamp  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1266, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1266 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-39-4016

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10/2/03  
Date

7

2003 TESTIMONY

HB 1266

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Mr. Chairman and members of the House IBL committee

For the record, my name is Jeff Delzer, representative for district 8, which is parts of Mclean and Burliegh counties. House bill 1266 was introduced to make some changes to the return policies when an retail implement dealer quits doing business with a manufacturer.

Section 1 of the bill adds lawn and garden equipment at full price to the list of returnable goods and also adds specialty tools that the manufacturer has required be purchased. Tools to be returned at a level of 50% of cost for new and 30% of cost for used. The percentage numbers are there but I will say that they may need to be adjusted for the correct amounts. It may be that you would prefer 50% across the board or some other number. I believe there will be people in the audience who wish to explain their dealings with these sections of law.

Section 2 of the bill updates the language in sec 57-07-01.1 to reflect the changes being made to section 57-07-01. When I looked through the bill it looks to me that the language on page 4 line 13 may be referencing the wrong group. As I look through it, replacing the person may need to be done with retailer instead of the manufacturing group.

Section 3 of the bill again reflects the needed changes to adhere to proposed changes in 57-07-01.

Mr. Chairman and committee we may want to make sure these protections are in place if either the manufac. ing group or the retailer wants to terminate the contracts. Thank you for your attention to this matter, if amendments need to be drafted I will gladly work with the committee. Committee members I ask for a favorable recommendation and would try to answer any questions you may have.



Source: S.L. 1991, ch. 521, § 1.

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

Source: S.L. 1937, ch. 125, § 2; R.C. 1943, § 51-0702; S.L. 1961, ch. 309, § 2; 1963, ch. 329, § 2.

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10/3/03  
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Attachment 3

IN SUPPORT OF HOUSE BILL #1266

SPONSERED BY REPS, DELZER, KEMPENICH, & SEN. KREBSBACH

I am here as A representative of Washburn Power and Equipment, Inc. of Washburn, North Dakota.

Washburn Power and Equipment, Inc. has closed it's doors after thirty years in the retail sales business of agricultural implements as well as lawn and garden equipment and related parts and service.

We ran into a roadblock in returning our remaining parts stocks to so called "short line companies" and suppliers of commodity items as well as the lawn and garden distributors. Also the major companies require specialty service tools be purchased whenever a new product is introduced and before it will be shipped to the dealership as ordered. Now, upon closing, we have no place to go with these specialty tools.

We need to include all the above as drafted into house bill #1266.

Several manufacturers and distributors flatly refuse to take these parts back because, as they told us, North Dakota law does not require them to "have to" buy back their products as sold to us. The companies that we have contracts with all agree they will follow the written North Dakota law as required. The law, however, does not include the lawn and garden suppliers/distributors nor suppliers of "commodity items". The short line companies/distributors in many cases will not enter into a contract with a dealer. These same companies want us to carry an inventory to help sell their product, but when we have to close shop, we can not even return the products we still may have in stock and paid for.

We request that you will give a favorable "do pass" to this bill and include suppliers of

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10/2/03  
Date

commodity items and upon dealer termination/closing ,as well, to give us a little  
more protection.

Sincerely,

*Elmer A. Schwarz*

Elmer A. Schwarz

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*10/3/03*  
Date

Fifty Eighth  
Legislative Assembly  
Of North Dakota

Representatives Delzer, Kempenich

Please note most of the Agricultural Short Line Companies gives no contract to their Dealers.

I wish you would take this BLACK HORSE out of the N. D. Century Code.  
Please add Agricultural Short Line Companies and parts supply companies that have no contract with their dealers.

I was questioning the suppliers about N. D. C. C. 51-07-01 and their reply was.

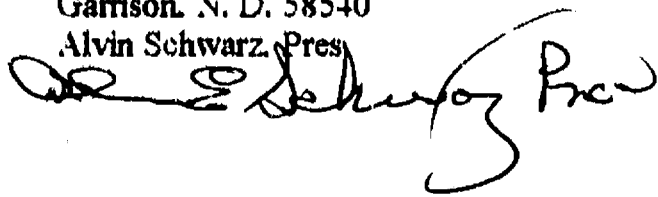
1. We have no written contract and will not give any.
2. Dealers are not required to maintain a stock of parts.
3. They are suppliers of commodity items and these items do not fall under the provision.
4. Some suppliers never answered.

These are things to address.

"May it be made known that the invoices shall govern the same as a written contract; thus the invoices shall constitute as the legal contract in house bill number 1266."

Thank You.

Schwarz Implement Inc.  
P. O. Box 37  
Garrison, N. D. 58540  
Alvin Schwarz, Pres





# HORVICK

## MANUFACTURING

4350 48TH AVE. NO. (N. HIGHWAY 81) FARGO, ND 58102-7404  
PH (701) 290-2862 FAX (701) 293-0981

12/16/2002

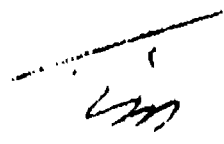
Alvin Schwarz  
Schwarz Implement  
PO Box 37  
Garrison, ND 58540

Alvin-

I received your letter concerning your wish to return items purchased from us. You refer to the NDCC 51-07-01. In the past, we have asked for information on the applicability of this provision as it applies to us. It is our understanding that it does apply in cases such as yours, and we have no obligation to return merchandise. We were told that we were suppliers of commodity items, and these items do not fall under the provision.

On a volunteer basis, however, we would be willing to look at the list of items you would like to return. If you could supply a list of the part numbers and copies of the invoices, we will review them and see what we can do.

Please send the list to my attention. Thank you.

  
Tim Pederson  
Sales Manager

FERTILIZER AND CHEMICAL APPLICATION EQUIPMENT AND PARTS SPECIALISTS

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10/2/03  
Date



# HORVICK

## MANUFACTURING

4350 48TH AVE. NO. (N. HIGHWAY 81) FARGO, ND 58102-7404  
PH: (701) 280-2862 FAX (701) 283-0861

1-22-2002  
Alvin Schwarz  
Schwarz Implement  
PO Box 37  
Garrison, ND 58540

Alvin-

I received your letter concerning your return of items purchased from us. You refer to the NDCC 51-07-01. As I mentioned in my previous letter, we have asked for information on the applicability of this provision as it applies to us. It is our understanding that it does apply in cases such as yours, and we have no obligation to return merchandise. We were told that we were suppliers of commodity items, and these items do not fall under the provision.

Below is the Century Code you mentioned. I have underlined the phrase "into a written contract whereby such retailer agrees to maintain a stock of parts."

Horvick's has never had a written contract for dealers, and has no policy of maintaining any type of minimum stock to maintain dealer pricing.

### CHAPTER 51-07

#### MISCELLANEOUS PROVISIONS

**51-07-01. Retail Implement or car dealer may recover price of articles upon discontinuance of contract by wholesaler or retail dealer.** Whenever 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 repair parts for automobiles or trucks, enters into a written contract whereby such retailer agrees to maintain a stock of parts or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, or repair parts, or automobiles, trucks, or repair parts, and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer unless the retailer should desire to keep such merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, automobiles, and trucks including transportation charges which have been paid by such 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 wholesaler, manufacturer, or distributor, and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such 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 farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges which have been paid by the retailer and

FERTILIZER AND CHEMICAL APPLICATION EQUIPMENT AND PARTS SPECIALISTS

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Date

TESTIMONY  
HOUSE BILL 1266  
MARCH 5, 2003

- Mr. Chairman, members of the Senate Industry, Business and Labor Committee. My name is Bob Lamp representing the North Dakota Implement Dealers Association. NDIDA is a statewide trade association consisting of 130 farm equipment dealers.
- House Bill 1266 amends a section of the NDCC that relates to dealer rights when a dealership termination takes place. It assures fair and equitable treatment for dealers whether the termination is voluntary or involuntary.
- North Dakota farm equipment dealers have been part of an extremely volatile industry over the past two decades. During that period of time, this state lost in excess of 200 dealers. These terminations have been difficult not only on the affected dealers but on many communities because the farm equipment dealer is often the cornerstone of these towns.
- As dealerships have terminated, NDCC 51-07 has provided the exact dealer protections which were intended when the law was first enacted a number of years ago. This law has been amended numerous times to address changing needs within the industry but the original intent of its passage has not changed over the years.
- Today you have before you another amendment to correct what has become a conflict between manufacturers/distributors and their dealers regarding lawn and garden equipment. The manufacturers and distributors contend that lawn and garden equipment is not covered by 51-07. Dealers believe the lawn and garden lines are part of a written agreement with the manufacturer/distributor and should be governed by the same laws as farm machinery.
- Many states have already enacted specific laws requiring the manufacturer/distributor to repurchase lawn and garden equipment and parts on the same basis as farm machinery. The NDIDA believes North Dakota should do the same and asks for your favorable consideration of House Bill 1266.
- Thank you Mr. Chairman for the opportunity to testify.

Robert L. Lamp  
North Dakota Implement Dealers Association

La Costa Rickford  
Operator's Signature

10/3/03  
Date



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Jeff Delzer  
District 8  
2919 Fifth Street NW  
Underwood, ND 58576-9603

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

COMMITTEES:  
Appropriations

Mr. Chairman and members of the Senate IBL committee

For the record, my name is Jeff Delzer, representative for district 8, which is parts of Mclean and Burleigh counties. House bill 1266 was introduced to make some changes to the return policies when an retail implement dealer quits doing business with a manufacturer.

Section 1 of the bill adds lawn and garden equipment at full price to the list of returnable goods and also adds specialty tools that the manufacturer has required be purchased. Tools to be returned at a level of 50% of cost for complete tools. This is the level that the house IBL committee decided on and I certainly have no problem with it. I believe there will be people in the audience who wish to explain their dealings with these sections of law.

Section 2 of the bill updates the language in sec 57-07-01.1 to reflect the changes being made to section 57-07-01.

Section 3 of the bill again reflects the needed changes to adhere to proposed changes in 57-07-01.

Mr. Chairman and committee members, Thank you for your attention to this matter, if amendments need to be drafted I will gladly work with the committee. Committee members I ask for a favorable recommendation and would try to answer any questions you may have.