MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1203

2001 HOUSE AGRICULTURE

HB 1203

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-25-2001

Tape Number	Side A	Side B	Meter #
THREE	A		1780 TO 5184
Committee Clerk Signature	Edward D Ellison		

Minutes:

1A:1780 CHAIRMAN NICHOLAS: We will open to hearing on HB 1203.

1A: OLE AARSVOLD: For the record my name is Ole Aarsvold. I appear before you as a sponsor of HB 1203. In this age of incredibly costly machinery and very narrow farm margins, it is essential that the farmers of this state and our local dealers have the protection afforded by HB 1203. I solicit your favorable recommendation.

1A:2175 CHAIRMAN NICHOLAS: Who would like to testify next?

BOB LAMP: I represent the ND Dealers Association. We support HB 1203. It is important to point out to the committee that what is really driving this Legislation is a current law that we are asking to be repealed. The ND CENTURY CODE BILL 510707. It relates to the purchaser being able to return equipment. It gives the purchaser the ability to rescind the sale. What is a reasonable time to return the equipment after time of sale. What is reasonable fit?

That is not pointed out in the Bill. In toadies world the implement dealer is there to satisfy the warranty. Take care of there farm customers. The problem with the code is leaves it up to what an individuals perception is. We need a new approach. The lemon law come in etc. We have run this Bill past several manufactures and they do not have any problem with this Bill. HB 1203 it self points out the importance of the Bill. I do have a couple of dealers that would like to testify.

1A:2694 REPRESENTATIVE LEMIEUX: When we talk warranties. This Bill is predominately for new machinery.

1A:2747 BOB LAMP: This Bill would not effect that circumstance at all.

1A: CHAIRMAN NICHOLAS: I will take additional testimony.

JOHN SCHABERT I am the John Deer dealer from Dickinson, ND.

I am here to speak in favor of HB 1203. M y big interest in the Bill is that I have had some problems that we would like to repeal. I sold a tractor to a purchaser. During the course of the sale we negotiated a warranty that was acceptable to both of us. The warranty was for a period of through the planting season of the next year. During that time frame he did invoke the warranty once. He told me what it cost him to repair the machine and I reimbursed him for it. He sent a note and told me that the tractor was working fine and he was real happy with it. Later on that fall after he had used the machine all summer and into the fall work. He had some problems with the tractor and took it to another dealership which I was not aware of. I had lived up to our negotiated dealership. He had had the tractor for nearly two years and the tractor was know thirteen years old. The end result of that: He ended up suing me and in the trial the judge sited this section 510707. He held me responsible to the tune of sixteen thousand dollars.

for the repairs that was done to the used tractor. Even thought I did not do it in my shop. He had the work done somewhere else. The judge overruled the express warranty that we negated at time of purchase. I thinks that HB 1203 will be a remedy to the problem. The Bill give time limits so that everyone know what the limits are right from the start.

This warranty would preclude the machinery from being taken to to home repair shop. Most of the machinery is take back to the seller of the machinery for warranty work. A custom combined would be a different situation. The machine would be taken to a licensed authorized dealer.

1A: REPRESENTATIVE BERG; This new Bill would not help you in your present dispute.

1A: JOHN SCHABERT: That's right.

1A:REPRESENTATIVE LEMIEUX: I have always thought that what was sold was buyer be ware.

1A: JOHN SCHABERT: I have been told by a judge that you can't sell something "as is" It has to be fit for something. It has to serve a purpose. Unless you bought it for parts.

1A:4444 CHAIRMAN NICHOLAS: What you are telling us is that if you have an implied warranty. This was a used equipment that you are being sued for. You had an implied warranty. Sometimes you buy used equipment and the dealer says I will warrant for ninety days or whatever. I will put this writing, etc.

1A:4476 JOHN SCHABERT: There are two different warranties. There is the express warranty which everything is written out. It tells what the customer gets at the time of the sale. The implied warrant is what basically addressed by 510707. The implied warranty is that the

equipment is fit to do what is for what it is purchased. The warranty on used equipment must be negotiated by the dealer and the customer at the time of the sale.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-25-2001

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 1021
Committee Clerk Signature	Edward Ellyson		

Minutes:

CONTINUED:

A customer of example; you buy a use tractor from me and you are paying $25,000.00 for it That's a lot of money and you might ask for some kind of a warranty. If something goes wrong with the machine and it needs to be hauled, we will split it fifty fifty. If we both agree to that then you are covered. At least you know what your share is going to be if something goes wrong but if you come into me and I tell you I want $25,000.00 for the machine. The purchaser says he will pay $20,000.00 for the machine. Then , as the dealer, I would say O.K. but then you are buying the tractor AS IS. Then the purchaser is taking $5,000.00 of the purchase price. Then you know that you the purchaser is taking the risk. That should all be negotiated between the dealer and the customer. I don't think that it should be written into a law that favors either party.

1A:88 CHAIRMAN NICHOLAS: Any other questions committee members?

REPRESENTATIVE LEMIEUX: When I refer back to Bob Lambs testimony where he has the statues sighted in which and we go down to the line where it says if it dose not prove to be reasonable fit for the purpose for which it was purchased. Where dose it imply that the dealer is liable and not the manufacture.

MR CHAIRMAN AND REPRESENTATIVE LEMIEUX: It dose not imply that. In fact what it says is that the recourse is to rescind the contract and that is why the case that I'm involved in is in the Supreme Court now. Because the customer that I'm dealing with had no intention of giving up the tractor. He did not want to give it back to me and even take the case back for what he paid for it. He wanted to keep the tractor. He just wanted me to pay to pay the repairs and the judge agreed with him. That why were in court. The part about this law that is so vague is the reasonable amount of time.

1A:253 CHAIRMAN NICHOLAS: Any other questions committee members. O.K. Thank you sir. Who else would like to offer testimony.

OUT GOING PRESIDENT OF THE N.D. IMPLEMENT DEALER ASSOCIATION: Fran?
We have two dealerships. Central Sales and we are a silver seder dealer in Jamestown and Casselton. I would like to speak in behalf of the Dealers in N.D. also in favor of this new legislation....perposed legislation. We feel the manufactures are liable and we want to honor and work on behalf of our customers. Make sure the manufacture is taking care of them and the product. We can sell with a warranty or without one. We suggest that the purchaser visit with the previous owner.

1A:465 CHAIRMAN NICHOLAS Any other questions committee members.

REPRESENTATIVE LEMIEUX: Fran, what about the situation were manufactures put those lemons out there. For example these new machines with the electronic components. We get out here five years and you take a $100.00.00 dollar machine that has an electrical bug in it, it can cost you thousands of dollars. Loss of time. Should we address that issue in this law. That the manufacture has to stand behind the machine for a longer period. Should we force the manufacture to stand behind there equipment. ANSWER: Manufactures do a lot to help the customer. They ask manufactures for help in situations. We dealers that are left want to keep a customer happy. We provide loners. We trade. We want to keep our image so that we can continue in business. I think this bill put enough teeth in this bill. We don't need to ask the manufactures for anymore then they have promised but they should follow through on there warranties

1A:758 CHAIRMAN NICHOLAS: Any other questions committee members.

JOHN OLSON: Good morning Mr. Chairman and committee members: My name is John Olson. I here today on behalf of Caterpillar. One manufacture that does business in the state. I am going to hand out an amendment which really kind of explains our position. It is a pretty simple amendment. Caterpillar, is the only of Butler Machinery I believe is the only dealer in N.D. for Caterpillar Equipment. Am I correct on that. On section six the last half of the section is says if warranty work repair work is performed under a manufacture's express warranty. The manufacture shall reimburse at the hourly labor rate that is the same or greater then the dealer presently charges consumers for non-warranty work. This section really defines the term of the contract between the dealer and the manufacture. My understanding is that caterpillar had a different arrangement with its dealers. It will discount the machine at the

time of the sale by manufacture to dealer and that discount reflects the warranty work labor that is being performed as warranty service of that machine. So this amendment simply allows the dealer the option, not the manufacture but the dealer the option to have that right to negotiate that separate manufactures required reimbursement. In association with the warranty. The terms of the warranty work. I have spoken to Mr Lamp, I don't believe the dealers of any objection to this. I don't know why they would because they still maintain the right to dictate the terms of the warranty repair work. I would be happy to answer any questions.

1A:980: CHAIRMAN NICHOLAS: Any questions from committee members. Thank you John. Anyone else wishing to appear in option to the bill. The committee will close the hearing on this Bill. HB1203

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

House Agriculture Committee

❑ Conference Committee

Hearing Date Feb. 9, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-8.75
Committee Clerk Signature			

Minutes:

Robert Lamp: **Written testimony.**

Jennifer Clark: **Written testimony.**

Chairman Nicholas: Close the hearing.

Rep Lloyd: I move the amendments.

Rep Mueller: I second.

Rep Berg: I move a do pass as amended.

Rep Pietsch: I second.

12 yea, 2 nay, 1 absent Carrier Rep Lemieux

Prepared by Caterpillar Inc.

PROPOSED AMENDMENTS TO HB 1203

Page 5, line 8, after "work." insert "In addition, the dealer shall have the right to accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above."

Renumber accordingly

Adopted by the Agriculture Committee
February 9, 2001

VR
2/9/01

HOUSE AMENDMENTS TO HB1203 HOUSE AGR. 2-9-01

Page 5, line 8, after the period insert "The dealer may accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above."

Renumber accordingly

2-2-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1253

House AGRICULTURE Committee

☐ Subcommittee on

or

☐ Conference Committee Lloyd - Meyer

Legislative Council Amendment Number 10315.0100 10315.0102 0200

Action Taken DO PASS

Motion Made By Berg Seconded By Dietrich

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman	✓		Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller		✓
Michael Brandenburg	✓		Kenton Onstad		✓
Joyce Kingsbury	✓		Sally M. Sandvig	✓	
Myron Koppang	✓		Dennis J. Renner		
Edward H. Lloyd	✓		Dwight Wrangham	✓	
Bill Pietsch	✓				

Total (Yes) 12 No 2

Absent 1

Floor Assignment LEMIEUX

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

REPORT OF STANDING COMMITTEE

HB 1203: Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1203 was placed on the Sixth order on the calendar.

Page 5, line 8, after the period insert "The dealer may accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above."

Renumber accordingly

2001 SENATE AGRICULTURE

HB 1203

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1203

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 2, 2001

Tape Number		Side A	Side B	Meter #
March 2	1	X		33.6 - End
March 15	3	X		0.0 - 7.0
Committee Clerk Signature				

Minutes:

REP. MONSON; Sponsor, introduced the bill to the committee. This bill will make dealers liable for only the reasonable types of warranties on the used machinery they sell.

REP. AARSVOLD; Sponsor, testified in support of this bill. See attached testimony.

BOB LAMP; North Dakota Implement Dealers Assoc., testified in support of this bill. See attached testimony.

JOHN OLSON; Caterpillar, testified in support of this bill.

JOHN SCHABERT; John Deere Dealer - Dickinson, testified in support of this bill.

FRAN ROMSDAHL; North Dakota Implement Dealers Assoc., testified in support of this bill.

The hearing was closed.

SENATOR ERBELE moved for a Do Pass.

SENATOR URLACHER seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR URLACHER will carry the bill

Date: 3-15-01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1203

Senate Agriculture Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Erbele Seconded By Sen. Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek - Chairman	✓		Senator Kroeplin	✓	
Senator Erbele - Vice Chairman	✓		Senator Nichols	✓	
Senator Klein	✓				
Senator Urlacher	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Urlacher

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 4:33 p.m.

Module No: SR-45-5770
Carrier: Urlacher
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1203, as engrossed: Agriculture Committee (Sen. Wanzek, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1203 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1203

Testimony For House Agriculture Committee

Prepared by Representative Ole Aarsvold

House Bill 1203

January 25, 2001

I appear before you today as a co-sponsor of House Bill 1203 which can be called a farm machinery "lemon" law. It is similar to the language and intent of the motor vehicle "lemon" law which has been in effect for several years in this state. It obligates a manufacturer of farm equipment who cannot repair a new farm machine to perform its intended purpose to replace or refund the price of that equipment at the purchaser's option. A reasonable deduction may be made for use and wear. Additionally, it requires the manufacturer to reimburse the farm machine dealer performing warrantee labor at a rate no less than customary.

House Bill 1203 would provide significant financial protection for both the local machine dealer and his farm customer. In the past, it was not uncommon for dealers to be the target of complaints, perform much uncompensated labor, and replace parts at his own expense to maintain a good relationship with his farmer customers. Customers often had to sell or trade such nonconforming equipment at a substantial financial loss. Dealers and farmer customers in the entire trade area "know" the piece of nonconforming equipment and discount its value dramatically.

In this age of incredibly costly machinery and very narrow farm margins, it is essential that the farmers of this state and our local dealers have the protection afforded by House Bill 1203.

I solicit your favorable recommendation.

TESTIMONY
HOUSE BILL 1203
THURSDAY, JANUARY 25, 2001

- Mr. Chairman, members of the House Agriculture Committee, my name is Bob Lamp representing the North Dakota Implement Dealers Association and here in support of House Bill 1203.
- House Bill 1203 is offered as a replacement of NDCC 51-07-07 an outdated law which adversely affects North Dakota's farm equipment dealers who represent manufacturers of farm machinery.
- NDCC 51-07-07 is a section in North Dakota law enacted in the early 1900s which refers to "...any gas or oil burning tractor, gas or steam engine, harvesting or threshing machinery...". It refers to the ability of purchaser to **rescind the sale of such machinery** if in "...a reasonable time after delivery for the inspection and testing of the same..." and that the piece of machinery does not prove to be "...reasonably fit for the purpose for which it was purchased...". I have attached a copy of Section 51-07-07 for your reference.
- Unfortunately, current law fails to provide adequate definitions on such critical issues as:
    1. what is a "reasonable time after delivery?";
    2. how to determine what is "reasonably fit?";
    3. who is responsible for the returned machine?"

  It simply leaves the settlement of these issues to individual perception or worse yet to the court system.
- House Bill 1203 presents a more reasonable and modernistic approach to farm machinery which does not conform to the manufacturer's expressed warranty and places the responsibility for such conformity where it should be---with the manufacturer which produced the equipment. The bill is fashioned after laws that exist in many other states around the country.
- It is important to note that this legislation has been reviewed by several major manufacturers and they have found no problem with its implementation.
- To address the bill in a very general way, I would like to briefly explain the various sections of the bill:

1. Section 1 simply defines the terms used in the bill. Of special note are the definitions of express warranty, farm machinery, nonconformity and reasonable allowance for consumer use.
2. Section 2 states that if the farm equipment does not conform to the express warranty and the consumer reports the nonconformity to the manufacturer or its authorized dealer, the manufacturer or its authorized dealer shall make appropriate repairs.
3. Section 3 says that if the manufacturer cannot conform the equipment after a reasonable number of attempts, the consumer has the option of having the manufacturer replace the equipment or refund the full purchase price less a reasonable allowance for consumer use.
4. Section 4 refers to an affirmative defenses and provides the definition of a "reasonable number of attempts" to repair the equipment.
5. Section 5 spells out information that must be supplied to the consumer of new farm machinery, the notice of complaint that must be made by the consumer, the responsibility of the manufacturer to provide replacement equipment if requested by the consumer and the time frame for actions under this section of the NDCC.
6. Section 6 relates to the effective dates and specifies the warranty reimbursement rate at which the manufacturer must pay the dealer for their express warranty work.
7. Section 7 is the repeal of Section 51-07-07.

- Mr. Chairman and members of the committee, this concludes my testimony on House Bill 1203. NDIDA asks for your favorable consideration of this legislation. There are two dealers here that wish to address the committee. I am happy to respond to any questions the committee may have on House Bill 1203.

Robert L. Lamp, CAE
Executive Vice President
North Dakota Implement Dealers Association

Source: S.L. 1961, ch. 119, §§ 1, 2; R.C. 1943, 1957 Supp., § 51-0704; S.L. 1975, ch. 106, § 849.

Collateral References.
Trade Regulation ⇐ 355.

51-07-05. "Goods" defined. Repealed by omission from this code.

Note.
The provisions of this section have been combined with section 51-07-04.

51-07-06. Money warranted genuine on exchange of money. Repealed by omission from this code.

51-07-07. Reasonable time to discover defects in engine or machinery — Rescinding contract — When contract void. Any person purchasing any gas or oil burning tractor, gas or steam engine, harvesting or threshing machinery, for his own use has a reasonable time after delivery for the inspection and testing of the same, and if it does not prove to be reasonably fit for the purpose for which it was purchased, the purchaser may rescind the sale by giving notice, within a reasonable time after delivery, to the parties from whom any such machinery was purchased, or the agent who negotiated the sale or made delivery of such personal property, or his successor, and by placing the same at the disposal of the seller. Any provision in any written order or contract of sale, or other contract, which is contrary to any of the provisions of this section, hereby is declared to be against public policy and void.

Bob Lamp

[redacted]m: Susan Boreen [sboreen@vogellaw.com]
[redacted]it: Monday, January 29, 2001 4:40 PM
To: 'blamp@adand.com'
Subject: House Bill 1203

January 29, 2001

Robert Lamp
North Dakota Auto and Implement
Dealers Association
P.O. Box 2524
Fargo, ND 58108

Re: House Bill No. 1203

Dear Bob:

Pursuant to your request, I have reviewed House Bill 1203. You requested that I draft some language to add to the bill to make it clear that it does not apply to the sale of used farm machinery, the sale of which would continue to be governed by the Uniform Commercial Code. The Act, as drafted, clearly applies only to new farm machinery. Therefore, it may not be necessary to add any such language to the Act. If, however, it is important to add such language in order to get this bill through, I suggest the following language be added at the end of Section 6:

[redacted] This Act shall not apply to the sale of used farm machinery. [redacted]e sale of used farm machinery shall be governed by the Uniform Commercial Code as contained in Chapter 41-02 of the North Dakota Century Code.

As we discussed, the Uniform Commercial Code does already govern the sale of used farm equipment. The Uniform Commercial Code contains specific provisions regarding warranties. Specifically, Section 41-02-30 sets forth the procedure for creating express warranties. That section provides as follows:

41-02-30. (2-313) Express Warranties by Affirmation, Promise, Description, Sample.

1. Express warranties by the seller are created as follows:

a. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

c. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

2. It is not necessary to the creation of an express [redacted]ranty that the seller use formal words such as "warrant" or "guaranty" or [redacted]t the seller have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

The Uniform Commercial Code also provides for the creation of an implied warranty of merchantability in every contract unless specifically excluded in writing in a conspicuous manner. Section 41-02-31 provides as follows:

41-02-31. (2-314) Implied warranty - Merchantability - Usage of trade.

1. Unless excluded or modified (section 41-02-33), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

2. Goods to be merchantable must be at least such as:

a. Pass without objection in the trade under the contract description;

b. In the case of fungible goods, are of fair average quality within the description.

c. Are fit for the ordinary purposes for which such goods are used.

d. Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;

e. Are adequately contained, packaged, and labeled as the agreement may require; and

f. Conform to the promises or affirmations of fact made on the container or label if any.

3. Unless excluded or modified (section 41-02-33), other implied warranties may arise from course of dealing or usage of trade.

The Uniform Commercial Code also provides for an implied warranty of fitness for a particular purpose if at the time the contract was entered into the seller has reason to know of a particular purpose for which the goods will be used. This implied warranty is set forth in Section 41-02-32 which provides as follows:

41-02-32. (2-315) Implied warranty - Fitness for particular purpose. If the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

If a seller breaches any express or implied warranties, a buyer has several potential remedies. A buyer can revoke acceptance of the goods. See N.D.C.C. § 41-02-90. Alternatively, the buyer can keep the goods and recover from the seller the difference between the value of the goods accepted and the value they would have had if they had been as warranted. N.D.C.C. § 41-02-93. A buyer may also be entitled to recover incidental and consequential damages arising from a seller's breach of warranty. N.D.C.C. § 41-02-94.

In summary, the repeal of Section 51-07-07 and adoption of House Bill 1203 will not leave the purchaser of used farm equipment without any remedies. The sale of used farm equipment will continue to be governed by the terms of the Uniform Commercial Code which provides for express and implied warranties. If any express or implied warranty is breached, the buyer has several potential remedies available, including rescission.

If you need anything further from me, please let me know.

Sincerely,

Steven A. Johnson

...lab

...san O. Boreen
Vogel Law Firm
502 First Avenue North
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Fargo, ND 58107-1389
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10620

North Dakota Legislative Council

STATE CAPITOL 600 EAST BOULEVARD BISMARCK ND 58505-0360 (701) 328-2916 TTY 1-800-366-6888

February 8, 2001

Honorable Rick Berg
State Representative
House Chamber
State Capitol
Bismarck, ND 58505

Dear Representative Berg:

This letter is in response to your request for a brief analysis of House Bill No. 1203 and the impact the bill may have on remedies for breach of contract or warranty which may be available to a purchaser of used farm machinery.

House Bill No. 1203 appears to do two things. First, the bill creates several new sections of law relating to remedies for breach of express warranties which may be available to purchasers of new farm machinery. Second, the bill repeals North Dakota Century Code (NDCC) Section 51-07-07, relating to remedies which may be available to a purchaser of new or used farm machinery if the machinery is not reasonably fit for the purpose for which it was purchased.

The applicability of the new law being created by Sections 1 through 6 of House Bill No. 1203 appears to be limited to sales and purchases of new farm machinery. Thus, these sections of the bill neither increase nor decrease the remedies currently available to purchasers of used farm machinery.

The repeal of NDCC Section 51-07-07 under Section 7 of House Bill No. 1203 appears to decrease the current remedies available to purchasers of used farm machinery. However, the remedies under Section 51-07-07 make up just one portion of the possible remedies available. Other remedies available to purchasers of used farm machinery should not be affected by the repeal of this section. These remedies include NDCC Title 9, regarding contracts and obligations; NDCC Chapter 41-02, regarding the Uniform Commercial Code article on sales; and NDCC Title 51, regarding sales and exchanges. Because the specific remedies available to a specific purchase and sale of used farm machinery depend on the unique circumstances of the sales transaction, it is not possible for us to list all of the statutory remedies that might be available.

Please do not hesitate to contact this office if you would like additional information regarding this matter.

Sincerely,

Jennifer S. N. Clark
Counsel

ISNC/DS

NORTH DAKOTA IMP[illegible]ALERS ASSOCIATION

1411 32nd St SW • PO Box 2624 • Fargo, ND 58108-2624

Phone (701) 293-6822 • FAX (701) 293-6824

SUMMARY SHEET FOR HOUSE BILL 1203

- **House Bill 1203** does three things:

  1. **Sections 1-5 add language that spells out a manufacturer's warranty responsibility to a purchaser of <u>new</u> farm machinery.**

  2. **Section 6 specifies a warranty labor rate.**

  3. **Section 7 removes an outdated law which has created increasing problems for sellers of <u>used</u> farm machinery.**

- The North Dakota Century Code does not address a manufacturer's responsibility when new farm machinery does not conform to their express warranty. Sections 1-5 spell out these obligations up to and including rescission of the sale if they cannot make the product conform to the warranty.

- Repeal of Section 51-07-07 is necessary since, unlike any other products, it mandates warranties on the sale of used farm equipment. While much of the used farm machinery sold does come with some type of warranty agreed to between the seller and the purchaser, the seller should also be able to disclaim any warranty if that is <u>fully</u> <u>disclosed</u> to the purchaser.

- This repeal does not leave the purchaser of used farm machinery without any remedies. The sale of used farm machinery will continue to be governed by NDCC Title 9 regarding contracts and obligations, NDCC Chapter 41-02 regarding the Uniform Commercial Code article on sales and NDCC Title 51 regarding sales and exchanges.

- If a seller of used farm machinery breaches any express of implied warranties, a buyer will continue to have numerous remedies including; 1) the ability to revoke acceptance of the goods, 2) the right to keep the goods and recover from the seller a difference in value, 3) the right to recover incidental and consequential damages arising from the breach of warranty.

Robert L. Lamp
North Dakota Implement Dealers Association

SENATE AGRICULTURE COMMITTEE
PREPARED BY REPRESENTATIVE OLE AARSVOLD
DISTRICT 20
HOUSE BILL 1203
MARCH 2, 2001

I APPEAR BEFORE YOU TODAY AS COSPONSOR OF HOUSE BILL 1203, WHICH CAN BE CALLED A FARM MACHINERY "LEMON" LAW. IT IS SIMILAR TO THE LANGUAGE AND INTENT OF THE MOTOR VEHICLE "LEMON" LAW, WHICH HAS BEEN IN EFFECT FOR SEVERAL YEARS IN THIS STATE. IT OBLIGATES A MANUFACTURER OF FARM EQUIPMENT WHO CANNOT REPAIR A NEW FARM MACHINE TO PERFORM ITS INTENDED PURPOSE TO REPLACE OR REFUND THE PRICE OF THAT EQUIPMENT AT THE PURCHASER'S OPTION. A REASONABLE DEDUCTION MAY BE MADE FOR USE AND WEAR. ADDITIONALLY, IT REQUIRED THE MANUFACTURER TO REIMBURSE THE FARM MACHINE DEALER PERFORMING WARRANTEE LABOR AT A RATE NO LESS THAN CUSTOMARY.

HOUSE BILL 1203 WOULD PROVIDE SIGNIFICANT FINANCIAL PROTECTION FOR BOTH THE LOCAL MACHINE DEALER AND HIS FARM CUSTOMER. IN THE PAST, IT WAS NOT UNCOMMON FOR DEALERS TO BE THE TARGET OF COMPLAINTS, TO PERFORM MUCH UNCOMPENSATED LABOR, AND TO REPLACE PARTS AT HIS OWN EXPENSE TO MAINTAIN A GOOD RELATIONSHIP WITH HIS FARMER CUSTOMERS. CUSTOMERS OFTEN HAD TO SELL OR TRADE SUCH NONCONFORMING EQUIPMENT AT A SUBSTANTIAL FINANCIAL LOSS. DEALERS AND FARMER CUSTOMERS IN THE ENTIRE TRADE AREA "KNOW" THE PIECE OF NONCONFORMING EQUIPMENT, AND DISCOUNT ITS VALUE DRAMATICALLY.

IN THIS AGE OF INCREDIBLY COSTLY MACHINERY AND VERY NARROW FARM MARGINS, IT IS ESSENTIAL THAT THE FARMERS OF THIS STATE AND OUR LOCAL DEALERS HAVE THE PROTECTION AFFORDED BY HOUSE BILL 1203.

I SOLICIT YOUR FAVORABLE RECOMMENDATION.

Cite as 240 N.W.2d 353

HOFFMAN MOTORS, INC., a corporation, Plaintiff and Appellant,

v.

Kenneth ENOCKSON, Defendant and Appellee.

Civ. No. 9150.

Supreme Court of North Dakota

March 24, 1976

As Amended April 1, 1976

Seller of tractor brought action against buyer to recover amount allegedly due on account. The District Court, McLean County, Bonny A. Graff, J., awarded judgment for plaintiff in amount less than claimed by plaintiff, and plaintiff appealed. The Supreme Court, Pederson, J., held that evidence sustained trial court's finding that tractor was not fit for farm work, which was purpose for which it was purchased, and thus, cost of repairs to tractor was not obligation of buyer; and that seller was entitled to interest on account due it, and in absence of evidence that buyer signed revolving charge agreement with seller setting interest rate at 1½% per month, legal rate of interest of 4% per annum would be applied.

Affirmed and remanded for allowance of interest.

1. Sales ⇐119

Statute providing that buyer of tractor may rescind sale if tractor does not prove to be reasonably fit for purpose for which it was purchased does not provide for any remedy other than rescission. NDCC 51-07-07.

2. Sales ⇐267

Provision in retail order for used tractor containing complete warranty disclaimer was in conflict with statute allowing buyer of tractor to rescind sale if tractor does not prove to be reasonably fit for purpose for which it was purchased, and was therefore void. NDCC 51-07-07.

3. Sales ⇐267

Provision in statute relating to voiding disclaimer of warranty with respect to sale of tractor can be relied upon by one who does not demand rescission, and has been preserved by Uniform Commercial Code. NDCC 41-02-02, 51-07-07.

4. Sales ⇐181(12)

In action brought by seller of tractor against buyer to recover amount allegedly due on account, evidence sustained trial court's finding that tractor was not fit for farm work, which was purpose for which it was purchased, and thus, cost of repairs to tractor was not obligation of buyer.

5. Interest ⇐31

Where amount awarded to seller of tractor in action to recover amount due on account was not in dispute, seller was entitled to interest on account due it, and in absence of evidence that buyer signed revolving charge agreement with seller setting interest rate at 1½% per month, legal rate of interest of 4% per annum would be applied. NDCC 47-14-05, 51-14-02.

Syllabus by the Court

1. Section 51-07-07, NDCC, does not provide for any remedy other than rescission.

2. The provision in Section 51-07-07, NDCC, relating to voiding a disclaimer of warranty, can be relied upon by one who does not demand rescission, and has been preserved by the Uniform Commercial Code (Section 41-02-02, NDCC).

3. Under Section 41-02-31, NDCC, unless excluded or modified, a warranty that goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

Farhart, Rasmuson, Olson & Lian and Robert A. Buttz, Minot, for appellant; argued by Steven C. Lian, Minot.

E. J. Rose, Bismarck, for appellee.

PEDERSON, Judge.

Hoffman Motors, Inc. of Washburn sued Kenneth Enockson to recover $2,032.14 on an account. The trial court, without a jury, awarded a judgment of $857.18, plus costs of $36.00, but allowed no interest. Hoffman Motors appeals but challenges none of the findings, arguing that the court improperly applied the law. We affirm but remand for allowance of interest.

The most pertinent findings are that Enockson's account at Hoffman Motors shows purchases and charges totaling $1,876.35, less payments of $1,019.17, leaving a balance of $857.18, and that a tractor purchased by Enockson from Hoffman Motors required repairs totaling $952.44. The trial court concluded that Enockson owed the $857.18, without interest and without service charges which had been periodically added to the account. However, because of the provisions of § 51-07-07, NDCC, Enockson was not obligated to pay the $952.44.

The tractor, a used International with a special type hitch, was located in Wisconsin at the request of Enockson and transported to Washburn by Hoffman Motors. Enockson took the tractor for a tryout in April 1971 and, when it broke down during the first day, it was returned to Hoffman Motors and repaired. The retail order form (or purchase contract) signed on May 13 contained a complete disclaimer of warranty. However, Enockson claims that an agent of Hoffman Motors assured him that if anything else was wrong with the tractor "they would get the bugs out of it."

During the balance of the month of May and in early June, Enockson tried to use the tractor for his farming operation but continual breakdowns occurred. Major repairs (costing $952.44) were completed by Hoffman Motors in early August and the tractor was returned to Enockson. When the tractor still did not work to Enockson's satisfaction, he took it to a different shop and had it fixed.[1] In November, Enockson and Hoffman Motors met and discussed the account and, when Enockson failed to pay, this action was brought. At the end of the trial counsel for Hoffman Motors was directed to, and did, prepare findings of fact and, on this appeal, states that the findings are not challenged.

Section 51-07-07, NDCC states:

"Any person purchasing any gas or oil burning tractor, gas or steam engine harvesting or threshing machinery, for his own use shall have a reasonable time after delivery for the inspection and testing of the same, and if it does not prove to be reasonably fit for the purpose for which it was purchased, the purchaser may rescind the sale by giving notice, within a reasonable time after delivery, to the parties from whom any such machinery was purchased, or the agent who negotiated the sale or made delivery of such personal property, or his successor, and by placing the same at the disposal of the seller. Any provision in any written order or contract of sale, or other contract, which is contrary to any of the provisions of this section, hereby is declared to be against public policy and void."

(The underlined portion was a separate section when enacted and remained separate until the code reviser combined the two sections for clarity without change of meaning. See reviser's notes in Code Revision Report, 28th Legislative Assembly, Revised Code of 1943.)

Hoffman Motors claims that since Enockson never asked for rescission of the contract and has kept the tractor, the warranty of fitness under § 51-07-07 cannot be applied. The trial court said that, though § 51-07-07 speaks only of rescission, the North Dakota Supreme Court has interpreted it to allow the buyer a cause of action for breach of warranty. Although the trial court did not cite any specific cases, it was undoubtedly aware of *Kramer v. K. O. Lee & Son Co.*, 61 N.D. 28, 237 N.W. 166 (1931), where this court said:

1. At some time during this period, unidentified in the record, the ownership of Hoffman Motors changed hands. This undoubtedly had some effect on the dealings between the parties.

[illegible]ough plaintiffs failed to rescind within time, they are not necessarily shut off from all remedy. It is only when they have claimed and been granted the remedy of rescission under the provisions of section 5991a [now the first part of § 51-07-07] that this method is exclusive."

[1] The reason the plaintiffs in *Kramer* were not without remedy was because they had an action based on fraud and deceit. Section 51-07-07, NDCC, does not provide for any remedy other than rescission. Section 51-07-07, however, does play a part in this action.

The retail order form which Enockson signed for the purchase of the tractor contained the following complete warranty disclaimer:

"Each item of USED equipment covered by this order is sold AS IS WITH NO WARRANTY OF ANY CHARACTER, express or implied, unless seller completes and endorses the 'Seller's Used Equipment Warranty' printed below."

[illegible]ed equipment warranty was not completed or endorsed.

[2] This complete disclaimer is in accordance with § 41-02-33, NDCC (2-316, UCC), which allows for exclusion or modification of warranties. However, § 41-02-02, NDCC, states that Chapter 41-02 does not "impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers." Therefore § 51-07-07 is given full effect and the disclaimer provision in this case is void as it is in conflict with § 51-07-07, NDCC.

This interpretation may make it impossible to include a complete disclaimer in a sales agreement for tractors and harvesting machinery but this is the effect of § 51-07-07.

This statute was enacted in two sections as Chapter 238, S.L.1919. Although we have found no legislative history or writing that has described the specific purpose of this enactment, we know from many political historians that the Legislative Assembly of 1919, dominated by the Nonpartisan League, had, for its purpose, the termination of exploitation of the farmer.[2] In 1963, Professor Tisdale, in writing on the *Impact of the Uniform Commercial Code on the Law of Contracts*, 43 N.D.L.Rev. 7, 34, refers to § 51-07-07 as having been enacted to eliminate unconscionable clauses in sales contracts. If the protection afforded by this statute is deemed inappropriate for the modern, educated farmer, it is up to the Legislature, not the court, to modify or repeal it.

[3] As we have noted hereinbefore, the public policy statement which makes disclaimers void was enacted separately from the provision authorizing purchasers to rescind if the tractor or harvesting machine proves to be unfit for the purpose for which it was purchased. We conclude that the provision in § 51-07-07 relating to voiding a disclaimer of warranty can be relied upon by one who does not demand rescission.

Once the disclaimer provision is voided, Section 41-02-31, NDCC (2-314, UCC), injects an implied warranty of merchantability into the contract for the sale of the tractor. Section 41-02-31, NDCC, states in part:

"1. Unless excluded or modified (section 41-02-33), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. • • •

"2. Goods to be merchantable must be at least such as

a. • • •

b. • • •

c. are fit for the ordinary purposes for which such goods are used; • • •"

[4] Even though it was labeled a conclusion, the trial court found as a fact that the tractor was not fit for farm work, the pur-

2. John M. Holzworth, *The Fighting Governor* (Chicago: The Pointer Press, 1938), Agnes Geelan, *The Dakota Maverick* (Fargo, N.D.: Kaye's Printing, 1975); Bruce Nelson, *Land of the Dacotahs* (Minneapolis: University of Minnesota Press, 1946), Lloyd B. Omdahl, *Insurgents* (Brainerd, Minn.: Lakeland Color Press, 1961).

41-02-32

pose for which it was purchased. There was ample evidence to support this finding and we do not find it clearly erroneous. We agree with the conclusion of law that the repairs to the tractor in the sum of $952.44 are not the obligation of Enockson is a correct application of the law to the facts in this case, and we affirm the judgment.

[5] The trial court concluded that Hoffman Motors was not entitled to interest on the account due it. We know of no law which supports this conclusion.

The court may have been acting on the principle that interest should not be allowed on an unliquidated or disputed claim for breach of contract until the amount due is definitely determined by entry of judgment. *North American Pump Corp. v. Clay Equipment Corp.*, 199 N.W.2d 888 (N.D. 1972). The $857.18 awarded by the court, however, did not involve items which were in dispute. The disputed items were only those relating to the repair of the tractor.

Hoffman Motors claimed that Enockson had agreed to a revolving charge agreement with interest at 1½% per month; however, Section 51-14-02, NDCC, states in part:

> "Every revolving charge agreement shall be in writing and shall be signed by the retail buyer."

We find nothing in the record to show that Enockson signed a revolving charge agreement with Hoffman Motors. We therefore apply the legal rate of interest which is set out in Section 47-14-05, NDCC, at 4% per annum.

Using the same accounting method as the trial court did in reaching the amount due Hoffman Motors, we conclude that, as of the date judgment was entered, the interest on the account due Hoffman Motors is $135.27. We remand for the purpose of amendment of the judgment to allow recovery of interest in the amount of $135.27.

Neither party shall recover costs on this appeal.

ERICKSTAD, C. J., and PAULSON, SAND and VOGEL, JJ., concur.

51-07-06. Money warranted genuine on exchange of money. Repealed by omission from this code.

51-07-07. Reasonable time to discover defects in engine or machinery — Rescinding contract — When contract void. Any person purchasing any gas or oil burning tractor, gas or steam engine, or harvesting or threshing machinery for that person's own use has a reasonable time after delivery for the inspection and testing of the same, and if it does not prove to be reasonably fit for the purpose for which it was purchased, the purchaser may rescind the sale by giving notice, within a reasonable time after delivery, to the parties from whom any such machinery was purchased, or the agent who negotiated the sale or made delivery of such personal property, or the agent's successor, and by placing the same at the disposal of the seller. Any provision in any written order or contract of sale, or other contract, which is contrary to any of the provisions of this section, hereby is declared to be against public policy and void.

Source: S.L. 1919, ch. 238, §§ 1, 2; 1925 Supp., §§ 5991a, 5993a; R.C. 1943, § 51-0707.

Cross-References.
Implied warranty, see §§ 41-02-31, 41-02-32.

Constitutionality.
This statute is not invalid as an arbitrary and unreasonable classification. Bratberg v. Advance-Rumely Thresher Co., 61 N.D. 452, 238 N.W. 552, 78 A.L.R. 1328 (1931); Hamman v. Advance-Rumely Thresher Co., 61 N.D. 505, 238 N.W. 700 (1931); Holden v. Advance-Rumely Thresher Co., 61 N.D. 584, 239 N.W. 479 (1931).

This statute is not invalid as depriving seller of right to contract without due process. Jackson v. Advance-Rumely Thresher Co., 62 N.D. 143, 241 N.W. 722, aff'd, 287 U.S. 283, 53 S. Ct. 133, 77 L. Ed. 306, 87 A.L.R. 285 (1932).

Agents' Authority.
This statute gives a purchaser the right to rescind for unfitness, but otherwise does not extend the authority of the seller's agents beyond that which they would have had were the statute not in force. Minneapolis Threshing Mach. Co. v. Hocking, 54 N.D. 559, 209 N.W. 996 (1926), decided prior to the enactment of N.D.C.C. §§ 41-02-19 and 41-02-98, distinguished, Deere & Webber Co. v. Moch, 71 N.D. 649, 3 N.W.2d 471, 139 A.L.R. 1270 (1942).

Alternative Remedies.
A seller may stipulate that a purchaser of a tractor unfit for the purpose for which it was intended shall have no remedy except rescission. Palaniuk v. Allis-Chalmers Mfg. Co., 57 N.D. 199, 220 N.W. 638 (1928).

Even though purchaser of machinery failed to rescind within a reasonable time, he still may recover from seller the damages sustained by the breach of contract. Kramer v. K.O. Lee & Son Co., 61 N.D. 28, 237 N.W. 166 (1931).

Express Disclaimers.
Express disclaimers of liability by tractor sellers which are contrary to the provisions of this section are contrary to public policy and void. Boe v. Thorburn Herseth, Inc., 134 N.W.2d 33 (N.D. 1965).

The only remedy this section provides is rescission of the sale, however, even where the purchaser has not attempted rescission he may rely on this section to void any disclaimer of warranties inconsistent with it, even though the disclaimer complies fully with section 41-02-33. Huffman Motors, Inc. v. Enockson, 240 N.W.2d 353 (N.D. 1976).

Implied Warranties.
A seller cannot by contract avoid an implied warranty that gas or steam engines, or harvesting or threshing machinery, are reasonably fit for the purposes for which they were purchased. Palaniuk v. Allis-Chalmers Mfg. Co., 57 N.D. 199, 220 N.W. 638 (1928).

The statute giving rise to an implied warranty of fitness of a tractor for purposes for which purchased must be read into the contract of sale. Dwinnell v. Boehmer, 60 N.D. 302, 234 N.W. 655 (1931).

This statute does not contemplate an implied warranty of fitness against defects of material or performance of which the purchaser was aware at the time the contract was made, nor does it give him a right to rescind because of such defects. Northwestern Equip. Inc. v. Tentis, 74 N.W.2d 832 (N.D. 1956).

Reasonable Time.
The issue of whether rescission by the buyer was timely is a question of fact and the verdict of the jury is determinative. Hamman v. Advance-Rumely Thresher Co., 61 N.D. 505, 238 N.W. 700 (1931).

Where delay in returning machinery or in placing it at the seller's disposal is caused by the seller himself, the purchaser cannot be charged with the effect of such actions. International Harvester Co. of Am. v. Olson, 62 N.D. 256, 243 N.W. 258 (1932).

Even though contract expressly negatives all warranties, this statute ensures to the buyer a reasonable time within which to test and inspect the property and the right to rescission if it proves to be unfit. Uhrig v. J.I. Case Threshing Mach. Co., 64 N.D. 189, 250 N.W. 922 (1934).

Purchaser who has a right to rescind by virtue of this statute may delay the exercise of that right on condition that the property be made fit, and if that condition is not complied with may thereafter rescind within a reasonable time after the seller has failed to comply with the condition. Northwestern Equip. Inc. v. Tentis, 74 N.W.2d 832 (N.D. 1956).

Repairs During Test Period.
Term "reasonably fit for the purpose for which it was purchased" means the tractor is free of serious defect which would render it inoperable, and that under ordinary and reasonable operating conditions the tractor will perform as intended and expected, test is not how the machine operates when "in good operating condition" between breakdowns, but how it performs throughout entire testing period; tractor which failed to operate at all on two occasions and was being repaired more than it was being used was not reasonably fit for purposes for which it was purchased. Gimbel v. Kuntz, 286 N.W.2d 501 (N.D. 1979).

Rescission.
A purchaser, to rescind the sale of designated farm machinery for breach of statutory warranty, must place the machine at the disposal of the seller. Jesperson v. Advance-Rumely Thresher Co., 61 N.D. 494, 240 N.W. 876 (1931).

This statute does not require a written rescission. International Harvester Co. of Am. v. Olson, 62 N.D. 256, 243 N.W. 258 (1932).

Where machinery and attachments are purchased under a contract which provides that the agreement to purchase each of the attachments constitutes a separate contract, the buyer is held for their purchase price where he does not rescind as to them within a reasonable time. International Havester Co. of Am. v. Olson, 62 N.D. 256, 243 N.W. 258 (1932).

Validity.
By virtue of the provisions of section 41-02-02, enactment of the Uniform Commercial Code — Sales, chapter 41-02, did not repeal this section by implication. Huffman Motors, Inc. v. Enockson, 240 N.W.2d 353 (N.D. 1976).

Waiver by Contract.
The provision of this statute allowing return within a reasonable time cannot be waived by contract provisions to the contrary. International Harvester Co. of Am. v. Olson, 62 N.D. 256, 243 N.W. 258 (1932).

Law Reviews.
Some Thoughts About Warranty Law: Express and Implied Warranties, 56 N.D. L. Rev. 509 (1980).

51-07-08. Manufacturers of tractors, engines, farm machinery, and automobiles, firefighting equipment and fire extinguishers, to maintain supply depot in state — Penalty. Repealed by S.L. 1975, ch. 106, § 673.

51-07-09. Waiving, releasing, or barring of claim for relief before it actually has accrued prohibited. A claim for relief arising out of the sale of personal property cannot be waived, released, or barred before the claim for relief actually has accrued, notwithstanding any terms or provisions of any contract or other written instrument to the contrary.

Source: S.L. 1913, ch. 219, § 1; C.L. 1913, § 6002; R.C. 1943, § 51-0709; S.L. 1985, ch. 82, § 121.

Cross-References.
Agreement not to assert defenses against assignee, see § 41-09-19.