

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1324
(Representatives Hawken, Timm)
(Senators Fischer, G. Nelson)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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been paid by ~~such~~ the retailer, and eighty-five percent of the current net prices on ~~repair~~ parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from ~~such~~ the wholesaler, manufacturer, or distributor, and held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

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

The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any

purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

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

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

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

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

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

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

51-07-02. Prices of implements, machinery, automobiles, and parts - How determined.

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1324.

House Vote: Yeas 98 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State