

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2289

Introduced by

Senators Armstrong, Cook, Klein

Representatives Howe, Vigesaa, Delmore

1 A BILL for an Act to amend and reenact sections 51-07-01.2, 51-07-02.2, and 51-26-06 of the  
2 North Dakota Century Code, relating to prohibited practices under farm equipment dealership  
3 contracts, dealership transfers, and reimbursement for warranty repair.

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

5 **SECTION 1. AMENDMENT.** Section 51-07-01.2 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **51-07-01.2. Prohibited practices under farm equipment dealership contracts.**

8 A

9 1. Notwithstanding the terms of any contract, a manufacturer, wholesaler, or distributor of  
10 farm implements, machinery, or repair parts who enters into a contract with any person  
11 engaged in the business of selling and retailing farm implements and repair parts for  
12 farm implements may not:

13 1-a. ~~Coerce~~Require or attempt to ~~coerce~~therequire a farm equipment dealer to  
14 accept delivery of farm equipment, parts, or accessories that the farm equipment  
15 dealer has not voluntarily ordered or require the farm equipment dealer to  
16 maintain or stock a level of equipment, parts, or accessories except as provided  
17 in subdivision b.

18 2-b. Condition or attempt to condition the sale of farm equipment, parts, or  
19 accessories on a requirement that the farm equipment dealer also purchase  
20 other goods or services, or purchase a minimum quantity of farm equipment as a  
21 condition of filling an order for farm equipment, except that a farm equipment  
22 manufacturer may require the dealer to purchase all parts reasonably necessary  
23 to maintain the quality of operation in the field of any farm equipment used in the

1 trade area and telecommunication necessary to communicate with the farm  
2 equipment manufacturer.

3 ~~3.c.~~ ~~Coerce~~Require or attempt to ~~coerce~~require a farm equipment dealer into a  
4 refusal to purchase farm equipment manufactured by another farm equipment  
5 manufacturer.

6 ~~4.d.~~ Require a farm equipment dealer to separate the line-makes operating within the  
7 dealer's facility by requiring the separation of personnel, inventory, service areas,  
8 display space, or otherwise dictate the method, manner, number of units, or the  
9 location of farm equipment displays at the dealer's facility. This subdivision does  
10 not prevent a farm equipment dealer and manufacturer from agreeing to those  
11 terms if the agreement was supported by separate and valuable consideration.  
12 The issuance, reissuance, or extension of a dealership contract alone is not  
13 separate and valuable consideration.

14 ~~e.~~ Require a farm equipment dealer to either establish or maintain exclusive  
15 facilities, personnel, or display space or to abandon an existing relationship with  
16 another manufacturer in order to continue, renew, reinstate, or enter a dealer  
17 agreement or to participate in any program discount, credit, rebate, or sales  
18 incentive. This subdivision does not prevent a farm equipment dealer and  
19 manufacturer from agreeing to establish or maintain exclusive facilities for  
20 separate and valuable consideration. The issuance, re-issuance, or extension of  
21 a dealership contract alone is not separate and valuable consideration.

22 ~~f.~~ Discriminate in the prices charged for farm equipment of ~~likes~~similar grade and  
23 quality sold by the farm equipment manufacturer to similarly situated farm  
24 equipment dealers. This ~~subsections~~subdivision does not prevent the use of  
25 differentials that make only due allowance for differences in the cost of  
26 manufacture, sale, or delivery or for the differing methods or quantities in which  
27 the farm equipment is sold or delivered by the farm equipment manufacturer. This  
28 ~~sections~~subdivision does not diminish the manufacturer's, wholesaler's, or  
29 distributor's ability to provide volume discounts, bonuses, or special machine  
30 ordering programs commonly used in the industry.

- 1           5-g. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the  
2           competitive circumstances of the dealership contract for any reason other than  
3           failure of the farm equipment dealer to substantially comply with the material  
4           terms of the written contract between the parties or if the attempt or threat is  
5           based on the results of a circumstance beyond the farm equipment dealer's  
6           control, including a sustained drought or other natural disaster in the dealership  
7           market area or a labor dispute. A substantial change in the competitive  
8           circumstances includes the removal of authorization to operate at a location from  
9           where the dealer is currently operating or the unreasonable removal of a product  
10          line or segment.
- 11          h. Require a farm equipment dealer to unreasonably remodel, renovate, or  
12          recondition the dealer's facilities, change the location of the facilities, or make  
13          unreasonable alterations to the dealership premises. A request for a dealer to  
14          remodel, renovate, or recondition the dealer's facilities, change the location of the  
15          facilities, or make alterations to the dealership premises must be considered in  
16          light of current and reasonably foreseeable projections of economic conditions,  
17          financial expectations, and the dealer's market for the sale of farm equipment. A  
18          facility modification request is unreasonable if the request is within seven years of  
19          a farm equipment dealer's most recent facility remodel, renovation, or  
20          reconditioning.
- 21          i. Unreasonably prevent or refuse to approve the relocation of a dealership to  
22          another site within the dealer's relevant market area. The dealer shall provide the  
23          manufacturer or distributor with notice of the proposed address and a reasonable  
24          site plan of the proposed location. The manufacturer or distributor shall approve  
25          or deny the request in writing within sixty days after receipt of the request. Failure  
26          to deny the request within sixty days is deemed an approval.
- 27          j. Conduct a warranty or incentive audit or seek a chargeback on a warranty or  
28          incentive payment more than one year after the date of the warranty or incentive  
29          payment. A manufacturer may not charge back a dealer for an incentive or  
30          warranty payment unless the manufacturer can satisfy its burden of proof that the  
31          dealer's claim was false, fraudulent, or the dealer did not substantially comply

1           with the reasonable written procedures of the manufacturer. The audit and  
2           chargeback provisions in this subdivision apply to all incentive and  
3           reimbursement programs that are subject to audit by a manufacturer. Before  
4           imposing a chargeback, a manufacturer shall identify each claim at issue and  
5           provide the dealer with written explanation for the proposed chargeback for each  
6           claim. The cumulative value of any chargeback, fees, penalties, or adverse action  
7           for an individual claim may not exceed the total direct compensation received by  
8           the dealer for the claim at issue. Thereafter, the manufacturer shall provide the  
9           dealer a reasonable time, no less than forty-five days, to present additional  
10          information regarding a claim at issue.

11          k. Use an unreasonable, arbitrary, or unfair sales, service, or other performance  
12          standard in determining a farm equipment dealer's compliance with a contract or  
13          program. Before applying any sales, service, or other performance standard to a  
14          farm equipment dealer, a manufacturer shall communicate the performance  
15          standard in writing in a clear and concise manner, including a detailed  
16          explanation of the criteria, calculations, methodology, and data used to establish  
17          the standard.

18          l. Require a farm equipment dealer in this state to enter an agreement with the  
19          manufacturer or any other party which requires:

- 20          (1) The law of another jurisdiction to apply to a dispute between the dealer and  
21          manufacturer;  
22          (2) The dealer to bring an action against the manufacturer in a venue outside of  
23          this state;  
24          (3) The dealer waive the right to have all of this state's statutory and common  
25          law apply;  
26          (4) Reducing, modifying, or eliminating the dealer's right to resolve a dispute in  
27          a state or federal court in this state; or  
28          (5) The dealer to agree to arbitration or waive their rights to bring a cause of  
29          action against the manufacturer, unless done in connection with a  
30          settlement agreement to resolve a matter between a manufacturer and the  
31          dealer. The settlement agreement must be entered voluntarily for separate

1 and valuable consideration. Renewal, reinstatement, or continuation of a  
2 dealer agreement alone is not separate and valuable consideration.

3 2. As used in this section "farm equipment" and "farm implements" means all vehicular  
4 implements and attachment units, designed and used primarily for planting, cultivating,  
5 or harvesting farm products or used primarily in connection with the production of  
6 agricultural produce or products, livestock, or poultry on farms, and which are  
7 operated, drawn, or propelled by motor or animal power.

8 **SECTION 2. AMENDMENT.** Section 51-07-02.2 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **51-07-02.2. Dealership transfers.**

11 1. A retailerdealer of automobiles or trucks, farm equipment, or parts for the automobiles  
12 or, trucks, or farm equipment may not transfer, assign, or sell a franchisedealer  
13 agreement to another person unless the retailerdealer first provides written notice to  
14 the franchisormanufacturer or distributor of the intended action. Within sixty days of  
15 receiving the notice, the franchisormanufacturer or distributor must approve or deny  
16 the action. If the franchisormanufacturer or distributor denies the action, the  
17 franchisormanufacturer or distributor shall provide material reasons for the denial to  
18 the franchiseedealer. If the franchisormanufacturer or distributor does not respond  
19 within the sixty-day period, the action is deemed approved. The refusal

20 2. A denial by the franchisormanufacturer or distributor to accept a proposed transferee  
21 who meets the written, reasonable, and uniformly applied standards of qualifications of  
22 the franchisormanufacturer or distributor relating to the financial qualifications of the  
23 transferee and business experience of the transferee is presumed to be unreasonable.  
24 If an action is rejecteddenied by the franchisormanufacturer or distributor, the  
25 franchiseedealer may file an action for determination of a violation of this  
26 sectionssubsection. The retailerdealer may elect to pursue either the retailer'sdealer's  
27 remedy under the contract or the remedy provided in this sectionssubsection. The  
28 franchisormanufacturer or distributor has the burden of proof with respect to regarding  
29 all issues raised in the action. The court shall approve the transfer unless the  
30 franchisormanufacturer or distributor can prove the proposed transferee does not meet

1 the written, reasonable, and uniformly applied standards regarding financial  
2 qualifications and business experience.

3 3. As used in this section, "farm equipment" has the same meaning as in section  
4 51-07-01.2.

5 **SECTION 3. AMENDMENT.** Section 51-26-06 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **51-26-06. Application - ~~Not to affect prior contracts--~~ Dealers reimbursed for**  
8 **~~labor~~warranty repair.**

9 ~~This chapter applies to any new farm machinery sold after July 31, 2001, and does not~~  
10 ~~invalidate, impair, or otherwise infringe upon the specific requirements of any contract between~~  
11 ~~a dealer and a manufacturer entered before August 1, 2001. However, if~~

12 1. If warranty repair work or service is performed for a consumer by a farm equipment  
13 dealer under a manufacturer's express warranty, the manufacturer shall reimburse the  
14 dealer at an hourly labor rate that is the same or greater than the hourly labor rate the  
15 dealer currently charges consumers for nonwarranty repair work. provide the dealer  
16 with reasonable and adequate compensation for diagnostic work, as well as repair  
17 service, parts, and labor, for warranty work compensation, a product improvement  
18 program, a maintenance plan, an extended warranty, a certified preowned warranty or  
19 a service contract, issued by the manufacturer or distributor or its common entity. In  
20 addition, a manufacturer shall provide reasonable and adequate time allowances for  
21 the diagnosis and performance of warranty work and service for the work performed  
22 and the time allowances may not be less than the average time spent by the dealer on  
23 similar work for nonwarranty customers. The hourly labor rate and parts  
24 reimbursement rate paid by a manufacturer to the dealer under this subsection may  
25 not be less than the average rate charged by the dealer for similar service or sales to  
26 nonwarranty customers. A manufacturer or distributor may not pay its dealers an  
27 amount of money for warranty work, parts, or service that is less than the average rate  
28 charged by the dealer for similar service or sales to nonwarranty customers. The  
29 dealer may accept the manufacturer's or supplier's warranty reimbursement terms and  
30 conditions in lieu of the above.

- 1       2. The compensation required under subsection 1 includes transportation services,  
2       including labor and equipment, necessary to transport equipment under warranty to  
3       perform the service and to return the equipment to the customer. If transporting the  
4       equipment to the dealership to perform the service is not mechanically or financially  
5       feasible, the compensation required under subsection 1 includes travel to and from the  
6       location of the equipment if the service or repairs are performed at the location of the  
7       equipment. Reimbursement for travel time required under this subsection may not  
8       exceed six hours.
- 9       3. A manufacturer shall pay a dealer on a claim made by a dealer under this section  
10      within thirty days of the approval of the claim. The manufacturer shall either approve or  
11      disapprove a claim within thirty days after the claim is submitted to the manufacturer.  
12      The manufacturer may prescribe the manner in which and the forms on which the  
13      dealer must present the claim. A claim not specifically disapproved in writing within  
14      thirty days after the manufacturer receives the claim must be construed to be  
15      approved and the manufacturer shall pay the claim within thirty days.
- 16      4. As used in this section, "farm equipment" has the same meaning as in section  
17      51-07-01.2.