

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

HOUSE BILL NO. 1203
(Representatives Wald, Aarsvold, Monson)
(Senators Bowman, Tomac)

AN ACT to provide for remedies for nonconformities in farm equipment; and to repeal section 51-07-07 of the North Dakota Century Code, relating to voiding or rescinding contracts for the purchase of farm machinery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Collateral charges" means those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for farm machinery.
2. "Comparable farm machinery" means an identical or reasonably equivalent piece of farm machinery.
3. "Consumer" means the purchaser, other than for the purposes of resale of new farm machinery primarily used for agricultural purposes; any person to whom the new farm machinery is transferred for the same purposes during the duration of an express warranty applicable to that new farm machinery; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
4. "Express warranty" means any written affirmation of fact or promise made by a manufacturer to a consumer in connection with the sale of new farm machinery which relates to the nature of the material or workmanship or will meet a specified level of performance over a specified period of time. The term does not include an implied warranty.
5. "Farm machinery" means any self-propelled equipment or machinery used for agricultural purposes being transferred for the first time from a manufacturer, distributor, or new farm machinery dealer which has not been registered or titled and which is offered for sale, barter, or exchange by a dealer who is franchised to sell, barter, or exchange that particular make of new farm machinery. The term includes farm machinery propelled by power other than muscular power but does not include off-road vehicles other than self-propelled equipment and machinery used for agricultural purposes.
6. "Manufacturer" means any person engaged in the manufacturing or assembling of new farm machinery as a regular business.
7. "Nonconformity" means any condition of the farm machinery which makes it impossible to use for the purpose for which it was intended.
8. "Reasonable allowance for consumer use" means:
 - a. That amount attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer or its authorized dealers;
 - b. That amount attributable to use by the consumer during any period subsequent to the first report of nonconformity when the farm machinery is not out of service by reason of repair of the reported nonconformity; and
 - c. That amount attributable to use by the consumer of the farm machinery provided by the manufacturer or its authorized dealer while the machine is out of service by

reason of repair of the reported nonconformity, but not less than the fair rental value of the farm machinery.

SECTION 2. Law applicable to breach of new farm machinery warranties - Report of nonconformity required - Repairs - Duty of manufacturer or agent. Notwithstanding any other provision of law, a sale of new farm machinery is governed by this Act. For the purposes of this Act, if new farm machinery does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer or its agent during the term of the express warranties or during the period of one year following the date of original delivery of the new farm machinery to the consumer, whichever period expires earlier, the manufacturer or its agent shall make any necessary repairs to conform the new machinery to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the term or the one-year period.

SECTION 3. Replacement of farm machinery or refund of purchase price - Allowance deducted for consumer's use - Refund. If the manufacturer or its agent cannot conform the new farm machinery to any applicable express warranty by repairing or correcting any default or condition that substantially impairs the use or market value of the new farm machinery to the consumer after a reasonable number of attempts, the manufacturer shall give the consumer the option of having the manufacturer either replace the new farm machinery with a comparable new farm machinery acceptable to the consumer, or take title of the machine from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the machine. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new farm machinery occurs. Refunds must be made to the consumer and lienholder of record, if any, as their interests may appear.

SECTION 4. Affirmative defenses.

1. It is an affirmative defense to any claim under this Act that:
 - a. An alleged nonconformity does not substantially impair the use, market value, or safety of the farm machinery;
 - b. A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of farm machinery by a consumer;
 - c. A claim by a consumer was not filed in good faith; or
 - d. Any other affirmative defense allowed by law.
2. It is presumed that a reasonable number of attempts have been undertaken to conform new farm machinery to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of one year following the date of original delivery of the new farm machinery to a consumer, whichever expires earlier, either:
 - a. The same nonconformity has been subject to repair five or more times by the manufacturer or its agents and the nonconformity continues to exist; or
 - b. The new farm machinery is out of service by reason of repair of the nonconformity by the manufacturer or its agents for a cumulative total of thirty or more working days, exclusive of downtime for routine maintenance as prescribed by the manufacturer, since delivery of the new farm machinery to the consumer. The thirty-day period may be extended by a period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

SECTION 5. Information on remedies to be furnished consumer - Notice of complaint to manufacturer required - Manufacturer's duties.

1. The manufacturer shall provide information for consumer complaint remedies with each new farm machinery. Before taking action under this Act, a consumer shall give written notification to the manufacturer of the need for the repair of the nonconformity to allow the

manufacturer an opportunity to cure the alleged defect. The manufacturer immediately shall notify the consumer of a reasonably accessible repair facility of a franchised new farm machinery dealer to conform the new farm machinery to the express warranty. After delivery of the new farm machinery to an authorized repair facility by the consumer, the manufacturer shall conform the new farm machinery to the express warranty within thirty calendar days in appropriate seasonable use times and within sixty days in other times. The agriculture commissioner shall designate appropriate seasonal use times for all machinery covered by this Act. Upon notification from the consumer that the new farm machinery has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer. If prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If any repair that may be required under any warranty takes more than fourteen working days to complete, the manufacturer shall supply at no cost a like piece of farm machinery for use by the consumer if requested by the consumer during the time of repair. The manufacturer shall reimburse any costs incurred by a dealer under this Act.

2. An action brought under this Act must be commenced within six months following expiration of the terms, conditions, or limitations of the express warranty or within eighteen months following the date of original delivery of the new farm machinery to a consumer, whichever is earlier. However, if a consumer resorts to an informal dispute settlement procedure, any action must be commenced within ninety days following the final action of any panel established pursuant to the procedure. If an action is brought under this Act, the prevailing party may recover any court costs and reasonable attorney's fees.

SECTION 6. Application - Not to affect prior contracts - Dealers reimbursed for labor.

This Act applies to any new farm machinery sold after July 31, 2001, and does not invalidate, impair, or otherwise infringe upon the specific requirements of any contract between a dealer and a manufacturer entered before August 1, 2001. However, if warranty repair work is performed for a consumer by a farm equipment dealer under a manufacturer's express warranty, the manufacturer shall reimburse the dealer at an hourly labor rate that is the same or greater than the hourly labor rate the dealer currently charges consumers for nonwarranty repair work. The dealer may accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above.

SECTION 7. REPEAL. Section 51-07-07 of the North Dakota Century Code is repealed.

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. 1203.

House Vote: Yeas 98 Nays 0 Absent 0

Senate Vote: Yeas 49 Nays 0 Absent 0

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