

## **N.D. Cent. Code, § 51-07-00.1**

Current through all acts approved by the governor through the end of the 67th Legislative Assembly Special 2021 Session.

***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-00.1. Definitions.**

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As used in sections 51-07-01, 51-07-02.1, 51-07-02.2, 51-07-02.3, 51-07-02.4, and 51-07-03 unless the context or subject matter otherwise requires:

1. "Contract" means any written franchise agreement, sales agreement, dealer agreement, or security agreement, or other form of agreement or arrangement of like effect.
2. "Dealer" means a person that engages in the business of selling, at retail, new motor vehicles or trucks or new and used motor vehicles or trucks and possesses a current new motor vehicle dealer license as defined in section 39-22-16.
3. "Distributor" means any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer, and any person that in whole or in part offers for sale, sells, or distributes any farm implement, machinery, or attachment or part for the same; or lawn and garden equipment, or part for the same; or semitrailer, or part for the same, to any person that retails all or any of these items.
4. "Franchise" or "franchise agreement" means any contract or addendum to a contract between a dealer and a manufacturer or distributor that authorizes the dealer to engage in the business of selling or purchasing any particular make of new motor vehicles or motor vehicle parts manufactured or distributed by the manufacturer or distributor.
5. "Franchisor" means a person that manufactures, imports, or distributes new motor vehicles and which may enter a franchise agreement.
6. "Good cause" means failure by a new motor vehicle dealer to substantially comply with material and reasonable requirements imposed upon the new motor vehicle dealer by the franchise agreement if the requirements are not unreasonable when compared to those requirements imposed on other similarly situated new motor vehicle dealers.
7. "Good faith" means honesty in fact and the observance of commercially reasonable, nondiscriminatory standards of fair dealing.
8. "Manufacturer" means any person that is engaged in the business of manufacturing or assembling new motor vehicles or any person that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.
9. "Merchandise" means farm implements, machinery, attachments, and parts for the same; lawn and garden equipment and parts for the same; and automobiles, trucks, and semitrailers and parts for the same.
10. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale, the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

- 11.** “Owner” means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.
- 12.** “Semitrailer” includes every vehicle of the trailer type so designed and used in conjunction with a truck that some part of its own weight and that of its own load rests upon or is carried by a truck, except that it does not include a mobile home.
- 13.** “Successor” means the individual who, in the case of the owner’s death, is entitled to inherit the ownership interest in the new motor vehicle dealership or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer’s property subject to sections 51-07-26 and 51-07-26.1.
- 14.** “Truck” includes every motor vehicle designed, used, or maintained primarily for transportation of property or designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
- 15.** “Used motor vehicle” means a motor vehicle that has been subject to a retail sale, the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

## History

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S.L. 2011, ch. 372, § 1.

Annotations

## Notes

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### Effective Date.

This section became effective April 20, 2011, pursuant to an emergency clause in section 5 of chapter 372, S.L. 2011.

### Note.

Section 4 of chapter 372, S.L. 2011 provides: “**APPLICATION.** This Act applies to all dealership agreements in effect on the effective date of this Act (April 20, 2011) which do not have an expiration date and which are continuing contracts and all other contracts entered, amended, or renewed on or after the effective date of this Act (April 20, 2011). A contract in effect on the effective date of this Act (April 20, 2011), which by its terms will terminate on a date after that date and which is not renewed, is governed by the law as it existed before the effective date of this Act (April 20, 2011).”

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## N.D. Cent. Code, § 51-07-01

Current through all acts approved by the governor through the end of the 67th Legislative Assembly Special 2021 Session.

***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-01. Retail farm implement; lawn and garden equipment; or vehicle dealer may recover price of merchandise upon discontinuance of contract by wholesaler or retail dealer.**

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1. If a person engaged in the business of retailing farm implements, machinery, or attachments, or parts for the same; lawn and garden equipment, or parts for the same; or automobiles, trucks, or semitrailers, or parts for the same, enters a contract under which the retailer agrees to maintain a stock of the merchandise covered under this section with a wholesaler, manufacturer, or distributor of the covered merchandise and tools and the wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, the wholesaler, manufacturer, or distributor shall pay to the retailer, unless the retailer desires to keep the merchandise, a sum equal to:
  - a. One hundred percent of the net cost of all current unused complete farm implements, machinery, and attachments; lawn and garden equipment; and automobiles, trucks, and semitrailers.
  - b. One hundred percent of the actual merchandise and tool transportation charges that have been paid by the retailer.
  - c. Ninety percent of the net prices on parts, including superseded parts, as shown in the manufacturer's, wholesaler's, or distributor's current price lists or catalogs in effect at the time the contract is canceled, discontinued, or not renewed. These parts must have previously been purchased from the wholesaler, manufacturer, or distributor, and must have been either held by the retailer on the date of the cancellation of, discontinuance of, or failure to renew the contract or received by the retailer from the wholesaler, manufacturer, or distributor after the date of the cancellation, discontinuance, or failure to renew.
  - d. Fifty percent of the net cost of all complete specialized tools for the covered merchandise.
  - e. Five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor.
2. Upon the payment of the amounts under subsection 1, the retailer shall pass the title to the covered merchandise and tools to the manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor is entitled to the possession of the covered merchandise and tools. 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.
3. The provisions of this section are supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of any merchandise and tools covered under this section. The retailer can elect to pursue either the retailer's contract remedy or the remedy provided 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 in this section as to any merchandise and tools covered under this section which is not affected by the contract remedy.
4. The obligations of any wholesaler, manufacturer, or distributor under this section and sections 51-07-01.1 and 51-07-03 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.

5. 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 or renewed after July 31, 2003. Any contract in force and effect on August 1, 2003, which by its own terms will terminate on a date subsequent thereto is governed by the law as it existed before August 1, 2003.

## History

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S.L. 1937, ch. 125, §§ 1, 3; R.C. 1943, § 51-0701; S.L. 1961, ch. 309, § 1; 1963, ch.329, § 1; 1971, ch. 472, § 1; 1987, ch. 589, § 1; 1993, ch. 54, § 106; 2001, ch. 441, § 1; 2003, ch. 435, § 1.

Annotations

### Notes to Decisions

**Constitutionality.**

**Construction of Section.**

**Discharge in Bankruptcy.**

**Election of Remedies.**

**Purpose of Section.**

**Written Contracts.**

### Constitutionality.

This statute is rationally related to the state's significant and legitimate interest in providing protection to distributors of vehicles and farm implements and does not violate the state or federal constitutional standards of interstate commerce, of impairment of contractual obligations, of deprivation of property without due process of law, and of special privileges and immunities. *Hall GMC v. Crane Carrier Co.*, 332 N.W.2d 54, 1983 N.D. LEXIS 256 (N.D. 1983).

The state's strong interest in protecting distributors, coupled with the conclusion that courts will defer to legislative judgment to determine the appropriateness of the action taken to remedy the societal harm, lends itself to the conclusion that this section does not violate the contract clause of the United States Constitution. *Farmers Union Oil Co. v. Allied Prods. Corp.*, 162 B.R. 834, 1993 U.S. Dist. LEXIS 18818 (D.N.D. 1993).

### Construction of Section.

Construing this section in its entirety, paragraph one is the substantive portion of the statute, while paragraphs two and three pertain to its ancillary application. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 1985 N.D. LEXIS 418 (N.D. 1985).

### Discharge in Bankruptcy.

The bankruptcy court order absolving defendant of liability of all liens, claims and encumbrances did not preempt the operation of this section, nor did the parties' agreement. *Farmers Union Oil Co. v. Allied Prods. Corp.*, 162 B.R. 834, 1993 U.S. Dist. LEXIS 18818 (D.N.D. 1993).

### **Election of Remedies.**

Retailer could not dispose of a portion of farm machinery at his own price and then force wholesaler to take the balance under provisions of this statute, the sale by retailer being an election on his part to keep the merchandise. *Kaisershot v. Gamble-Skogmo, Inc.*, 96 N.W.2d 666, 1959 N.D. LEXIS 85 (N.D. 1959).

### **Purpose of Section.**

This section was intended to remedy the problem which arises when a dealer has been required by the terms of a franchise agreement to invest in purchases of equipment in order to maintain a specified level of inventory parts or machinery, thereby using cash assets that would ordinarily be available for operating expenses. In such instances, the manufacturer shares the fault, should the situation arise where the dealer is unable to continue in business. In *re Hausauer Implement Co.*, 35 B.R. 661, 1983 Bankr. LEXIS 4838 (Bankr. D.N.D. 1983).

### **Written Contracts.**

This section applied to written contracts only. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 1985 N.D. LEXIS 418 (N.D. 1985).

The 1961 amendment to this section reflects the legislature's intention to change the earlier law and to limit the statute's coverage to written contracts. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 1985 N.D. LEXIS 418 (N.D. 1985).

The second paragraph of this section, which was added by amendment in 1971, was designed to insure that a retailer's election to pursue his contract remedy does not bar his right to the statutory remedy. Nowhere does the legislative history of this 1971 amendment indicate any legislative intent to contradict the specific reference in the first paragraph to a written contract so as to expand the statute's coverage to include oral contract. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 1985 N.D. LEXIS 418 (N.D. 1985).

The third paragraph of this section does not denote any legislative intent to place all contracts, written and oral, within the coverage of this section. *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 1985 N.D. LEXIS 418 (N.D. 1985).

This section is not applicable in instances where the written agreement does not specifically require the dealer to maintain a stock of parts or whole machines. In *re Hausauer Implement Co.*, 35 B.R. 661, 1983 Bankr. LEXIS 4838 (Bankr. D.N.D. 1983).

### **Collateral References.**

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624.

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### **51-07-01.1. Termination of retail contract to be done in good faith — Definition of good cause.**

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1. Any manufacturer, wholesaler, or distributor of merchandise and tools covered under section 51-07-01, excluding automobile dealers, truck dealers, or parts dealers of the automobiles or trucks, that enters a contract with any person engaged in the business of retailing the covered merchandise by which the retailer agrees to maintain a stock of the covered merchandise may not terminate, cancel, or fail to renew the contract with the retailer 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 retailer to substantially comply with those essential and reasonable requirements imposed by the contract between the parties if the requirements are not different from those requirements imposed on other similarly situated retailers. The determination by the manufacturer, wholesaler, or distributor of good cause for the termination, cancellation, or failure to renew must be made in good faith.
3. 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. If a notice of termination is issued and the dealer challenges the notice by filing an action, there is an automatic stay during the pendency of the action. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, the manufacturer, wholesaler, or distributor is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorney's fees for prosecuting the action and the plaintiff, if appropriate, is entitled to injunctive relief. This section applies to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered, amended, or renewed after July 31, 2003. Any contract in force and effect on August 1, 2003, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before August 1, 2003.

### **History**

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S.L. 1975, ch. 450, § 1; 1987, ch. 589, § 2; 1993, ch. 54, § 106; 2001, ch. 441, § 2; 2003, ch. 435, § 2; 2005, ch. 439, § 1.

Annotations

#### **Notes to Decisions**

**Attorney's Fees and Costs.**

**Evidence Excluded.**

**Good Cause.**

**Good Faith.****Purpose.****Termination by Retailer.****Attorney's Fees and Costs.**

Because plaintiff had not yet sent defendant a notice of termination of the parties' dealership agreement, defendant was not entitled to costs or attorney's fees under N.D.C.C. § 51-07-01.1(3), so defendant's request for the same was premature. *CNH Am. LLC v. Magic City Implement, Inc.*, 2011 U.S. Dist. LEXIS 9641 (D.N.D. Jan. 31, 2011).

**Evidence Excluded.**

Where defendant in action brought under this section for bad faith termination of farm implement dealership moved to exclude evidence about another, non-party dealership, evidence proffered at hearing on motion in limine established plaintiff and other dealership were not in substantially similar financial condition, so that the evidence was of limited probative value and the trial court did not abuse its discretion by excluding the evidence. *Williston Farm Equip. v. Steiger Tractor*, 504 N.W.2d 545, 1993 N.D. LEXIS 151 (N.D. 1993).

**Good Cause.**

Where dealer was in default on his payments to manufacturer for three equipment purchases, he breached the dealership contract, thereby giving manufacturer good cause, for purposes of this section, to terminate the dealership agreement. *Foley Equip. v. Krause Plow Corp.*, 456 N.W.2d 121, 1990 N.D. LEXIS 114 (N.D. 1990).

"Good cause" under this section must relate to a dealer's compliance with the requirements imposed by a written dealership agreement and a manufacturer must make a good faith determination about good cause. *Williston Farm Equip. v. Steiger Tractor*, 504 N.W.2d 545, 1993 N.D. LEXIS 151 (N.D. 1993).

**Good Faith.**

Where it was undisputed that dealer was in default on payments to manufacturer, trial court's finding that manufacturer's termination of the dealership agreement was not in bad faith was one of law. *Foley Equip. v. Krause Plow Corp.*, 456 N.W.2d 121, 1990 N.D. LEXIS 114 (N.D. 1990).

Evidence about a manufacturer's treatment of other similarly situated dealerships in an action for bad faith termination of a farm implement dealership under this section may have some probative value to establish "good cause" and "good faith" for the termination of the dealership agreement. Where plaintiff and another dealership were not in substantially similar financial condition, exclusion of the evidence about the non-party dealership was not abuse of discretion. *Williston Farm Equip. v. Steiger Tractor*, 504 N.W.2d 545, 1993 N.D. LEXIS 151 (N.D. 1993).

Defendant's counterclaim for a declaratory judgment that plaintiff did not have good cause under N.D.C.C. § 51-07-01.1 to terminate the parties' dealership agreement and that any such termination by plaintiff would be in bad faith would not be dismissed because it was not duplicative of plaintiff's claim for a declaratory judgment that it had good cause to terminate the agreement. Because plaintiff had not yet sent defendant a notice of termination, defendant was not entitled to costs or attorney's fees under N.D.C.C. § 51-07-01.1(3), so defendant's request for the same was premature. *CNH Am. LLC v. Magic City Implement, Inc.*, 2011 U.S. Dist. LEXIS 9641 (D.N.D. Jan. 31, 2011).

Defendant's counterclaim for breach of contract and the covenant of good faith and fair dealing under N.D.C.C. §§ 41-01-18 and N.D.C.C. § 51-07-01.1(3) would not be dismissed because the primary issue in both the complaint

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and the counterclaim was whether the parties' dealership agreement could be terminated in good faith and for cause, and the counterclaim contained sufficient facts to survive a motion to dismiss. *CNH Am. LLC v. Magic City Implement, Inc.*, 2011 U.S. Dist. LEXIS 9641 (D.N.D. Jan. 31, 2011).

**Purpose.**

The purpose of this section is to equalize the disparity in bargaining power between manufacturers and dealers, and to protect dealers from a termination based solely upon a manufacturer's subjective whim and caprice. *Williston Farm Equip. v. Steiger Tractor*, 504 N.W.2d 545, 1993 N.D. LEXIS 151 (N.D. 1993).

**Termination by Retailer.**

This section is not applicable where the retailer is the one who terminates the contract. *Hall GMC v. Crane Carrier Co.*, 332 N.W.2d 54, 1983 N.D. LEXIS 256 (N.D. 1983).

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## N.D. Cent. Code, § 51-07-02.1

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### **51-07-02.1. Change in automobile or truck franchise agreement — Notification requirements.**

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1. At least ninety days before any change in or from an existing contract which will substantially impair the sales, the service obligations, or investment of a retailer of automobiles or trucks, or parts of the automobiles or trucks, the manufacturer, wholesaler, or distributor that is a party to the contract shall give notice by certified mail to the retailer of the intended change and the specific grounds for the change.
2. If the manufacturer, wholesaler, or distributor fails to give the proper notice under subsection 1, the change is voidable at the option of the retailer.
3. A contract between a manufacturer, wholesaler, or distributor and a retailer of automobiles or trucks, or parts of the automobiles or trucks, is offered for automatic renewal under the same terms unless notice is provided under subsection 1.
4. A retailer may file an action against the manufacturer, wholesaler, or distributor for violation of this section or for a determination of whether the action proposed by the manufacturer, wholesaler, or distributor is an unfair or a prohibited change in or from the contract. Contracts and certificates of appointment continue in effect until final determination of the issues in the action.
5. A change in or from a contract is unfair and prohibited if the change is not clearly permitted by the agreement; is not taken in good faith; is not taken for good cause; is based on an alleged breach of the agreement which is not in fact a material and substantial breach; or, if the grounds relied on for the change have not been applied in a uniform and consistent manner by the manufacturer, wholesaler, or distributor. Good faith means honesty in fact and fair dealing. The manufacturer, wholesaler, or distributor shall have the burden of proof that any action taken by the manufacturer, wholesaler, or distributor is fair and not prohibited. A manufacturer, wholesaler, or distributor that fails to carry the burden of proof is liable for all special and general damages sustained by the retailer, including the costs of litigation and reasonable attorney's fees. If appropriate, the retailer is entitled to injunctive relief.

### **History**

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S.L. 2005, ch. 439, § 2.

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## N.D. Cent. Code, § 51-07-02.2

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

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1. A dealer of automobiles or trucks, farm equipment, or parts for automobiles, trucks, or farm equipment may not transfer, assign, or sell a dealer agreement to another person unless the dealer first provides written notice to the manufacturer or distributor of the intended action. Within sixty days of receiving the notice, the manufacturer or distributor must approve or deny the action. If the manufacturer or distributor denies the action, the manufacturer or distributor shall provide material reasons for the denial to the dealer. If the manufacturer or distributor does not respond within the sixty-day period, the action is deemed approved.
2. A denial by the manufacturer or distributor to accept a proposed transferee who meets the written, reasonable, and uniformly applied standards of qualifications of the manufacturer or distributor relating to the financial qualifications of the transferee and business experience of the transferee is presumed to be unreasonable. If an action is denied by the manufacturer or distributor, the dealer may file an action for determination of a violation of this subsection. The dealer may pursue the dealer's remedy under the contract or the remedy provided in this subsection. The manufacturer or distributor has the burden of proof regarding all issues raised in the action. The court shall approve the transfer unless the manufacturer or distributor can prove the proposed transferee does not meet the written, reasonable, and uniformly applied standards regarding financial qualifications and business experience.
3. As used in this section, "farm equipment" has the same meaning as in section 51-07-01.2.

### **History**

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S.L. 2005, ch. 439, § 3; 2017, ch. 354, § 2, eff August 1, 2017.

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End of Document

## **N.D. Cent. Code, § 51-07-02.3**

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### **51-07-02.3. Prohibited acts.**

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A manufacturer, wholesaler, or distributor of automobiles or trucks, or parts of the automobiles or trucks, that enters a contract with any person engaged in the business of selling or retailing automobiles, trucks, or parts for the automobiles or trucks, may not:

1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles, trucks, parts, or accessories that the retailer has not ordered voluntarily.
2. Condition or attempt to condition the sale of automobiles or trucks on a requirement that the automobile or truck retailer purchase other goods or services, except that the manufacturer, wholesaler, or distributor may require a retailer to purchase all parts reasonably necessary to maintain the quality of operation and telecommunications necessary to communicate with the manufacturer, wholesaler, or distributor.
3. Implement or establish a system of motor vehicle allocation or distribution to one or more of its dealers that is unfair, inequitable, or unreasonably discriminatory. As used in this subsection, "unfair" includes requiring a dealer to accept new vehicles not ordered by the dealer or the refusal or failure to offer to any dealer all models offered to any of its other same line-make dealers in this state. The failure to deliver any motor vehicle is not a violation of this section if failure is due to any cause over which the manufacturer does not have control.
4. Require a dealer to pay all or any part of the cost of an advertising campaign or contest or purchase any promotional material, showroom, or other display decoration or material at the expense of the dealer.
5. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy the reasonable requirements of the manufacturer, wholesaler, or distributor.
6. Require a retailer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive. This subsection does not apply to a program that is in effect with more than one dealer in this state on April 20, 2011, or to a renewal or modification of the program.
7. Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealer's relevant market area. The dealer shall provide the manufacturer or distributor with notice of the proposed address and a reasonable site plan of the proposed location. The manufacturer or distributor shall approve or deny the request in writing within sixty days after receipt of the request, and failure to deny the request within sixty days is deemed approval.
8. Require the retailer to unreasonably remodel, renovate, or recondition the retailer's facilities, change the location of the facilities, or make unreasonable alterations to the dealership premises.
9. Discriminate in the prices charged for automobiles or trucks of like grade and quality sold by automobile or truck manufacturers to similarly situated automobile or truck retailers. This prohibition

does not prevent the use of differentials that solely make due allowance for differences in the cost of manufacture, sale, or delivery or for differing methods or quantities in which the automobiles or trucks are sold or delivered by the manufacturer, wholesaler, or distributor.

**10.** Refuse or fail to offer any incentive program, bonus payment, holdback margin, or any other mechanism that effectively lowers the net cost of a vehicle to any franchised dealer in this state if the incentive, bonus, or holdback is available or made to one or more same line-make dealers in this state.

**11.** Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the competitive circumstances of the dealership contracts for any reason other than the failure of the automobile or truck retailer to comply with the terms of the contract between the parties, if the attempt or threat is based on the results of a circumstance beyond the retailer's control, including a natural disaster in the dealership market area or a labor dispute.

**12.** Require a dealer in this state to enter any agreement to assent to a release, assignment, novation, waiver, or estoppel in which a dealer relinquishes any rights under this state's law, or which would relieve any person from liability imposed by this state's law unless done in connection with a settlement agreement to resolve a matter between a manufacturer and the dealer. The settlement agreement must be entered voluntarily for separate and valuable consideration, and the renewal, reinstatement, or continuation of a franchise agreement alone does not constitute separate and valuable consideration.

**13.** Require any dealer in this state to enter any agreement with the manufacturer or any other party which requires the law of another jurisdiction to apply to any dispute between the dealer and manufacturer, requires that the dealer bring an action against the manufacturer in a venue outside of this state, in any way purports to waive any dealer's right to have all of this state's statutory and common law apply, shortens or otherwise modifies or eliminates any dealer's right to resolve any dispute with a manufacturer in a state or federal court in this state, or requires the dealer to agree to arbitration or waive its rights to bring a cause of action against the manufacturer, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer and the dealer. This settlement agreement must be entered voluntarily for separate and valuable consideration and renewal, reinstatement, or continuation of a franchise agreement alone is not separate and valuable consideration.

## History

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S.L. 2005, ch. 439, § 4; 2011, ch. 372, § 2.

Annotations

## Notes

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### Effective Date.

The 2011 amendment of this section by section 2 of chapter 372, S.L. 2011 became effective April 20, 2011, pursuant to an emergency clause in section 5 of chapter 372, S.L. 2011.

### Note.

Section 4 of chapter 372, S.L. 2011 provides: "**APPLICATION.** This Act applies to all dealership agreements in effect on the effective date of this Act (April 20, 2011) which do not have an expiration date and which are continuing contracts and all other contracts entered, amended, or renewed on or after the effective date of this Act (April 20, 2011). A contract in effect on the effective date of this Act (April 20, 2011), which by its terms will

terminate on a date after that date and which is not renewed, is governed by the law as it existed before the effective date of this Act (April 20, 2011).”

## Notes to Decisions

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### Executory Contract.

In Fifth Amendment takings action by car dealers whose franchise agreements were rejected when automobile manufacturer went into bankruptcy, court entered findings in favor of United States because car dealers failed to establish government coerced manufacturer into filing for bankruptcy under government’s negotiated bankruptcy terms or into rejecting any franchise agreements. Because evidence established that manufacturer would have faced immediate liquidation in Chapter 7 bankruptcy without government assistance, dealers failed to prove franchise agreements would have had value in “but-for world” without government assistance. Thus, dealers failed to prove property was “taken” from them. *Colonial Chevrolet Co. v. United States*, 145 Fed. Cl. 243, 2019 U.S. Claims LEXIS 1311 (Fed. Cl. Oct. 2, 2019), *aff’d*, — F.3d —, 2020 U.S. App. LEXIS 40691 (Fed. Cir. 2020).

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## N.D. Cent. Code, § 51-07-02.4

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### **51-07-02.4. Warranty and incentive claims.**

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1. A manufacturer may not conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of that warranty or incentive payment.
2. A manufacturer may not charge back a dealer for an incentive or warranty payment unless the manufacturer can satisfy its burden of proof that the dealer's claim was false, fraudulent, or the dealer did not substantially comply with the reasonable written procedures of the manufacturer.
3. The audit and chargeback provisions of this section apply to all other incentive and reimbursement programs that are subject to audit by the manufacturer. This section does not apply to fraudulent claims.

### **History**

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S.L. 2011, ch. 372, § 3.

Annotations

### **Notes**

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#### **Effective Date.**

This section became effective April 20, 2011, pursuant to an emergency clause in section 5 of chapter 372, S.L. 2011.

#### **Note.**

Section 4 of chapter 372, S.L. 2011 provides: "**APPLICATION.** This Act applies to all dealership agreements in effect on the effective date of this Act (April 20, 2011) which do not have an expiration date and which are continuing contracts and all other contracts entered, amended, or renewed on or after the effective date of this Act (April 20, 2011). A contract in effect on the effective date of this Act (April 20, 2011), which by its terms will terminate on a date after that date and which is not renewed, is governed by the law as it existed before the effective date of this Act (April 20, 2011)."

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## N.D. Cent. Code, § 51-07-03

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-03. Failure to pay sum specified on cancellation of contract — Liability.**

---

If a manufacturer, wholesaler, or distributor of merchandise and tools covered under section 51-07-01, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to the retailer as is required by section 51-07-01, or refuses to supply covered merchandise or tools to any retailer of the merchandise, who may have a retail sales contract dated after July 31, 2003, or a contract with no expiration date or a continuing contract in force or effect on August 1, 2003, with the manufacturer, wholesaler, or distributor, the manufacturer, wholesaler, or distributor is liable in a civil action to be brought by the retailer for the amounts provided under subsection 1 of section 51-07-01. 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.

### **History**

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S.L. 1937, ch. 125, § 3; R.C. 1943, § 51-0703; S.L. 1961, ch. 309, § 3; 1963, ch. 329, § 3; 1987, ch. 589, § 3; 1993, ch. 54, § 106; 2001, ch. 441, § 4; 2003, ch. 435, § 3.

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## N.D. Cent. Code, § 51-07-09

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-09. Waiving, releasing, or barring of claim for relief before it actually has accrued prohibited.**

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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.

### **History**

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

Annotations

### **Notes to Decisions**

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#### **Clause Barring Action Against Assignee.**

Where a conditional sales contract contains a provision that if the seller should assign the contract, the buyer will settle any claims, defenses, setoffs, and counter-claims arising under the contract directly with the seller and will not set up any of these against the assignee, such a provision is contrary to this section and will not bar a buyer from establishing failure of consideration from the seller as a defense to an action by seller's assignee. *C. I. T. Corp. v. Hetland*, 143 N.W.2d 94, 1966 N.D. LEXIS 177 (N.D. 1966).

### **Research References & Practice Aids**

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#### **Cross-References.**

Agreement not to assert defenses against assignee, see § 41-09-65.

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## N.D. Cent. Code, § 51-07-14

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*North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)*

### **51-07-14. Maximum amount of service charge which wholesalers and manufacturers may charge on overdue accounts.**

---

Wholesalers and manufacturers, when selling to retailers or other persons, may charge a service charge of up to one and one-half percent per month on the remaining balance of all overdue accounts, provided the parties have entered into a written agreement prior to the transaction setting forth the amount of service charge, computed on the basis of simple interest per annum. The wholesaler or manufacturer shall inform the purchaser in writing at the time of the purchase of the service charge which will be charged if the account becomes overdue. The service charge allowed in this section is allowed on any such purchase on or after July 1, 1971.

### **History**

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S.L. 1971, ch. 473, § 1.

Annotations

### **Notes to Decisions**

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#### **Interest on Interest.**

Where there was no evidence in the record to show that the plaintiff was a manufacturer or wholesaler entitled to the service charge authorized by this section, the plaintiff had not shown that it was entitled to charge interest on interest. *Northwestern Equip. v. Badinger*, 403 N.W.2d 8, 1987 N.D. LEXIS 273 (N.D. 1987).

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## N.D. Cent. Code, § 51-07-16

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-16. Definitions.**

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As used in sections 51-07-16 through 51-07-22, and unless the context otherwise requires:

1. “Consumer” means the purchaser or lessee, other than for purposes of resale or lease, of a passenger motor vehicle normally used for personal, family, or household purposes. The term includes any person to whom the passenger motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to that passenger motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
2. “Passenger motor vehicle” means a passenger motor vehicle as defined in section 39-01-01 or a truck with registered gross weight of ten thousand pounds [4536 kilograms] or less which is sold or leased in this state. The term does not include a house car, as defined in section 39-01-01.

### **History**

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S.L. 1985, ch. 424, § 2; 1995, ch. 473, § 1.

Annotations

### **Research References & Practice Aids**

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#### **Collateral References.**

Validity, construction and effect of state motor vehicle warranty legislation, 88 A.L.R.5th 301.

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## N.D. Cent. Code, § 51-07-17

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-17. Duty of manufacturer to repair defective passenger motor vehicles.**

If a new passenger motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the express warranties or during the period of one year following the date of original delivery of the passenger motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make the repairs necessary to conform the passenger motor vehicle to the express warranties, notwithstanding the fact that the repairs might be made after the expiration of the warranty or one-year period.

### **History**

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S.L. 1985, ch. 424, § 3.

Annotations

### **Research References & Practice Aids**

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#### **Collateral References.**

Liability for delay in making repair of motor vehicle, 44 A.L.R.4th 1174.

Award of attorney's fees under state motor vehicle warranty legislation (lemon laws), 82 A.L.R.5th 501.

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## **N.D. Cent. Code, § 51-07-25**

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-25. Motor vehicle fuel franchise agreements.**

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A motor vehicle fuel franchise agreement may not require a security deposit except for the purpose of securing against loss of or damage to property. The dealer may satisfy any security deposit required by depositing cash or pledging a savings account or its equivalent in a financial institution in this state. Earnings accruing on a savings account or its equivalent are the property of the dealer and the dealer may withdraw the earnings annually from the account.

### **History**

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S.L. 1997, ch. 417, § 1.

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## N.D. Cent. Code, § 51-07-26

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-26. Succession to ownership of an automobile, truck, or farm equipment dealership.**

---

1. The owner of an automobile, truck, or farm equipment dealership may appoint by trust, will, or any other valid written instrument a successor to the owner's dealership interest upon the owner's death or incapacity.
2. Unless the manufacturer, wholesaler, or distributor has good cause to refuse to honor the succession, the successor may succeed to the ownership of the dealership under the existing franchise if:
  - a. Within ninety days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the dealership; and
  - b. The successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior owner.
3. Upon request, the successor shall promptly provide the manufacturer, wholesaler, or distributor evidence of the successorship appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be honored by the manufacturer, wholesaler, or distributor.

### **History**

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S.L. 1997, ch. 418, § 1.

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## N.D. Cent. Code, § 51-07-26.1

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-26.1. Refusal to honor succession.**

---

1. If a manufacturer, wholesaler, or distributor believes that good cause exists to refuse to honor the intended succession under section 51-07-26, then the manufacturer, wholesaler, or distributor shall serve the named successor written notice of refusal to honor the intended succession within sixty days of its receipt of the notice of the intended succession. The notice must contain specific grounds for the refusal to honor the succession.
2. If notice of refusal to honor the intended succession is not timely served upon the intended successor, the successor may continue the franchise subject only to termination as permitted otherwise in this chapter.
3. In determining whether good cause exists for the refusal to honor the intended succession, the manufacturer, wholesaler, or distributor has the burden of proving that the intended successor is not a person of good moral character or does not meet the franchisor's existing and reasonable standards. Good cause for refusal to honor succession does not include the owner's dealership being dualled with another manufacturer's line.

### **History**

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S.L. 1997, ch. 418, § 2.

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## N.D. Cent. Code, § 51-07-28

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-28. Recording devices on motor vehicles — Disclosure — Removal.**

1. A manufacturer of a new motor vehicle sold or leased in this state which is equipped with a recording device commonly referred to as an event data recorder shall disclose by model year 2007 the presence, capacity, and capabilities of the event data recorder in the owner's manual for the vehicle. A motor vehicle dealer shall include within the purchase contract in a clear and conspicuous manner information on the possibility of a recording device. As used in this section, an event data recorder means a feature that is installed by the manufacturer of the vehicle and does any of the following for the purpose of retrieving data:
  - a. Records the speed of the vehicle and the direction the motor vehicle is traveling.
  - b. Records vehicle location data.
  - c. Records steering performance.
  - d. Records brake performance, including whether brakes were applied before an accident.
  - e. Records the driver's safety belt status.
  - f. Has the ability to transmit information concerning an accident in which the vehicle has been involved to a central communications system when an accident occurs.
2. Data recorded on an event data recorder may not be downloaded or otherwise retrieved by a person other than the owner of the motor vehicle at the time the data is recorded, or through consent by the owner's agent or legal representative, except under any of the following circumstances:
  - a. The data is retrieved for the purpose of improving motor vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, and the identity of the registered owner or driver is not disclosed in connection with that retrieved data. The disclosure of the vehicle identification number, with the last four digits deleted, for the purpose of improving vehicle safety, including for medical research of the human body's reaction to motor vehicle accidents, does not constitute the disclosure of the identity of the registered owner or driver. A person authorized to download or otherwise retrieve data from a recording device under this subdivision may not release that data, except to share the data among the motor vehicle safety and medical research communities to advance motor vehicle safety, and only if the identity of the registered owner or driver is not disclosed.
  - b. The data is retrieved by a licensed motor vehicle dealer or by an automotive technician for the purpose of diagnosing, servicing, or repairing the motor vehicle.
  - c. By stipulation of the parties to the proceeding or by order of the court.
3. "Owner" means a person having all the incidents of ownership, including the legal title of a vehicle regardless of whether the person lends, rents, or creates a security interest in the vehicle; a person entitled to the possession of a vehicle as the purchaser under a security agreement; or the person entitled to possession of the vehicle as lessee pursuant to a written lease agreement, if the agreement at inception is for a period in excess of three months.

4. A person, including a service or data processor operating on behalf of the person, authorized to download or otherwise retrieve data from an event data recorder pursuant to subdivision a of subsection 2 may not release that data except for the purposes of motor vehicle safety and medical communities to advance motor vehicle safety, security, or traffic management; or to a data processor solely for the purposes permitted by this subsection and only if the identity of the owner or driver of the vehicle is not disclosed.
5. If a motor vehicle is equipped with a recording device that is capable of recording or transmitting information relating to vehicle location data or concerning an accident to a central communications system and that capability is part of a subscription service, the fact that the information may be recorded or transmitted must be disclosed in the terms and conditions of the subscription service. Subsection 2 does not apply to a subscription service that meets the requirements of this subsection.
6. An insurer may not require as a condition of insurability consent of the owner for access to data that may be stored within an event data recorder and may not use data retrieved with the owner's consent before or after an accident for the purpose of rate assessment.

## History

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S.L. 2005, ch. 440, § 1.

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## N.D. Cent. Code, § 51-07-29

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)***

### **51-07-29. Warranty work compensation.**

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1. A motor vehicle manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a motor vehicle manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a motor vehicle manufacturer to the dealer for warranty services may not be less than the average rate charged by the dealer for like service to nonwarranty customers for nonwarranty service as provided under subsection 5. A motor vehicle manufacturer may not reimburse a dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the dealer for these parts as provided under subsection 4.
2. A motor vehicle manufacturer shall pay a dealer on a claim made by a dealer under this section within thirty days of the approval of the claim. The manufacturer shall either approve or disapprove a claim within thirty days after the claim is submitted to the manufacturer. The manufacturer may prescribe the manner in which and the forms on which the dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
3. A motor vehicle manufacturer, factory branch, distributor, or distributor branch shall fully compensate its motor vehicle dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the dealer or imposing a separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover the costs of complying with this section from the dealer.
4. The retail rate customarily charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
5. The retail rate customarily charged by the dealer for labor must be established using the same process as provided under subsection 4 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection 4.
6. In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:
  - a. Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
  - b. Parts sold at wholesale;
  - c. Routine maintenance not covered under any retail customer warranty, including fluids, filters, and belts not provided in the course of repairs;

- d. Nuts, bolts, fasteners, and similar items that do not have an individual part number;
  - e. Tires; and
  - f. Vehicle reconditioning.
7. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must go into effect thirty days following the manufacturer's approval. A manufacturer or distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar area of the state offering the dealer's declaration of the same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
8. Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.
9. A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections 4 and 5; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections 4 and 5.

## History

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S.L. 2013, ch. 388, § 1.

Annotations

## Notes

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### Effective Date.

This section became effective April 16, 2013, pursuant to an emergency clause in section 2 of chapter 388, S.L. 2013.

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## N.D. Cent. Code § 51-07-31

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*North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-07 Miscellaneous Provisions (§§ 51-07-00.1 — 51-07-31)*

### **51-07-31. Parts, equipment, and accessory dealers reimbursed for warranty repair.**

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1. As used in this section:

- a. "Commercial distributor" means any person that offers for sale, sells, or distributes to a dealer parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- b. "Commercial equipment dealer" means a person that engages in the business of:
  - (1) Selling, at retail, parts for any new or used commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo; or
  - (2) Repairing new or used commercial motor vehicle, truck, or semitrailer parts, or vehicular implements, commercial equipment or, accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- c. "Commercial manufacturer" means any person engaged in the business of manufacturing or assembling parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or semitrailer components.

2. A commercial manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a commercial manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a commercial manufacturer to the commercial equipment dealer for warranty services may not be less than the average rate charged by the commercial equipment dealer for like service to nonwarranty customers for nonwarranty service. A commercial manufacturer may not reimburse a commercial equipment dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the commercial equipment dealer for these parts as provided under subsection 5.

3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made by a commercial equipment dealer under this section within thirty days of the approval of the claim. The commercial manufacturer either shall approve or disapprove a claim within thirty days after the claim is submitted to the commercial manufacturer. The commercial manufacturer may prescribe the manner in which and the forms on which the commercial equipment dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the commercial manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.

- 4.** A commercial manufacturer, commercial distributor, or commercial distributor branch shall compensate fully its commercial equipment dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the commercial equipment dealer or imposing a separate charge, surcharge, or other imposition by which the commercial manufacturer seeks to recover the costs of complying with this section from the commercial equipment dealer.
- 5.** The retail rate customarily charged by the commercial equipment dealer for parts is established by the commercial equipment dealer submitting to the commercial manufacturer or commercial distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
- 6.** The retail rate customarily charged by the commercial equipment dealer for labor must be established using the same process as provided under subsection 5 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.
- 7.** In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the following work may not be included in the calculation:
  - a.** Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional discounts for retail customer repairs;
  - b.** Parts sold at wholesale; and
  - c.** Nuts, bolts, fasteners, and similar items that do not have an individual part number.
- 8.** The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer's approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other commercial equipment dealers in an economically similar area of the state offering the commercial equipment dealer's declaration of the same part, or vehicular implement, equipment, accessory, or attachment unit. If the average parts markup rate or average labor rate, or both are rebutted, the commercial manufacturer or commercial distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
- 9.** Each commercial manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not obligate any commercial equipment dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating commercial equipment dealers to engage in transaction-by-transaction or part-by-part calculations.
- 10.** A commercial dealer or commercial manufacturer may demand the average parts markup or average labor rate be calculated using the process provided under subsections 5 and 6; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the commercial equipment dealer or commercial manufacturer, the commercial equipment dealer shall determine the repair orders to be included in the calculation under subsections 5 and 6.

## History

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S.L. 2019, ch. 422, § 1, eff August 1, 2019.

Annotations

## Notes

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### Note.

Section 51-07-30 was enacted 2 times by the 2019 Legislative Assembly. Pursuant to Section 1-02-09.1, the section is printed above to harmonize and give effect to the enactment made in Section 1 of Chapter 424, Session Laws 2019, House Bill 1195 over Section 1 of Chapter 422, Session Laws 2019, House Bill 1339. Section 51-07-30 as added by Section 1 of Chapter 422 is accordingly redesignated to the present location.

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## N.D. Cent. Code, § 51-20.2-01

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***North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-20.2 Franchise Merchandise Return (§§ 51-20.2-01 — 51-20.2-03)***

### 51-20.2-01. Definitions.

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As used in this chapter, unless the context requires otherwise:

1. “Contractual arrangement” means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer by which the dealer agrees to sell at retail and service the distributor’s merchandise in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of merchandise and, if the dealer is to perform service, an inventory of parts for that merchandise.
2. “Dealer” means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new merchandise and is not engaged in the business of home solicitation sales.
3. “Distributor” means any manufacturer, wholesaler, or distributor of merchandise who has a contractual arrangement with a dealer for such merchandise.
4. “Merchandise” includes all new products of inventory intended for resale or retail sale by franchised dealers.

### History

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S.L. 1987, ch. 593, § 1; 1993, ch. 54, § 106.

Annotations

### Research References & Practice Aids

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#### Collateral References.

Primary liability of private chain franchisor for injury or death caused by franchise premises or equipment, 59 A.L.R.4th 1142.

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## N.D. Cent. Code, § 51-20.2-02

Current through all acts approved by the governor through the end of the 67th Legislative Assembly Special 2021 Session.

*North Dakota Century Code Annotated > TITLE 51 Sales and Exchanges (Chs. 51-01 — 51-37) > CHAPTER 51-20.2 Franchise Merchandise Return (§§ 51-20.2-01 — 51-20.2-03)*

### **51-20.2-02. Dealers may recover value of merchandise or parts from distributor in certain cases.**

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1. Whenever:

a. A distributor cancels or discontinues a contractual arrangement; or

b. A dealer cancels or discontinues a contractual arrangement because the distributor entered into a contractual arrangement with another dealer to sell in the same geographical area for which the first dealer had an exclusive dealership,

the dealer may recover from the distributor the net cost to the dealer of all new and unused merchandise, and parts for such merchandise, held by the dealer at the time of cancellation or discontinuance of the contractual arrangement. The dealer may enforce the right given under this section by civil action commenced in district court in the county where the dealer has the dealer's principal place of business in North Dakota.

2. The provisions of this section are supplemental to any contractual rights which the dealer may have with respect to reimbursement for merchandise and parts inventory held by the dealer at cancellation or discontinuance of a contractual arrangement. The dealer may elect to pursue the dealer's rights under the contractual arrangement and under this section, but the dealer's total recovery may not exceed the net cost of the merchandise and parts, plus freight costs for return of the merchandise and parts, remaining in the dealer's hands at the time of cancellation or discontinuance, plus legal costs awarded by the court.

### **History**

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S.L. 1987, ch. 593, § 1.

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