

## CHAPTER 51-07 MISCELLANEOUS PROVISIONS

### 51-07-00.1. Definitions.

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.

**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.**

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.

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

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.

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

1. Notwithstanding the terms of any contract, a manufacturer, wholesaler, or distributor of farm implements, machinery, or repair parts who enters into a contract with any person engaged in the business of selling and retailing farm implements and repair parts for farm implements may not:
  - a. Require or attempt to require a farm equipment dealer to accept delivery of farm equipment, parts, or accessories that the farm equipment dealer has not voluntarily ordered or require the farm equipment dealer to maintain or stock a level of equipment, parts, or accessories except as provided in subdivision b.
  - b. Condition or attempt to condition the sale of farm equipment, parts, or accessories on a requirement that the farm equipment dealer also purchase other goods or services, or purchase a minimum quantity of farm equipment as a condition of filling an order for farm equipment, except a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer.
  - c. Require or attempt to require a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.
  - d. Require a farm equipment dealer to separate the line-makes operating within the dealer's facility by requiring the separation of personnel, inventory, service areas, display space, or otherwise dictate the method, manner, number of units, or the location of farm equipment displays at the dealer's facility. This subdivision does not prevent a farm equipment dealer and manufacturer from agreeing to those terms if the agreement was supported by separate and valuable consideration. The issuance, reissuance, or extension of a dealership contract alone is not separate and valuable consideration.

- e. Require a farm equipment dealer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing relationship with another manufacturer in order to continue, renew, reinstate, or enter a dealer agreement or to participate in any program discount, credit, rebate, or sales incentive. This subdivision does not prevent a farm equipment dealer and manufacturer from agreeing to establish or maintain exclusive facilities for separate and valuable consideration. The issuance, reissuance, or extension of a dealership contract alone is not separate and valuable consideration.
- f. Discriminate in the prices charged for farm equipment of similar grade and quality sold by the farm equipment manufacturer to similarly situated farm equipment dealers. This subdivision does not prevent the use of differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered by the farm equipment manufacturer. This subdivision does not diminish the manufacturer's, wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special machine ordering programs commonly used in the industry.
- g. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the dealership contract for any reason other than failure of the farm equipment dealer to substantially comply with the material terms of the written contract between the parties or if the attempt or threat is based on the results of a circumstance beyond the farm equipment dealer's control, including a sustained drought or other natural disaster in the dealership market area or a labor dispute. A substantial change in the competitive circumstances includes the removal of authorization to operate at a location from where the dealer is currently operating or the unreasonable removal of a product line or segment.
- h. Require a farm equipment dealer to unreasonably remodel, renovate, or recondition the dealer's facilities, change the location of the facilities, or make unreasonable alterations to the dealership premises. A request for a dealer to remodel, renovate, or recondition the dealer's facilities, change the location of the facilities, or make alterations to the dealership premises must be considered in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the dealer's market for the sale of farm equipment. A facility modification request is unreasonable if the request is within seven years of a farm equipment dealer's most recent facility remodel, renovation, or reconditioning.
- i. 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. Failure to deny the request within sixty days is deemed an approval.
- j. Conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of the warranty or incentive payment. 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. The audit and chargeback provisions in this subdivision apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. Before imposing a chargeback, a manufacturer shall identify each claim at issue and provide the dealer with written explanation for the proposed chargeback for each claim. The cumulative value of any chargeback, fees, penalties, or adverse action for an individual claim may not exceed the total direct compensation received by the dealer for the claim at issue. Thereafter, the manufacturer shall provide the

dealer a reasonable time, no less than forty-five days, to present additional information regarding a claim at issue.

- k. Use an unreasonable, arbitrary, or unfair sales, service, or other performance standard in determining a farm equipment dealer's compliance with a contract or program. Before applying any sales, service, or other performance standard to a farm equipment dealer, a manufacturer shall communicate the performance standard in writing in a clear and concise manner, including a detailed explanation of the criteria, calculations, methodology, and data used to establish the standard.
- l. Require a farm equipment dealer in this state to enter an agreement with the manufacturer or any other party which requires:
  - (1) The law of another jurisdiction to apply to a dispute between the dealer and manufacturer;
  - (2) The dealer to bring an action against the manufacturer in a venue outside of this state;
  - (3) The dealer waive the right to have all of this state's statutory and common law apply;
  - (4) Reducing, modifying, or eliminating the dealer's right to resolve a dispute in a state or federal court in this state; or
  - (5) The dealer to agree to arbitration or waive their rights to bring a cause of action against the manufacturer, 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. Renewal, reinstatement, or continuation of a dealer agreement alone is not separate and valuable consideration.
2. As used in this section "farm equipment" and "farm implements" means all vehicular implements and attachment units, designed and used primarily for planting, cultivating, or harvesting farm products or used primarily in connection with the production of agricultural produce or products, livestock, or poultry on farms, and which are operated, drawn, or propelled by motor or animal power.

**51-07-02. Prices of implements, machinery, automobiles, and parts - How determined.**  
Repealed by S.L. 2003, ch. 435, § 4.

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

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.

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

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.

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

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.

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

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.

**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.

**51-07-04. Selling goods bearing counterfeit trademark - Penalty.**

Every person who, with intent to represent such goods as the genuine goods of another, sells or keeps for sale any goods upon which any counterfeit trademark has been affixed, knowing the same to be counterfeited, is guilty of a class A misdemeanor. The word "goods" as used in this section includes every kind of goods, wares, merchandise, compound, or preparation, which may be kept or offered for sale lawfully.

**51-07-04.1. Defacing, destroying, or altering serial numbers on farm machinery - Penalty.**

It is unlawful for any person to willfully:

1. a. Deface, destroy, alter, or remove the serial number on any tractor, combine, cornpicker, or any other heavy farm machinery that carries a factory serial number; or
- b. Place or stamp other than the original serial number upon any tractor, combine, cornpicker, or any other heavy farm machinery that carries a factory serial number; and
2. Sell or offer for sale any such heavy farm machinery bearing an altered or defaced serial number other than the original.

Any person who violates this section is guilty of a class C felony.

**51-07-05. Goods defined.**

Repealed by omission from this code.

**51-07-06. Money warranted genuine on exchange of money.**

Repealed by omission from this code.

**51-07-07. Reasonable time to discover defects in engine or machinery - Rescinding contract - When contract void.**

Repealed by S.L. 2001, ch. 447, § 7.

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

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

A claim for relief arising out of the sale of personal property cannot be waived, released, or barred before the claim for relief actually has accrued, notwithstanding any terms or provisions of any contract or other written instrument to the contrary.

**51-07-10. Conditional sales must be in writing and filed.**

Repealed by S.L. 1965, ch. 296, § 32.

**51-07-11. Property sold under conditional sale contract not attached, repossessed, or acquired until taxes paid.**

When personal property has been sold under a conditional sale contract and such contract has been canceled or foreclosed, the owner, holder, or assignee of such contract may not attach, repossess, or acquire by bill of sale the property sold under the contract until the taxes levied upon such property have been paid as follows:

1. For property other than mobile homes subject to tax under chapter 57-55, all taxes levied upon the property must be paid in full.
2. For mobile homes subject to tax under chapter 57-55, the tax levied upon the property for the current year and the most recent preceding year must be paid in full.

**51-07-12. Automobile sales finance contracts - Information of insurance protection to be given - Warning required - Penalty.**

1. Purchasers of automobiles under sales finance contracts, when required by a dealer, bank, or other finance agency or company, to furnish insurance on any motor vehicle, in connection with the financing of such motor vehicle, must be furnished by the seller evidence of the insurance protection. Such insurance evidence must be in the form of a regular insurance binder or policy or certificate of insurance. The original policy or certificate of insurance clearly stating the coverage afforded by the policy must be delivered to the purchaser within a reasonable time after execution of the insurance order. The certificate must display the premium charged for each coverage afforded.
2. If the insurance required by any dealer, bank, or other finance agency or company does not provide insurance for bodily injury liability or property damage liability, then the insurance policy or the certificate of insurance, if the policy is filed with the payee, must have imprinted or stamped on the policy or certificate a notice that the policy does not include bodily injury liability or property damage liability insurance. The imprinting or stamping of such notice must be in the manner or form as may be approved by the insurance commissioner.
3. Any person failing to comply with the provisions of this chapter is guilty of a class B misdemeanor.

**51-07-13. Labeling imported meats sold - Penalty.**

1. No person may knowingly sell or offer for sale in the state of North Dakota any meat, whether fresh, frozen, cured, or processed, which is imported from outside the boundaries of the United States or any meat product containing in whole or in part such imported meat, if this fact is not shown by labels or printing on each quarter, half, or whole carcass of such meat, or on each case, package, can, tray, or display containing such imported meat.
2. Any person who violates any of the provisions of this section is guilty of a class B misdemeanor.

**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.

**51-07-15. Use of electronic or magnetic scanners in retail foodstores - Item pricing required - Exceptions - Penalty.**

Except as otherwise provided in this section, every retail foodstore which uses electronic or magnetic scanners to read prices shall clearly post the selling price of each item in Arabic numerals, by stamp, tag, label, or other conspicuous marking device. If a product is packaged for sale in quantities of more than one, the total price must be posted. The posting must be by a label securely affixed on each item or by a label posted on the shelf edge immediately below or above the item. Compliance with this section is not required for items not marked in accordance with a uniform products code or any similar marking system designed to be scanned by electronic or magnetic checkout equipment. Any person who violates this section is guilty of an infraction.

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

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.

**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.

**51-07-18. Duty to replace defective passenger motor vehicle or refund price - Prerequisite of using available informal dispute settlement process.**

1. If the manufacturer, its agent, or its authorized dealer is unable to make the passenger motor vehicle conform to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value of the passenger motor vehicle, after a reasonable number of attempts, the manufacturer shall replace that passenger motor vehicle with a comparable passenger motor vehicle or accept return of the passenger motor vehicle from the consumer, and refund to the consumer the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle not exceeding ten cents per mile [1.61 kilometers] driven or ten percent of the purchase price, whichever is less. Refunds

must be made to the consumer, the lessor, and the lienholder, if any, as their interests may appear. A reasonable allowance for use is the amount directly attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer, agent, or dealer, and during any subsequent period when the vehicle is not out of service for repair.

2. It is an affirmative defense to any claim under sections 51-07-16 through 51-07-22:
  - a. That an alleged nonconformity does not substantially impair the use and market value of the passenger motor vehicle; or
  - b. That a nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the passenger motor vehicle by a consumer.
3. If a manufacturer has established or participates in an informal dispute settlement procedure that substantially complies with the substantive rules of the federal trade commission, 16 CFR 703, or if the manufacturer participates in a consumer and industry appeals, arbitration, or mediation appeals board whose decisions are binding on the manufacturer, the remedy under subsection 1 is not available to a consumer who has not first resorted to that procedure. If the consumer requests an oral presentation before the board or dispute settlement mechanism, the hearing must take place in the state in which the consumer resides. The attorney general shall, on application, issue a determination of whether an informal dispute resolution mechanism qualifies under this subsection.

#### **51-07-18.1. Refunds for leased passenger motor vehicles.**

In any case in which a refund is tendered by a manufacturer for a leased motor vehicle under section 51-07-18, the refund and rights of the motor vehicle lessor, lessee, and manufacturer are as follows:

1. The manufacturer shall provide to the lessee the sum of all payments previously paid to the motor vehicle lessor by the lessee less a reasonable allowance for the consumer's use of the vehicle. Payments include all cash payments, security deposits, and trade-in allowance, if any, tendered by the lessee to the motor vehicle lessor under the lease agreement.
2. The manufacturer shall provide to the motor vehicle lessor the sum of the following:
  - a. The lessor's actual purchase cost, less payments made by the lessee;
  - b. The freight cost, if applicable;
  - c. The cost for dealer or manufacturer installed accessories, if applicable; and
  - d. An amount equal to five percent of the lessor's actual purchase cost as provided in subdivision a. The amount in this subdivision is in lieu of any early termination costs or penalties described in the lease agreement.
3. Upon return of the passenger motor vehicle, the consumer's lease agreement with the lessor is terminated and no penalty for early termination may be assessed.
4. Any refund to be paid to the motor vehicle lessor must be made to the lessor and lienholder, if any, as their interests may appear.

#### **51-07-19. Presumptions.**

1. It is presumed that a reasonable number of attempts have been undertaken to make a passenger motor vehicle conform to the applicable express warranties, if:
  - a. The same nonconformity has continued to exist, despite having been subject to repair more than three times by the manufacturer, its agent, or its authorized dealer, within the express warranty term or within one year of the date of original delivery of the passenger motor vehicle to a consumer, whichever is the earlier date.
  - b. The passenger motor vehicle is out of service for repair for a cumulative total of at least thirty business days during the warranty term or in a year, whichever is less.
2. The term of an express warranty, the one-year period and the thirty-day period, are extended by any period during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster.

3. The presumption does not apply against a manufacturer unless the manufacturer has received prior direct notification from or on behalf of the consumer and an opportunity to cure the alleged defect.

**51-07-20. Exclusive remedy.**

A consumer who elects to proceed under sections 51-07-16 through 51-07-22 is foreclosed from pursuing any other remedy arising out of the facts and circumstances which gave rise to the claim under sections 51-07-16 through 51-07-22.

**51-07-21. Limitation of actions.**

An action brought under sections 51-07-16 through 51-07-22 must be commenced within six months after the earlier of:

1. Expiration of the express warranty term; or
2. Eighteen months after the date of original delivery of the passenger motor vehicle to a consumer.

**51-07-22. Resale of returned passenger motor vehicles - Penalty.**

1. A person may not sell or lease in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22, unless the manufacturer provides:
  - a. The same express warranty it provided to the original purchaser, except the term of the warranty must be for at least twelve thousand miles or twelve months after the date of resale, whichever is earlier; and
  - b. The purchaser a statement on a separate document that must be signed by the manufacturer and the purchaser and must be in ten-point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE DEFECTS COVERED BY THE MANUFACTURER'S EXPRESSED WARRANTY WERE NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY NORTH DAKOTA LAW".
2. A person may not ship or deliver for resale or lease in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer.
3. Violation of this section is a class B misdemeanor.

**51-07-23. Unsolicited telefacsimile advertising.**

It is unlawful for any person to initiate the unsolicited transmission of a telefacsimile message promoting a good or service for purchase by the recipient of the message. The term "telefacsimile" as used in this section means any process in which an electronic signal is transmitted by telephone line for conversion into written text. This section does not apply to a telefacsimile message sent to a recipient with whom the initiator has had a prior contractual or business relationship, nor does it apply to transmissions not exceeding two pages which are transmitted between the hours of nine p.m. and six a.m. Notwithstanding the above, it is unlawful to initiate a telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive any telefacsimile from the initiator. A person who transmits an unsolicited telefacsimile message in violation of this section is liable to the recipient of that message for fifty dollars per month for each month in which the recipient receives the unsolicited message.

**51-07-24. Insurance claims for excessive charges - Penalty.**

1. A person who sells goods or services paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles may not:
  - a. Advertise or promise to provide a good or service as an incentive, pay or waive all or part of any applicable insurance deductible, or pay a rebate in an amount equal to all or part of any applicable insurance deductible; or

- b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by that person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by that person on behalf of an insured or remitted to an insured by that person as a rebate.
2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not knowingly submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.
3. A violation of this section is a class B misdemeanor.

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

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.

**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.

**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.

**51-07-27. Restrictions on electronically printed credit card receipts - Penalty.**

Except as otherwise provided under this section, a person that accepts credit cards for the transaction of business and also electronically prints receipts for these credit card transactions

may not print on the receipt provided to the customer more than the last five digits of the credit card account number nor print on the receipt provided to the customer the expiration date of the credit card. This section does not apply to a credit card transaction in which the sole means of recording the customer's credit card number is by handwriting or by an imprint or copy of the credit card. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004. A person who violates this section is guilty of a class B misdemeanor.

**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.

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

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.