

SENATE BILL NO. 2191

Introduced by

Senators Brown, Klein, Robinson

Representatives Carlson, Thorpe, Vigessaa

1 A BILL for an Act to create and enact sections 51-07-02.1, 51-07-02.2, and 51-07-02.3 of the
2 North Dakota Century Code, relating to contractual relationships between automobile and truck
3 wholesalers and retailers; to amend and reenact section 51-07-01.1 of the North Dakota
4 Century Code, relating to the termination of a contractual relationship between automobile and
5 truck wholesalers and retailers; and to provide for application.

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

7 **SECTION 1. AMENDMENT.** Section 51-07-01.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **51-07-01.1. Termination of retail contract to be done in good faith - Definition of**
10 **good cause.**

11 1. Any manufacturer, wholesaler, or distributor of merchandise and tools covered
12 under section 51-07-01, ~~who~~ excluding automobile dealers, truck dealers, or parts
13 dealers of the automobiles or trucks, that enters into a contract with any person
14 engaged in the business of retailing the covered merchandise by which the retailer
15 agrees to maintain a stock of the covered merchandise may not terminate, cancel,
16 or fail to renew the contract with the retailer without good cause.

17 2. For the purpose of this section, good cause for terminating, canceling, or failing to
18 renew a contract is limited to failure by the retailer to substantially comply with
19 those essential and reasonable requirements imposed by the contract between the
20 parties if the requirements are not different from those requirements imposed on
21 other similarly situated retailers. ~~Further, the~~ The determination by the
22 manufacturer, wholesaler, or distributor of good cause for the termination,
23 cancellation, or failure to renew must be made in good faith.

1 3. In any action against a manufacturer, wholesaler, or distributor for violation of this
2 section, the manufacturer, wholesaler, or distributor shall establish that the
3 termination, cancellation, or failure to renew was made in good faith for good
4 cause. If a notice of termination is issued and the dealer challenges the notice by
5 filing an action, there is an automatic stay during the pendency of the action. If the
6 manufacturer, wholesaler, or distributor fails to establish good cause for its action,
7 the manufacturer, wholesaler, or distributor is liable for all special and general
8 damages sustained by the plaintiff, including the costs of the litigation and
9 reasonable attorney's fees for prosecuting the action and the plaintiff, if
10 appropriate, is entitled to injunctive relief. ~~The provisions of this~~ This section apply
11 applies to all contracts now in effect which have no expiration date and are
12 continuing contracts and all other contracts entered into, amended, or renewed
13 after July 31, 2003. Any contract in force and effect on August 1, 2003, which by
14 its terms will terminate on a date subsequent thereto is governed by the law as it
15 existed before August 1, 2003.

16 **SECTION 2.** Section 51-07-02.1 of the North Dakota Century Code is created and
17 enacted as follows:

18 **51-07-02.1. Change in automobile or truck franchise agreement - Notification**
19 **requirements.**

- 20 1. At least ninety days before any change in or from an existing contract which will
21 substantially impair the sales, the service obligations, or investment of a retailer of
22 automobiles or trucks, or parts of the automobiles or trucks, the manufacturer,
23 wholesaler, or distributor that is a party to the contract shall give notice by certified
24 mail to the retailer of the intended change and the specific grounds for the change.
25 2. If the manufacturer, wholesaler, or distributor fails to give the proper notice under
26 subsection 1, the change is voidable at the option of the retailer.
27 3. A contract between a manufacturer, wholesaler, or distributor and a retailer of
28 automobiles or trucks, or parts of the automobiles or trucks, is offered for automatic
29 renewal under the same terms unless notice is provided under subsection 1.
30 4. A retailer may file an action against the manufacturer, wholesaler, or distributor for
31 violation of this section or for a determination of whether the action proposed by

1 the manufacturer, wholesaler, or distributor is an unfair or a prohibited change in or
2 from the contract. Contracts and certificates of appointment continue in effect until
3 final determination of the issues in the action.

4 5. A change in or from a contract is unfair and prohibited if the change is not clearly
5 permitted by the agreement; is not taken in good faith; is not taken for good cause;
6 is based on an alleged breach of the agreement which is not in fact a material and
7 substantial breach; or, if the grounds relied on for the change have not been
8 applied in a uniform and consistent manner by the manufacturer, wholesaler, or
9 distributor. Good faith means honesty in fact and fair dealing. The manufacturer,
10 wholesaler, or distributor shall have the burden of proof that any action taken by
11 the manufacturer, wholesaler, or distributor is fair and not prohibited. A
12 manufacturer, wholesaler, or distributor that fails to carry the burden of proof is
13 liable for all special and general damages sustained by the retailer, including the
14 costs of litigation and reasonable attorney's fees. If appropriate, the retailer is
15 entitled to injunctive relief.

16 **SECTION 3.** Section 51-07-02.2 of the North Dakota Century Code is created and
17 enacted as follows:

18 **51-07-02.2. Dealership transfers.** A retailer of automobiles or trucks, or parts for the
19 automobiles or trucks, may not transfer, assign, or sell a franchise agreement to another person
20 unless the retailer first provides written notice to the franchisor of the intended action. Within
21 sixty days of receiving the notice, the franchisor must approve or deny the action. If the
22 franchisor denies the action, the franchisor shall provide material reasons for the denial to the
23 franchisee. If the franchisor does not respond within the sixty-day period, the action is deemed
24 approved. The refusal by the franchisor to accept a proposed transferee who is of good moral
25 character and who otherwise meets the written, reasonable, and uniformly applied standards of
26 qualifications of the franchisor relating to the financial qualifications of the transferee and
27 business experience of the transferee is presumed to be unreasonable. If an action is rejected
28 by the franchisor, the franchisee or prospective franchisee may file an action for determination
29 of a violation of this section. The retailer may elect to pursue either the retailer's remedy under
30 the contract or the remedy provided in this section. The franchisor has the burden of proof with
31 respect to all issues raised in the action. The court shall approve the transfer unless the

1 franchisor can prove the proposed transferee is not of good moral character or does not meet
2 the written, reasonable, and uniformly applied standards regarding financial qualifications and
3 business experience.

4 **SECTION 4.** Section 51-07-02.3 of the North Dakota Century Code is created and
5 enacted as follows:

6 **51-07-02.3. Prohibited acts.** A manufacturer, wholesaler, or distributor of automobiles
7 or trucks, or parts of the automobiles or trucks, that enters a contract with any person engaged
8 in the business of selling or retailing automobiles, trucks, or parts for the automobiles or trucks,
9 may not:

- 10 1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles,
11 trucks, parts, or accessories that the retailer has not ordered voluntarily.
- 12 2. Condition or attempt to condition the sale of automobiles or trucks on a
13 requirement that the automobile or truck retailer purchase other goods or services,
14 except that the manufacturer, wholesaler, or distributor may require a retailer to
15 purchase all parts reasonably necessary to maintain the quality of operation and
16 telecommunications necessary to communicate with the manufacturer, wholesaler,
17 or distributor.
- 18 3. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual
19 lines or into maintaining separate facilities as long as the retailer's facilities
20 otherwise satisfy the reasonable requirements of the manufacturer, wholesaler, or
21 distributor.
- 22 4. Discriminate in the prices charged for automobiles or trucks of like grade and
23 quality sold by automobile or truck manufacturers to similarly situated automobile
24 or truck retailers. This prohibition does not prevent the use of differentials that
25 solely make due allowance for differences in the cost of manufacture, sale, or
26 delivery or for differing methods or quantities in which the automobiles or trucks are
27 sold or delivered by the manufacturer, wholesaler, or distributor.
- 28 5. Attempt or threaten to terminate, cancel, or fail to renew, or substantially change
29 the competitive circumstances of the dealership contracts for any reason other
30 than the failure of the automobile or truck retailer to comply with the terms of the
31 contract between the parties, if the attempt or threat is based on the results of a

1 circumstance beyond the retailer's control, including a natural disaster in the
2 dealership market area or a labor dispute.

3 **SECTION 5. APPLICATION OF ACT.** This Act applies to all contracts in effect on
4 August 1, 2005, which do not have an expiration date and are continuing contracts and all other
5 contracts entered, amended, or renewed after July 31, 2005. Any contract in effect on
6 August 1, 2005, which by its terms will terminate on a date subsequent to that date is governed
7 by the law as it existed on July 31, 2005.