

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2191

Introduced by

Senators Brown, Klein, Robinson

Representatives Carlson, Thorpe, Vigesaa

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  
29           automatic renewal under the same terms unless notice is provided under  
30           subsection 1.

1           4. A retailer may file an action against the manufacturer, wholesaler, or distributor for  
2           violation of this section or for a determination of whether the action proposed by  
3           the manufacturer, wholesaler, or distributor is an unfair or a prohibited change in or  
4           from the contract. Contracts and certificates of appointment continue in effect until  
5           final determination of the issues in the action.

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

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

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

1 provided in this section. The franchisor has the burden of proof with respect to all issues raised  
2 in the action. The court shall approve the transfer unless the franchisor can prove the  
3 proposed transferee does not meet the written, reasonable, and uniformly applied standards  
4 regarding financial qualifications and business experience.

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

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

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

1                   contract between the parties, if the attempt or threat is based on the results of a  
2                   circumstance beyond the retailer's control, including a natural disaster in the  
3                   dealership market area or a labor dispute.

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