

SENATE BILL NO. 2236

Introduced by

Senators Klein, G. Lee, O'Connell

Representatives Ruby, Kaldor, Vigesaa

1 A BILL for an Act to create and enact section 51-07-00.1 and 51-07-02.4 of the North Dakota
2 Century Code, relating to definitions and warranty or incentive audits for new motor vehicle
3 dealers; to amend and reenact section 51-07-02.3 of the North Dakota Century Code, relating
4 to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and
5 automobile parts; to provide for application; and to declare an emergency.

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

7 **SECTION 1.** Section 51-07-00.1 of the North Dakota Century Code is created and enacted
8 as follows:

9 **51-07-00.1. Definitions.**

10 As used in sections 51-07-01, 51-07-02.1, 51-07-02.2, 51-07-02.3, 51-07-02.4, and
11 51-07-03 unless context or subject matter otherwise requires:

- 12 1. "Contract" means any oral or written franchise agreement, sales agreement, dealer
13 agreement, or security agreement, or other form of agreement or arrangement of like
14 effect.
- 15 2. "Dealer" means a person that engages in the business of selling, at retail, new motor
16 vehicles or trucks or new and used motor vehicles or trucks and possesses a current
17 new motor vehicle dealer license as defined in section 39-22-16.
- 18 3. "Distributor" means any person who in whole or in part offers for sale, sells, or
19 distributes any new motor vehicle to a new motor vehicle dealer, and any person that
20 in whole or in part offers for sale, sells, or distributes any farm implement, machinery,
21 or attachment or part for the same; or lawn and garden equipment, or part for the
22 same; or semitrailer, or part for the same, to any person that retails all or any of these
23 items.

- 1 4. "Franchise" or "franchise agreement" means any contract or agreement between a
2 dealer and a manufacturer or distributor that authorizes the dealer to engage in the
3 business of selling or purchasing any particular make of new motor vehicles or motor
4 vehicle parts manufactured or distributed by the manufacturer or distributor or that
5 establishes rights or obligations, or both, relating to the dealer's new motor vehicle
6 operation, including agreements relating to dealership facilities or site control.
- 7 5. "Franchisor" means a person that manufactures, imports, or distributes new motor
8 vehicles and which may enter a franchise agreement.
- 9 6. "Good cause" means failure by a new motor vehicle dealer to substantially comply
10 with essential and reasonable requirements imposed upon the new motor vehicle
11 dealer by the franchise agreement if the requirements are not different from those
12 requirements imposed on other similarly situated new motor vehicle dealers.
- 13 7. "Good faith" means honesty in fact and the observance of commercially reasonable,
14 nondiscriminatory standards of fair dealing.
- 15 8. "Line-make" means new motor vehicles that are offered for sale, lease, or distribution
16 under a common name, trademark, service mark, or brand name of the manufacturer,
17 distributor, or factory branch.
- 18 9. "Manufacturer" means any person that is engaged in the business of manufacturing or
19 assembling new motor vehicles or any person controlled by the manufacturer.
- 20 10. "Merchandise" means farm implements, machinery, attachments, and parts for the
21 same; lawn and garden equipment and parts for the same; and automobiles, trucks,
22 and semitrailers and parts for the same.
- 23 11. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale,
24 the registration provisions of chapter 39-04, the title registration provisions of chapter
25 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.
- 26 12. "Owner" means a person, other than a lienholder, having the property in or title to a
27 vehicle. The term includes a person entitled to the use and possession of a vehicle
28 subject to a security interest in another person, but excludes a lessee under a lease
29 not intended as security.

- 1 13. "Semitrailer" includes every vehicle of the trailer type so designed and used in
2 conjunction with a truck that some part of its own weight and that of its own load rests
3 upon or is carried by a truck, except that it does not include a mobile home.
- 4 14. "Successor" means the spouse, child, grandchild, parent, brother, or sister of the
5 owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled
6 to inherit the ownership interest in the new motor vehicle dealership or who, in the
7 case of an incapacitated owner of a new motor vehicle dealer, has been appointed by
8 a court as the legal representative of the new motor vehicle dealer's property.
- 9 15. "Truck" includes every motor vehicle designed, used, or maintained primarily for
10 transportation of property or designed and used primarily for drawing other vehicles
11 and not so constructed as to carry a load other than a part of the weight of the vehicle
12 and load so drawn.
- 13 16. "Used motor vehicle" means a motor vehicle that has been subject to a retail sale, the
14 registration provisions of chapter 39-04, the title registration provisions of
15 chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

16 **SECTION 2. AMENDMENT.** Section 51-07-02.3 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **51-07-02.3. Prohibited acts.**

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

- 22 1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles, trucks,
23 parts, or accessories that the retailer has not ordered voluntarily.
- 24 2. Condition or attempt to condition the sale of automobiles or trucks on a requirement
25 that the automobile or truck retailer purchase other goods or services, except that the
26 manufacturer, wholesaler, or distributor may require a retailer to purchase all parts
27 reasonably necessary to maintain the quality of operation and telecommunications
28 necessary to communicate with the manufacturer, wholesaler, or distributor.
- 29 3. Implement or establish a system of motor vehicle allocation or distribution to one or
30 more of its dealers that is unfair, inequitable, or unreasonably discriminatory. As used
31 in this subsection, "unfair" includes requiring a dealer to accept new vehicles not

- 1 ordered by the dealer or the refusal or failure to offer to any dealer all models offered
2 to any of its other same line-make dealers in this state. The failure to deliver any motor
3 vehicle is not a violation of this section if failure is due to any cause over which the
4 manufacturer does not have control.
- 5 4. Require a dealer to pay all or any part of the cost of an advertising campaign or
6 contest or purchase any promotional material, showroom, or other display decoration
7 or material at the expense of the dealer.
- 8 5. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines
9 or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy
10 the reasonable requirements of the manufacturer, wholesaler, or distributor.
- 11 6. Require a retailer to either establish or maintain exclusive facilities, personnel, or
12 display space or to abandon an existing franchise relationship with another
13 manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or
14 to participate in any program discount, credit, rebate, or sales incentive.
- 15 7. Unreasonably prevent or refuse to approve the relocation of a dealership to another
16 site within the dealer's relevant market area. The dealer shall provide the
17 manufacturer or distributor with notice of the proposed address and a reasonable site
18 plan of the proposed location. The manufacturer or distributor shall approve or deny
19 the request in writing within sixty days after receipt of the request, and failure to deny
20 the request within sixty days is deemed approval.
- 21 8. Require the retailer to unreasonably remodel, renovate, or recondition the retailer's
22 facilities, change the location of the facilities, or make unreasonable alterations to the
23 dealership premises.
- 24 4.9. Discriminate in the prices charged for automobiles or trucks of like grade and quality
25 sold by automobile or truck manufacturers to similarly situated automobile or truck
26 retailers. This prohibition does not prevent the use of differentials that solely make due
27 allowance for differences in the cost of manufacture, sale, or delivery or for differing
28 methods or quantities in which the automobiles or trucks are sold or delivered by the
29 manufacturer, wholesaler, or distributor.
- 30 10. Refuse or fail to offer any incentive program, bonus payment, holdback margin, or any
31 other mechanism that effectively lowers the net cost of a vehicle to any franchised

1 dealer in this state if the incentive, bonus, or holdback is available or made to one or
2 more same line-make dealers in this state.

3 5-11. Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the
4 competitive circumstances of the dealership contracts for any reason other than the
5 failure of the automobile or truck retailer to comply with the terms of the contract
6 between the parties, if the attempt or threat is based on the results of a circumstance
7 beyond the retailer's control, including a natural disaster in the dealership market area
8 or a labor dispute.

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

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

30 **SECTION 3.** Section 51-07-02.4 of the North Dakota Century Code is created and enacted
31 as follows:

1 **51-07-02.4. Warranty and incentive claims.**

2 1. If a manufacturer attempts to conduct a warranty or incentive audit on claims paid
3 more than one year earlier, or if a manufacturer seeks to charge back any warranty or
4 incentive payment made more than one year earlier, and a retailer objects to the
5 warranty or incentive audit on the claims or on the attempted chargeback of any
6 warranty or incentive payment, the audit or chargeback may not take place until the
7 manufacturer proves that the proposed warranty or incentive audit is on a claim made
8 less than one year before the date of the notice of the proposed audit, or that the
9 proposed chargeback of any warranty or incentive payment is for a payment made
10 less than one year before the date the chargeback is first proposed.

11 2. A manufacturer may not charge back a dealer for a sales or warranty payment unless
12 the manufacturer can satisfy its burden of proof that the dealer's claim was fraudulent
13 or that the dealer did not substantially comply with the reasonable written procedures
14 of the manufacturer.

15 3. The audit and chargeback provisions of this section apply to all other incentive and
16 reimbursement programs that are subject to audit by the manufacturer. This section
17 does not apply to fraudulent claims.

18 **SECTION 4. APPLICATION.** This Act applies to all dealership agreements in effect on the
19 effective date of this Act which do not have an expiration date and which are continuing
20 contracts and all other contracts entered, amended, or renewed on or after the effective date of
21 this Act. A contract in effect on the effective date of this Act, which by its terms will terminate on
22 a date after that date and which is not renewed, is governed by the law as it existed before the
23 effective date of this Act.

24 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.