

**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~~~~addendum to a~~  
2       contract between a dealer and a manufacturer or distributor that authorizes the dealer  
3       to engage in the business of selling or purchasing any particular make of new motor  
4       vehicles or motor vehicle parts manufactured or distributed by the manufacturer or  
5       distributor~~or that establishes rights or obligations, or both, relating to the dealer's new~~  
6       motor vehicle operation, including agreements relating to dealership facilities or site  
7       control.
- 8       5. "Franchisor" means a person that manufactures, imports, or distributes new motor  
9       vehicles and which may enter a franchise agreement.
- 10      6. "Good cause" means failure by a new motor vehicle dealer to substantially comply  
11      with ~~essential~~material and reasonable requirements imposed upon the new motor  
12      vehicle dealer by the franchise agreement if the requirements are not different from  
13      those requirements imposed on other similarly situated new motor vehicle dealers.
- 14      7. "Good faith" means honesty in fact and the observance of commercially reasonable,  
15      nondiscriminatory standards of fair dealing.
- 16      8. "Line-make" means new motor vehicles that are offered for sale, lease, or distribution  
17      under a common name, trademark, service mark, or brand name of the manufacturer,  
18      distributor, or factory branch.
- 19      9. "Manufacturer" means any person that is engaged in the business of manufacturing or  
20      assembling new motor vehicles or any person controlled by the manufacturer.
- 21      10. "Merchandise" means farm implements, machinery, attachments, and parts for the  
22      same; lawn and garden equipment and parts for the same; and automobiles, trucks,  
23      and semitrailers and parts for the same.
- 24      11. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale,  
25      the registration provisions of chapter 39-04, the title registration provisions of chapter  
26      39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.
- 27      12. "Owner" means a person, other than a lienholder, having the property in or title to a  
28      vehicle. The term includes a person entitled to the use and possession of a vehicle  
29      subject to a security interest in another person, but excludes a lessee under a lease  
30      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~~individual who, in the case of the owner's death, is  
6                    entitled to inherit the ownership interest in the new motor vehicle dealership or who, in  
7                    the case of an incapacitated owner of a new motor vehicle dealer, has been appointed  
8                    by a court as the legal representative of the new motor vehicle dealer's property  
9                    subject to sections 51-07-26 and 51-07-26.1.
- 10       15. "Truck" includes every motor vehicle designed, used, or maintained primarily for  
11                    transportation of property or designed and used primarily for drawing other vehicles  
12                    and not so constructed as to carry a load other than a part of the weight of the vehicle  
13                    and load so drawn.
- 14       16. "Used motor vehicle" means a motor vehicle that has been subject to a retail sale, the  
15                    registration provisions of chapter 39-04, the title registration provisions of  
16                    chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

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

19        **51-07-02.3. Prohibited acts.**

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

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

1 in this subsection, "unfair" includes requiring a dealer to accept new vehicles not  
2 ordered by the dealer or the refusal or failure to offer to any dealer all models offered  
3 to any of its other same line-make dealers in this state. The failure to deliver any motor  
4 vehicle is not a violation of this section if failure is due to any cause over which the  
5 manufacturer does not have control.

6 4. Require a dealer to pay all or any part of the cost of an advertising campaign or  
7 contest or purchase any promotional material, showroom, or other display decoration  
8 or material at the expense of the dealer.

9 5. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines  
10 or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy  
11 the reasonable requirements of the manufacturer, wholesaler, or distributor.

12 6. Require a retailer to either establish or maintain exclusive facilities, personnel, or  
13 display space or to abandon an existing franchise relationship with another  
14 manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or  
15 to participate in any program discount, credit, rebate, or sales incentive.

16 7. Unreasonably prevent or refuse to approve the relocation of a dealership to another  
17 site within the dealer's relevant market area. The dealer shall provide the  
18 manufacturer or distributor with notice of the proposed address and a reasonable site  
19 plan of the proposed location. The manufacturer or distributor shall approve or deny  
20 the request in writing within sixty days after receipt of the request, and failure to deny  
21 the request within sixty days is deemed approval.

22 8. Require the retailer to unreasonably remodel, renovate, or recondition the retailer's  
23 facilities, change the location of the facilities, or make unreasonable alterations to the  
24 dealership premises.

25 ~~4.9.~~ Discriminate in the prices charged for automobiles or trucks of like grade and quality  
26 sold by automobile or truck manufacturers to similarly situated automobile or truck  
27 retailers. This prohibition does not prevent the use of differentials that solely make due  
28 allowance for differences in the cost of manufacture, sale, or delivery or for differing  
29 methods or quantities in which the automobiles or trucks are sold or delivered by the  
30 manufacturer, wholesaler, or distributor.

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

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

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

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

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

3       **51-07-02.4. Warranty and incentive claims.**

- 4       1. ~~If a manufacturer attempts to conduct a warranty or incentive audit on claims paid~~  
5 ~~more than one year earlier, or if a manufacturer seeks to charge back any warranty or~~  
6 ~~incentive payment made more than one year earlier, and a retailer objects to the~~  
7 ~~warranty or incentive audit on the claims or on the attempted chargeback of any~~  
8 ~~warranty or incentive payment, the audit or chargeback may not take place until the~~  
9 ~~manufacturer proves that the proposed warranty or incentive audit is on a claim made~~  
10 ~~less than one year before the date of the notice of the proposed audit, or that the~~  
11 ~~proposed chargeback of any warranty or incentive payment is for a payment made~~  
12 ~~less than one year before the date the chargeback is first proposed.~~A manufacturer  
13 may not conduct a warranty or incentive audit or seek a chargeback on a warranty or  
14 incentive payment more than one year after the date of that warranty or incentive  
15 payment.
- 16       2. A manufacturer may not charge back a dealer for a salesan incentive or warranty  
17 payment unless the manufacturer can satisfy its burden of proof that the dealer's claim  
18 was false, fraudulent, or that the dealer did not substantially comply with the  
19 reasonable written procedures of the manufacturer.
- 20       3. The audit and chargeback provisions of this section apply to all other incentive and  
21 reimbursement programs that are subject to audit by the manufacturer. This section  
22 does not apply to fraudulent claims.

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

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