

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED 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 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 addendum to a contract
2 between a dealer and a manufacturer or distributor that authorizes the dealer to
3 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.
- 6 5. "Franchisor" means a person that manufactures, imports, or distributes new motor
7 vehicles and which may enter a franchise agreement.
- 8 6. "Good cause" means failure by a new motor vehicle dealer to substantially comply
9 with material and reasonable requirements imposed upon the new motor vehicle
10 dealer by the franchise agreement if the requirements are not unreasonable when
11 compared to those requirements imposed on other similarly situated new motor
12 vehicle dealers.
- 13 7. "Good faith" means honesty in fact and the observance of commercially reasonable,
14 nondiscriminatory standards of fair dealing.
- 15 8. "Manufacturer" means any person that is engaged in the business of manufacturing or
16 assembling new motor vehicles or any person that in whole or in part offers for sale,
17 sells, or distributes any new motor vehicle to a new motor vehicle dealer.
- 18 9. "Merchandise" means farm implements, machinery, attachments, and parts for the
19 same; lawn and garden equipment and parts for the same; and automobiles, trucks,
20 and semitrailers and parts for the same.
- 21 10. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale,
22 the registration provisions of chapter 39-04, the title registration provisions of chapter
23 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.
- 24 11. "Owner" means a person, other than a lienholder, having the property in or title to a
25 vehicle. The term includes a person entitled to the use and possession of a vehicle
26 subject to a security interest in another person, but excludes a lessee under a lease
27 not intended as security.
- 28 12. "Semitrailer" includes every vehicle of the trailer type so designed and used in
29 conjunction with a truck that some part of its own weight and that of its own load rests
30 upon or is carried by a truck, except that it does not include a mobile home.

1 13. "Successor" means the individual who, in the case of the owner's death, is entitled to
2 inherit the ownership interest in the new motor vehicle dealership or who, in the case
3 of an incapacitated owner of a new motor vehicle dealer, has been appointed by a
4 court as the legal representative of the new motor vehicle dealer's property subject to
5 sections 51-07-26 and 51-07-26.1.

6 14. "Truck" includes every motor vehicle designed, used, or maintained primarily for
7 transportation of property or designed and used primarily for drawing other vehicles
8 and not so constructed as to carry a load other than a part of the weight of the vehicle
9 and load so drawn.

10 15. "Used motor vehicle" means a motor vehicle that has been subject to a retail sale, the
11 registration provisions of chapter 39-04, the title registration provisions of
12 chapter 39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.

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

15 **51-07-02.3. Prohibited acts.**

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

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

1 vehicle is not a violation of this section if failure is due to any cause over which the
2 manufacturer does not have control.

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

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

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

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

19 8. Require the retailer to unreasonably remodel, renovate, or recondition the retailer's
20 facilities, change the location of the facilities, or make unreasonable alterations to the
21 dealership premises.

22 4.9. Discriminate in the prices charged for automobiles or trucks of like grade and quality
23 sold by automobile or truck manufacturers to similarly situated automobile or truck
24 retailers. This prohibition does not prevent the use of differentials that solely make due
25 allowance for differences in the cost of manufacture, sale, or delivery or for differing
26 methods or quantities in which the automobiles or trucks are sold or delivered by the
27 manufacturer, wholesaler, or distributor.

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

1 ~~5-11.~~ Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the
2 competitive circumstances of the dealership contracts for any reason other than the
3 failure of the automobile or truck retailer to comply with the terms of the contract
4 between the parties, if the attempt or threat is based on the results of a circumstance
5 beyond the retailer's control, including a natural disaster in the dealership market area
6 or a labor dispute.

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

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

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

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

2 1. A manufacturer may not conduct a warranty or incentive audit or seek a chargeback
3 on a warranty or incentive payment more than one year after the date of that warranty
4 or incentive payment.

5 2. A manufacturer may not charge back a dealer for an incentive or warranty payment
6 unless the manufacturer can satisfy its burden of proof that the dealer's claim was
7 false, fraudulent, or the dealer did not substantially comply with the reasonable written
8 procedures of the manufacturer.

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

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

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