

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO.

Introduced by

Senator Brown

1 A BILL for an Act to create and enact sections 51-07-02.1 and 51-07-02.2 of the North Dakota
2 Century Code, relating to contractual relationships between automobile and truck wholesalers
3 and retailers.

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

5 **SECTION 1.** Section 51-07-02.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **51-07-02.1. Change in automobile or truck franchise agreement - Notification**
8 **requirements.**

- 9 1. At least 90 days before any change in or from an existing contract that will
10 substantially impair the sales, the service obligations, or investment of a retailer of
11 automobiles or trucks, or parts of the same, the manufacturer, wholesaler, or
12 distributor that is a party to the contract shall give written notice by certified mail to
13 the retailer of the intended change and the specific grounds for the change.
- 14 2. If there is failure to give the proper notice under subsection 1, the change is
15 voidable at the option of the retailer. Designation of a contract at a specific location
16 as a nondesignated point is an unfair cancellation and is void.
- 17 3. A contract between a manufacturer, wholesaler, or distributor and a retailer of
18 automobiles or trucks, or parts of the same, is offered for automatic renewal under
19 the same terms unless notice is provided under subsection 1.
- 20 4. A retailer who receives improper notice under subsection 1 may file an action
21 against the manufacturer, wholesaler, or distributor for violation of this section or
22 for a determination of whether the action proposed by the manufacturer,
23 wholesaler, or distributor is an unfair or prohibited change from the contract.

1 Contracts and certificates of appointment continue in effect until final determination
2 of the issues in the action.

3 ??*Remove any reference to the notice*??

4 5. A change in or from a contract is unfair and prohibited if it is not clearly permitted
5 by the agreement; is not taken in good faith; is not undertaken for good cause; or is
6 based on an alleged breach of the agreement that is not in fact a material and
7 substantial breach; or, if the grounds relied upon for the change have not been
8 applied in a uniform and consistent manner by the manufacturer, wholesaler, or
9 distributor. A change in or from the contract is unfair and prohibited if it is not
10 clearly permitted by the franchise agreement, is not undertaken in good faith, or is
11 not undertaken for good cause. The manufacturer, wholesaler, or distributor shall
12 have the burden of proof that any action taken by the manufacturer, wholesaler, or
13 distributor is fair and not prohibited. Good faith is honesty in fact and fair dealing.

14 **SECTION 2.** Section 51-07-02.2 of the North Dakota Century Code is created and
15 enacted as follows:

16 **51-07-02.2. Dealership transfers.** A retailer of automobiles or trucks or parts for the
17 same may not transfer, assign, or sell a franchise agreement to another person unless the
18 retailer first notifies by written notice the franchisor of the intended action. Within sixty days of
19 receiving the notice, the franchisor must approve or deny the action. If the franchisor denies
20 the action, the franchisor shall provide material reasons for the denial to the franchisee. If the
21 franchisor does not respond within the sixty day period, the action is deemed approved. The
22 refusal by the franchisor to accept a proposed transferee who is of good moral character and
23 who otherwise meets the written, reasonable, and uniformly applied standards of qualifications,
24 if any, of the franchisor relating to the financial qualifications of the transferee and business
25 experience of the transferee is presumed to be unreasonable. If an action is rejected by the
26 franchisor, the franchisee or prospective franchisee may file an action for determination of a
27 violation of this section. The franchisor has the burden of proof with respect to all issues raised
28 in the action. Unless the franchisor can prove the proposed transferee is not of good moral
29 character or does not meet the uniformly applied standards regarding financial qualifications
30 and business experience, the transfer shall be approved by the court.

1 **SECTION 3.** Section 51-07-02.3 of the North Dakota Century Code is created and
2 enacted as follows:

3 **51-07-02.3. Prohibited acts.** A manufacturer, wholesaler, or distributor of automobiles
4 or trucks, or parts of the same, who enters into a contract with any person engaged in the
5 business of selling or retailing automobiles, trucks, or parts for the same may not:

- 6 1. Coerce or attempt to coerce the retailer to accept delivery of automobiles, trucks,
7 parts, and accessories that the dealer has not ordered voluntarily.
- 8 2. Condition or attempt to condition the sale of automobiles or trucks on a
9 requirement that the automobile or truck retailer purchase other goods or services,
10 except that the manufacturer, wholesaler, or distributor may require a dealer to
11 purchase all parts reasonably necessary to maintain the quality of operation and
12 telecommunications necessary to communicate with the manufacturer, wholesaler,
13 or distributor.
- 14 3. Coerce or attempt to coerce an automobile or truck retailer into a refusal to
15 purchase and resell automobiles or trucks of another manufacturer, wholesaler, or
16 distributor.
- 17 4. Discriminate in the prices charged for automobiles or trucks of like grade and
18 quality sold by automobile or truck manufacturers to similarly situated automobile
19 or truck dealers. This prohibition does not prevent the use of differentials that
20 make solely due allowance for differences in the cost of manufacture, sale, or
21 delivery or for differing methods or quantities in which the automobiles or trucks are
22 sold or delivered by the manufacturer, wholesaler, or distributor.
- 23 5. Attempt or threaten to terminate, cancel, or fail to renew, or s substantially change
24 the competitive circumstances of the dealership contracts for any reason other
25 than the failure of the automobile or truck retailer to comply with the terms of the
26 contract between the parties, if the attempt or threat is based on the results of a
27 circumstance beyond the retailer's control, including a natural disaster in the
28 dealership market area or a labor dispute.

29 **SECTION 4. AMENDMENT.** Section 51-07-01.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **51-07-01.1. Termination of retail contract to be done in good faith - Definition of**
2 **good cause.**

- 3 1. Any manufacturer, wholesaler, or distributor of merchandise and tools covered
4 under section 51-07-01, excluding automobile dealers, truck dealers, or parts
5 dealers of the same, who enters into a contract with any person engaged in the
6 business of retailing the covered merchandise by which the retailer agrees to
7 maintain a stock of the covered merchandise may not terminate, cancel, or fail to
8 renew the contract with the retailer without good cause.
- 9 2. For the purpose of this section, good cause for terminating, canceling, or failing to
10 renew a contract is limited to failure by the retailer to substantially comply with
11 those essential and reasonable requirements imposed by the contract between the
12 parties if the requirements are not different from those requirements imposed on
13 other similarly situated retailers. Further, the determination by the manufacturer,
14 wholesaler, or distributor of good cause for the termination, cancellation, or failure
15 to renew must be made in good faith.
- 16 3. In any action against a manufacturer, wholesaler, or distributor for violation of this
17 section, the manufacturer, wholesaler, or distributor shall establish that the
18 termination, cancellation, or failure to renew was made in good faith for good
19 cause. If the manufacturer, wholesaler, or distributor fails to establish good cause
20 for its action, the manufacturer, wholesaler, or distributor is liable for all special and
21 general damages sustained by the plaintiff, including the costs of the litigation and
22 reasonable attorney's fees for prosecuting the action and the plaintiff, if
23 appropriate, is entitled to injunctive relief. The provisions of this section apply to all
24 contracts now in effect which have no expiration date and are continuing contracts
25 and all other contracts entered into, amended, or renewed after July 31, 2003. Any
26 contract in force and effect on August 1, 2003, which by its terms will terminate on
27 a date subsequent thereto is governed by the law as it existed before August 1,
28 2003.