

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2191

2005 SENATE JUDICIARY

SB 2191

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2191

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 19, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 3040
1		X	1900 -2700
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: Relating to the termination of a contractual relationship between automobile and truck wholesalers and retailers; provide application

Senator John O. Syverson, Vice Chairman called the Judiciary committee to order. All Senators were present except for chairman Traynor. The chair returned from testifying to another bill during the first testimony in support of the bill. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen. Richard Brown, Dist #27, Introduce the bill (meter 75). This has to do with franchisees and franchisors and the contract they have with manufactures this bill is to try to "clear up" the process of termination or change of their contract.

Rep. Don Vigessaa, I would like to speak to you about the section that pertains to "dealership transfers" (meter 200). Gave testimony (Att #2).

Sen. Trenbeath stated that in the dealership transfer portion of this bill, where does the language "good morale character" come from? I do not know.

Bob Lamp - Automobile Dealers Assoc. of ND (meter 440) Gave testimony (Att #1) This bill pertains to a dealership in a rural area being able to carry "duel lines" . Bob stated to **Senator Triplett** the language comes from MN and SD laws 5-6 years without challenges in court.

Sen. Trenbeath asked in section three, if this is a declaratory action and the manufacturer franchiser who decides that he is not going to allow the sale of the dealership and the franchisee files an action in court to determine whether or not this has been violated, this section. Having done that the manufacture they are dragging into court has the burden of proof that they have not violated that. Is this correct? Yes. Before any of this has happened the dealer must have a buyer. If there is a buyer then it should be a viable on going business. (meter 1380) I am concerned that this section seems to "turn things on its' head". I don't think something is fair, I bring it to court, then I must demonstrate that it is not fair. What this says is "I don't think it's fair, so I bring it to court and it is up to you to show me it's fair. **Mr. Lamp** replied, how while he understands the point, that he has gone and found a buyer for his business and brings it to the manufacturer and they say "no, I am not interested".

Sen. Trenbeath stated that "good morel character" is problematic (meter 1385). It is too subjective. Without it you would have a better position. Not making the moral character of the person in the arms length transaction with your seller would benefit this transaction. It could be a stumbling block for the purchaser.

Rick Johnson - Northwood MN. (meter 2350) I was a "pin" on the map and I tried to sell my dealership and could not.

Renard Barkstrom - Dv Lk. (meter 2474) cited his case when he tried to buy a fourth dealership and was rejected. How much money he had to spend to get the dealership could have been avoided if we had this legislation.

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Senator John (Jack) T. Traynor, Chairman reopened the Hearing

The hearing opened with the discussion of the term "Good Morale Character" (meter 1906) How leaving it in would make it to "subjective". Your definition and mine may be very different.

Senator Triplett made the motion to amend removing "morale" character. **Sen. Nelson** seconded the motion all were in favor.

Sen. Trenbeath made the motion to do pass the bill as amended and **Senator Syverson** seconded. All were in favor

Carrier: Senator Triplett

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 4/19/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2191

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50101.0401

Action Taken Amend. Do Pass

Motion Made By sen Triplett Seconded By sen Nelson

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 1/19/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2191

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50101-0401

Action Taken Do Pass as Amended

Motion Made By Sen Trenbeath Seconded By Sen Syverson

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Triplett

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2191: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2191 was placed on the Sixth order on the calendar.

Page 3, line 24, remove "is of good moral"

Page 3, line 25, remove "character and who otherwise"

Page 4, line 1, remove "is not of good moral character or"

Renumber accordingly

2005 HOUSE TRANSPORTATION

SB 2191

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2191

House Transportation Committee

☐ Conference Committee

Hearing Date March 3, 2005

Tape Number	Side A	Side B	Meter #
2	X		8.3-45.1
Committee Clerk Signature <i>De Loue D. Shimek</i>			

Minutes:

Acting Chairman Hawken opened the hearing on SB 2191 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 North Dakota Century Code, relating to contractual relationships between automobile and truck wholesalers and retailers; to amend and reenact section 51-07-01.1 of the North Dakota Century code, relating to the termination of contractual relationship between automobile and truck wholesalers and retailers; and to provide for application.

Senator Brown:(9.6)This bill relates to the contractual relationship between auto and truck wholesalers and retailers. It has to do with franchise and franchiser and the contract they have between themselves. The proposed bill attempts to clear up the process of termination or changes in their contracts.

Rep. Vigasaa (10.8) I am here to urge your support of SB2191. I am president of an auto dealer, VW Motors Inc. in Cooperstown. This dealership has been in our family for 45 years and this

bill is very important to a small rural dealer. This bill would strengthen my position when it comes time for me to sell, transfer, or assign a dealership to another party. My fear, being a small rural dealer that a major automobile manufacturer may not allow this action as they would deem it unnecessary to have a dealership located in a rural community. The impact to a small area can be quite a lot. As you know economic development is nothing new. It is very important for rural ND and small rural dealers are economic pillars in all of our small communities. My dealership is that we employ 14 people full time. Our annual payroll in Cooperstown is about \$350,000 and those good paying jobs also include health benefits, retirement plans and our total sales, just out of our small dealership is about \$8 million. This small rural dealership is very important to the economic vitality of our rural trade area. What has happened in the rural landscape with new auto dealership. When my dad started the dealership back in 1960 our trade area, which was about a 30 mile radius around Cooperstown had 13 new car dealerships in that area. There are two left. Passage of SB2191 will make it more feasible for businesses, such as ours, to continue to serve the great future of ND. Bob Lamp, from the auto dealers association is going to address the specifics of this bill, but I would be happy to answer any questions you may have.

Bob Lamp:(13.4) (See Testimony #1) Appearing on behalf of the automobile dealers association of ND, which constitutes of the 106 franchise dealers in ND. That number has decreased significantly over the past years. In the early 1980's we have in excess of 300 car dealers and we are at 106 today. Before we approached Senator Brown we spent nearly two years deliberating the need for this bill and what should be in this bill. One of the major reasons for the legislation is an attempt to add some stability to the existing automobile dealers. Rep.

Vigesaa has indicated to be able to meet the franchise requirements of the manufacturer or to have the ability to transfer, assign, or sell the dealerships it is critical that the dealers and certainly the communities in which they do business. These dealerships are often economic cornerstones in their communities and to illustrate that I have attached a document with my testimony, which I will not discuss in any detail, but it does show you the impact these dealers have on this states economy if very significant. Maintaining as many of our dealerships as we can it quite critical to our states economic being. This bill contains four different provisions, but only one underlining purpose and that is to bring some balance into the relationship between the manufacturer and dealers. It is important to understand that dealers that sign contracts with manufactures as signing a contract of adhesion. That is that it is not a negotiated contract. Either you take it or leave it contract. The dealer is presented with the document, if they sign it they can be a dealer. If they don't sign it they can't. Another section of the bill would address amendments to the contract. That happens frequently, the manufacturer will often amend the contract when there is a change in products or programs or services and again this is a situation where the dealer doesn't have a negotiated interest in that amendment. The dealer has to sign it or you are not a dealer. It is because of these types of situations that we come to the legislature from time to time to try to correct what we see are inequities in the contract. You will hear from a couple of our dealers about individual situations before this meeting is over. Went over the engrossed bill. The first second on lines 12 & 13 is an exclusion for automobile dealers, truck dealers or parts dealers from that section of the code. The intend of that language is simply to remove dealers from this specific section of 51-07. The only reason the legislative counsel said that we necessary was we do address good faith and good cause in the next section so they

wanted to avoid confusion. This does not exclude dealers from all the other provisions in section 51-07. You will notice on page 2 there is an amendment that simply says if the notice of termination is given to the dealer, then the dealer challenges that notice, then there is an automatic stay until that action is decided. The meat of the bill actually occurs in section 2,3 & 4. Section 2 deals with changes in the franchise agreement. Basically what it says is if these changes are going to substantially impure the sales, the service obligations, or the investment or the retailer and the retailer can challenge those notices. If I can call your attention to page 3, section 5 specifically, it talks about if the change is unfair and prohibited, it is not clearly committed by the agreement, it is not taken in good faith or good cause and is not applied in a uniform and constituent manner, than that would be grounds for challenging those changes. In section 3 is the dealership transfer. Basically it says, if a dealer wants to sell his dealership and finds a qualified buyer, he must first notify the manufacturer about that proposed sale. The manufacturer still controls whether or not that sale is going to be made. The difference between the way it is handled today and what this bill would do is it would be unreasonable for the manufacturer to deny that transfer if the buyer is a qualified buyer under their rules and regulations. Section 4: This language is already in ND Century Code as it relates to farm equipment and dealers. The language is almost identical to that section of the code. What this says is that the manufacturer may not require the dealer to purchase other goods and services based on the vehicles they might be getting. They can not prohibit a dealer in our state from caring dual lines. That is the major issue for the manufacturers and dealers. There just isn't enough population in our rural areas to have stand alone dealerships. This would prohibit them from not allowing a dealer to having dual lines. Section 4 talks about discrimination in prices for

similar situated auto and truck dealers and number 5 simply addresses the situation of changes in propetitive circumstances. That is the essence of the bill. What you see in this bill is already law in many other states. We are asking for your favorable consideration to give our dealers equal treatment.

Richard Johnson: (20.3) Krabberhoft Inc. A new car dealer in the city of Norwood. About 1,000 people in that town if you count a dog or cat. Have worked for the dealership for 33 years. I have been a dealer for 21. We employ about 9-10 people. Probably 40-50 vehicles. GM has described my business as a closed point, which means I can't sell it or will it or basically do anything with it. GM has agreed with me for a stay with me clause for as long as I want to be the dealer they will let me exist. If I die, they close. A few years ago I had a respected dealer approach me on buying the place. I called GM to sell and that raised the questions, am I a closed point or not? I guess shouldn't I be able to go out and find a buyer instead of GM going out and picking a dealer. This bill would help dealers such as I. With this bill I can make plans, not only for myself, but for the small town of Northwood.

Renard Bergstrom: Car dealer from Devils Lake. A couple years ago we were looking at and thinking of buying another dealership in the city of Devils Lake. In the process of the that transaction one of the manufacturers had a conflict with that transaction and wanted some things delayed it quite a bit and ended up costing quite a bit of money for them and us. The thing became apparent in the process that ND literally had no law on this situation. We needed to be able to hold them (the manufacturer) accountable like they hold us.

Bill Wallwork:(24.3) W.W. Wallwork Inc. of Fargo. In 1997 we were terminated by Ford. We started in 1921 as a Ford dealership. Started doing business as a ND business in 1937, but over

that period of time we represented Ford Motor Company. In 1980 Ford and ourselves were in hard economic times, went to them and my father wanted to terminate the franchise. Ford Motor Company asked if we stay in business because they didn't have a buyer for the business. So my father did that because of his loyalty to the company. Within a year they ran a couple buyers by; well within 10 years of that Ford Motor Company came back and wanted to terminate us. As we pursued the issue it was not based on customer satisfaction. We were at the top of our group as far as that went and personal service. It wasn't a questions of the parts or service. They felt we were selling 1 out of 5 cars and we should be selling 1 out of 4 cars. That is the history of us. I just wanted to be treated fairly so I pursued the legal course, but found out there was anything we could do since the laws we have a vague and the court case would have cost us more yet. Ford told us they did not care what we had done they made it clear that they would do what they wanted to and the laws of ND were such that they could do this. I just want the laws in ND to be fair for the dealerships.

Chairman Weisz(28.4) The reason they terminated you was that you weren't selling enough for the trade area and that they evidently had someone they wanted to transfer the dealership to that they felt could do that.

Renard Bergstom:(28.6) They just wanted to change horses. Since then they have changed horses and the numbers have not changed. Most of my employees stayed with the company but my understanding is they are going the same.

Rep. Thorpe(28.8) I have been knowledgeable about what had transpired and I guess I remember when I was in business for myself and at that time I became good friends with your

dealership and at that time your dealership was known as the largest retailer of trucks in North America. It did quite surprise me when I heard the circumstances of the sale.

Renard Bergstrom:(30.4) We were the largest dealership at that time in the state of ND. That is part of my concern. If we could not get a fair shake, then how could any dealer smaller than us get one.

Rep. Schmidt(31.6) You said that your company wanted you to sell 5 out of every one and you sold 4 out of everyone. Does that mean you had a multiple line?

Renard Bergstrom: In our market we were selling one out of every five cars was a Ford. They wanted us to sell one out of every four cars. We just had Ford.

Tom Kelsch, representing General Motors: I am in support of the bill. We have one minor amendment that deleted three words. We have reviewed this amendment with the dealers association and they are in agreement with it and we have also talked to the bill sponsors and they are also in agreement with it. (Went over the proposed amendment).

Rep. Meyer(34.4) On page 4 line 23 & 24 what does similarly situated does that mean an automobile dealership in the same town.

Bob Lamp:(36.2) The language did come out of other state laws. It would be more a geographic area. For example General Motors has two regions in the state of ND. They split this for some reasons and we think we are talking about those regions.

Chairman Weisz Anyone here in opposition to SB 2191.

Closed (37.4)

Chairman Weisz (38.3) reopened hearing on SB2191

Made to accept amendment to SB2191.

Page 8

House Transportation Committee

Bill Number SB 2191

Hearing Date March 3, 2005

Motion Made By Rep. Meyer Seconded By Rep. Kelsch

Voice vote carried. No opposition.

Discussion:

Chairman Weisz I realize there is allot of stuff in this bill. It is somewhat unusual that you have at least one manufacture and the auto dealers more or less agreeing on the provisions. That doesn't happen too often here.

Rep. Thorpe: I talked to Mr. Wallwork before he left and he said this language in this bill would have been a big help on his case.

Rep. Vigesaa(40.6) I want to thank Tom Kelsch and GM and their willingness to work with us. You may notice that Ford and Chrysler are aware of this legislation and they did not appear in opposition. I think there was allot of conversation between Mr. Lamp and Mr. Kelsch and GM and apparently what we have here is workable with everybody.

Rep. Weiler(41.7) What are the manufactures getting?

Chairman Weisz They know now what ND law says and what the rules are they are going to have to live by. Whether they like all the rules or not I think it is pretty clear that these are the rules to live by in ND.

Rep. Schmidt(42.6) Do you remember when this law was put in.

Chairman Weisz We have had the franchises in. The RV guys two or four years ago.

Bob Lamp: The language is the same as the farm equipment side. The farm equipment do not have the other language in section 2 & 3.

Motion Made By Rep., Delmore Seconded by Rep. Kelsch

Do Pass As Amended 13 Yes 0 No 2 Absent Carrier: Rep. Vigesaa

REPORT OF STANDING COMMITTEE

SB 2191, as engrossed: Transportation Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2191 was placed on the Sixth order on the calendar.

Page 3, line 29, remove "or"

Page 3, line 30, remove "prospective franchisee"

Renumber accordingly

Date: 3-3-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 582191

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Delmore Seconded By Rep. Kelsch

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.	✓		Rep. Meyer	✓	
Rep. Bernstein	✓		Rep. Schmidt	✓	
Rep. Dosch	abs		Rep. Thorpe	✓	
Rep. Iverson	abs				
Rep. Kelsch	✓				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigasaa	✓				
Rep. Weiler	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Vigasaa

If the vote is on an amendment, briefly indicate intent:

2005 TESTIMONY

SB 2191

TESTIMONY
SENATE BILL 2191
SENATE JUDICIARY
JANUARY 19, 2005

HH #1

- Mr. Chairman and members of the committee. My name is Bob Lamp and I am appearing on behalf of the Automobile Dealers Association of North Dakota which consists of the 106 franchised new car dealers in our state.
- Senate Bill 2191 was introduced at the request of the franchised new car dealers. Our dealers take the opportunity to have legislation introduced very seriously and approached Senator Brown only after carefully deliberating the need for this bill over a 2 year period.
- One of the major reasons for this legislation is an attempt to add stability for existing automobile dealers. As Representative Vigesaa has indicated, to be able to meet the franchise requirements of the manufacturer or have the ability to transfer, assign or sell their dealership is critical to dealers and the communities in which they do business. These dealerships are often the economic cornerstone of their communities.
- To illustrate the economic impact of franchised new car dealers to this state's economy, I have attached an economic impact summary for the franchised new car dealers in North Dakota. Our conclusion from these statistics should be simple. Maintaining as many of our existing dealerships as possible only makes good economic sense for our state.
- While the bill contains four different provisions, there is really one underlying purpose and that is to help bring BALANCE into the relationship between dealers and their manufacturers. It is important to understand that a contract between a dealer and manufacturer is actually a CONTRACT OF ADHESION, that is, it is not a negotiated contract. Rather, it is a take-it or leave-it arrangement under which the dealer has no choice but to sign the contract or not be a dealer.
- In addition, the manufacturer will often amend the contract as products, programs and services change. Again, the dealer has no choice but to accept these changes or face the threat of losing their franchise.
- It is because of these situations that dealers come to the legislature from time to time to correct what they see as inequities in these contracts. You will hear the real life side of this bill in testimony from some of the dealers in attendance.
- Senate Bill 2191 addresses four different issues:
 1. Terminations of the franchise agreement/contract
 2. Changes/amendments to the franchise agreement/contract
 3. Dealership transfers
 4. Prohibited practices
- It is important to note that Senate Bill 2191 contains the same provisions that already exist in many states. In fact, the basic content of the bill is fashioned after law that already exists in Minnesota and South Dakota. This bill simply asks for equal treatment for the franchised new car dealers in North Dakota.
- Thank you for allowing me the time Mr. Chairman.

ROBERT L. LAMP
AUTOMOBILE DEALERS ASSOCIATION OF NORTH DAKOTA



NORTH DAKOTA'S NEW VEHICLE DEALERS...

DRIVING OUR STATE'S ECONOMY*

Maintaining a **MULTI-BILLION** dollar retail industry...

North Dakota's **106** new-vehicle dealers generate average annual sales in excess of **\$15.7 million** per dealership! All together, our state's new vehicle dealers generate over **\$1.7 BILLION** in annual retail sales.

New vehicle dealers constitute **3.2%** of the total retail establishments in the state, yet they generate a whopping **21.9%** of North Dakota's retail sales!

Providing thousands of well- paying jobs in North Dakota...

Over **3,200** people are employed by new vehicle dealers in North Dakota, averaging **31** employees per dealership. That's **9.8%** of our state's total retail employment. Dealership employees are well-paid, with average annual earnings of over **\$34,000**. In fact, the average annual payroll per new vehicle dealership is **\$1,050,000** which amounts to **\$110 MILLION** statewide — **13.3%** of our state's total retail payroll!

The new car retail industry in our state also helps other segments of our economy to thrive as well. For instance, North Dakota's new car dealers collectively spend over **\$11,000,000** per year in advertising!

Generating hundreds of millions of dollars in state and local tax revenue...

In addition to corporate and payroll tax dollars totalling in the hundreds of millions, new and used vehicle sales annually pay over **\$4 MILLION** in sales and use taxes, and generate over **\$66 MILLION** in motor vehicle excise tax.

Serving as charitable contributors and civic leaders...

Over **90%** of new vehicle dealers are active in civic and/or charitable organizations, contributing time, talent, and collectively over **\$1,000,000** annually. In addition over half of new car dealers are also involved in business/government activities outside of their dealerships.

Providing essential products and services to the people of North Dakota...

North Dakota is a land of wide open spaces and challenging weather elements. The ability to obtain and service high quality vehicles is not a luxury, it's essential. North Dakota's new car dealers not only help to drive our economy...they secure our safety and our quality of life as well.



AUTOMOBILE DEALERS ASSOCIATION OF NORTH DAKOTA

1411 32nd ST SW • PO Box 2524 • Fargo ND 58108-2524 • (701) 293-6822 • FAX (701) 293-6824 • www.adand.com

SUMMARY SHEET FOR SENATE BILL 2191

BOARD OF DIRECTORS

PAM KOSTELECKY
President
Dickinson
483-4411

MITCH IVERSON
Vice President
Grafton
352-2992

ROBERT L. LAMP
Executive Vice President
Fargo
293-6822

RENARD BERGSTROM
Devils Lake
662-4017

MURPHY
Dickinson
292-2927

DON VIGESAA
Cooperstown
797-2461

BILL WALLWORK
Fargo
476-7000

JUSTIN THEEL
Bismarck
223-2190

ROBERT RYDELL
Grand Forks
772-7211

TERRY YONEY
Finley
524-1200

ALAN KURTH
Minot
852-1236

DONOVAN BERTSCH
Bottineau
228-2281

CASEY STOUT
Jamestown
252-2270

DANNY ROY
Langdon
256-5331

DON CHARBONNEAU
NDA Director
Dickinson
292-2277

1. Bill identifies procedures that must be followed when changes are made to an existing manufacturer contract.
 - Requires manufacturer, wholesaler or distributor to give 90 days notice by certified mail when a contract change is proposed which will substantially impair the sales, service obligations or investment of the franchised dealer.
 - If notice is not given the changes are voidable at the option of the retailer.
 - Retailer has the right to file an action to determine whether the proposed changes are unfair or a prohibited change. The retailer contract continues until final determination.
 - Requires good faith and good cause tests and places the burden of proof on the manufacturer, wholesaler or distributor to show that the change is fair and not prohibited.
 - Provides that manufacturer, wholesaler or distributor is liable for damages sustained by the retailer if the procedures are not followed and the changes are unfair or prohibited.
2. Bill requires a manufacturer, wholesaler or distributor to respond promptly to a dealership transfer proposal by the retailer and identifies acceptable criteria for the proposed buyer. Withholding approval if the proposed buyer meets this criteria is deemed to be unreasonable.
 - Manufacturer, wholesaler or distributor must approve or deny a proposed dealership transfer within 60 days of receipt of proposal or the transfer shall be deemed approved.
 - If denied, manufacturer shall provide material reasons for the denial to the retailer.
 - Bill identifies the criteria for an acceptable transferee and states that if the proposed transferee meets these criteria it is unreasonable for the franchisor to withhold the transfer.
 - Again, the bill places the burden of proof on the manufacturer to justify a denial of the proposed transfer.

Page 2
Summary Sheet
Franchise Legislation

3. Bill itemizes a list of prohibited practices by the manufacturer under the franchise agreement.

- Retailer cannot be forced into accepting inventory the dealer has not ordered voluntarily.
- Retailer cannot be forced into purchasing other goods or services except those required to maintain the quality of operation and communications.
- Retailer cannot be prohibited from carrying dual lines or required to have dual facilities if retailer's facility satisfies reasonable requirements of the manufacturer.
- Manufacturer may not discriminate on prices charged for like grade and quality except in specified circumstances.
- Manufacturer may not substantially change the competitive circumstances of the dealership contract unless the retailer fails to comply with the terms of the contract.

Robert L. Lamp
Automobile Dealers Association of North Dakota

GOOD MORNING CHAIRMAN TRAYNOR AND MEMBERS OF THE COMMITTEE. FOR THE RECORD, MY NAME IS REP. DON VIGESAA. I REPRESENT DISTRICT 23 WHICH IS ALL OF GRIGGS AND NELSON COUNTIES AND PARTS OF STEELE EDDY AND BENSON COUNTIES. I AM BEFORE YOU THIS MORNING TO URGE YOUR SUPPORT OF SB 2191. I AM PRESIDENT OF V-W MOTORS INC IN COOPERSTOWN , A CHRYSLER DODGE JEEP DEALER. THIS DEALERSHIP HAS BEEN IN OUR FAMILY FOR 45 YEARS. THIS BILL WOULD STRENGTHEN OUR POSITION WHEN IT COMES TIME FOR ME TO TRANSFER, ASSIGN, OR SELL THE FRANCHISE AGREEMENT TO ANOTHER PARTY. MY FEAR IS THAT A MAJOR AUTOMOBILE MANUFACTURER MAY NOT ALLOW THIS ACTION AS THEY WOULD DEEM IT UNNECESSARY FOR THEM TO HAVE A DEALERSHIP LOCATED IN A SMALL RURAL COMMUNITY.

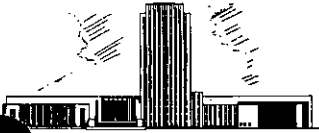
ECONOMIC DEVELOPMENT IS CURRENTLY A FOCUS FOR

NORTH DAKOTA. SMALL RURAL DEALERS ARE ECONOMIC
PILLARS IN THEIR RESPECTIVE COMMUNITIES. HERE ARE
NUMBERS FOR YOU TO CONTEMPLATE. I EMPLOY 14
PEOPLE FULL TIME WITH AN ANNUAL PAYROLL OF ABOUT
\$338,000. THOSE GOOD PAYING JOBS ALSO INCLUDE HEALTH
INSURANCE BENEFITS AND RETIREMENT PLANS. AND OUR
TOTAL SALES WILL BE APPROXIMATELY 7.8 MILLION
DOLLARS THIS YEAR. THIS SMALL RURAL DEALERSHIP IS
VERY IMPORTANT TO THE ECONOMIC VITALITY OF RURAL
NORTH DAKOTA.

WHEN MY FATHER STARTED THIS BUSINESS IN 1960, THERE
WERE 13 NEW CAR DEALERSHIPS IN OUR TRADE AREA.
NOW THERE ARE TWO.

PASSAGE OF SB 2191 WILL MAKE IT MORE FEASIBLE FOR
BUSINESSES SUCH AS MINE TO CONTINUE TO SERVE THE
GREAT PEOPLE OF NORTH DAKOTA.

I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator John T. Traynor
District 15
P.O. Box 838
Devils Lake, ND 58301-0838
jtraynor@state.nd.us

COMMITTEES:
Judiciary, Chairman
Natural Resources

To: Sen. Syverson Sen. Nelson
 Sen. Trenbeath Sen. Triplett
 Sen. Hacker

The House amended 2191, the car dealer franchise bill. They deleted three words on line 28, page 3. The words are:

"or prospective franchisee"

I spoke to Renard Bergstrom, a dealer in Devils Lake and Jamestown, and Bob Lamp. The dealers have no objection to the removal, so I am going to concur.

Thanks,

John Traynor

P.S. I met with the Attorney General on March 10 and he gave me the enclosed copy of a letter from the Justice Dept re 1509. Please read it and we'll see you



AUTOMOBILE DEALERS ASSOCIATION OF NORTH DAKOTA

1411 32nd-ST SW • PO Box 2524 • Fargo ND 58108-2524 • (701) 293-6822 • FAX (701) 293-6824 • www.adand.com

TESTIMONY SENATE BILL 2191 HOUSE TRANSPORTATION MARCH 3, 2005

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- Mr. Chairman and members of the committee. My name is Bob Lamp and I am appearing on behalf of the Automobile Dealers Association of North Dakota which consists of the 106 franchised new car dealers in our state.
- Senate Bill 2191 was introduced at the request of the franchised new car dealers. Our dealers take the opportunity to have legislation introduced very seriously and approached Senator Brown only after carefully deliberating the need for this bill over a 2 year period.
- One of the major reasons for this legislation is an attempt to add stability for existing automobile dealers. As Representative Vigesaa has indicated, to be able to meet the franchise requirements of the manufacturer or have the ability to transfer, assign or sell their dealership is critical to dealers and the communities in which they do business. These dealerships are often the economic cornerstone of their communities.
- To illustrate the economic impact of franchised new car dealers to this state's economy, I have attached an economic impact summary for the franchised new car dealers in North Dakota. Our conclusion from these statistics should be simple. Maintaining as many of our existing dealerships as possible only makes good economic sense for our state.
- While the bill contains four different provisions, there is really one underlying purpose and that is to help bring BALANCE into the relationship between dealers and their manufacturers. It is important to understand that a contract between a dealer and manufacturer is actually a CONTRACT OF ADHESION, that is, it is not a negotiated contract. Rather, it is a take-it or leave-it arrangement under which the dealer has no choice but to sign the contract or not be a dealer.
- In addition, the manufacturer will often amend the contract as products, programs and services change. Again, the dealer has no choice but to accept these changes or face the threat of losing their franchise.
- It is because of these situations that dealers come to the legislature from time to time to correct what they see as inequities in these contracts. You will hear the real life side of this bill in testimony from some of the dealers in attendance.

(over).