

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2191
(Senators Brown, Klein, Robinson)
(Representatives Carlson, Thorpe, Vigesaa)

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 a contractual relationship between automobile and truck wholesalers and retailers; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Any manufacturer, wholesaler, or distributor of merchandise and tools covered under section 51-07-01, ~~who excluding automobile dealers, truck dealers, or parts dealers of the automobiles or trucks, that enters into~~ a contract with any person engaged in the business of retailing the covered merchandise by which the retailer agrees to maintain a stock of the covered merchandise may not terminate, cancel, or fail to renew the contract with the retailer without good cause.
2. For the purpose of this section, good cause for terminating, canceling, or failing to renew a contract is limited to failure by the retailer to substantially comply with those essential and reasonable requirements imposed by the contract between the parties if the requirements are not different from those requirements imposed on other similarly situated retailers. ~~Further, the~~ The determination by the manufacturer, wholesaler, or distributor of good cause for the termination, cancellation, or failure to renew must be made in good faith.
3. In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor shall establish that the termination, cancellation, or failure to renew was made in good faith for good cause. If a notice of termination is issued and the dealer challenges the notice by filing an action, there is an automatic stay during the pendency of the action. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, the manufacturer, wholesaler, or distributor is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorney's fees for prosecuting the action and the plaintiff, if appropriate, is entitled to injunctive relief. ~~The provisions of this~~ This section ~~apply~~ applies to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered ~~into~~, amended, or renewed after July 31, 2003. Any contract in force and effect on August 1, 2003, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before August 1, 2003.

SECTION 2. Section 51-07-02.1 of the North Dakota Century Code is created and enacted as follows:

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

1. At least ninety days before any change in or from an existing contract which will substantially impair the sales, the service obligations, or investment of a retailer of automobiles or trucks, or parts of the automobiles or trucks, the manufacturer, wholesaler, or distributor that is a party to the contract shall give notice by certified mail to the retailer of the intended change and the specific grounds for the change.
2. If the manufacturer, wholesaler, or distributor fails to give the proper notice under subsection 1, the change is voidable at the option of the retailer.
3. A contract between a manufacturer, wholesaler, or distributor and a retailer of automobiles or trucks, or parts of the automobiles or trucks, is offered for automatic renewal under the same terms unless notice is provided under subsection 1.
4. A retailer may file an action against the manufacturer, wholesaler, or distributor for violation of this section or for a determination of whether the action proposed by the manufacturer, wholesaler, or distributor is an unfair or a prohibited change in or from the contract. Contracts and certificates of appointment continue in effect until final determination of the issues in the action.
5. A change in or from a contract is unfair and prohibited if the change is not clearly permitted by the agreement; is not taken in good faith; is not taken for good cause; is based on an alleged breach of the agreement which is not in fact a material and substantial breach; or, if the grounds relied on for the change have not been applied in a uniform and consistent manner by the manufacturer, wholesaler, or distributor. Good faith means honesty in fact and fair dealing. The manufacturer, wholesaler, or distributor shall have the burden of proof that any action taken by the manufacturer, wholesaler, or distributor is fair and not prohibited. A manufacturer, wholesaler, or distributor that fails to carry the burden of proof is liable for all special and general damages sustained by the retailer, including the costs of litigation and reasonable attorney's fees. If appropriate, the retailer is entitled to injunctive relief.

SECTION 3. Section 51-07-02.2 of the North Dakota Century Code is created and enacted as follows:

51-07-02.2. Dealership transfers. A retailer of automobiles or trucks, or parts for the automobiles or trucks, may not transfer, assign, or sell a franchise agreement to another person unless the retailer first provides written notice to the franchisor of the intended action. Within sixty days of receiving the notice, the franchisor must approve or deny the action. If the franchisor denies the action, the franchisor shall provide material reasons for the denial to the franchisee. If the franchisor does not respond within the sixty-day period, the action is deemed approved. The refusal by the franchisor to accept a proposed transferee who meets the written, reasonable, and uniformly applied standards of qualifications of the franchisor relating to the financial qualifications of the transferee and business experience of the transferee is presumed to be unreasonable. If an action is rejected by the franchisor, the franchisee may file an action for determination of a violation of this section. The retailer may elect to pursue either the retailer's remedy under the contract or the remedy provided in this section. The franchisor has the burden of proof with respect to all issues raised in the action. The court shall approve the transfer unless the franchisor can prove the proposed transferee does not meet the written, reasonable, and uniformly applied standards regarding financial qualifications and business experience.

SECTION 4. Section 51-07-02.3 of the North Dakota Century Code is created and enacted as follows:

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

1. Coerce or attempt to coerce the retailer into accepting delivery of automobiles, trucks, parts, or accessories that the retailer has not ordered voluntarily.

2. Condition or attempt to condition the sale of automobiles or trucks on a requirement that the automobile or truck retailer purchase other goods or services, except that the manufacturer, wholesaler, or distributor may require a retailer to purchase all parts reasonably necessary to maintain the quality of operation and telecommunications necessary to communicate with the manufacturer, wholesaler, or distributor.
3. Coerce or attempt to coerce an automobile or truck retailer into not carrying dual lines or into maintaining separate facilities as long as the retailer's facilities otherwise satisfy the reasonable requirements of the manufacturer, wholesaler, or distributor.
4. Discriminate in the prices charged for automobiles or trucks of like grade and quality sold by automobile or truck manufacturers to similarly situated automobile or truck retailers. This prohibition does not prevent the use of differentials that solely make due allowance for differences in the cost of manufacture, sale, or delivery or for differing methods or quantities in which the automobiles or trucks are sold or delivered by the manufacturer, wholesaler, or distributor.
5. Attempt or threaten to terminate, cancel, or fail to renew, or substantially change the competitive circumstances of the dealership contracts for any reason other than the failure of the automobile or truck retailer to comply with the terms of the contract between the parties, if the attempt or threat is based on the results of a circumstance beyond the retailer's control, including a natural disaster in the dealership market area or a labor dispute.

SECTION 5. APPLICATION OF ACT. This Act applies to all contracts in effect on August 1, 2005, which do not have an expiration date and are continuing contracts and all other contracts entered, amended, or renewed after July 31, 2005. Any contract in effect on August 1, 2005, which by its terms will terminate on a date subsequent to that date is governed by the law as it existed on July 31, 2005.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2191.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State