

2011 SENATE TRANSPORTATION

SB 2236

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Transportation Committee**  
Lewis and Clark Room, State Capitol

SB 2236  
January 28, 2011  
13597

Conference Committee

Committee Clerk Signature *Flange*

**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

**Senator Lee** said the committee would take testimony on SB 2236 but the hearing will remain open until next week.

**Senator Lee** opened the hearing on SB 2236 relating to definitions and warranty or incentive audits for new motor vehicle dealers; relating to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and automobile parts.

**Senator Klein**, District 14, will defer his introduction and testimony until next week, Thursday, February 3, 2011.

**Matthew Larsgaard**, Automobile Dealers Association of North Dakota will defer until next week.

**Tom Balzer**, North Dakota Motor Carriers Association said that they support this bill and will be prepared to supply full testimony next week.

No opposing testimony at this time.

**Senator Lee** closed the hearing with the intention of reopening next Thursday, February 3, at 9:00 AM.

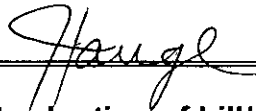
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee  
Lewis and Clark Room, State Capitol

SB 2236  
February 3, 2011  
13930

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

The bill was introduced at the request of North Dakota's new car dealers.

## Minutes:

*Attached testimony*

**Senator G. Lee** reopened the hearing on SB 2236 relating to definitions and warranty or incentive audits for new motor vehicle dealers; relating to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and automobile parts.

**Senator Klein**, District 14, introduced SB 2236. He explained how the bankruptcy of car manufacturers affected some dealerships in ND and all over the country. He stated that what SB 2236 does is help protect some of our North Dakota new car and truck dealers from what is believed to be unfair business practices of these huge manufacturers. They are presently forcing dealers to sign contracts which could be unreasonably demanding. Current ND franchise laws leave dealers vulnerable to the demands of those manufactures. This could mean the loss of important automotive products, services and our small dealerships in our small communities.

**Senator Mathern** asked why this area should be regulated by government.

**Senator Klein** replied that we regulate enterprise everywhere. He said what we are trying to do here is not new; these type of rules have been adopted by Minnesota, South Dakota and Montana.

**Representative Vigesaa**, District 23, testified in support of SB 2236. He stated that he is an auto dealer from Cooperstown. From a dealership perspective, he said that in May of 2009 Chrysler and General Motors declared bankruptcy. There were 789 Chrysler dealers that were terminated on one day. He did not get a letter terminating his dealership, many did. As auto dealers he said that we need to look at our franchise laws and see if there are areas that we could make some adjustments so that manufacturers don't have complete reign over our private industry. The association has worked hard on this legislation and he urged a do pass on SB 2236.

**Senator Nething** asked what benefit the manufacturers got from terminating a dealership. He said they had one in Jamestown that was terminated.

**Representative Vigesaa** answered that we dealers had a very hard time accepting that decision that they could just come in and tell us that we could no longer be a franchise dealer. He said that he doesn't know or understand their rationale.

**Senator Lee** asked if this passed how manufacturers will look at North Dakota.

**Rep. Vigesaa** replied that he would have to ask that of the manufacturers. He did state that ND is a small state and it doesn't have a huge amount of dealers, but if you take all the dealers in ND and add up what they contribute to the manufacturers, he would see that as significant.

**Matthew Larsgaard**, Automobile Dealers Association appeared in support of SB 2236. Written testimony #1 In addition, he explained the sections of the bill in detail and offered amendments (11.0579.01002). The amendments make three changes to the bill. These amendments were drafted in an attempt to address some of the manufacturers concerns. He said that they had two conference calls and one face to face meeting and ultimately they had to agree to disagree.

**Senator Oehlke** asked about page 4, line 4, where it talks about dealers having to buy or pay for advertising promotion materials and pay for advertising campaigns they don't want. He asked about TV advertising where it could benefit more dealerships.

**Mr. Larsgaard** replied that TV advertising benefits the manufacturers. They don't want the manufacturers to **require** the dealer to pay for these things. The dealers know their territory and they know how to market to them. This bill will prevent dealers from having to pay for something they don't want.

**Senator Nething** asked about the use of the words "reasonable" and "unreasonable" in the bill.

**Mr. Larsgaard** replied that the word "reasonable" and "unreasonable" is used throughout our miscellaneous provisions, Title 51. They also talked with a franchise attorney on the definition and use of the words. The attorney said that "reasonable" is used throughout the uniform commercial code. It is an acceptable term.

**Senator Sitte** questioned the use of the word "unfair" on page 3.

**Mr. Larsgaard** said that the word "unfair" is defined.

**Senator Lee** asked why farm machinery and lawn & garden were included and how it would affect the dealers at the Hardware Hanks etc.

**Mr. Larsgaard** explained why it was included.

**Senator Nething** asked where the areas were that they could not negotiate a compromise with manufacturers.

**Mr. Larsgaard** gave an explanation of changes that could not be agreed on. He stated that they felt they wanted to carve up the bill. He gave examples.

**Senator Lee** asked about the amendment on page 6, lines 3 through 10. Does this change anything.

**Mr. Larsgaard** said that there are no changes. All this does is make that language that already exists clearer and easier to understand.

Discussed the relationship this bill has with other laws passed in surrounding states and if there is uniformity between states. Mr. Larsgaard referred back to his own testimony on pages 3 through 5.

**Gregg Jacobson**, owner, R Z Motors Inc., Hettinger, ND testified in support of SB 2236. Written testimony #3

**Senator Lee** asked if the manufactures set the price for his vehicles.

**Mr. Jacobson** answered that the selling price is determined by the dealer. The vehicle is dispersed to the dealer with a manufacturer's suggested retail price. He added, that the dealers own the vehicles on their lots. He said that they are required to have a Market Share responsibility for their given area.

**Steve Schwan**, President of Schwan GM Auto Center in Bismarck-Mandan, urged passage of SB 2236. He said that they lost their Pontiac Franchise through the bankruptcy. He said that when they did get their new franchise from General Motors, it came by e-mail and there was no negotiating or there was nothing they could do about it because of the parameters that had been set forth by the manufacturers. He also expressed his concern on the succession of the franchise to his sons.

**Tom Balzer**, Executive Vice President of the North Dakota Motor Carriers Association testified in support of SB 2236. Written testimony #4

#### Opposing Testimony

**Laura Dooley**, Alliance of Automobile Manufacturers, testified in opposition to SB 2236. They represent twelve passenger car and light truck manufactures including GM, Chrysler, and Ford and nine others from out of the country. When looking at opening franchises like this, it is important to remember that the law will impact all of those manufacturers not just the ones that went through bankruptcy. She said that they were not trying to be obstructionists. They haven't said no to any of the provisions in concept. All we have been asking for is some consideration and how to make these issues better. She stated that the issues that have been outlined so far, aren't really issues that they get stuck on in other states. She said that they have identified all their concerns with the dealers in the previous three consultations. She added that they have only had a week to work on this bill. They had 28 franchise bills last year across the United States and they were able to take a neutral position on 20 of those bills, including Minnesota. What we look for is balance and equity between the dealer and the manufacturer. She said manufactures cannot succeed

without dealers who sell our product across North Dakota and dealers cannot succeed without manufacturers because we make the product that they sell. She outlined a few of the concerns that they had and offered up some solutions. She stated that they were not here to say no, they just want to investigate some alternatives that they think are appropriate. She presented some amendments that they drafted that would consider all of those concerns. She explained the amendments that they felt would continue to balance this bill.

**Ms. Dooley** said that she would get information to the committee on what Minnesota, South Dakota and Montana have adopted in law. She stated that their goal here is not to be obstructionists. We want to work together to have a bill that is put into place. Many of the issues that are on the table are really parsing of words and concerns that we have because of how things are defined. She hopes that we can all work together collectively and hopes they do not have to oppose this bill.

**Senator Mathern** asked for examples of what her concern would be about the new owner.

**Ms. Dooley** said that their concern was simply to make sure that when a successor is named, that successor meets the standard requirements. The requirements being: moral, financial, good legal standing, and she added that the dealers may be able to answer that question better.

Discussion followed on audits and dual franchises in the same dealership.

**Ross Good**, Chrysler Group LLC, testified in opposition to SB 2236. He addressed the bankruptcy of Chrysler and how it affected their manufacturers and employees. They have come to agreements with twenty other states in the adoption of state laws. He said that they are not opposed to the bill just the process.

**Senator Sitte** asked what he saw in Ms. Dooley's amendments that is the most important.

**Mr. Good** answered that from a manufacturer's perspective, the ability, if we choose, to go into a separate agreement with franchisee, and go into some site agreements. They would like to preserve that right.

**Senator Lee** closed the hearing on SB 2236.

**Senator Nething** would like to see the two parties continue to work on this, if the time table allows, and see if the parties can get closer.

**Senator Lee** said he would like to see us take care of our work by next Friday. He said this bill has a fiscal note but the note has no impact so it could wait until next Friday.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee  
Lewis and Clark Room, State Capitol

SB 2236  
February 17, 2011  
14663

Conference Committee

*Sturgeon*

## Minutes:

*Discussion/Action*

**Chairman Senator G. Lee** opened discussion on SB 2236 relating to definitions and warranty or incentive audits for new motor vehicle dealers; relating to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and automobile parts.

Senator Lee handed out amendments #11.0579.01003 (attachment #1) and said it was his understanding that these are the points that the dealers and manufacturers have come to agreement on. Senator Lee asked Matthew Larsgaard to address the committee on their negotiations with the Manufacturers and explain the amendments.

**Matthew Larsgaard**, Automobile Dealers Association of North Dakota, said that at the February 3, 2011 hearing this committee asked the Automobile Dealers Association and the Manufacturers to continue to work towards compromise language. He said that they took that request very seriously and hired a franchise lawyer to review the manufacturers proposed amendment and also had several discussions with their National Associations Legal Council. The amendments before the committee were developed to address many but not all of the manufacturers concerns. Several of the amendments consist of the manufacturer's language. He explained the amendments. Also, presented a change in language to read "incentive" and replace "sales".

**Joel Gilbertson**, representing the Alliance of Automobile Manufacturers, said that the amendments presented were agreed upon.

**Senator Nething** moved to adopt amendment #11.0579.01003 and include the language on the word incentive to replace sales.

**Senator Sitte** seconded the motion.

Roll call vote: 5-0-1. **Amendment adopted.**

**Senator Lee** presented another set of amendments proposed by the manufacturers and submitted by Joel Gilbertson. (Attachment #2) He said that it included everything we just adopted but also includes sections that the dealers and manufacturers did not agree to.

**Mr. Gilbertson** went over the four major issues that the two parties could not agree on. He handed out what other states surrounding North Dakota have on exclusivity.  
Attachment #3

**Senator Sitte** asked if they removed the line make definition, what this would do to local franchises.

**Mr. Gilbertson** said in his opinion, it doesn't change anything. There is no change in law.

**Senator Nething** said that Montana and Minnesota have the line maker language.

**Mr. Gilbertson** replied yes.

**Senator Oehlke** moved a **Do Pass as Amended**.

**Senator Nodland** seconded the motion.

Roll call vote: 5-0-1. **Motion passed**.

**Senator Oehlke** is the carrier.



11.0579.01003  
Title.

Prepared by the Legislative Council staff for  
Senator G. Lee

February 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2236

- Page 1, line 12, remove "oral or"
- Page 2, line 1, replace the second "agreement" with "addendum to a contract"
- Page 2, line 4, remove "or that"
- Page 2, remove line 5
- Page 2, line 6, remove "operation, including agreements relating to dealership facilities or site control"
- Page 2, line 10, replace "essential" with "material"
- Page 3, line 4, remove "spouse, child, grandchild, parent, brother, or sister of the"
- Page 3, line 5, replace "owner of a new motor vehicle dealer" with "individual"
- Page 3, line 8, after "property" insert "subject to sections 51-07-26 and 51-07-26.1"
- Page 5, line 14, replace "adequate" with "separate"
- Page 5, line 15, after "agreement" insert "alone"
- Page 5, line 15, replace "adequate" with "separate"
- Page 5, line 27, replace "adequate" with "separate"
- Page 5, line 28, after "agreement" insert "alone"
- Page 5, line 28, replace "adequate" with "separate"
- Page 6, line 2, remove "If a manufacturer attempts to conduct a warranty or incentive audit on claims paid"
- Page 6, replace lines 3 through 10 with "A manufacturer may not conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of that warranty or incentive payment."
- Page 6, line 12, after "was" insert "false."
- Page 6, line 12, after "fraudulent" insert an underscored comma
- Page 6, line 13, remove "that"
- Re-number accordingly

*Page 11 -*

Date: 2-17-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2236

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Nething Seconded By Senator Sitte

| Senators                  | Yes | No | Senators            | Yes | No |
|---------------------------|-----|----|---------------------|-----|----|
| Chairman Gary Lee         | ✓   |    | Senator Tim Mathern |     |    |
| Vice Chairman Dave Oehlke | ✓   |    |                     |     |    |
| Senator Dave Nething      | ✓   |    |                     |     |    |
| Senator George Nodland    | ✓   |    |                     |     |    |
| Senator Margaret Sitte    | ✓   |    |                     |     |    |
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Total (Yes) 5 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

Date: 2-17-11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2236

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Senator Oehlke Seconded By Senator Nodland

| Senators                  | Yes | No | Senators            | Yes | No |
|---------------------------|-----|----|---------------------|-----|----|
| Chairman Gary Lee         | ✓   |    | Senator Tim Mathern |     |    |
| Vice Chairman Dave Oehlke | ✓   |    |                     |     |    |
| Senator Dave Nething      | ✓   |    |                     |     |    |
| Senator George Nodland    | ✓   |    |                     |     |    |
| Senator Margaret Sitte    | ✓   |    |                     |     |    |
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Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2236: Transportation Committee (Sen. G. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2236 was placed on the Sixth order on the calendar.

Page 1, line 12, remove "oral or"

Page 2, line 1, replace the second "agreement" with "addendum to a contract"

Page 2, line 4, remove "or that"

Page 2, remove line 5

Page 2, line 6, remove "operation, including agreements relating to dealership facilities or site control"

Page 2, line 10, replace "essential" with "material"

Page 3, line 4, remove "spouse, child, grandchild, parent, brother, or sister of the"

Page 3, line 5, replace "owner of a new motor vehicle dealer" with "individual"

Page 3, line 8, after "property" insert "subject to sections 51-07-26 and 51-07-26.1"

Page 5, line 14, replace "adequate" with "separate"

Page 5, line 15, after "agreement" insert "alone"

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Page 5, line 27, replace "adequate" with "separate"

Page 5, line 28, after "agreement" insert "alone"

Page 5, line 28, replace "adequate" with "separate"

Page 6, line 2, remove "If a manufacturer attempts to conduct a warranty or incentive audit on claims paid"

Page 6, replace lines 3 through 10 with "A manufacturer may not conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of that warranty or incentive payment."

Page 6, line 11, replace "a sales" with "an incentive"

Page 6, line 12, after "was" insert "false."

Page 6, line 12, after "fraudulent" insert an underscored comma

Page 6, line 13, remove "that"

Renumber accordingly

2011 HOUSE TRANSPORTATION

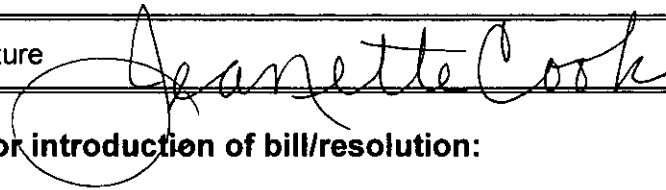
SB 2236

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee  
Fort Totten Room, State Capitol

SB 2236  
03/24/2011  
Job #15952

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

SB 2236 is a bill relating to definitions and warranty or incentive audits for new motor vehicle dealers; relating to prohibited acts for manufacturers, wholesalers, or distributors of new automobiles and automobile parts; to provide for application; and to declare an emergency.

## Minutes:

Attachment #1 - 5

**Senator Klein**, District 14, introduced the SB 2236. He stated that this bill will strengthen our North Dakota auto dealers' provisions. Many times auto manufacturers will require things that are onerous to our franchises throughout the state. This bill hopes to address that, and hopes to create a fair balance with a working relationship, but yet provide some sort of continuity and stability for the North Dakota auto and truck franchise dealers.

**Representative Delmore**: Is this modeled after legislation that we have in place in other states as well?

**Senator Klein**: Yes, most of the provisions of this bill already exist in other states, including South Dakota, Montana, and Minnesota.

**Representative Vigesaa**, District 23 and a North Dakota auto dealer, and recent Chairman of the North Dakota Auto Dealers: I would like to lend my support to SB 2236. The last two to three years have been interesting times for the franchise auto dealers across the country. Virtually every state took this incident that happened and used it for an opportunity to look at their franchise laws to see if there were any areas that needed to be tightened up. This committee has always dealt with the franchise dealer laws for both the auto and implement dealerships. North Dakota is not unusual in that we are taking a look at our franchise law this session. I know that the legislative committee within the auto dealers' group has worked very hard at crafting the language that will strengthen our franchise law a bit. I would urge the committee to support SB 2236 in its current form.

**Chairman Ruby**: Can you give us an example of how the existing laws aren't working for the dealers?

**Representative Vigesaa:** I think what got everyone's attention was when two years ago, they closed so many dealerships. I think that it was between 2,000 and 3,000 dealerships. Going forward, the dealers just want to have certain safeguards in place, so that manufacturers can't just come in and demand things from a dealer that aren't reasonable.

**Representative R. Kelsch:** I was told by some senators that there were some disagreements in the Senate. Is this bill what was worked out by both sides and is in front of us now?

**Representative Vigesaa:** Yes, there were a lot of negotiations on the Senate side between the manufacturers and the dealers. I think that for the most part they did come to an agreement. I don't think that it is total agreement, but as I have witnessed in many pieces of legislation, you don't always get total agreement on both sides of the issue. The dealers are very comfortable with the language that currently exists in the bill. I'm sure that you will hear some opposing testimony this morning from the manufacturers. A lot of things were compromised on both sides.

**Matthew Larsgaard,** Automobile Dealers Association of North Dakota spoke in support of SB 2236 and provided written testimony. See attachment #1.

**Representative Vigesaa:** When were their current laws enacted in South Dakota, Minnesota, and Montana?

**Matthew Larsgaard:** In South Dakota a year and one half ago they had a major rewrite to their franchise legislation. Minnesota has addressed these concerns in their last two legislative sessions. Montana addressed them last year. Many of the same concepts are in the bill before you.

**Representative Weisz:** Does the bill apply to implement dealers?

**Matthew Larsgaard:** Within Title 50-51 we have buyback provisions which identify the tools, parts, merchandise, new motor vehicles, and farm equipment machinery that has to be repurchased from the manufacturer in the event that a dealer is either elected to terminate their contract, or the manufacturer has terminated them. Again, the buyback provisions apply to both new car dealers and farm equipment dealers. Merchandise is a word that is used within that section.

**Representative Weisz:** But, this bill will not apply at all to franchise implement dealers, correct?

**Matthew Larsgaard:** No.

**Vice Chairman Weiler:** In your testimony you talked about the bankruptcy that Chrysler and GM went through, and that they came back as new companies with new rules. It says that all 64 of North Dakota's GM and Chrysler dealers had worthless franchise agreements. The new agreements that these manufacturers brought forth, you said, were clearly violations of North Dakota law. How many of those 64 dealers signed that agreement?

**Matthew Larsgaard:** To my knowledge all of the GM dealers had to sign the original participation GM agreement, which stripped the dealers of their rights and demanded that the dealers drop any other brand that they had in their store.

**Vice Chairman Weiler:** If all 64 of those dealers are now operating under those contracts that break North Dakota law, how is it then if we pass a new law, that we can supersede the contracts that they have signed?

**Matthew Larsgaard:** The 64 dealers were both GM and Chrysler dealers. The contract that was referenced was put forth by GM. Since that time, I believe it was last fall, GM developed a new five year agreement that all of our GM dealers signed. Whether or not the original participation agreement supplements the new contract, I don't know. However, as we look forward, on page 6 of the bill, line 12, Section 4, it says: "This act applies to all dealership agreements in effect on the effective date of this act, which do not have an expiration date and which are continuing contracts. A contract on the effective date of this act, which by its terms will terminate on a date after that date and is not renewed, is governed by the laws that existed before the date of this act." So, a lot of dealership franchise agreements are subject to automatic renewal. It varies with the manufacturers. Most of the contracts will fall under the protections of this bill if this body elects to pass it.

**Vice Chairman Weiler:** If we pass this law, will this end up in a law suit at some time?

**Matthew Larsgaard:** I don't believe that it will. Again, 47 states have passed franchise legislation. What we are doing here is not unique to North Dakota. I am not aware of any other states that have encountered any legal proceeding regarding some of the provisions that we have within this bill.

**Representative Gruchalla:** Ford Motor Company came in and made a round of closures in North Dakota in the past. Are you saying that if these laws would have been in effect, they would not have been able to do that?

**Matthew Larsgaard:** I don't have specific knowledge regarding those closures. If it was pre-2005, they would have had more liberty to close dealerships. The Prohibited Acts Section was established in 2005, and those protections that we currently have, such as, right now it is currently illegal for a manufacturer to coerce a dealer into dropping any other franchises that they may have in their building. It is also illegal for a manufacturer to demand that the motor vehicle dealers accept delivery of new motor vehicles that they have not ordered. Prior to 2005, those could have been circumstances that the manufacturer could have used to close those dealerships.

**Representative Gruchalla:** This certainly would not be retroactive?

**Matthew Larsgaard:** No, and furthermore, the dealerships that were terminated in the recent GM and Chrysler bankruptcies, this would not reinstate those dealerships.

**Representative Delmore:** I would assume that agreements that are made between the dealers and the manufacturers have a limited time, both to the benefit of the dealer and the manufacturer. How long is the typical agreement?



**Matthew Larsgaard:** It varies from manufacturer to manufacturer. It is my understanding that General Motors is five years. There is another manufacturer that has a couple of years. Toyota is six years. Another is two years.

**Representative R. Kelsch:** I don't know much about franchise laws. Are these franchise protections similar to restaurant franchises?

**Matthew Larsgaard:** I don't have specific knowledge within that industry. We worked with a franchise attorney in Minnesota to develop this bill.

**Chairman Ruby:** If you are a mechanic or repair shop, your price from the parts house is much better than the average person walking in. If you are a contractor, your price is much better from a lumber yard than the average person walking in, since it is based on volume. I am wondering if it doesn't make sense to have some kind of provision based on the amount of sales.

**Matthew Larsgaard:** This bill does not restrict a manufacturer from offering volume bonuses to dealers. We think that is a reasonable concept.

**Representative Owens:** You said that you had asked and not gotten an answer to the question, if the original agreement supplemented the new agreements. Are you referring to the franchise agreement that was in place prior to the bankruptcy?

**Matthew Larsgaard:** I meant the participation agreements given when the manufacturers came out of bankruptcy, which allowed them to become a franchise dealer with the new GM. Since that time, GM developed new five year agreements. Whether or not the original participation agreement, which stripped dealers of their state protections and demanded that they drop any other brand within their dealership, is still in effect and supplements the new agreement, I don't know.

**Representative Owens:** I understand your points about the agreements. You referred to agreements that were illegal. Yet, you were talking about agreements that were made after our 2005 state statutes were put in place. Some of the things that you have mentioned are listed under prohibited acts. How could they be in the agreements if they are illegal in this state? Wouldn't that part of the contract be null and void in that case?

**Matthew Larsgaard:** I am not a lawyer, but it is my understanding that when the dealers were forced to waive their rights in those agreements, they waived all of their state protections.

**Representative Gruchalla:** Hasn't the practice of requiring dealers to have only one franchise been in place for several years? Isn't that common practice now?

**Matthew Larsgaard:** It is common that a manufacturer will want a dealership to maintain an exclusive facility for their brand alone. However, if you look on page 4 of the bill, line 6, Provision 5, it is currently illegal and has been since 2005 for a manufacturer to coerce or attempt to coerce an auto dealer 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. So, it is currently illegal for a manufacturer to demand that a dealer drop any other franchised that they have within their dealership premises.

**Representative Gruchalla:** So, if you have a dealership that has Toyota and Honda, they are just telling you that you have to have a separate store?

**Matthew Larsgaard:** Could you rephrase that question?

**Representative Gruchalla:** I think that what you said was that the manufacturer was violating state statute.

**Matthew Larsgaard:** They did violate state statutes when they created the new participation agreement. However, they were able to circumvent our state law by, again, forcing the dealer to waive their rights.

**Representative Delmore:** When you say they forced the agreement, what were the ramifications if the dealers didn't sign the agreements?

**Matthew Larsgaard:** Here are the ramifications. General Motors sent the agreement to all of our dealers. It said sign it, or you are not a dealer. It was not open to negotiations. The dealers had no other option. Many dealers invest hundreds of thousands of dollars in representing one brand alone. So, it would be extremely detrimental to these family owned dealerships to *not* have signed that agreement.

**Representative Delmore:** How many dealers do we have today in North Dakota with multiple franchises?

**Matthew Larsgaard:** I don't know the exact number, but I would guess it would be greater than 80%. The vast majority of our dealerships are dual.

**Chairman Ruby:** You define semi-trailers in the bill. We had an issue dealing with a bill and registration of semi-trailers. As we look at it, it would depend how you license it, whether it would be registered as a semi-trailer. I think the definition in this bill might be a little limiting.

**Matthew Larsgaard:** We pulled that definition out of Century Code, and I am not sure where we pulled it from. We tweaked it slightly to distinguish the tractors from the trailers.

**Chairman Ruby:** We should have some discussion on "line-make" and all the different types of ... There is one manufacturer or parent company that might have separate line-makes. How does this apply to all of these line-makes, and does this give a dealer who sells one GM product the ability to sell all GM products?

**Matthew Larsgaard:** This definition of line-make that we have provides clarity in identifying those groups of motor vehicles that are offered for sale, lease, or distribution. The manufacturers have expressed to us that under our definition of line-make, GMC, Buick, Cadillac and Chevrolet, would be the same line-make as they are all GM brands.

However, we believe that statement would be inaccurate. I don't want to speak for the manufacturers, but if you look at the definition of line-make, the bill states that it is: those vehicles that are under a common name (line 15), trademark, service mark, or brand name of the manufacturer, distributor, or factory branch. Brand names are GMC, Buick, Cadillac, or Chevrolet. Under our definition of line-make they would be considered separate line-makes and separate franchises.

**Representative Owens:** Referring to definitions, I was curious as to why the change of the definition of "good cause" on page 2 line 8, since it is already defined in Century Code in that very section, page 292, 51-07 01.1. The one in Code is more detailed. Your definition is on page 2, line 8.

**Matthew Larsgaard:** Because, 51-07 01.1 only applies to farm equipment dealers. This definition section does not apply to 51-07 01.1. We are talking about two different sections of the Code.

**Representative Owens:** Why create a whole new definition?

**Matthew Larsgaard:** I think the definitions are relatively similar.

**Representative Owens:** I agree with that, but I did notice the difference between material and essential.

**Matthew Larsgaard:** The manufacturers did not like the word essential. They stated that they identified any requirement within the franchise agreement as essential. There was no non-essential versus essential. So, as we look at the word material, again, good cause is restricting the manufacturers from (one word inaudible) among dealerships. Without the word material, a dealer could be guilty of a good cause infraction by merely having one of their technicians out of uniform, or they may not have enough salesmen on the floor. That would be a reasonable requirement to have three salesmen instead of two. We don't think that infraction would be reason to establish good cause. The word material is a word that we believe is going to encompass the idea that a major infraction, one that would constitute good cause, would be something to the effect of a dealership not offering warranty repair work.

**Representative Owens:** It says "or factory branch", could line-make be just a single automobile line, like Corvette or Suburban?

**Matthew Larsgaard:** Models are not included under a line-make.

**Chairman Ruby:** Is there a definition of a factory branch?

**Matthew Larsgaard:** I will get that definition for you.

**Gregg Jacobson,** owner of RZ Motors Inc., Hettinger, North Dakota, spoke in favor of SB 2236 and provided written testimony. See attachment #2.

**Tom Balzer,** North Dakota Motor Carriers' Association spoke in support of SB 2236.

**Tom Balzer:** We have been working with the Automobile Dealers Association on this bill as we represent a number of truck dealers. The issues that we have are especially unique to our situation. One of which is the fair treatment of dealers that is on the bottom of page 3. In the trucking industry the dealers or manufacturers will look at how many trucks are run in that area. Then, they will base their quantity sells, or their minimum sell for the dealer on how many trucks are in that area. If you have FedEx and UPS there, they are not buying their trucks from the North Dakota dealers. The issue that a lot of our dealers are fearful of is the usage of quantity sell or the minimum buys to basically drive them out of business. Another issue that we have is use of exclusive facilities. Most trucking sales floors are the smallest part of the dealership. Our dealers make their money on service and parts. The third part is warranty audits, we want a clean slate. We want to be able to do the warranty work for our customers and be free and clear of those. Once that year is gone, not have to worry about them coming afterwards. Those are the three areas that we support, and we support the bill in its entirety. We think that in the Senate we got as close as we could working with the manufacturers and did make some changes to the bill. We would ask for your support without amendment. Chairman Ruby, the definition of semitrailer is correct.

There was no further support for SB 2236.

**Joel Gilbertson**, Alliance of Automobile Manufacturers, spoke in opposition to SB 2236.

**Joel Gilbertson:** The Alliance is an association of twelve vehicle manufacturers that include: General Motors, Chrysler, and Ford, as well as, some Asian manufacturers and German manufacturers. I want to discuss two things. The first is sort of a reminder that what we have here in this bill is government telling businesses what has to be in your contract. The reason that I mention that is from a public policy perspective, I think it is the obligation of Government to step back and say, "Let's be reasonable, if we are going to do this." Let's not do more than is necessary as we start making requirement of what can or cannot be in a contract. The second thing I wanted to do is introduce Ross Good. Ross is from Chrysler. He will be going through the amendments that we are seeking to the bill. He will be talking on behalf of the industry and go through the amendments that we have.

**Ross Good**, State Government Relations for Chrysler and speaking on behalf of the Alliance of Automobile Manufacturers, spoke to address some of the specific concerns of the group.

**Ross Good:** I would like to thank Matthew Larsgaard and the great work that the North Dakota Auto Dealers' Association did. When we met in the Senate there were many difficult issues, and we were able to work through most of them. We only have questions with four or five points in the bill now. These can be easily be addressed with one or two word changes or removal of some words. It is all very simple. I would also like to address the bankruptcy or the difficult economic time that we all suffered through. It is not really the point of the bill, but it seems to be a point of contention here today, so I would be glad to address any issues or questions you have related to Chrysler at the end.

To address the specifics of the bill, we are going to oppose this bill unless amended, and these are the four points we would like to make. I would like to discuss the changes we would like to see in this bill. See attachment # 3 and amendment #4.

**Chairman Ruby:** Would you anticipate that if we don't use the word material, I as Matthew spoke about, such as not wearing the correct uniform, that would be considered under the reasonable, fair and equitably applied?

**Ross Good:** When we are talking about cases of good cause; what we are really talking about is dealer termination. I don't think that anyone can point to an example in the history of North Dakota where a dealership has lost its franchise because the mechanic wasn't in uniform, or because they had two sales people rather than three. That is not why someone might lose a franchise. It would be bigger business issues. I really don't understand the point of "material", but if it is in existing Code then we can probably live with that as long as we adopt the same understanding of good cause that the rest of North Dakota understands and enjoys.

**Ross Good** continued to discuss his testimony. Attachment #3 – **Definition of Line-make.**

**Representative Delmore:** Is there a definition in law for "line-make" now, or is there a reason that other states would want this particular language?

**Ross Good:** I don't know of the definition of line-make in other state codes. Maybe there aren't any, because we are sort of plowing new ground here. There are some higher end manufacturers that two things seem to go together, and they sound like the same company, but they are really not. So, they tend to separate those manufacturers. For our point in North Dakota, we are not really seeing a reason why we need to define it here. We could spend considerable more time here trying to define it, but the point is really, what point are we trying to solve here? We really don't see one.

**Representative Owens:** What is YOUR definition of "line-make"?

**Ross Good:** I didn't provide a copy of that definition because as twelve manufacturers get together and try to define something is like trying to design a car by committee. It is not an easy thing to do. So, we had a definition that was unwieldy at best. It was very long and satisfied all the needs of our members. It took us almost a year to negotiate between our members. We presented that, and the dealers rejected. I can understand why they did reject it. It is very long, intricate, and detailed. In the end it really didn't solve any problems for North Dakota. Our compromise position is that we have our definition, and you have yours, but in the middle, where we are currently at, it seems to be working. So, why change it?

**Ross Good** continued to discuss his testimony. Attachment #3 - **Definition of manufacturer.** He stressed that the word "control" is a very difficult word for us to address.

**Ross Good** continued to discuss his testimony. Attachment #3 – **Exclusivity.**

**Ross Good:** We talked about a lot of things here and we agreed with the dealers on most of their proposals. It was in 2005 when franchise issues were addressed. Maybe it is time for a fresh up, which is fine. We agree with many of the previously contentious issues. We worked hard to come together to resolve a lot of issues. But, there are still these four issues. With the amendments that we offered, we would go neutral on the bill.

**Representative Weisz:** On your last point, the current language says "require", so doesn't that already give you the opportunity still to enter into an exclusive agreement with a dealership?

**Ross Good:** The heading of that is "Illegal Acts" and it says that the manufacturer shall not require. That is correct, we do not require it.

**Representative Weisz:** It doesn't then prohibit you from entering into an exclusive agreement, does it?

**Ross Good:** Yes, it does in the wording of this bill. If that is what you mean, and as long as we retain that right, and it is made clear up front. Sometimes it is important to understand legislative intent as we do these things. Chrysler doesn't require exclusivity, but when it is important to the dealer, we like to maintain that right to do so.

**Representative Heller:** If you were allowed to enter into an exclusive agreement with a dealership, could part of that agreement be to sell vehicles at a lesser cost to that dealer than those that are not exclusive. Then the exclusive dealers would be able to sell the vehicles for less than the ones that are not.

**Ross Good:** It is my understanding that you can't write a contract that is in violation of other laws. Clearly we have to make any sales incentive program available to all dealers in the state. We have to make sales allotments available to all dealers in the state. We cannot go into the contract and carve out specific clauses that are illegal in North Dakota state code. So, no, we wouldn't be able to do that.

**Representative Onstad:** Do you have different classifications for dealers, such as rural and urban?

**Ross Good:** I believe that there are, depending on the relevant areas that a dealer services. There are different definitions of the level of the franchise agreement under which a dealership is licensed.

**Representative Onstad:** If there is a different level, are there different requirements for each level?

**Ross Good:** Yes, they are.

**Representative Onstad:** When you get a franchise, is there a standard form?

**Ross Good:** They start out the same, but there are specifics for every location. They change as they develop. To say that a rural dealer may be different than a city dealer, that

is true. But to also say that one city dealer may have one different needs or requirements than another city dealer, which may also be true too. We also have dealer development programs. We may want to develop a minority dealer for some reason. Or, we want to develop a local candidate for some reason. We enter into different contracts with them based on their experience, level of financing, or many other things. So, to say that any two contracts are exactly the same, wouldn't be accurate.

**Representative Onstad:** You would say that those franchises are negotiable then? If you had a preference, would you want all dealers to be exclusive?

**Ross Good:** To some degree, but we all have points that are not negotiable.

**Representative Onstad:** So, if you are going to require me to have a separate building to sell my separate varieties, is that negotiable?

**Ross Good:** We don't require anybody to have separate facilities. We are not asking for that at all. What we are asking for is the right to make an offer of other consideration in exchange for that exclusivity. We **never** require it.

**Representative Onstad:** If you had a preference then, you just as soon that all dealerships be an exclusive dealer, not multiple?

**Ross Good:** If I had my choice, I would have all dealers that are healthy, profitable, and making money and selling cars. With respect to big city with a dense population, maybe exclusivity is the right choice. For a rural dealer with sparse population, that may not be the right choice. There are different circumstances in different places. I cannot say that I would rather have exclusivity everywhere.

**Representative Onstad:** But, you would offer more incentives to a dealer with exclusivity?

**Ross Good:** If we felt that the market could support it, we might offer that, but not in every case. If there are not enough people there to buy the cars, it doesn't make sense for us to offer exclusivity. We have no intention of driving our dealerships out of business. We want them to make money. They are our customer. We make money when they sell cars.

**Representative Onstad:** Do you look at the profitability of a dealership as part of further considerations to keep a franchise? Do you think that your definition of profitability is the same as Mr. Jacobson's?

**Ross Good:** When we are talking about offering valuable consideration, the profitability of a dealership is not something that we offer. That is the responsibility of the dealership. That includes the lease that they may have, or the property that they may own. The profitability of a dealership is not valuable consideration that we can offer to them. That is outside of the question of valuable consideration. We can only offer the things that we have control over. We are responsible for the other things that help make him profitable.

**Representative Onstad:** So, you make a recommendation to a dealership to change the front of their store. The dealer thinks it is serving him fine. What kinds of decisions are made about something like that? Do you accept that?

**Ross Good:** Chrysler doesn't require anyone to change the front of their store. We may make a suggestion, or even help them to make that change. That help may be considered valuable consideration.

**Representative Delmore:** You seemed to say that each of your contracts could be unique and different. Is that true? Are they categorical?

**Ross Good:** I don't know that any two contracts are identically the same. Perhaps, if you are buying a car, perhaps, one person may offer more down than another. One might finance differently. All of those things are part of the sales contract. A franchise contract works in much the same way. We do have tiers. We have different things that we expect of different people in different areas. Chrysler has three basic areas in which we work. We start with the standard franchise agreement and then modify it with the needs of that particular location and that particular dealer principle. So, to say that any two are exactly the same, I don't think that is correct.

**Representative Delmore:** I am just asking because I don't know.

**Vice Chairman Weiler:** In Matthew's testimony he talked about the contract that manufacturer's created that forced a dealer to waive all of their rights under our state laws. Was that common practice throughout the entire country or just in certain parts of the country?

**Ross Good:** That was not a particularity of the Chrysler contract. So, I have no basis on which to speak to that.

**Representative Onstad:** What were some of the criteria that were used when some dealerships lost their franchise a few years ago?

**Ross Good:** I would be glad to come to your office sometime and have that conversation with you. It really doesn't address the particularities of this bill. A few of the top point were: how well a brand was represented in an area, the ability of that dealership to meet certain sales targets, and customer satisfaction issues. None of that has to do with the bill before us today.

**Representative Onstad:** Wasn't that a reason why 47 states were looking at their franchise laws? The dealers thought they were safe. It is the basis of why we are here today. For the public's perspective, especially in my area, two franchises seem to be very successful, yet one was denied their franchise and the other wasn't.

**Ross Good:** The bankruptcy process and the difficult economic period that we went through were painful to many people. The auto manufacturers suffered as well. Our employers and suppliers suffered. We lost about 1/5 of our dealerships, but the company lost about 1/2 of our employees. We lost more than 1/3 of our manufacturing facilities in the



United States. Several suppliers went bankrupt and didn't come back. It was an incredibly painful time, but it wasn't like one side suffered and others didn't. We empathize with the dealers in that regard. That was why on many of the provisions of the bill we were able to work and come together in a compromise position.

**Representative Vigesaa:** Can you speak to how it is handled when a franchise law changes in mid-contract?

**Ross Good:** Some states have retroactivity clauses. We have fought very hard against those. It is difficult to say, here is the agreement, and then have someone else come by and rewrite your agreement. It has happened in a couple of places this year. So far we have been able to generally come to agreements on those things. In some places we haven't. I guess if a problem arises from that, and we feel that our rights were violated, who knows what will happen. I'm sure that it will be the same with the dealers. It is a very difficult situation when retroactivity clauses are input. It is unknown; we haven't really faced that yet where it has created a problem that we felt that we needed take action.

**Representative Vigesaa:** Are there any concerns with the language with the concerns in this particular bill about the application of the legislation?

**Ross Good:** At this point we have not raised an objection.

**Tom Kelsch,** General Motors, spoke in support of the proposed amendments brought forth by Mr. Good (attachment #4).

**Tom Kelsch:** I will address the questions that Representative Delmore asked about what other states around the area are doing. On the exclusivity issue in the Senate the manufacturers offered to have the same exclusivity language that Minnesota, South Dakota, or Montana has. The auto dealers weren't in agreement with that. They could pick the one that they wanted, but it didn't get done. The manufacturers have come back and basically agreed with the dealers' language on that, with the exception of saying that if someone wants to agree to something different and offer additional consideration, they could do that.

Representative Weisz, you said that it uses the word, "require" there. Our concern from a legal standpoint is that if I, as a manufacturer, contract with you and say that I will pay you X number of dollars more for something – to remodel your store, or put up a bigger sign for GM- and we voluntarily agreed to that. But, then we pay you that money, but you don't do it. Now what happens? By law we can't require you to do any of these other things, but we have paid you something for that. Our concern then is that if it just says that we can't require these things, and you don't have that exception in there, how can we enforce that side agreement? That is why we feel that the added language is important in there. Even though it does say, "require".

There was a question on the line-make definitions. I'm not sure what all other states have, but line-makes are defined in each franchise agreement. We feel, as far as GM is concerned, that that is covered.

Let's refer to the examples that Mr. Larsgaard gave about someone not having proper uniform on or two sales persons versus three. In the requirements in the definition of good cause because it currently states that good cause means to substantially comply, it is already protecting the dealers for minor incompliance with the franchise. It would have to be a breach of substantial compliance. It is our position that you would not have to have the word material in there.

Our bigger problem that Mr. Good testified about is with the "different from" in the language. That means that everyone has to be the same, and that every contact has to be the same. As Mr. Good testified, they really aren't. We would prefer the words, "unreasonable when compared to" other similar situated dealers.

Those were the main points that I had. Other than if you look at the items complained by the dealers forcing a company that might force or prevent exclusivity, or force someone to build or move their franchise, those are covered in the bill. They are not being challenged by the manufacturers. They are already in existing law on page 4 paragraph 5. That prevents a manufacturer from coercing or attempting to coerce a dealer from not carrying dual lines. Then on 8, it covers requiring the retailer to unreasonably renovate or remodel, or recondition, or change their location, or make unreasonable alteration to their premises. Plus the language in 6 with the only exception of if they agree to do more for that added consideration. If you look at the whole part of this bill, the requested changes by the manufacturers are relatively minor and just clarifying things. We would request that you adopt the amendments.

**Vice Chairman Weiler:** With regards to GM, do you know if it was common practice throughout the country to ask all the dealers to waive their state rights?

**Tom Kelsch:** I think what happened while they were in bankruptcy under the reorganization, that the bankruptcy courts had certain requirements for the whole country. Since they were dealing with a new company, they had to have new contracts. It is my understanding that once they got out of bankruptcy they had to comply with North Dakota law. They couldn't have a provision that would waive North Dakota protections. That is why the manufacturers aren't challenging paragraph 13 on page 5.

**Representative Delmore:** We've seen 47 states react to the information that we have gotten. It is clear that people are concerned with what happened. You talked about the dialog that went on in the Senate. How many amendments and changes were made to the bill in the Senate?

**Tom Kelsch:** There were a number of them. I don't have the exact number. They did a good job. It got down to about 4, so maybe they changed about 10 things. I think that the major protections in here for the dealership and major problems that the dealers are concerned about aren't really being affected in these in these four changes that we are asking for now.

**Representative Delmore:** Will the line-make portion of this be more important to a dealership with multiple franchises, instead of someone who just has one franchise? Would it be a little easier for them to comply? Is that the reason for it?

**Tom Kelsch:** General Motors supports the Alliance's position on the line-make. We haven't had a problem in North Dakota with line-make problems or definitions. If the committee wanted to, GM could live with the current language in there. In the Senate the manufacturers had their longer, more detailed definition. We supported that. We support removing it, as the Alliance is suggesting taking it out of here. But, we could live with the suggested language that is currently in the bill.

**Representative Vigesaa:** If a GM manufacturer had two stores 25 miles apart, and GM offered dealer A a very, very lucrative consideration in order for them to remain exclusive, with the thinking that possibly they didn't need both of those dealers in that location. Then dealer B also enters into an agreement to remain exclusive, but gets a much, much less lucrative deal. It would be one way for GM to incentivize dealer A to have a very strong competitive advantage over dealer B in order to eventually eliminate dealer B. Could you see that that language could possibly lead to a scenario like that with any manufacturer?

**Tom Kelsch:** It may be possible, but I don't know. It is not my area of expertise.

**Representative Vigesaa:** I was just putting forth a scenario that that type of language could possibly lead to that type of scenario.

**Tom Kelsch:** The way that we look at these franchise laws, they are laws that the state is saying that you can't do these things or preventing the manufacturers from requiring someone else to do, or even preventing the manufacturer from doing. If it goes beyond those types of things, where it is a voluntary agreement for added consideration, I think that shouldn't be prevented. There should be some capitalism, that you as a dealer have certain things to offer our company or your manufacturer because you want to be more aggressive and have a better facility. If you come and propose that to your manufacturer, and they agree that because of how you have been operating that this would help your business and would be good for both the dealership and the company. Why should the state come in and tell you what to do? As long as the basic requirements of franchise are being met and you are being protected. There should be some free market where both sides are able to contract, and it is not a contract of adhesion.

**Representative R. Kelsch:** Doesn't current law already take into consideration what Representative Vigesaa just stated, in Section 2 57-07-02.3 and on the top of page 5 line 1? Wouldn't that be the scenario that **Representative Vigesaa** just laid out?

**Tom Kelsch:** I stand corrected.

**There was no further opposition to SB 2236.**

**Vice Chairman Weiler** asked **Matthew Larsgaard** to review the new amendments from his standpoint.

**Matthew Larsgaard** explained the amendments and explained why they resist the amendments in attachment #5.

**Representative R. Kelsch:** Are you telling us, this is the bill, take it, and pass it. There is no more room for compromise? I am assuming that you lobby for the dealers and the implement dealerships as well. Are your contracts exactly the same for both of them?

**Matthew Larsgaard:** They are the same. I work for both associations under the exact terms and conditions.

**Representative R. Kelsch:** It is a matter of contract law, is basically what I was getting to.

**Matthew Larsgaard:** We don't believe that we are being unreasonable in asking for the bill in its present form. We have literally spent hours and hours negotiating with the manufacturers. If you were to look at the bill mock-up there is red and green ink all over it. A lot of these amendments that we have before us today that were proposed by the manufacturers were addressed on the Senate side. We have addressed these issues, and I have given you what I hope are compelling reasons why we resist those amendments.

**Representative R. Kelsch:** I think that you did bring compelling arguments. The only thing was that I thought that perhaps a couple of them made sense. That is why I was asking you about the art of compromise.

**Matthew Larsgaard:** What would they be, may I respond to them?

**Representative R. Kelsch:** I thought that when the scenario was brought up about, "require", I thought that that argument maybe made a little bit of sense to me. The biggest reason that I say that is that I have seen it my industry. It seemed to make some sense in the exclusivity part of it. I guess that living in Mandan, I have watched one business make changes, and it seemed to me that it had something to do with, not exclusivity, but picking up another brand. There are just some things that I don't understand. If you can explain them, that would be great.

**Matthew Larsgaard:** The language states that the manufacturer cannot REQUIRE a dealer to maintain an exclusive facility in order to participate in a sales incentive, credit rebate, or discount. I am not a lawyer, but I don't understand why there would be a problem if the dealer elected to enter into a voluntary with the manufacturer. We are not restricting the dealership from coming to terms with the manufacturers. All of this provision, specifically Provision #6, restricts a manufacturer from **requiring** a dealership to maintain that stand alone facility under our state laws.

**Representative R. Kelsch:** Do we have any exclusive dealerships in North Dakota?

**Matthew Larsgaard:** Yes, we have several. The majority of our dealerships are dual.

**Representative R. Kelsch:** Representative Vigesaa, are you one?

**Representative Vigesaa:** Yes. Chrysler, Dodge, Jeep

**Representative Owens:** I still don't understand the "good cause". Every contract that I have ever done has included the requirements of "material breach" and defined what it was

in the contract. So, why do we even need to state "material" or even have that portion in this law to duplicate it?

**Matthew Larsgaard:** Are you asking why we have "good cause", or why we have the work *material* within the definition of "good cause"?

**Representative Owens:** Why we are trying to duplicate "good cause", because you state that you want to distinguish between every little component of possibly any contract versus material breach. What I am saying is that every contract that I negotiate has "material breach" defined right in the document. Then there is no misunderstanding between the two parties what is considered an annoyance or a disagreement versus a true material breach where they have 30 days to remedy or they go into default.

**Matthew Larsgaard:** Within a franchise agreement there may or may not be a definition of "good cause" for termination. That may vary from manufacturer to manufacturer. Again, that may be one of the requirements within a franchise agreement that is NOT subject to negotiation. Hence, we need a definition within our state law to insure that a definition of "good cause" is both reasonable and provides a baseline of equity between the relationship of the manufacturer and the dealer. As far as the word material, again, we want to distinguish a material breach from a reasonable breach as we look at establishing "good cause".

I told the committee that I would get a definition of "**factory branch**". In auto manufacturing a factory branch would be a manufacturing facility that produces a specific component or part of a vehicle that could be later transported to the main plant for final assembly. It could also mean a factory that belongs to a company whose headquarters are in another location or country. In that definition it would be reasonable to include "factory branch" within the definition of line-make.

**Representative Owens:** I still have a problem with us trying to define "material" in there. We haven't defined what a material breach of the contract is just by simply stating material. Let me take you to my last question, which is "any person controlled by the manufacturer". That seems awfully broad to me. I can see why there might be some trepidation on certain people connected with the manufacturer, but that still seems awful broad. You stated that we are not doing anything unique to North Dakota. If we are not, then we don't need this. You really meant unique to the industry and the surrounding area? You didn't mean unique to North Dakota because why would we need it in the bill if we already had it in law, and it wasn't unique to North Dakota? Is there any way we could get the two groups together to further define that section? It seems awful broad, and I am not comfortable saying anybody right now.

**Matthew Larsgaard:** I do have a handout that identifies South Dakota, Minnesota, and Montana's state law concerning manufacturers and identifying any person or entity controlled by a manufacturer. We feel comfortable that that is reasonable. Would you like me to hand that out?

**Vice Chairman Weiler:** We can get it after the hearing. That would be fine.

**Vice Chairman Weiler** asked Ross Good if he would like to further respond to the amendments.

**Ross Good:** We stand by our amendments. We think that they offer some great clarifications and also provide some sort of indication of legislative intent with the bill. If those amendments were adopted, the Alliance and member companies would remove our opposition to the bill.

There was no further testimony on SB 2236  
The hearing was closed on SB 2236.

The committee was in recess until 11:30 AM.

**Chairman Ruby** brought SB 2236 back before the committee for discussion or a motion. He stated that there were some problems raised.

**Representative Weisz:** It appears that we have the bill as is, and then we have the six suggested changes. To me the discussion might be on those. On the last suggested one that talked about "require", I'm not sure that you need the new language that is suggested, but at the same time, I don't see that it hurts anything. Maybe it could, by opening up the potential ...

**Vice Chairman Weiler:** When you say you are not sure that the new language is needed, are you talking about the amendments or the proposed bill?

**Representative Weisz:** The new language that was suggested to further amend the bill. I don't think that adding the language is going to change anything on the dealer end. From my perspective I wouldn't have a problem with it. The only other one that I think there is an issue with is the language "or controlled by the manufacturer". I don't know what the answer is, but I do have a problem with leaving that language in the current bill. I am okay with leaving the new language in under the Require the Retailer. I don't like the current language "or any person controlled", but I am not sure that you should just take it out and not do anything. What I have heard, that may not eliminate the issue of where you do set up an agent for the manufacturer to enter into certain agreements that could actually do the franchise agreements that say we are not the manufacturer.

**Representative Owens:** I am also having problems "with any person". I think that Montana's version is very clear. We could add that. This was given to us in a document ADAND Concerns Regarding Manufacturer Amendments, attachment #5.

**Representative Owens:** On the other issue on the last item, yes it restricts them from requiring exclusivity but it doesn't restrict them from entering into agreement of it, if it is a mutual agreement. However, there is obviously some contention to that paragraph. I have no problem with changing the wording on the end to clarify that.

**Chairman Ruby:** I was wondering too, if it is really necessary.

**Representative Weisz:** We often add language to add comfort levels on both sides, so that it is clear what it does. I don't have any problem with that.

**Representative Weisz:** Your objection to the language “manufacturer or any person controlled by the manufacturer”. What happens if you change that to “or any person *representing* the manufacturer”?

**Tom Kelsch:** I think that the auto dealers don't want a manufacturer to get around the franchise law by having some other entity do something that they couldn't do. If that is the concern, rather than change the definition of who a manufacturer is, the best argument would be to put in a new prohibitive act that says that a manufacturer can't do something through a subsidiary that they are prohibited from doing under this act.

**Representative Weisz:** Even if we do a Subsection like you said, then are we leaving something else out to argue about? I don't know how broad it is “to represent”. I can see the concerns of the dealers.

**Tom Kelsch:** From the manufacturers' position, they used to have General Motors Acceptance Corporation that financed, and it may be wholly owned. So, they could say that they are controlled by General Motors. By defining them in this, you have just made that finance company a manufacturer who has to comply with all the manufacturing requirements. They probably haven't signed the franchise agreements with them, but they are defined as one, and now how do they do that?

**Representative Weisz:** So, the biggest concern is putting any of that language under a definition.

**Tom Kelsch:** So, I am not sure that changing it to “representative” really helps.

**Representative Weisz:** It might be acceptable under another part, but not in a definition. It should be done in a separate section if we want to do it.

**Representative Owens:** Would you comment on the Montana definition of “manufacturer” on page 5 of attachment # 5?

**Tom Kelsch:** That would deal with the concern with the manufacturers have dealing with a finance company.

**Representative Owens:** I think that if we used that, there wouldn't be any way to get around our state law.

**Tom Kelsch:** It does take care of the example that I indicated. That condition would make it better.

**Representative Weisz:** I would agree with Tom that anything we want to do shouldn't be in the definition part of what a manufacturer is. It could become a problem and should be defined in a different part of the bill.

**Chairman Ruby:** Matt, that was your language, would you like to respond to this?

**Matthew Larsgaard:** We had a law firm in Florida review our state laws, and they gave us some recommendations on definitions. After that, we hired *another* franchise attorney from Minnesota to review our language. They thought that this was good language. With respect to the concerns that a captive finance company may be pulled into this, it is important to understand context. What we are doing is defining manufacturer in the context of prohibitive acts. If the captive finance company becomes the arm by which the manufacturer distributes motor vehicles, and that is a long shot, they should be pulled into it. As we look at Montana's language that seems reasonable language to us. Again, our only concern is the manufacturer trying to circumvent our state laws. If this committee believes that language would clarify our definition, we would not be opposed to it.

**Chairman Ruby:** This is preemptive; there hasn't been any situation where a finance company has been used to usurp it.

**Matthew Larsgaard:** That is correct.

**There was no further discussion.**

**The bill will be discussed further in afternoon committee work.**



# 2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee  
Fort Totten Room, State Capitol

SB 2236  
03/24/2011 PM  
Job #15978

Conference Committee

Committee Clerk Signature

*Mary Brucker*

## Minutes:

**Chairman Ruby** brought SB 2236 before the committee. He called for a representative to explain where they agree now.

**Tom Kelsch:** Matt and I agree where it says "any person controlled by the manufacturer" that this language can be deleted and add "any person who in whole or in part offers for sale, sells or distributes any new motor vehicle to any new motor vehicle dealer." Their concern was that a manufacturer couldn't make a deal with a distributor outside of some of the legal requirements because it was a distributor and not a manufacturer. We are in agreement with that language as it addresses the concern that General Motors had as far as any person controlled by the manufacturer. We haven't been able to reach an agreement on all the other issues.

**Chairman Ruby:** A "manufacturer means any person that..." and right away it would start out with that language?

**Tom Kelsch:** No, at the end. You would delete "any person controlled by the manufacturer..." and the language "any person who in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer."

**Matthew Larsgaard, Automobile Dealers Association:** We will concede to the language in the amendment on line 10.

**Chairman Ruby:** But you're not in agreement on the material?

**Matthew Larsgaard:** We would really like to see that material language stay. We are very concerned about their last two amendments with regard to provision 6 as that is the most important provision to us as we look at this bill. We would strongly oppose any amendment to provision 6. As we look at the other amendments we would like to see the bill as it is and not be amended, however, again provision 6 is very important to us.

**Chairman Ruby:** Do you have any problem with word "new vehicle" being left in there?

**Matthew Larsgaard:** We would be concerned that any facility program or some type of other reimbursement may be excluded if we include that language "new vehicle" because we would only be talking about sales incentives, rebates, credits, discounts, or program with respect to new vehicles.

**Representative Weisz:** Where are you at on the definition of "line-make"?

**Matthew Larsgaard:** We would like to see "line-make" stay in the bill. It is almost identical to Montana and Minnesota as I alluded to earlier.

**Representative R. Kelsch:** When do you ever see rebates on used cars? That's why I thought the language of "new vehicles" made sense but I guess I don't understand that.

**Matthew Larsgaard:** Often times a manufacturer will offer incentives on parts, accessories, and other items you purchase from the manufacturer not just vehicles.

**Joel Gilbertson, Auto Alliance:** This is the definition that the manufacturers use for "line-make". See attachment #1. I don't think with respect to North Dakota that this is a big issue. This was proposed and discussed on the senate side and we withdrew it and instead went with deleting line-make altogether. We would be very happy if this committee wanted to adopt this version of "line-make" too as it's specific to various manufacturers.

**Representative Weisz:** Can you clarify the importance of "line-make" in relationship to a franchise agreement? I understand what "line-make" is but if you could just clarify the importance it has to a dealer or whatever in reference to the franchise agreement.

**Representative Vigesaa:** I can't answer that. It took the manufacturers over a year to decide what it was. It's different with GM versus Chrysler because they had separate franchise agreements for every line. The Chrysler brand has one agreement that covers all the brands that you sell.

**Joel Gilbertson:** Some of the materials that we distribute to the talking points and the example given to me on "line-make" is that Toyota has Lexus and Scion, Lexus is a separate line-make for Toyota and Scion is not, Scion is "Toyota." I'm also told that BMW is totally different and that's why they are included as a different definition. Those are the line-make problems that manufacturers have.

**Matthew Larsgaard:** We looked at the manufacturer's definition of line-make and it could nullify or buy back provisions 51-07-01. There are certain rights that dealers have in the event a dealer is terminated or they give up their franchise agreement. The manufacturer is obligated to purchase back the new, unused vehicles, parts, etc. We are concerned that this new definition could strip dealers of their rights. Our national legal counsel stated "The language raises an issue in the context of a manufacturer ending a brand and not wanting that to be considered the termination

of a franchise." GM used the product addendum when it was in the heavy truck business. One GM agreement but with product addenda that allowed dealers to sell heavy, medium, and light trucks. When GM announced that it was exiting the heavy duty truck segment of the business a number of courts ruled against dealers who argued that this was the termination of a franchise. The rationale of some of these decisions was that the dealers still had a GM dealer agreement that allowed them to continue to sell medium or light duty vehicles. Those courts held that there had not been a termination. This led several states to amend their laws to say the elimination of a line-make is a termination. It is unclear whether this language would create similar problems for the dealer or whether there's another goal here and that is our concern.

**Chairman Ruby:** The opposition to "line-make" from the opponents was in dealing with the BMW motorcycles.

**Matthew Larsgaard:** The intent of that legislation is to identify the line-make as GMC, Buick, Cadillac, and not get down to the micro level. The other instance where the line-make word is used is on the bottom of page 4 line 31.

**Chairman Ruby:** So, if we removed the definition for "line-make", then the definition would be too broad and it would compare a Ford dealer with a Chrysler dealer with a GM dealer? Is that the importance of having a definition for "line-make"?

**Matthew Larsgaard:** Our intent in providing a definition for "line-make" is to provide clarity in identifying those groups of motor vehicles that are offered for sale. If this body elects to eliminate that definition of "line-make" we wouldn't resist it but we would like to see it stay.

**Representative Weisz:** The example that you just used, was the problem with that when it went to court was the idea that the manufacturer didn't have to buy back the heavy trucks instead of selling them after they eliminated the agreement? The argument really was if they should have been forced to take the trucks back.

**Matthew Larsgaard:** Exactly.

**Tom Kelsch:** On the first amendment that we asked to remove the word "material", I think the court would probably have to say that it had to be a material breach before they would take somebody's franchise away. I think that is probably one that we could give on. You asked about the new vehicle on page 4 and the example that GM uses is they have a program called General Motors Essentials Program that they offer in most states that if a dealer wanted to voluntarily enroll in this program they are then given some cash payments and one of the requirements is that they would have to be an exclusive GM dealer. They can't be forced to do that under the current law but they would have that opportunity. If you leave the language in there the way it currently is the concern is that what it is saying is that the legislature by this section 6 is preventing a manufacturer from requiring a retailer to be an exclusive GM dealer in exchange for participating in any program. So it isn't a voluntary thing anymore. I believe in Virginia they passed a law similar to this so they said they

can't offer this GM Essentials Program in that state which hurt some of those dealers. If you're an exclusive GM dealer I can't give you a better deal on the vehicles than somebody else who is a dual dealer. I have to offer the same programs and incentives for all the cars. Because the way it reads we wouldn't be able to offer any GM Essentials Program as a voluntary thing for any of the dealers. If we had that language in there I think the subsequent language about "this subsection shall not apply to any agreements" we could live without if we just have that new vehicle language in there.

**Vice Chairman Weiler:** It sounds to me like we are down to one issue. The first amendment on page 2 line 9 sounds like the manufacturers are okay with that. That's all we need. On page 2 line 10 the dealers have given in on that. On page 2 line 14-16 the dealers also give on that, however, we would need to remove reference to "line-make" in two other places.

**Chairman Ruby:** It seemed like the dealers were pretty much on the same pages in not liking the language that is in the bill. They are saying they like the language in the bill but we can live without it if we had too.

**Joel Gilbertson:** The alliance can live without the language as well that's why we proposed to delete the language.

**Chairman Ruby:** Since there is no definition we would have to remove "line-make" in the two areas you referenced, correct?

**Matthew Larsgaard:** We can leave "line-make" in there, but just leave the definition out.

**Chairman Ruby:** So we'll just remove the definition then. We have the new language you agreed on dealing with the "manufacturer" definition. Now we are down to a new vehicle.

**Joel Gilbertson** (? he didn't identify himself): In Virginia, that law was aimed at making pricey facility improvements. This provision is in regard to requiring a dealer to maintain exclusive facilities. In Virginia under that bill dealers who had made store improvements within the last 10 years would automatically be in compliance with the manufacturer's facility portion of their standards program which is cash payments.

**Chairman Ruby:** Would you agree that by having new vehicle in there it would be restrictive and not allow for parts?

**Matthew Larsgaard:** Yes, we would.

**Representative Vigesaa moved the amendment, page 2 line 9 not doing anything with that, making the change on page 2 line 10, deleting lines 14-16, and adopting the new language for page 2 line 18.**

**Representative Hogan** seconded the motion.

**A voice vote was taken: MOTION CARRIED.**

**Representative Weisz:** Under the language under this prohibited act where would parts or other equipment fit in?

**Representative Vigesaa:** In larger dealerships there are a lot of programs for facilities that are just beyond the vehicle itself. They quick lube facilities, parts departments, etc. If it says "new vehicle" to me that is only incentives, credits, rebates, or discounts on cars or trucks. There are so many other things they offer for the facility and the business.

**Chairman Ruby:** You're stating in some situations you feel that with the new vehicle language they could come in and require you to increase your level of parts inventory.

**Representative Vigesaa:** I think all of the manufacturers are into the Quick Lube and the quick service. There's a real push on with Chrysler for dealerships to install those fast lanes for service and that's a very expensive proposition. There would be question on whether if all dealers wanted to get involved in that or not. There would be programs to incentivize dealers to go that route.

**Representative R. Kelsch:** I remember a conversation that I had with a car dealer in Mandan that received money from the manufacturer to rebuild their showroom, etc. How does that relate to Section 6?

**Representative Vigesaa:** If Schwan GMC wanted to take on Mitsubishi we would want him to be able to do that. This is a prohibitive act that GM could not require him to be exclusive so without this they could tell him that he couldn't take on Mitsubishi.

**Representative R. Kelsch:** Didn't Bill Barth have Ford and then established Saturn across the street?

**Representative Vigesaa:** Those are duals. There is a movement by the manufacturer to try and get rid of those. When you saw the closings during the bankruptcy very coincidentally a lot of those dealerships were dueled with another franchise.

**Representative Weisz:** Again the example that was used, it wouldn't make any difference if it is a new vehicle or not. What if the manufacturer came and offered you \$25,000 to put in a Quick Lube?

**Representative Vigesaa:** In some cases I could see where that could happen. They could say in a particular market it is big enough so it must have a Quick Lube and here is the price so you have to do it. That's not a new vehicle program, that's a service program but it is the manufacturer telling you to do this.

**Chairman Ruby:** In that situation with one dealer wanting to have another line and you said you would like them to be able to do that. Would that be the case if they were given a lot of money from one manufacturer to increase their showroom space, redo the outside of the building, put up a sign, etc. but they want it exclusive so are we still saying they can't do that because they have to allow another line even if they are going to put a lot of investment into your business?

**Representative Vigesaa:** The money that people say they get to do those things is not a program where they are gifted the money. I think they are earning funds through sales and that money goes into an account and then they can use that money to do the upgrades. It's not a grant from GM to redo your buildings. There is a situation in Fargo where a dealer has two of the three Chrysler lines; Dodge and Chrysler, and the Jeep franchise is available now because Chrysler shut down the Jeep dealer, but he currently has another franchise in his store and they told him they couldn't have Jeep until they removed the other franchise from their facility. They would have to put that in a completely different facility in order to get the Jeep line. These are demands that they are putting on to be exclusive.

**Chairman Ruby:** I have a question about the additional language that would be added to that section. It says "this subsection shall not apply to any agreement where separate and valuable consideration has been offered and accepted." I understand the fear is that if somebody agrees to that it could possibly negate some of the protections on the upper part of that subsection. If I read that verbatim it seems to be that it doesn't negate any of the previous restrictions that the manufacturer would have, it just allows that if you decide to enter into an agreement it is allowed.

**Matthew Larsgaard:** This subsection "shall not apply to any agreements..." (Inaudible as speaker cut him off).

**Chairman Ruby:** You talked about what happened but the only way it could happen is if the dealer was offered the whole package and accepted it as it says in the very last words. Otherwise he wouldn't have to accept it. He would know what he's going into anyway.

**Matthew Larsgaard:** This provision is good for North Dakota dealerships and their customers. Competition drives up service and drives the price down.

**Representative Weisz:** Do you still want all the language from "new vehicle on" to stay in the section?

**Tom Kelsch:** The biggest part for us is the "new vehicle" and we would like to keep that last sentence in there too. We don't think that any part of that is going to be changed by adding either "new vehicle" or adding the last sentence because that is still the prohibition. When this bill passes even with these amendments they wouldn't have been able to have done that with the Jeep dealer in Fargo because they would be prohibited to require the retailer to either maintain exclusive facilities or to abandon another franchise in order to enter into a franchise agreement on the

Jeep one. You are protecting against that problem. The language in our suggested amendment both for the "new vehicle" and the voluntary language is showing some intent that they can enter into something else or added consideration. I would submit that it would have to be more than just a sales incentive or a credit rebate or discount because those are already in that first paragraph that's already in there. It would have to be some added consideration over and above that where the person entered in voluntarily and accepted.

**Representative Weisz:** I agree with you on that. As I look at it, would you have opposition to leaving in "this subsection shall not apply to any agreements where separate valuable has been offered and accepted" and leaving out the "new vehicle" language?

**Tom Kelsch:** I think that would solve our concern. It allows them to voluntarily do it.

**Representative Weisz:** They couldn't be forced to participate in some credit rebate or sales incentive.

**Representative Weisz moved to further amend SB 2236. We would add the language "this subsection shall not apply to any agreements where separate and valuable consideration has been offered and accepted."**

**Representative Sukut seconded the motion.**

**Representative Vigesaa:** I think if we lay this out plainly it would give the manufacturer the opportunity to enter into agreements where they could use this to favor one dealer over another. I would definitely oppose that amendment.

**A roll call vote was taken to further amend: MOTION FAILED.**

**Representative R. Kelsch:** I'm certainly hoping that the people in this room will go over to the senate and not allow this bill to go to conference committee.

**Representative Vigesaa:** We want to make sure that happens.

**Representative Heller moved a DO PASS as amended.**

**Representative Gruchalla: Seconded.**

**Representative Vigesaa:** I really want to thank Joel, Tom, Matthew, and John Olson. Everybody has really worked hard on this and I wanted to thank them.

**A roll call vote was taken: YES 10      NO 0      ABSENT 4  
MOTION CARRIED FOR DO PASS AS AMENDED.**

**Representative Weisz will carry SB 2236.**

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee  
Fort Totten Room, State Capitol

SB 2236  
03/31/11  
Job #16236

Conference Committee

Committee Clerk Signature *Jeanette Cook*

Minutes:

Attachment #1

**Representative R. Kelsch moved that we reconsider our action on SB 2236.  
Representative Weisz seconded the motion.  
A voice vote was taken. The motion passed.**

**Thomas Kelsch**, speaking on behalf of General Motors, spoke to explain the position of General Motors and the additional amendment that was requested.

**Tom Kelsch:** What happened after the bill ... (skip in the tape) ... said that they didn't want to lose that program (EVE). After that the dealers a rep, I think that General Motors was involved, some legal people from their department, and the attorney for the Dealers' Association got together and came up with this language that is in the proposed amendment before you. It limits the exception to not applying to any program that is in effect with more than one dealer in the state as of the effective date of this act, or a renewal or modification of that program. My understanding is the attorneys for GM and for the Auto Dealers' Association are in agreement with that exception of the exclusivity provision. We would request that you adopt the amendment. The rest would be the same as previously agreed to by the committee.

**Chairman Ruby:** The only part of the amendment that is being discussed is page 4, line 12.

**Representative R. Kelsch:** This doesn't make anything retroactive, correct?

**Tom Kelsch:** That is my understanding. Any programs that are in existence would be accepted from that provision. It does not make the whole act retroactive.

**Chairman Ruby:** When I read the part that is being changed, I don't see anything in that language that would prevent a manufacturer from having a separate agreement with some dealers that they don't have with all of the dealers. You indicated that if we didn't put this language on, they didn't believe that they could have that EVE program, because they weren't doing it with all of them? I didn't see the language in that subsection.

**Tom Kelsch:** It is a fairly legalistic definition. Where six says that no manufacturer can require a retailer to maintain exclusive facilities to participate in a program, basically that is



the issue. If they have an EVE program, they can't say that you have to have so much square footage for Cadillac, or an exclusive showroom for GM products in return for these X amount of dollars. They couldn't require them anyway, but as a separate deal. If you say you want to participate in this program, we are going to pay you as a dealership this much more money in order to have that exclusive showroom or whatever for it. The lawyers from GM said they would not be able to offer that to you because it is part of the other contract. Even though it is added consideration, we are saying that you have to have some exclusivity requirements or facility requirements. They said that if we entered into that we couldn't enforce that anymore because of the state law. So, they went back to the dealers and told them that the way the bill was as amended from the committee they wouldn't be able to enter into that type of an EVE requirement. The dealers who were affected by that said it was too big of a deal for them. They would lose significant sums of money, and we don't want to take that risk. So to prevent that possibility from happening, this language was agreed to. So now, GM can offer that program that they are offering right now.

**Chairman Ruby:** How is this language better than what was in the original bill?

**Tom Kelsch:** It does the job to protect those dealers. I don't know if GM would say that it is better. It is more limiting than the language that the auto manufacturers had originally proposed.

**Matthew Larsgaard,** Automobile Dealers' Association of North Dakota: We support the amendment.

**Chairman Ruby:** Do you think that this language is better than what was offered the first time?

**Matthew Larsgaard:** From our perspective, without a doubt.

**Representative Weisz moved the amendment.**  
**Representative R. Kelsch seconded the motion.**  
**A voice vote was taken. The motion carried.**

**Representative R. Kelsch moved a DO PASS as amended.**  
**Representative Owens seconded the motion.**  
**A roll call vote was taken. Aye 13 Nay 0 Absent 1**  
**Representative Weisz will carry SB 2236.**

March 25, 2011

VR  
3/25/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2236

Page 2, line 10, replace "different from" with "unreasonable when compared to"

Page 2, line 14, remove "Line-make means new motor vehicles that are offered for sale, lease, or distribution"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "9."

Page 2, line 18, replace "controlled by the manufacturer" with "that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer"

Page 2, line 19, replace "10." with "9."

Page 2, line 22, replace "11." with "10."

Page 2, line 25, replace "12." with "11."

Page 2, line 29, replace "13." with "12."

Page 3, line 1, replace "14." with "13."

Page 3, line 6, replace "15." with "14."

Page 3, line 10, replace "16." with "15."

Renumber accordingly

Date: 3-24-11

Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Vigessa Seconded By Hogan

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            |     |    | Representative Delmore   |     |    |
| Vice Chairman Weiler     |     |    | Representative Gruchalla |     |    |
| Representative Frantsvog |     |    | Representative Hogan     |     |    |
| Representative Heller    |     |    | Representative Onstad    |     |    |
| Representative R. Kelsch |     |    |                          |     |    |
| Representative Louser    |     |    |                          |     |    |
| Representative Owens     |     |    |                          |     |    |
| Representative Sukut     |     |    |                          |     |    |
| Representative Vigessaa  |     |    |                          |     |    |
| Representative Weisz     |     |    |                          |     |    |
|                          |     |    |                          |     |    |
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|                          |     |    |                          |     |    |

*Vote  
Motion  
carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*p. 2 line 9*

Date: 3-24-11

Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Weisz Seconded By Sukut

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            |     | X  | Representative Delmore   |     | X  |
| Vice Chairman Weiler     |     | X  | Representative Gruchalla |     | X  |
| Representative Frantsvog |     |    | Representative Hogan     |     | X  |
| Representative Heller    |     | X  | Representative Onstad    | -   |    |
| Representative R. Kelsch | X   |    |                          |     |    |
| Representative Louser    | 1/1 |    |                          |     |    |
| Representative Owens     | 1/1 |    |                          |     |    |
| Representative Sukut     |     | X  |                          |     |    |
| Representative Vigesaa   |     | X  |                          |     |    |
| Representative Weisz     | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
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|                          |     |    |                          |     |    |

*Motion failed*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*further amend.  
Rep. Weisz*

Date: 3-24-11

Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Heller Seconded By Gruchalla

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            | X   |    | Representative Delmore   | X   |    |
| Vice Chairman Weiler     | X   |    | Representative Gruchalla | X   |    |
| Representative Frantsvog | —   |    | Representative Hogan     | X   |    |
| Representative Heller    | X   |    | Representative Onstad    | —   |    |
| Representative R. Kelsch | X   |    |                          |     |    |
| Representative Louser    | —   |    |                          |     |    |
| Representative Owens     | —   |    |                          |     |    |
| Representative Sukut     | X   |    |                          |     |    |
| Representative Vigesaa   | X   |    |                          |     |    |
| Representative Weisz     | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
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|                          |     |    |                          |     |    |

Total (Yes) 10 No 0

Absent 4

Floor Assignment Weisz

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

Date: 3/31/11

Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By R. Kelsch Seconded By Weisz

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            |     |    | Representative Delmore   |     |    |
| Vice Chairman Weiler     |     |    | Representative Gruchalla |     |    |
| Representative Frantsvog |     |    | Representative Hogan     |     |    |
| Representative Heller    |     |    | Representative Onstad    |     |    |
| Representative R. Kelsch |     |    |                          |     |    |
| Representative Louser    |     |    |                          |     |    |
| Representative Owens     |     |    |                          |     |    |
| Representative Sukut     |     |    |                          |     |    |
| Representative Vigasaa   |     |    |                          |     |    |
| Representative Weisz     |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

*Doice  
Vote  
Passed.*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

VR  
3/31/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2236

In lieu of the amendments adopted by the House as printed on page 1156 of the House Journal, Engrossed Senate Bill No. 2236 is amended as follows:

Page 2, line 10, replace "different from" with "unreasonable when compared to"

Page 2, line 14, remove """Line-make" means new motor vehicles that are offered for sale, lease, or distribution"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "9."

Page 2, line 18, replace "controlled by the manufacturer" with "that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer"

Page 2, line 19, replace "10." with "9."

Page 2, line 22, replace "11." with "10."

Page 2, line 25, replace "12." with "11."

Page 2, line 29, replace "13." with "12."

Page 3, line 1, replace "14." with "13."

Page 3, line 6, replace "15." with "14."

Page 3, line 10, replace "16." with "15."

Page 4, line 12, after the underscored period insert "This subsection does not apply to a program that is in effect with more than one dealer in this state on the effective date of this Act or to a renewal or modification of the program."

Renumber accordingly

Date: 3/31/11

Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Weisz Seconded By R. Kelsch

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            |     |    | Representative Delmore   |     |    |
| Vice Chairman Weiler     |     |    | Representative Gruchalla |     |    |
| Representative Frantsvog |     |    | Representative Hogan     |     |    |
| Representative Heller    |     |    | Representative Ostad     |     |    |
| Representative R. Kelsch |     |    |                          |     |    |
| Representative Louser    |     |    |                          |     |    |
| Representative Owens     |     |    |                          |     |    |
| Representative Sukut     |     |    |                          |     |    |
| Representative Vigasaa   |     |    |                          |     |    |
| Representative Weisz     |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

*Vote  
Motion carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Amends.  
- p. 4  
line 12*



Date: 3-31-11

Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2236

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By RAKelsch Seconded By Owens.

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Ruby            | X   |    | Representative Delmore   | X   |    |
| Vice Chairman Weiler     | X   |    | Representative Gruchalla | X   |    |
| Representative Frantsvog | X   |    | Representative Hogan     | X   |    |
| Representative Heller    | X   |    | Representative Onstad    | X   |    |
| Representative R. Kelsch | X   |    |                          |     |    |
| Representative Louser    | X   |    |                          |     |    |
| Representative Owens     | X   |    |                          |     |    |
| Representative Sukut     | X   |    |                          |     |    |
| Representative Vigasaa   | A   |    |                          |     |    |
| Representative Weisz     | X   |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

Total (Yes) 13 No 0

Absent 1

Floor Assignment Wieny

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

**REPORT OF STANDING COMMITTEE**

**SB 2236, as engrossed: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2236 was placed on the Sixth order on the calendar.

Page 2, line 10, replace "different from" with "unreasonable when compared to"

Page 2, line 14, remove "Line-make means new motor vehicles that are offered for sale, lease, or distribution"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "9."

Page 2, line 18, replace "controlled by the manufacturer" with "that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer"

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Page 3, line 1, replace "14." with "13."

Page 3, line 6, replace "15." with "14."

Page 3, line 10, replace "16." with "15."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2236, as engrossed and amended: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2236, as amended, was placed on the Sixth order on the calendar.**

In lieu of the amendments adopted by the House as printed on page 1156 of the House Journal, Engrossed Senate Bill No. 2236 is amended as follows:

Page 2, line 10, replace "different from" with "unreasonable when compared to"

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Page 3, line 6, replace "15." with "14."

Page 3, line 10, replace "16." with "15."

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Renumber accordingly

2011 TESTIMONY

SB 2236

**Proposed Amendments to Senate Bill #2236**

Page 1, Line 12: remove "oral or"

Page 2, Line 1: remove "or agreement" and replace with "or addendum related thereto"

Page 2, Line 4: remove "or that"

Page 2, Lines 5 and 6: delete

Page 2, Line 10: remove "essential and"

Page 2, Line 11: remove "if the requirements are not different from those" and replace with "which requirements are not discriminatory as compared with the requirements imposed on other similarly situated franchisees."

Page 2, Line 12: delete

Page 2, Line 15 through 17: delete

Page 2, Line 19: remove "or any person controlled by the manufacturer"

Page 3, Line 4: remove "spouse, child, grandchild, parent, brother, or sister of the" and replace with "individual"

Page 3, Line 5: remove "owner of a new motor vehicle dealer"

Page 3, Line 8: insert "subject to 51-07-26 and 51-07-26.1" after the word "property"

Page 4, Line 7: after the word "dealer" add the following, "Nothing in this provision shall apply to any agreements when separate and reasonable consideration have been offered and voluntarily accepted."

Page 4, Line 14: after the word "incentive" add the following, "provided the dealer complies with the reasonable capitalization, financial, and facility requirements of the manufacturer."

Page 5, Line 14: remove "adequate" and replace with "separate"

Page 5, Line 15: insert the word "alone" after the word "agreement"

Page 5, Line 15: remove "adequate" and replace with "separate"

Page 5, Line 27: remove "adequate" and replace with "separate"

Page 5, Line 28: insert the word "alone" after the word "agreement"

Page 5, Line 28: remove "adequate" and replace with "separate"

Page 6, Lines 2 through 10: delete and replace with, "A manufacturer may not conduct a warranty or incentive audit or seek a chargeback on a warranty or incentive payment more than one year after the date of that warranty or incentive payment."

Page 6, Line 12: remove "the manufacturer can satisfy its burden of proof that"

Page 6, Line 12: insert "false," after the word "was"

Page 16, Line 13: remove "that"

Submitted on behalf of the Alliance of Automobile Manufacturers

By Joel Gilbertson

Lobbyist No. 1

Alliance of Automobile Manufacturers  
North Dakota: SB 2236: Exclusivity Provisions

- 15 states use "reasonable business considerations" language to varying degrees.
- 13 states refer to a line of credit, facility requirements and management changes.
- The four states closest to North Dakota each have some requirements or conditions.

**Wyoming** uses "reasonable business considerations" and requires the dealer to maintain a reasonable line of credit in addition to facilities and other franchise requirements of the manufacturer.

W.S. §31-16-108

(viii) To establish, after becoming a new vehicle dealer, exclusive facilities, personnel or display space for a line make when such requirements would not be justified by reasonable business considerations;

(vi) To refrain from participation in the management of, investment in or the acquisition of any other line of new vehicle or related products. This paragraph does not apply unless the new vehicle dealer maintains a reasonable line of credit for each make or line of new vehicle, the new vehicle dealer remains in compliance with any reasonable facilities and other franchise requirements of the manufacturer and no change is made in the principal management of the new vehicle dealer;

**South Dakota** statute states that "denial of a proposed dual arrangement or facility improvement shall be supported by credible evidence that it will substantially affect in an adverse way the current franchisor or community." S.D. Codified Laws § 32-6B-49.1

**Minnesota** uses "reasonable in light of existing circumstances." Minn. Stat. § 80E.12

"(h) refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products or establishment of another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer; provided, however, that this clause does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facilities requirements of the manufacturer and that the acquisition or addition is not unreasonable in light of all existing circumstances;

**Montana** has facility, capitalization and line of credit requirements. Mont. Code Ann. § 61-4-208

(v) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements.

Alliance of Automobile Manufacturers  
North Dakota: SB 2236: Exclusivity Provisions

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- 13 states refer to a line of credit, facility requirements and management changes.
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**Senate Bill 2236**  
**Testimony before Senate Transportation Committee**  
**Matthew C. Larsgaard, MBA**  
**Automobile Dealers Association of North Dakota**  
**February 3, 2011**

2/2/11

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in SUPPORT of Senate Bill 2236 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.

ADAND members generate approximately \$1.5 Billion in annual retail sales in North Dakota. We are 13% of total retail sales and employ almost 3,400 people with an annual statewide payroll of over \$140 Million dollars.

This bill was introduced at the request of North Dakota's new car dealers. We take the opportunity to have legislation introduced very seriously and approached Senator Klein only after carefully deliberating the need for this bill over the last 1½ years. One of the major reasons for this legislation is an attempt to add stability for North Dakota dealers following the GM and Chrysler bankruptcies.

In 2009 U.S. automobile production fell to its lowest level in nearly 50 years. As a result of years of mismanagement and poor performance, two major auto manufacturers were unable to remain solvent; Chrysler filed for bankruptcy on April 30 and reemerged 41 days later on June 10. GM filed for bankruptcy on June 1 and reemerged as the new GM 40 days later on July 10. As a result of the bankruptcies, approximately 21 North Dakota, family owned dealerships were told that they would be stripped of their franchises and terminated. It is important to understand that these franchise terminations and impending job losses were totally unnecessary; the dealerships targeted for termination were profitable, self-financed, going concern businesses. These independently-owned dealerships were not a "cost" to their manufacturers, and in no way contributed to the manufacturers' insolvency.

As the bankrupt manufacturers reemerged as new companies the real travesty of the situation became immediately apparent. All 64 of North Dakota's GM and Chrysler dealers had worthless franchise agreements with the old, bankrupt companies; agreements that were no longer worth the paper they were written on.

Bankruptcy allowed the manufacturers to have an absolute free pass to trample our state laws and the rights of your North Dakota businesses and their employees. They now had the ability to write brand new franchise agreements that were completely one-sided and entirely unfair. These new agreements were Contracts of Adhesion which are not negotiable. They are a take-it or leave-it arrangement under which the dealer had no choice but to sign the contract or not be a dealer.

With this in mind, one of the manufacturers created a contract that forced the dealer to waive all of their rights under our state laws. Since they knew that the dealer would have no rights and no choice but to sign the agreement, they demanded that the dealer must sell as many vehicles as the manufacturer commanded them to and further demanded that the dealer must purchase all of those vehicles from the manufacturer at their command. They also demanded the dealer to abandon any other franchise they had with another manufacturer and maintain exclusive, stand alone facilities for their brand alone. They stripped dealers of their protest rights and retained the ability to force the dealer to move their facilities or establish another dealership right beside the existing dealer. The contract also stated that if the dealer was unable to comply with any of these demands, even through no fault of their own, the manufacturer could immediately terminate them.

It is important to understand that every single one of these demands was a clear violation of North Dakota state law. However, the manufacturer knew that your dealers had no choice but to sign the agreement. Dealers were forced to waive their rights and were subjected to the manufacturer's unreasonable, unfair, and otherwise illegal demands.

The reason I took the time to explain the events that took place immediately following the bankruptcy is to give you a clear indication of how giant, out-of-state manufacturers can oppress dealers if there are not strong state laws in place to protect them.

**In 2005 the ND legislature created the manufacturer “Prohibited acts” section (51-07-02.3).** They recognized the need to protect North Dakota new car dealers from the unfair business practices of auto manufacturers. One of the protections they created prevented manufacturers from demanding that dealers maintain, exclusive stand-alone facilities. **This legislation saved dealerships across North Dakota from closing their doors during the bankruptcy process.** Even though a dealer may have had their GM or Chrysler franchise terminated, most of them had franchises with other companies and were able to keep their doors open and keep good paying jobs within their communities.

We now come to you and respectfully ask that you expand those protections by passing the following:

Page 1, **Section 1** creates a definition section.

**Section 2** begins on page 3, line 16 and identifies illegal business practices:

**#3.** page 3, lines 29-30: Prevents manufacturers from discriminating among dealers in supplying motor vehicles. They must supply vehicles fairly to all dealers.

page 4, lines 2-4: Protects manufacturers in the event they can't supply vehicles because of a situation they can't control. SD/MT/MN

**#4.** page 4, lines 5-7: Protects dealers from being forced to buy manufacturer promotional materials or pay for advertising campaigns they don't want. SD/MT/MN

#6. page 4, lines 11-14: Protects dealers from being forced to maintain separate buildings or personnel or abandon an existing franchise agreement with another manufacturer in order to renew or enter into a franchise agreement or participate in a sales incentive. MT/MN

#7. page 4, lines 15-20: Allows a dealer to move to another location as long as the location and site plan are reasonable. The manufacturer has 60 days to approve or deny the request. SD/MN?

#8. page 4, lines 21-23: Protects dealers from being forced to move their dealership to another location or to make unreasonable changes to the dealership building or property. MT/MN

#10. page 4, lines 30-31 and page 5 lines 1-2: Prevents manufacturers from discriminating among dealers. If they offer an incentive that lowers the cost of a vehicle to one dealer, they must be fair and offer it to all dealers equally. SD/MN

#12. page 5, lines 9-16: Prevents manufacturers from forcing a dealer to waive their rights under state law or relieve any person (the dealer or the manufacturer) from liability, imposed by North Dakota state law. SD/MT/MN

#13. page 5, lines 17-29: Protects dealers from being required to sign an agreement that requires a dealer to: a) be subject to another state's law b) conduct legal proceedings outside of North Dakota c) give up the dealer's rights under ND state law d) give up the dealer's right to settle a disagreement in a state or federal court in ND e) agree to arbitration or f) give up the dealer's right to bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached. MT/MN

**Section 3** begins on page 6, line 1 and identifies warranty and incentive claims processes.

#### **51-07-02.4 Warranty and Incentive Claims**

**#1.** lines 2-10: Prohibits a manufacturer from conducting an audit/chargeback on warranty or incentive payments made more than 1 year ago. If the date of the payment is in question, the manufacturer has the burden of proving the payment was made within the previous 12 months. SD/MT/MN (1 year provision)

**#2.** lines 11-14: Protects dealers from having the manufacturer charge back sales or warranty payments unless the dealer's claim was fraudulent, or the dealer did not comply with the manufacturer's reasonable written procedures for turning in the claim.

**#3.** lines 15-17: The audit/chargeback provisions of this section apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. This section also protects manufacturers and does not apply to fraudulent claims.

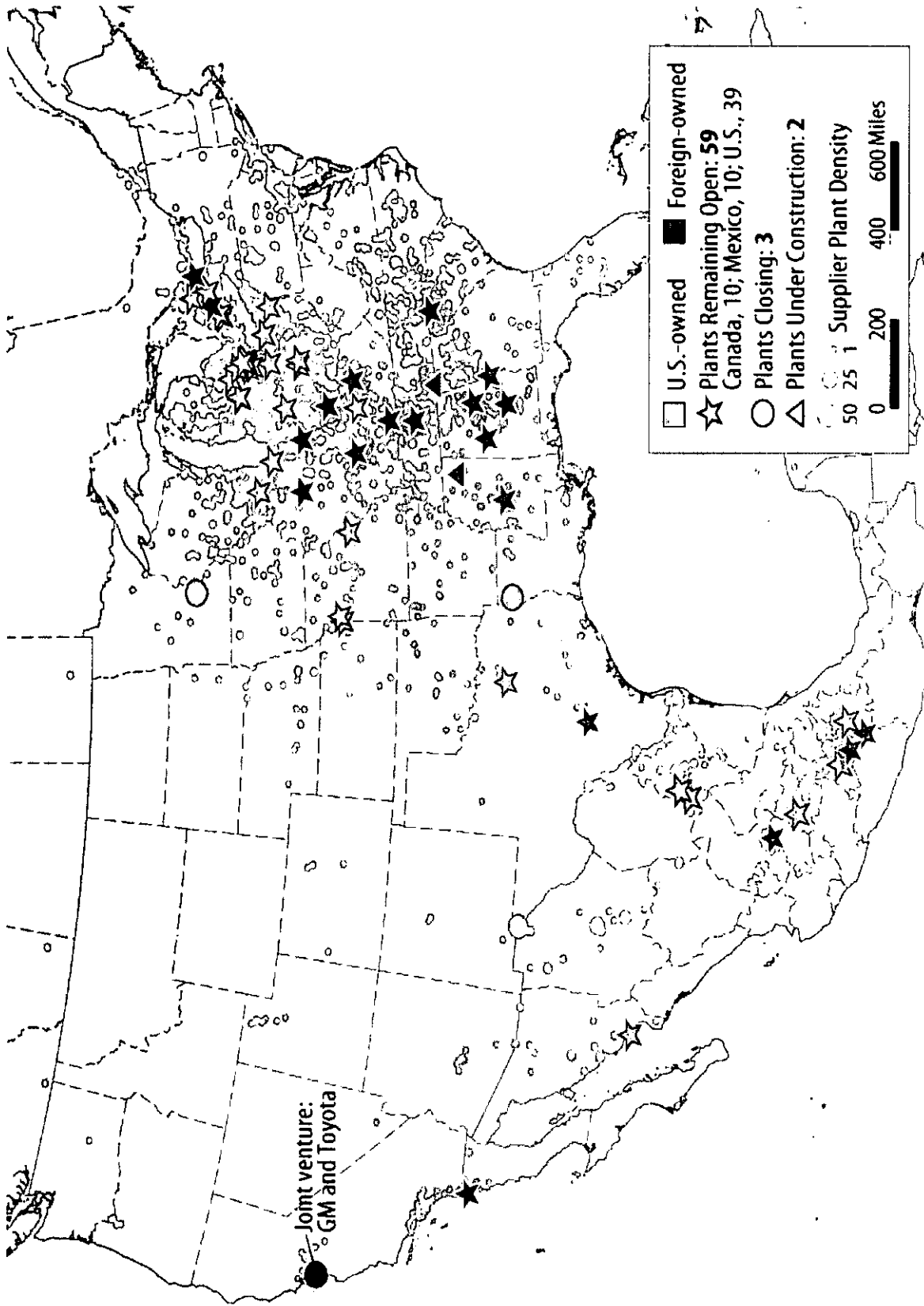
It is important to note that this bill contains the same provisions that already exist in many states. In fact, as you may see on the last page of my testimony, 47 states have introduced or passed franchise legislation such as this in response to the manufacturer bankruptcies. The majority of the provisions in this bill are fashioned after law that already exists in South Dakota, Montana, and Minnesota. As I explained, we have also built several protections into this bill for the manufacturers....we want fairness for both parties.

We as North Dakota small businesses are asking you as North Dakota legislators to please support this bill. Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with giant, out-of-state auto manufacturers. It affects dealers, their employees and the vital transportation needs of our communities. Providing fair business conditions for this important segment of our state's economy is absolutely crucial.

Thank you Mr. Chairman and members of the committee,

Matthew C. Larsgaard, MBA  
Automobile Dealers Association of North Dakota

# Geography of North American Auto Production Plants

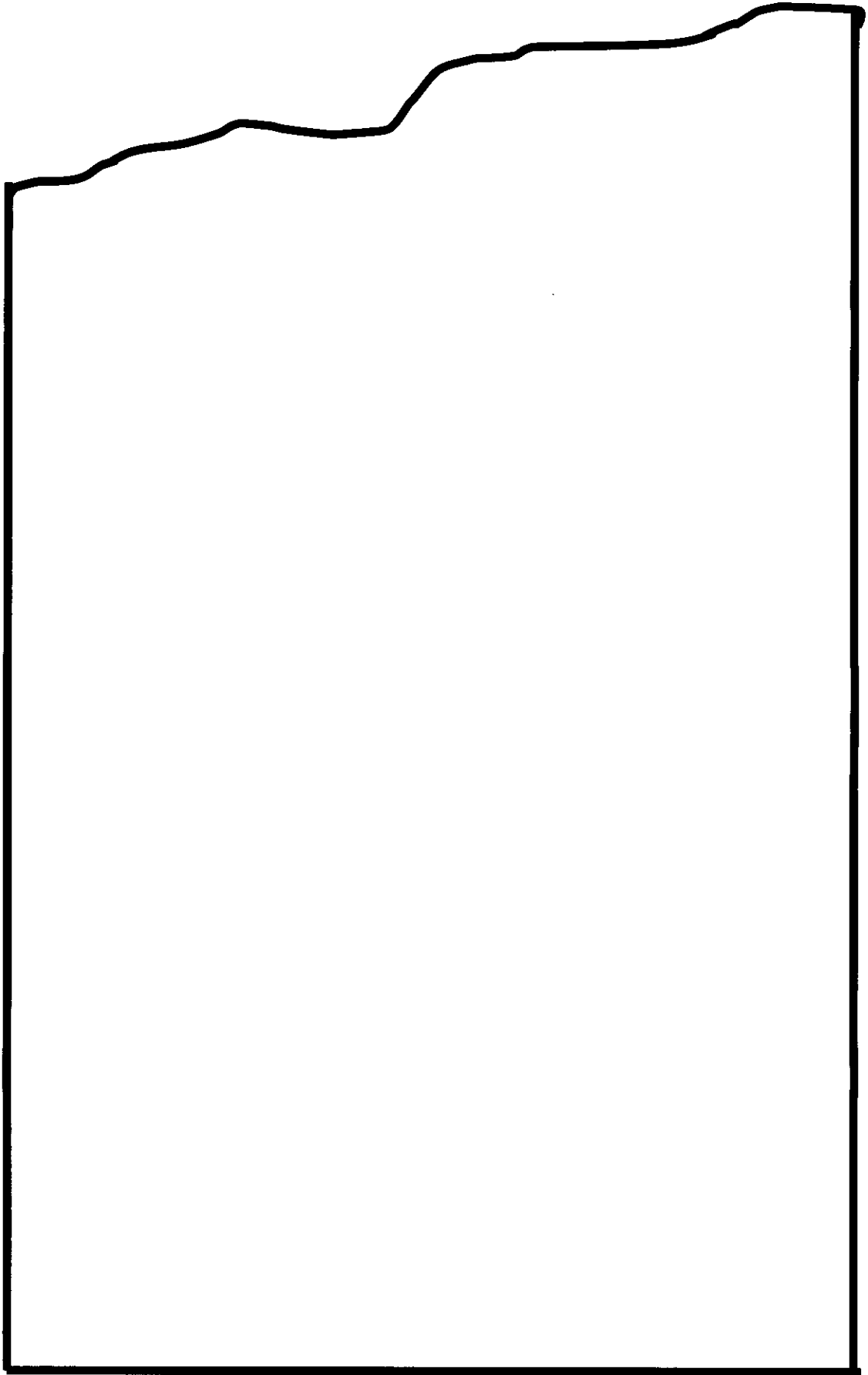


The U.S. Motor Vehicle Industry: Confronting a New Dynamic in the Global Economy, March 26, 2010

# Geography of North American Auto Production Plants

Auto Manufacturer & Supplier Plants in North Dakota

3/26/10



# AUTOMOBILE DEALERS ASSOCIATION OF NORTH DAKOTA Dealer Locations 2011

2/1/11

**BOTTINEAU**  
- Theel Inc.

**ROLLA**  
- Theel Motors

**WALHALLA**  
- Soeby Motor Co.

**LANGDON**  
- Christie Motors Inc.  
- D & B Motors

**CAVALIER**  
- Swanson Motors

**MINOT**

- Don Bessette Motors
- Minot Chrysler Toyota Scion
- Ryan Chevrolet.
- Ryan GMC Bu Cadillac
- Ryan Honda of Minot
- Westlie Motor Co.

**STANLEY**  
- Prairie Motors

**WILLISTON**  
- Murphy Motors  
- Ryan Motors  
- Select Ford Mercury

**RUGBY**  
- D & S Motors  
- MJ McGuire Co.

**DEVILS LAKE**  
- Lake Toyota  
- Devils Lake Chrysler  
- Lake GM Auto Center  
- Marketplace Motors

**GRAND FORKS**  
- Honda Nissan  
- Lithia Chy Jeep Dodge  
- Lithia Ford Linc Merc  
- Lithia Toyota Scion  
- Eide Motors  
- Forks Freightliner  
- GF Subaru Kia  
- Rydeill GM Auto Center

**NEW TOWN**  
- Rensch Chev Buick

**GARRISON**  
- Rensch Farm  
Store Inc.

**HARVEY**  
- Ripplinger Motors

**COOPERSTOWN**  
- V-W Motors

**KILLDEER**  
- Sax Motor Co.

**HAZEN**  
- Hazen Motor Co.

**CARRINGTON**  
- Bessette Motors

**BISMARCK/MANDAN**

- Cedric Theel Toyota Scion
- Trucks of Bismarck
- Nelson International
- Ryan Chrysler Dodge Jeep
- Stan Puklich Chev
- Bismarck Honda Nissa Hyundai
- Eide Ford Merc Lincoln
- Wallwork Truck Center, Bismarck
- Bill Barth Automotive Group (Mandan)
- Ressler Chev (Mandan)
- Schwan GM Auto Center (Mandan)

**DICKINSON**  
- Charbonneau Car Center  
- Dan Porter Motors  
Parkway Ford Sales  
- Sax Motor Co.

**FINLEY**  
- Finley Motor

**HATTON**  
- Hatton Ford

**FARGO**  
- Corwin Chry Do Honda  
- Corwin Toyota  
- Gateway Chev Cadillac  
- Gateway Hyundai Nissan  
- Kia of Fargo  
- Lunde Auto Center  
- Nelson International  
- Valley Imports  
- Fargo Freightliner  
- Luther Family Buick GMC  
- RDO Truck Center  
- Wallwork Truck Center

**VALLEY CITY**  
- Perkins  
- Miller Motors  
- Stoudt-Ross Ford

**JAMESTOWN**  
- Don Wilhelm  
- Lloyds Toyota  
- RM Stoudt

**LISBON**  
- Berube Inc.

**LINTON**  
- Schumachers  
- Jim Weber Ford  
- Pfeifle Chev. Bu

**WISHEK**

**HETTINGER**  
- RZ Motors

**BOWMAN**  
- Bowman Sales & Service  
- Sax Motor Co. SW

**LIDGERWOOD**  
- Wolfe Ford

**ELLENDALE**  
- Blumhardt Chev Po.

**ASHLEY**  
- G & G Chev.

**WAPETON**  
- Smith Motors  
- Dakota Chrysler  
- Vision Automotive



# Car dealers go on the muscle to toughen state franchise laws . . .

-As of 1/24/11 47 States have introduced legislation.

Donna Harris and Amy Wilson  
dharris@crain.com

When Chrysler and General Motors yanked thousands of franchises last year during their bankruptcies, dealers across the country were caught off guard. Many assumed incorrectly that their state franchise laws protected them.

Now dealers are seeking tough amendments to those laws to bolster their protection in the future.

"In the previous world we all lived in, the idea of a GM or Chrysler or a major auto manufacturer going bankrupt was not on anybody's radar screen," said Tim Doran, president of the Ohio Automobile Dealers Association. "That's all changed now."

It's unclear if the new state laws will trump bankruptcy laws. But 40 state legislatures have passed or are considering franchise amendments, many of them beefing up the financial assistance factories would be required to pay spurned dealers.

The most hotly contested legislation restricts factories from returning to a market in which they terminated a dealer unless they offer to give back the franchise to that former dealer.

## No waivers

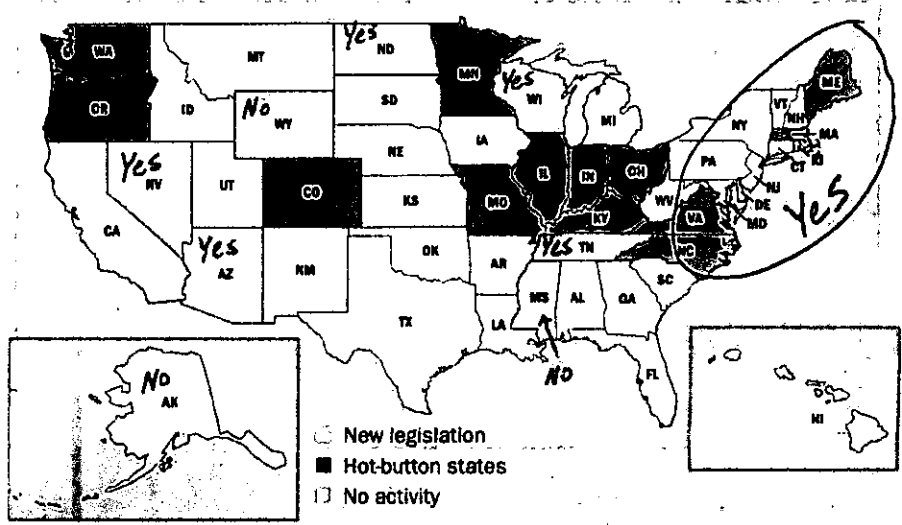
The agreements that GM required dealers to sign to remain in the automaker's retail network made them waive their right to protest the addition or relocation of another dealership in their vicinity for two years after GM's reorganization.

Chrysler Group dealers who wanted to add a Chrysler, Dodge or Jeep brand also had to waive their rights to a legal protest should Chrysler attempt to install nearby competitors.

Bills in several states prohibit such waivers.

## Fighting over franchises

Franchise legislation has been proposed or passed in 47 states in 2009 and 2010, the biggest surge in activity since dealers fought factory-owned dealerships a decade ago. General Motors and Chrysler have pushed back in several hot-button states.



-Alaska, Wyoming, & Mississippi have not.

Dealers also seek to limit "site control" or "exclusive use" agreements, which allow a factory to control how property is used. Chrysler required dealers adding a franchise to sign an agreement giving the company strict control over the property's use for 30 years. The property had to remain an exclusive Chrysler-Dodge-Jeep store.

Legislation in New Mexico limits the term of these agreements to 15 years. Under a Virginia bill, site control agreements automatically end

if the manufacturer sells or transfers the right to manufacture or distribute its vehicles, the dealer's franchise is terminated for any reason or the factory fails to exercise its legal right to object to the dealership's sale by buying the property.

Some legislation keeps franchise rights alive as a dealer protests termination.

Chrysler's rejected dealers abruptly lost their

see LAWS, Page 29

## Not just about bankruptcy

New franchise laws and proposed legislation in several states also address nonbankruptcy concerns, such as

- Requiring factories to presume dealers did not knowingly sell vehicles that end up as gray-market exports
- Protecting dealerships from factory mandates to upgrade stores; upgrades must be economically feasible and necessary
- Beefing up language governing exclusive facility requirements to give dealerships more flexibility on dualing
- Shortening the look-back period that factories have for audits and chargebacks on warranty and incentive payments
- Requiring that factories pay dealerships for items such as incentives and warranty work within a prescribed period
- Preventing per-vehicle surcharges that some manufacturers have charged dealerships to cover state demands that warranty work be reimbursed at retail rates for parts and labor

# 2

11.0579.01002  
Title.

Prepared by the Legislative Council staff for  
Representative Vigesaa  
February 2, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2236

Page 1, line 12, remove "oral or"

Page 3, line 4, remove "spouse, child, grandchild, parent, brother, or sister of the"

Page 3, line 5, replace "owner of a new motor vehicle dealer" with "individual"

Page 6, line 2, remove "If a manufacturer attempts to conduct a warranty or incentive audit on claims paid"

Page 6, replace lines 3 through 10 with "A manufacturer may not conduct an audit or seek a chargeback on a warranty or incentive claim made more than one year before notice of the audit or the sought chargeback. The retailer may object to the timeliness of the audit or sought chargeback. If the retailer objects, the manufacturer may not conduct the audit or seek the chargeback unless the manufacturer proves the warranty or incentive claim was made within one year of the notice."

Renumber accordingly

Dealer Testimony – Gregg Jacobson  
SB 2236  
Senate Transportation Committee  
Thursday, February 3 at 9:00 a.m.

I am Gregg Jacobson, owner, R Z Motors Inc., Hettinger, ND. Our dealership has 4 franchise agreements: Ford Motor Company, and Chrysler Corporation LLC, Dodge, Chrysler and Jeep. Our company has been incorporated in North Dakota since 1984 serving southwestern North Dakota.

Provision #6, page 4, lines 11-14

Provision 6 states that when a dealer wants to renew or begin a franchise agreement or participate in a sales incentive, manufacturers can't force the dealer to get a separate building or employees in order to do so. Dealers also can't be forced to abandon a franchise agreement they already have with another manufacturer.

In rural North Dakota, Hettinger, these manufacturer requirements would simply close our dealership. It would be financially impossible for our company to provide a separate facility for a forced division of our franchise. It would also require an additional workforce that does not exist.

If this bill is not passed, incentives will be used to force rural dealerships out. Manufacturers will establish new standards with an incentive payment for those who are able to conform. Those dealerships that are unable to meet the new standards will be at a disadvantage to other dealers within the franchise. Chrysler Corporation LLC, has already started such a program, called the "Dealer Rewards Program."

The manufacturers, knowing that our company had only one facility and one set of employees, granted our dealership the separate franchises that we have today. In 2002, my wife Lisa and I used all of our life savings and also borrowed money for the purchase of our dealership. The lender carefully examined our ability to make payments for this purchase.

We would be forced out of business if a separate facility and separate employees would be required. Rural dealerships like ours would have no choice but to abandon their customers, forcing them to travel 1 to 2 hours for required service.

As a store manager for 10 years, owner for 9 years, I am asking you to please protect the dealerships on every main street in rural North Dakota. Provision #6 is critical to the survival of rural North Dakota and its automobile dealerships.

Provision #8, page 4, lines 21-23

Provision 8 states that manufacturers can't force a dealer to change locations or make unreasonable changes to the dealership building or property.

Once again, the manufacturer may require a financial investment from a rural dealership that can't be done. To build a million dollar, or even a half million dollar facility would be the end of rural dealerships.

It is important to note that many rural dealerships like ours rank above the region in customer satisfaction, for both sales and repair. In our case, we are consistently above the region in all customer satisfaction requirements in sales, and service. We have also exceeded the required market penetration required by the franchise.

Do manufacturers honestly believe an archway in the front of the building, or a children's play area in the show room, or the color of the tile in the bathroom will make us better able to serve our customers. This doesn't make any sense, especially for a dealer like me who is from a town of just over 1200 people.

Our dealerships have endured the toughest period in recent history in the auto industry. This has weakened many dealerships financially. This additional expense to all dealerships would be difficult on many, and the end for others.

As a small business man in rural North Dakota, I know my customer base and they know me. Eliminating more dealerships across our state will result in a hardship for the customers we have served for generations. For manufacturers, less competition results in more control of the product and a higher price that customers must pay for a vehicle. For rural North Dakota customers, not only will they pay more, but, they will be forced to travel great distances to seek service and repair work.

I ask this body to stand with the backbone of rural North Dakota, main street, and your local automobile dealers. Protect our dealerships, or it will surely be our demise.

Respectfully,  
Gregg Jacobson, owner  
R Z Motors Inc.

**TESTIMONY  
SENATE BILL 2236  
TRANSPORTATION COMMITTEE  
FEBRUARY 3, 2011**

Mr. Chairman and members of the Senate Transportation committee my name is Tom Balzer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in support of Senate Bill 2236.

Although the truck dealerships in North Dakota did not see their franchisee agreements nullified by manufactures, the impacts on the auto dealers in the state sent shock waves through the industry.

Sterling Trucks was a subsidiary of ~~Daimler Chrysler~~ <sup>FORD</sup> but was ~~sold off~~ <sup>crushed</sup> as part of their bankruptcy restructuring. The dealer in North Dakota was looking at the same concerns that the auto dealers did especially in the area of exclusivity agreements. In this scenario this dealer carried multiple lines of trucks.

The issue of forcing a dealership into exclusivity agreements is detrimental to dealers in this state. The market size in North Dakota may not support one dealer carrying one line. Keeping the protections from exclusivity agreements is vital to this bill.

The other issue that concerns the truck dealers in the state addressed in this bill is the fair and equitable treatment of dealers compared to other similarly situated dealers. Most dealers' biggest concern is a manufacture using the quota system against them for the sole purpose of forcing a breach in their franchisee contract. This bill addresses this by requiring that manufacture treat dealers with parity.

On behalf of the truck dealers in North Dakota we ask that you give SB 2236 favorable consideration and a DO PASS recommendation.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

#5

Proposed Amendments to Senate Bill #2236

Page 1, Line 12: remove "oral or"

Page 2, Line 4: remove "or that"

Page 2, Line 5 through 6: delete

Page 2, Line 10: remove "essential and"

Page 2, Line 11: remove "if the requirements are not different from those"

Page 2, Line 12: delete

Page 2, Line 15 through 17: delete and replace with "Line-make' is a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark; provided, however:

1. Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together only, and not separately, to its authorized dealers; and
2. Motor vehicles that share a common brand name or mark may constitute separate line-makes when such vehicles are of different types or are intended for different types of use, provided that either: i) the manufacturer has expressly defined or covered the subject line-makes of vehicles as separate and distinct line-makes in the applicable dealer agreement(s); or ii) the manufacturer has consistently characterized the subject vehicles as constituting a separate and distinct line-makes to its dealer network(s).

Page 2, Line 19: remove "or any person controlled by the manufacturer"

Page 3, Line 4 through 8: remove and replace with "Successor' means the individual who, in the case of the owner's death or incapacity is designated by the owner to take over the ownership and operational interest in the new motor vehicle dealership subject to approval by the manufacturer."

Page 3, Line 23: add at the end of the line "Nothing in this provision shall prevent a manufacturer from requiring a dealer to maintain reasonable inventory requirements pursuant to the franchise agreement."

Page 4, Line 7: after the word "dealer" add the following, ", if the promotional material, showroom and display decorations and material are not required of all other similarly situated same line make dealers in the state. Nothing in this provision shall apply to any agreements when separate and reasonable consideration have been offered and voluntarily accepted."

Page 4, Line 14: after the word "incentive" add the following, "unless the exclusivity requirement is justified by the reasonable business considerations of the manufacturer and provided the dealer complies with the reasonable capitalization, financial, and facility requirements of the manufacturer."

Page 5, Line 14: remove "adequate" and replace with "separate"

Page 5, Line 15: insert the word "alone" after the word "agreement"

Page 5, Line 15: remove "adequate" and replace with "separate"

Page 5, Line 27: remove "adequate" and replace with "separate"

Page 5, Line 28: insert the word "alone" after the word "agreement"

Page 5, Line 28: remove "adequate" and replace with "separate"

Page 6, Lines 2 through 10: delete and replace with, "A manufacturer may conduct a warranty or incentive audit on claims up to one year after the date of payment or expiration of the program which does not exceed one year, whichever is later. If the audit results in a proposed chargeback to the retailer, the manufacturer must disclose in writing, the grounds upon which the chargeback is based. "

Page 6, Line 12: remove "the manufacturer can satisfy its burden of proof that"

Page 6, Line 12: insert "false," after the word "was"

Page 16, Line 13: remove "that"



#1

**Senate Bill 2236**  
**Testimony before Senate Transportation Committee**  
**Matthew C. Larsgaard, MBA**  
**Automobile Dealers Association of North Dakota**

2/24/11

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in SUPPORT of Senate Bill 2236 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.

ADAND members generate approximately \$1.5 Billion in annual retail sales in North Dakota. We are 13% of total retail sales and employ almost 3,400 people with an annual statewide payroll of over \$140 Million dollars.

This bill was introduced at the request of North Dakota's new car dealers. We take the opportunity to have legislation introduced very seriously and approached Senator Klein only after carefully deliberating the need for this bill over the last 1½ years. One of the major reasons for this legislation is an attempt to add stability for North Dakota dealers following the GM and Chrysler bankruptcies.

In 2009 U.S. automobile production fell to its lowest level in nearly 50 years. As a result of years of mismanagement and poor performance, two major auto manufacturers were unable to remain solvent; Chrysler filed for bankruptcy on April 30 and reemerged 41 days later on June 10. GM filed for bankruptcy on June 1 and reemerged as the new GM 40 days later on July 10. As a result of the bankruptcies, approximately 21 North Dakota, family owned dealerships were told that they would be stripped of their franchises and terminated. It is important to understand that these franchise terminations and impending job losses were totally unnecessary; the dealerships targeted for termination were profitable, self-financed, going concern businesses. These independently-owned dealerships were not a "cost" to their manufacturers, and in no way contributed to the manufacturers' insolvency.

As the bankrupt manufacturers reemerged as new companies the real travesty of the situation became immediately apparent. All 64 of North Dakota's GM and Chrysler dealers had worthless franchise agreements with the old, bankrupt companies; agreements that were no longer worth the paper they were written on.

Bankruptcy allowed the manufacturers to have an absolute free pass to trample our state laws and the rights of your North Dakota businesses and their employees. They now had the ability to write brand new franchise agreements that were completely one-sided and entirely unfair. These new agreements were Contracts of Adhesion which are not negotiable. They are a take-it or leave-it arrangement under which the dealer had no choice but to sign the contract or not be a dealer.

With this in mind, one of the manufacturers created a contract that forced the dealer to waive all of their rights under our state laws. Since they knew that the dealer would have no rights and no choice but to sign the agreement, they demanded that the dealer must sell as many vehicles as the manufacturer commanded them to and further demanded that the dealer must purchase all of those vehicles from the manufacturer at their command. They also demanded the dealer to abandon any other franchise they had with another manufacturer and maintain exclusive, stand alone facilities for their brand alone. They stripped dealers of their protest rights and retained the ability to force the dealer to move their facilities or establish another dealership right beside the existing dealer. The contract also stated that if the dealer was unable to comply with any of these demands, even through no fault of their own, the manufacturer could immediately terminate them.

It is important to understand that every single one of these demands was a clear violation of North Dakota state law. However, the manufacturer knew that your dealers had no choice but to sign the agreement. Dealers were forced to waive their rights and were subjected to the manufacturer's unreasonable, unfair, and otherwise illegal demands.

The reason I took the time to explain the events that took place immediately following the bankruptcy is to give you a clear indication of how giant, out-of-state manufacturers can oppress dealers if there are not strong state laws in place to protect them.

**In 2005 the ND legislature created the manufacturer “Prohibited acts” section (51-07-02.3).** They recognized the need to protect North Dakota new car dealers from the unfair business practices of auto manufacturers. One of the protections they created prevented manufacturers from demanding that dealers maintain, exclusive stand-alone facilities. **This legislation saved dealerships across North Dakota from closing their doors during the bankruptcy process.** Even though a dealer may have had their GM or Chrysler franchise terminated, most of them had franchises with other companies and were able to keep their doors open and keep good paying jobs within their communities.

We now come to you and respectfully ask that you expand those protections by passing the following:

Page 1, **Section 1** creates a definition section.

**Section 2** begins on page 3, line 13 and identifies illegal business practices:

**#3.** page 3, lines 26-30: Prevents manufacturers from discriminating among dealers in supplying motor vehicles. They must supply vehicles fairly to all dealers.

page 4, lines 1-2: Protects manufacturers in the event they can't supply vehicles because of a situation they can't control. SD/MT/MN

**#4.** page 4, lines 3-5: Protects dealers from being forced to buy manufacturer promotional materials or pay for advertising campaigns they don't want. SD/MT/MN

**#6.** page 4, lines 9-12: Protects dealers from being forced to maintain separate buildings or personnel or abandon an existing franchise agreement with another manufacturer in order to renew or enter into a franchise agreement or participate in a sales incentive. MT/MN

**#7.** page 4, lines 13-18: Allows a dealer to move to another location as long as the location and site plan are reasonable. The manufacturer has 60 days to approve or deny the request. SD/MN?

**#8.** page 4, lines 19-21: Protects dealers from being forced to move their dealership to another location or to make unreasonable changes to the dealership building or property. MT/MN

**#10.** page 4, lines 28-31: Prevents manufacturers from discriminating among dealers. If they offer an incentive that lowers the cost of a vehicle to one dealer, they must be fair and offer it to all dealers equally. SD/MN

**#12.** page 5, lines 7-14: Prevents manufacturers from forcing a dealer to waive their rights under state law or relieve any person (the dealer or the manufacturer) from liability, imposed by North Dakota state law. SD/MT/MN

**#13.** page 5, lines 15-27: Protects dealers from being required to sign an agreement that requires a dealer to: a) be subject to another state's law b) conduct legal proceedings outside of North Dakota c) give up the dealer's rights under ND state law d) give up the dealer's right to settle a disagreement in a state or federal court in ND e) agree to arbitration or f) give up the dealer's right to bring a legal proceeding against a manufacturer unless a voluntary settlement agreement has been reached. MT/MN

**Section 3** begins on page 6, line 1 and identifies warranty and incentive claims processes.

**51-07-02.4 Warranty and Incentive Claims**

**#1.** lines 2-4: Prohibits a manufacturer from conducting an audit/chargeback on warranty or incentive payments made more than 1 year ago. SD/MT/MN (1 year provision)

**#2.** lines 5-8: Protects dealers from having the manufacturer charge back sales or warranty payments unless the dealer's claim was fraudulent, or the dealer did not comply with the manufacturer's reasonable written procedures for turning in the claim.

**#3.** lines 9-11: The audit/chargeback provisions of this section apply to all incentive and reimbursement programs that are subject to audit by a manufacturer. This section also protects manufacturers and does not apply to fraudulent claims.

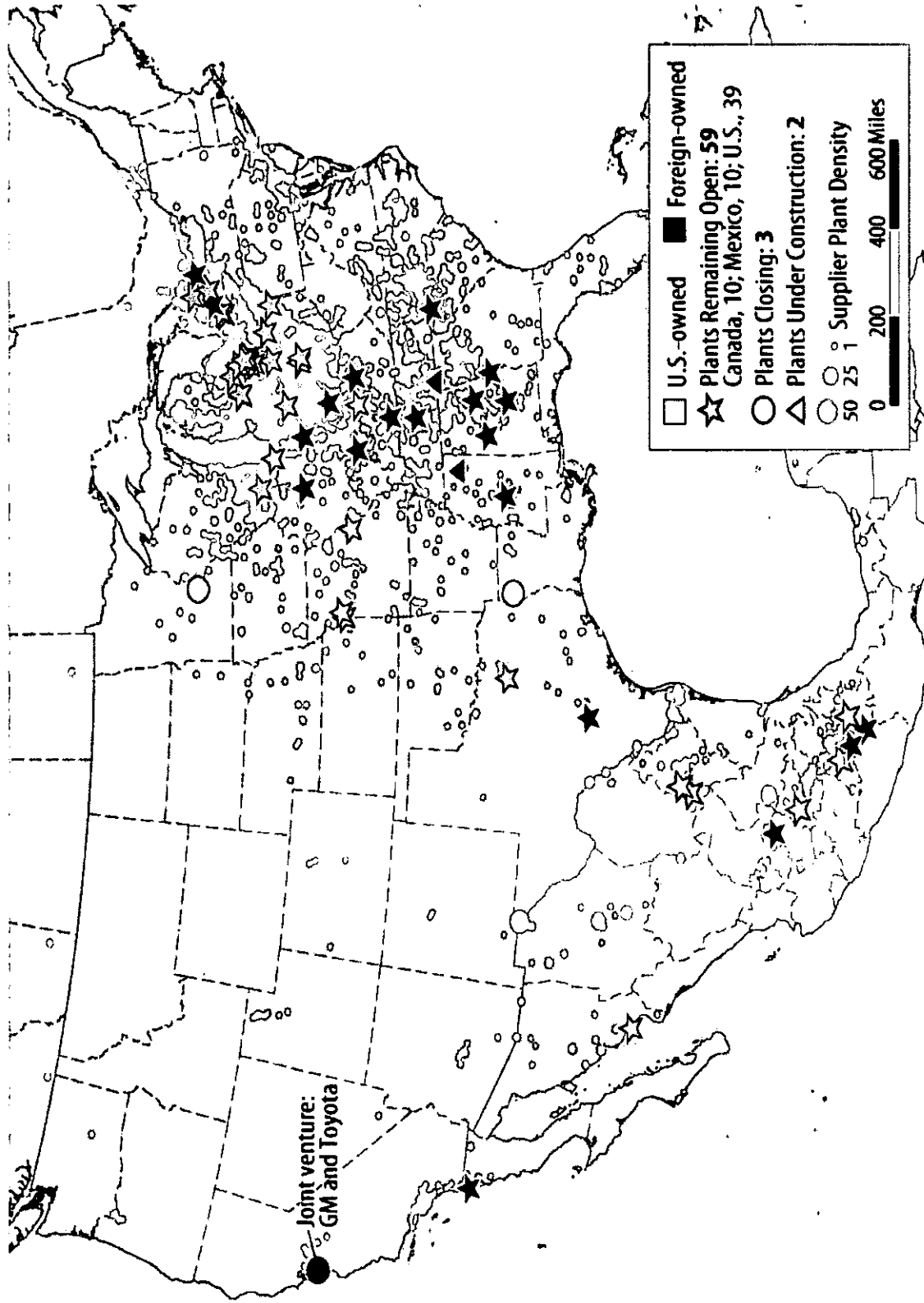
It is important to note that this bill contains the same provisions that already exist in many states. In fact, as you may see on the last page of my testimony, 47 states have introduced or passed franchise legislation such as this in response to the manufacturer bankruptcies. The majority of the provisions in this bill are fashioned after law that already exists in South Dakota, Montana, and Minnesota. As I explained, we have also built several protections into this bill for the manufacturers....we want fairness for both parties.

We as North Dakota small businesses are asking you as North Dakota legislators to please support this bill. Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with giant, out-of-state auto manufacturers. It affects dealers, their employees and the vital transportation needs of our communities. Providing fair business conditions for this important segment of our state's economy is absolutely crucial. Thank you Mr. Chairman.

Matthew C. Larsgaard, MBA

Automobile Dealers Association of North Dakota

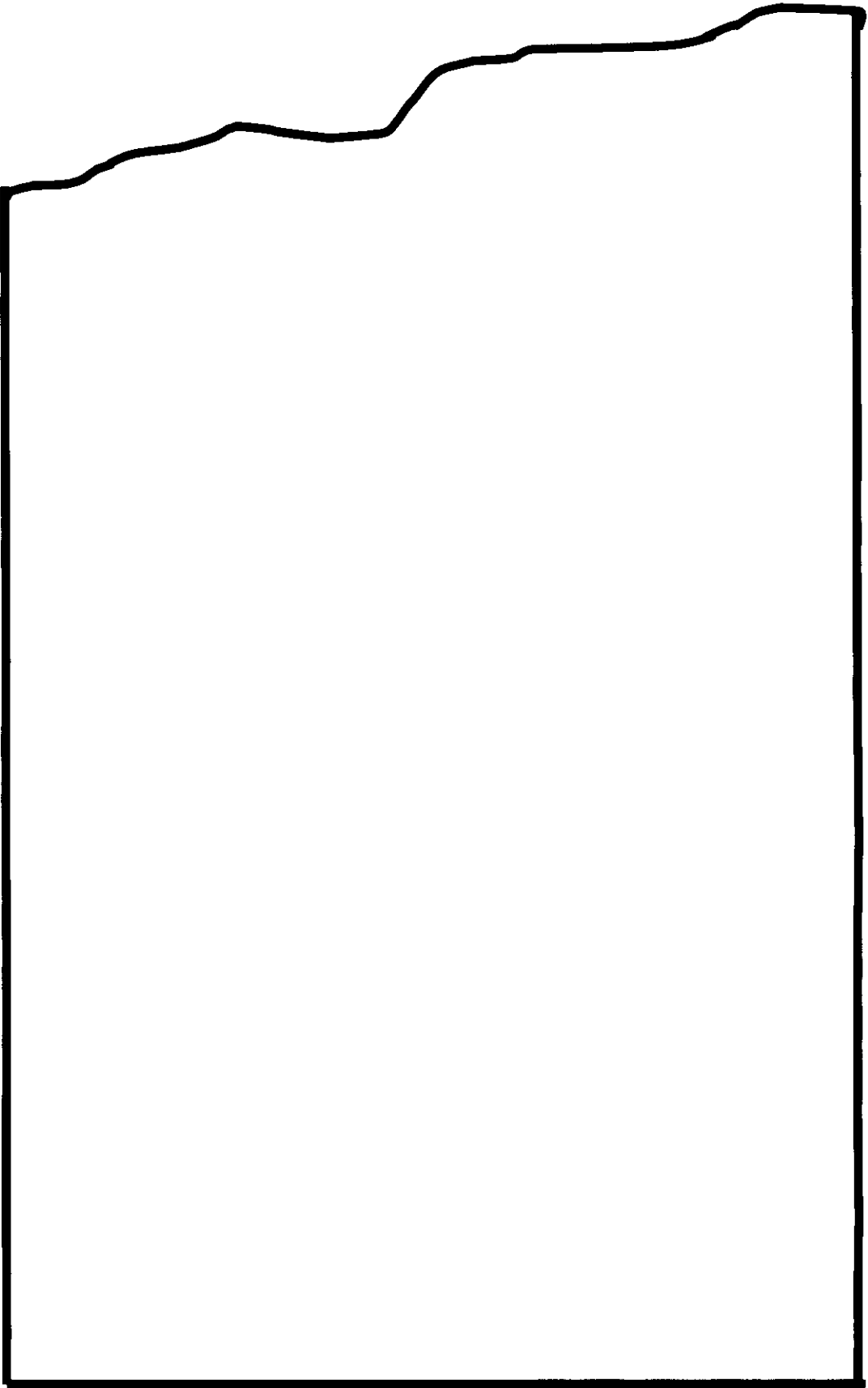
# Geography of North American Auto Production Plants



The U.S. Motor Vehicle Industry: Confronting a New Dynamic in the Global Economy, March 26, 2010

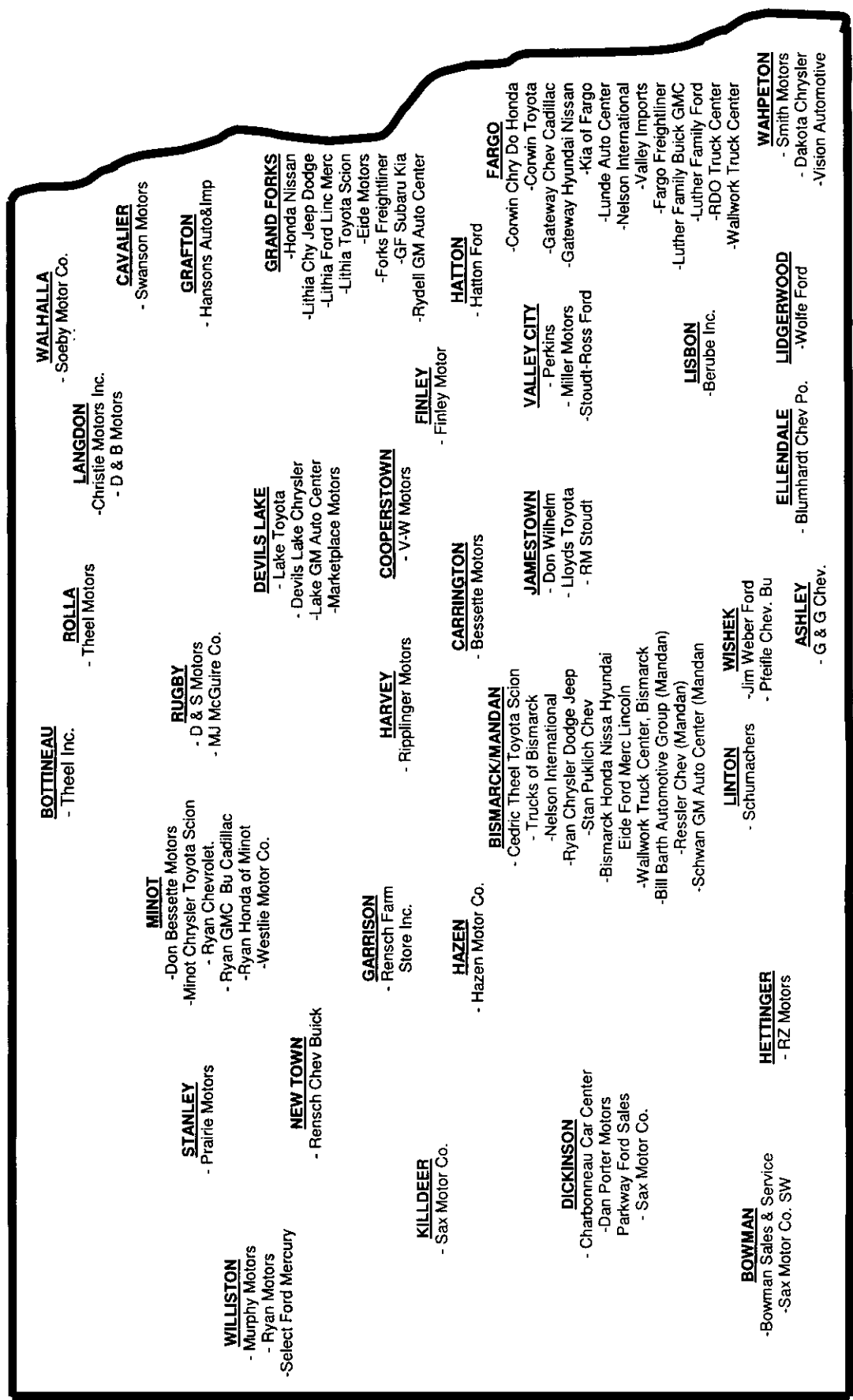
**Geography of North American Auto Production Plants**  
Auto Manufacturer & Supplier Plants in North Dakota

3/26/10



# AUTOMOBILE DEALERS ASSOCIATION OF NORTH DAKOTA Dealer Locations 2011

2/1/11





# Car dealers go on the muscle to toughen state franchise laws . . .

-As of 1/24/11 47 States have introduced legislation.

**Donna Harris and Amy Wilson**  
dharris@crafn.com

When Chrysler and General Motors yanked thousands of franchises last year during their bankruptcies, dealers across the country were caught off guard. Many assumed incorrectly that their state franchise laws protected them.

Now dealers are seeking tough amendments to those laws to bolster their protection in the future.

"In the previous world we all lived in, the idea of a GM or Chrysler or a major auto manufacturer going bankrupt was not on anybody's radar screen," said Tim Doran, president of the Ohio Automobile Dealers Association. "That's all changed now."

It's unclear if the new state laws will trump bankruptcy laws. But 40 state legislatures have passed or are considering franchise amendments, many of them beefing up the financial assistance factories would be required to pay spurned dealers.

The most hotly contested legislation restricts factories from returning to a market in which they terminated a dealer unless they offer to give back the franchise to that former dealer.

## No waivers

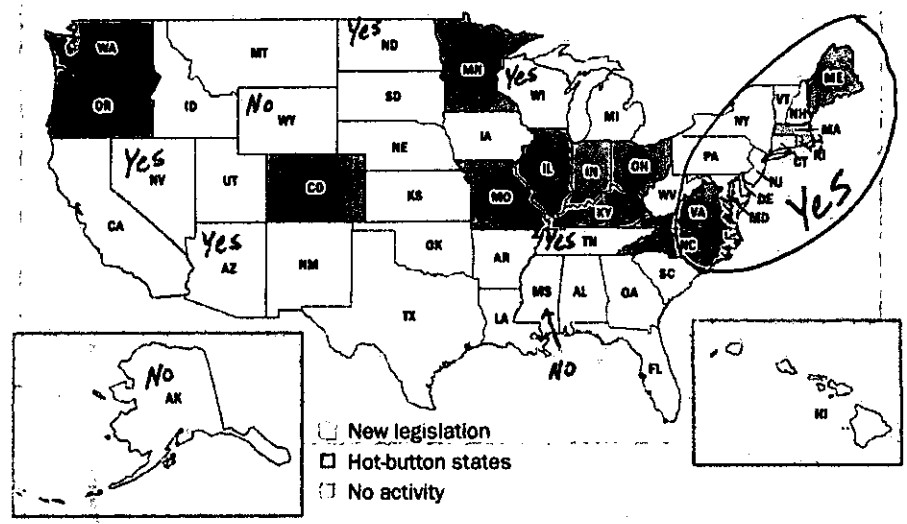
The agreements that GM required dealers to sign to remain in the automaker's retail network made them waive their right to protest the addition or relocation of another dealership in their vicinity for two years after GM's reorganization.

Chrysler Group dealers who wanted to add a Chrysler, Dodge or Jeep brand also had to waive their rights to a legal protest should Chrysler attempt to install nearby competitors.

Bills in several states prohibit such waivers.

## Fighting over franchises

Franchise legislation has been proposed or passed in 47 states in 2009 and 2010, the biggest surge in activity since dealers fought factory-owned dealerships a decade ago. General Motors and Chrysler have pushed back in several hot-button states.



-Alaska, Wyoming, & Mississippi have not.

Dealers also seek to limit "site control" or "exclusive use" agreements, which allow a factory to control how property is used. Chrysler required dealers adding a franchise to sign an agreement giving the company strict control over the property's use for 30 years. The property had to remain an exclusive Chrysler-Dodge-Jeep store.

Legislation in New Mexico limits the term of these agreements to 15 years. Under a Virginia bill, site control agreements automatically end

if the manufacturer sells or transfers the right to manufacture or distribute its vehicles, the dealer's franchise is terminated for any reason or the factory fails to exercise its legal right to object to the dealership's sale by buying the property.

Some legislation keeps franchise rights alive as a dealer protests termination.

Chrysler's rejected dealers abruptly lost their

see LAWS, Page 29

## Not just about bankruptcy

New franchise laws and proposed legislation in several states also address nonbankruptcy concerns, such as

- Requiring factories to presume dealers did not knowingly sell vehicles that end up as gray-market exports
- Protecting dealerships from factory mandates to upgrade stores; upgrades must be economically feasible and necessary
- Beefing up language governing exclusive facility requirements to give dealerships more flexibility on dualing
- Shortening the look-back period that factories have for audits and chargebacks on warranty and incentive payments
- Requiring that factories pay dealerships for items such as incentives and warranty work within a prescribed period
- Preventing per-vehicle surcharges that some manufacturers have charged dealerships to cover state demands that warranty work be reimbursed at retail rates for parts and labor

#2

Dealer Testimony – Gregg Jacobson  
SB 2236  
House Transportation Committee

I am Gregg Jacobson, owner, R Z Motors Inc., Hettinger, ND. Our dealership has 4 franchise agreements: Ford Motor Company, and Chrysler Corporation LLC, Dodge, Chrysler and Jeep. Our company has been incorporated in North Dakota since 1984 serving southwestern North Dakota.

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I ask this body to stand with the backbone of rural North Dakota, main street, and your local automobile dealers. Protect our dealerships, or it will surely be our demise.

Respectfully,  
Gregg Jacobson, owner  
R Z Motors Inc.

## ND SB 2236: Oppose Unless Amended

### Definition of good cause:

- Prohibiting a manufacturer from placing "different" requirements implies that different is always hurtful to the dealer. This is not the case. Every dealership is unique in some way.
- There are many reasons why some dealers have different requirements within the private contracts that both parties agree to.
- Dealers choose to go into business with a manufacturer and understand the terms of their franchise agreements. The state should not be in the business of defining what constitutes a violation of such agreements.

### Requested change:

"Good cause" means a failure by a new motor vehicle dealer to substantially comply with ~~material and the reasonable, fair and equitably applied~~ requirements imposed upon the new motor vehicle dealer by the franchise agreement, if the requirements are not unreasonable when compared to different from those requirements imposed on other similarly situated new motor vehicle dealers

### Definition of Line-make: strike entirely.

- The proposed definition collectively defines "common name, trademark, service mark, or brand name" as a line-make. That is much too broad and inaccurate.
  - Example: Toyota has Lexus and Scion. Lexus is a separate line-make. Scion is a model under the Toyota line (regardless of the fact that within Scion there are three models of vehicles)
- The Alliance does have a preferred definition to be used when state franchise statutes are opened via legislation. All twelve of the Alliance's member companies have signed off on this language. Should North Dakota choose to define line-make; it makes sense to use a definition that automakers understand.
- The North Dakota Automobile Dealers Association outright rejected the Alliance definition.
- Line-make is not currently defined in North Dakota statute and dealers have not expressed that there have been any challenges or problems by having the term undefined. Status quo is working, and has been working for decades.
- **In the spirit of compromise, the Alliance requests that this language be deleted entirely.**

### Definition of manufacturer:

- If this language were intended to apply only to employees of a manufacturer, the language is unnecessary as such limitations would already apply under agency law.
- As drafted, this language could be interpreted to impose the restrictions of dealer franchise law upon the contracts of other entities that do not have a franchise relationship or contracts with the dealer.
- These entities could be responsible for termination assistance provisions never intended to apply to them.
- If the dealers wish to include language regarding subsidiary companies, that language should be in a separate paragraph - not within the definition of manufacturer.

### Requested change:

"Manufacturer" means any person that is engaged in the business of manufacturing or assembling new motor vehicles ~~or any person controlled by the manufacturer.~~

**Exclusivity:** Section 2 – Prohibited Acts, sub (6)

This language is problematic as it limits a manufacturer's rights and interests in promoting its own brands and permits a dealer to engage in activity that is inconsistent with his franchise commitments to that manufacturer.

- Manufacturers incur 100% of the cost of product development and have made significant investments in brand development for the mutual benefit of the manufacturer and the dealer.
- In exchange for the right to become an "authorized retailer" and to build a business from the brands and products developed by the manufacturer, the dealer agrees to promote the manufacturer's products and not engage in activity that is inconsistent with such promotion.
- Allowing dealers an unfettered right to bring other competing manufacturer products into the store denies a manufacturer any right to protect the product and brands that it has developed.

**Requested change:**

Require a retailer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or to participate in any new vehicle program discount credit rebate or sales incentive. This subsection shall not apply to any agreements where separate and valuable consideration has been offered and accepted.

# 4

Proposed Amendments to Senate Bill #2236, First Engrossment

Page 2, Line 9: remove "material and" and after "reasonable," insert "fair and equitably applied"

Page 2, Line 10: remove "different from" and replace with "unreasonable when compared to"

Page 2, Line 14-16: delete

Page 2, Line 18: remove "or any person controlled by the manufacturer"

Page 4, Line 12: after "in any" insert "new vehicle"

Page 4, Line 12: After the period, insert "This subsection shall not apply to any agreements where separate and valuable consideration has been offered and accepted."

# ADAND Concerns Regarding Manufacturer Amendments #5

3/10/11

"Good cause" DEFINITION page 2, line 8

SB 2236  
3/24  
Matthew  
Larsgaard

6. "Good cause" means failure by a new motor vehicle dealer to substantially comply with material and reasonable, fair and equitably applied requirements imposed upon the new motor vehicle dealer by the franchise agreement if the requirements are not different from those requirements imposed on other similarly situated new motor vehicle dealers. (Manufacturer amendments are RED)

Without the definition of "good cause" it may be possible that a manufacturer could discriminate among dealers and single out a particular dealer by imposing unique, onerous, or "different" requirements on that lone dealer. Without the word "material" a dealer could be guilty of a "good cause" infraction by merely having one of their technicians out of uniform, or not having enough salesman on the showroom floor. The word "material" prevents the manufacturer from establishing "good cause" for a minor infraction.

The manufacturers have indicated that "different" requirements are not always hurtful to dealers...we agree. However, it would be unfair to impose "different" requirements on a single dealer and then use those requirements to establish good cause. Again, the manufacturer is the one who establishes the requirements...they should be consistent among dealers.

Pertains to North Dakota Farm Equipment Dealers

**NDCC 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, excluding automobile dealers, truck dealers, or parts dealers of the automobiles or trucks, that enters 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.

Continued....



***“Good Cause” Continued....***

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. 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.

**SOUTH DAKOTA**

**32-6B-1. Definition of terms.** Terms as used in this chapter mean:

**32-6B-45. Good cause** required for franchisor termination, cancellation, nonrenewal, or change in competitive circumstances. No franchisor may, directly or through an officer, agent, or employee, terminate, cancel, fail to renew, or substantially change the competitive circumstances of a vehicle dealership agreement without good cause. For the purposes of this section, good cause means failure by a vehicle dealer to substantially comply with **essential and reasonable** requirements imposed upon the vehicle dealer by the vehicle dealership agreement, **if the requirements are not different from those requirements imposed on other similarly situated vehicle dealers by their terms.** In addition, good cause exists if: ....

**MONTANA**

**61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

- (a) the franchisee's sales in relation to the market;
- (b) investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise;
- (c) permanency of the investment;
- (d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;
- (e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;
- (f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for warranty work performed by the franchisee pursuant to this part;
- (g) except as provided in subsection (2), actions by the franchisee that result in a **material breach** of the written and **uniformly applied requirements** of the franchise that are determined by the department to be reasonable and material; and
- (h) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms and the parties' relative bargaining power.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

- (a) a change in ownership of the franchisee's dealership;

*Continued....*

***“Good Cause” Continued....***

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee;

(c) the failure of a franchisee to change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities; or

(d) the desire of a franchisor or a franchisor's representative for market penetration.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel, for the new motor vehicle products of the line-make.

**MINNESOTA**

**80E.06 CANCELLATIONS, TERMINATIONS, OR NONRENEWALS.**

**Subd. 2. Circumstances constituting good cause.**

Notwithstanding the terms of any franchise agreement or waiver to the contrary, good cause exists for the purposes of a termination, cancellation, or nonrenewal, when the new motor vehicle dealer fails to comply with a provision of the franchise which is both reasonable and of **material significance** to the franchise relationship; provided, that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of the failure.

If failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer; provided, that the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; the notification stated that notice was provided for failure of performance pursuant to sections 80E.01 to 80E.17; the new motor vehicle dealer was afforded a reasonable opportunity in no event less than six months to comply with the criteria; and the dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during the period. To rebut allegations of good cause for a proposed termination, a dealer may present evidence including, but not limited to, a showing that the grounds for termination resulted from acts or circumstances beyond the control of the dealer and which were communicated to the manufacturer, or that in evaluating the dealer's compliance with reasonable sales criteria, the manufacturer failed to consider the dealer's sales of factory program vehicles. For the purposes of this subdivision, "factory program vehicle" means a vehicle of the current model year offered for sale and resold by the manufacturer directly or at a factory sponsored or authorized auction and purchased by a dealer holding a current franchise from the manufacturer for that same line make.

**“Line-make” DEFINITION** page 2, line 14

8. “Line-make” means new motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer, distributor, or factory branch.

***Manufacturers propose to remove this definition.***

A definition of “Line-make” provides clarity in identifying those groups of motor vehicles that are offered for sale, lease, or distribution through a franchise agreement. The manufacturers stated that “Under this definition: GMC, Buick, Cadillac, and Chevrolet would be considered the same line-make as they are all GM brands.” Their statement is inaccurate. The bill’s definition of Line-make identifies those vehicles “under common name, trademark, service mark, or **brand name** of the manufacturer...” Our definition is almost identical to Montana’s and Minnesota’s definition and clearly identifies GMC, Buick, etc. as separate brand names.

**SOUTH DAKOTA**

Definition Not Found

**MONTANA**

**61-4-201. Definitions.** As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(10) “Line-make” means vehicles that are offered for sale, lease, or distribution under a common name, trademark, or service mark.

**MINNESOTA**

**80E.03 DEFINITIONS. Subdivision 1. Terms.**

As used in sections 80E.01 to 80E.17, unless the context otherwise requires, the following terms have the meanings given them.

**80E.03 DEFINITIONS. Subd. 10a. Line-make.**

“Line-make” means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer, distributor, or factory branch.

**“Manufacturer” DEFINITION** page 2, line 17

9. “Manufacturer” means any person that is engaged in the business of manufacturing or assembling new motor vehicles or any person controlled by the manufacturer.

*(Manufacturer amendments are RED)*

ADAND is concerned that the manufacturers may try to circumvent our state laws by supplying motor vehicles to dealers through an entity that would not be considered a “manufacturer”. We are also concerned that they would attempt to use or establish another entity by which they would impose requirements on dealers that are prohibited by manufacturers. Note: South Dakota, Montana, and Minnesota all have some type of language identifying an entity “controlled” by the manufacturer.

**South Dakota 32-6B-79.**

Manufacturer defined. In §§ 32-6B-79 to 32-6B-83, inclusive, the term, manufacturer, includes a representative or a person or entity who is directly or indirectly controlled by, or is under common control with, the manufacturer. For purposes of this section, a person or entity is controlled by a manufacturer if the manufacturer has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person or entity

**Montana 61-4-201**

"Manufacturer" means a person who manufactures or assembles a line-make of new motor vehicles and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state.... The term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, a manufacturer distributes its products.

**Minnesota 80E.03**

"Manufacturer" means any person who manufactures or assembles new motor vehicles or any person, partnership, firm, association, joint venture, corporation, or trust which is controlled by the manufacturer.

**EXCLUSIVE FACILITY REQUIREMENTS** page 4, line 9

6. Require a retailer to either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to continue, renew, reinstate, or enter a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive provided the dealer complies with the reasonable capitalization, financial and facility requirements of the manufacturer. (Manufacturer amendments are RED)

If a dealer does not have enough square footage in their showroom to meet the "facility requirements of the manufacturer" does the manufacturers' amendment allow them to demand that the dealer abandon any other franchises or else lose their franchise agreement?

Furthermore with regard to exclusivity, the manufacturers have stated "The Alliance requests that language be considered to involve the manufacturer in this decision to some respect, whether that be through a requirement to meet certain standards before dealers can introduce a second line-make into the same facility (*already allowed in subsection 5.*) OR that reasonable business considerations are considered."

1. It is already illegal for a manufacturer to coerce or demand that a dealer maintain an exclusive facility as long as the dealer's facilities satisfy the manufacturer's facility requirements. Why are they fighting this language?
2. This provision is intended to prevent manufacturers from circumventing our state exclusivity law by providing more clarity to subsection 5.

We are very concerned that the manufacturers' amendments could allow a manufacturer to have the opportunity to terminate a dealer if the dealer doesn't give up or abandon any of their other franchises. This is a very important provision for our rural dealers.

*Continued...*

***Exclusivity Requirements Continued....***

**SOUTH DAKOTA**

**Language Not Found**

**MONTANA**

**61-4-208. Prohibited acts.** (1) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;

(v) require, coerce, or attempt to coerce a new motor vehicle dealer or transferee of a new motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicle or related products, as long as the new motor vehicle dealer or transferee of a new motor vehicle dealer maintains a reasonable line of credit for each franchise and the new motor vehicle dealer or transferee of a new motor vehicle dealer remains in substantial compliance with reasonable facilities requirements. The reasonable facilities requirements may not include any requirement that a new motor vehicle dealer or transferee of a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space.

**MINNESOTA**

**80E.135 WAIVERS AND MODIFICATIONS PROHIBITED.**

**Subd. 1a. Site control agreements. No manufacturer, distributor, or factory branch shall Subd.**

**Subd. 1a. Site control agreements.**

No manufacturer, distributor, or factory branch shall directly or indirectly condition the awarding of a franchise to a prospective new motor vehicle dealer, the addition of a line make or franchise to an existing dealer, the renewal of a franchise of an existing dealer, the approval of the relocation of an existing dealer's facility, or the approval of the sale or transfer of the ownership of a franchise on the willingness of a dealer, proposed new dealer, or owner of an interest in the dealership facility to enter into a site control agreement or exclusive use agreement. For purposes of this section, the terms "site control agreement" and "exclusive use agreement" include any agreement that has the effect of either:

*Continued....*

(1) requiring that the dealer establish or maintain exclusive dealership facilities; or

(2) restricting the ability of the dealer, or the ability of the dealer's lessor in the event the dealership facility is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease the dealership facilities, option to purchase the dealership facilities, option to lease the dealership facilities, or other similar agreement, regardless of the parties to the agreement.

Any provision contained in any agreement that is inconsistent with the provisions of this subdivision is voidable at the election of the affected dealer or owner of an interest in the dealership facility. This subdivision does not limit the right of a manufacturer, distributor, factory branch, or importer to exercise a right of first refusal under section 80E.13, paragraph (j), to acquire a franchisee's assets or ownership in the event of a proposed sale or transfer of a franchise.

## RESPONSES TO MANUFACTURER AMENDMENTS INTRODUCED IN SENATE

### “Line-make” DEFINITION CONTINUED page 2, line 14

#### **Manufacturer Proposed “Line-make” Definition:**

The manufacturer’s definition could possibly nullify our “Buyback Provisions” (51-07-01). There are certain rights that dealers have in the event a dealer is terminated or they give up their franchise agreement. The manufacturer is obligated to purchase back the new, unused vehicles, parts, etc. We are concerned that this new definition could strip dealers of their rights. Our national legal counsel stated:

“I think the language raises an issue in the context of a manufacturer ending a brand and not wanting that to be considered the termination of a franchise. GM used a product addendum when it was in the heavy duty truck business. One GM Agreement but with product addenda that allowed dealers to sell heavy, medium and light trucks.

When GM announced that it was exiting the heavy duty truck segment of the business, a number of courts ruled against dealers who argued that this was the termination of a franchise. The rationale of some of these decisions was that the dealers still had a GM Dealer Agreement – one that allowed them to continue to sell medium or light duty vehicles.

Thus, those courts held that there had not been a termination. This led several states to amend their laws to say the elimination of a line make is a termination. It is unclear whether this language would create similar problems for the dealer or whether there is another goal here.”



Prohibited Acts, Provision #4

**REQUIRED PURCHASE OF PROMOTIONAL MATERIAL** page 4, line 3

4. Require a dealer to pay all or any part of the cost of an advertising campaign or contest or purchase any promotional material, showroom, or other display decoration or material at the expense of the dealer. Nothing in this provision shall apply to any agreements when separate and reasonable consideration have been offered and voluntarily accepted. (Manufacturer amendments are RED)

Does the manufacturer's proposed language allow the manufacturer to "force" the dealer to purchase the promotional material, display decorations, etc. or the dealer would not be eligible to "voluntary" participate in a sales incentive or some other type of reimbursement program?

ADAND's language states that a manufacturer can't **REQUIRE** a dealer to participate...the dealers can if they want to. Why do the manufacturers need language that states it's ok to "voluntarily" accept an agreement to purchase the material?  
ADAND is afraid there is a hidden motive.

**Warranty and Incentive Claims page 6, line 5**

**Subsection 2**

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

If the manufacturer wants to chargeback a sales or warranty payment they should be required to have the burden of proving that the claim was fraudulent or that the dealer didn't comply with the manufacturer's written procedures.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2236

In lieu of the amendments adopted by the House as printed on page 1156 of the House Journal, Engrossed Senate Bill No. 2236 is amended as follows:

Page 2, line 10, replace "different from" with "unreasonable when compared to"

Page 2, line 14, remove """Line-make" means new motor vehicles that are offered for sale, lease, or distribution"

Page 2, remove lines 15 and 16

Page 2, line 17, remove "9."

Page 2, line 18, replace "controlled by the manufacturer" with "that in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer"

Page 2, line 19, replace "10." with "9."

Page 2, line 22, replace "11." with "10."

Page 2, line 25, replace "12." with "11."

Page 2, line 29, replace "13." with "12."

Page 3, line 1, replace "14." with "13."

Page 3, line 6, replace "15." with "14."

Page 3, line 10, replace "16." with "15."

Page 4, line 12, after the underscored period insert "This subsection does not apply to a program that is in effect with more than one dealer in this state on the effective date of this Act or to a renewal or modification of the program."

Renumber accordingly

#1  
Joel Gilbertson

3/24  
PM

- 1           4.   "Franchise" or "franchise agreement" means any contract or agreement between a  
2           dealer and a manufacturer or distributor that authorizes the dealer to engage in the  
3           business of selling or purchasing any particular make of new motor vehicles or motor  
4           vehicle parts manufactured or distributed by the manufacturer or distributor or that  
5           establishes rights or obligations, or both, relating to the dealer's new motor vehicle  
6           operation, including agreements relating to dealership facilities or site control.  
7           "Franchisor" means a person that manufactures, imports, or distributes new motor  
8           vehicles and which may enter a franchise agreement.  
9           6.   "Good cause" means failure by a new motor vehicle dealer to substantially comply  
10           with essential and reasonable requirements imposed upon the new motor vehicle  
11           dealer by the franchise agreement if the requirements are not different from those  
12           requirements imposed on other similarly situated new motor vehicle dealers.  
13           7.   "Good faith" means honesty in fact and the observance of commercially reasonable,  
14           nondiscriminatory standards of fair dealing.  
15           a.   "Line-make" means new motor vehicles that are offered for sale, lease, or distribution  
16           under a common name, trademark, service mark, or brand name of the manufacturer,  
17           distributor, or factory branch is a collection of models, series, or groups of motor vehicles  
          manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or  
          distribution pursuant to a common brand name or mark; provided, however:  
  
          1. Multiple brand names or marks may constitute a single line-make, but only when included in a  
          common dealer agreement and the manufacturer, distributor, or importer offers such vehicles bearing the  
          multiple names or marks together only, and not separately, to its authorized dealers; and  
  
          2. Motor vehicles that share a common brand name or mark may constitute separate line-makes  
          when such vehicles are of different vehicle types or are intended for different types of use, provided that  
          either: i) the manufacturer has expressly defined or covered the subject line-makes of vehicles as  
          separate and distinct line-makes in the applicable dealer agreement(s); or ii) the manufacturer has  
          consistently characterized the subject vehicles as constituting a separate and distinct line-makes to its  
          dealer network(s).  
18           "Manufacturer" means any person that is engaged in the business of manufacturing or  
19           assembling new motor vehicles or any person controlled by the manufacturer.  
20           .10. "Merchandise" means farm implements, machinery, attachments, and parts for the  
21           same; lawn and garden equipment and parts for the same; and automobiles, trucks,  
22           and semitrailers and parts for the same.  
23           .11. "New motor vehicle" means a motor vehicle that has not been subject to a retail sale,  
24           the registration provisions of chapter 39-04, the title registration provisions of chapter  
25           39-05, or the motor vehicle excise tax provisions of chapter 57-40.3.  
26           .12. "Owner" means a person, other than a lienholder, having the property in or title to a

Sixty-second  
Legislative Assembly

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