

shall upon conviction, as a first offense, be fined not more than Five Hundred Dollars (\$500.00) or imprisonment in the County jail for not more than ninety days, or by both such fine and imprisonment. Any subsequent offense shall be punishable by not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

§ 4. EMERGENCY.] This Act is hereby declared to be an Emergency Measure and shall be in full force and effect from and after its passage and approval.

Approved March 10, 1941.

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## UNFAIR TRADE ACT

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### CHAPTER 291

S. B. No. 172—(Braun, Bridston, Blank and Topp)

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#### NORTH DAKOTA UNFAIR TRADE PRACTICES ACT

An Act Defining and prohibiting unfair sales and unfair trade practices, prohibiting the advertising or offering for sale or selling merchandise below actual cost for the purpose or having the effect of injuring competitors or destroying competition, and providing penalties for the violation and remedies for the enforcement of the provisions thereof.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. This Act shall be known and designated as the "North Dakota Unfair Trade Practices Act."

§ 2. (1) When used in this act, the term "cost" shall mean the actual invoice cost of the merchandise or the replacement cost of the merchandise whichever is lower; less all trade discounts, advertising allowances, including customary discounts for cash, to which shall be added (a) transportation including cartage cost, not otherwise included in the invoice cost or the replacement cost of the merchandise; provided, that where a manufacturer publishes a list price, proof of such list price, less all discounts, shall be prima facie evidence of "cost."

(2.) When used in this Act the term "replacement cost" shall mean the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time prior to the

date of sale or the date upon which it is offered for sale by the seller.

(3) When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, each and all of said items shall, for the purpose of this Act, be deemed to be advertised, offered for sale, or sold, and the price of each item named shall be governed by the provisions of paragraphs (1) or (2) of Section 2, respectively.

(4) The terms "sell at retail," "sales at retail," and "retail sale" shall mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchase for consumption or use other than resale or further processing or manufacturing, provided, however, that sales to contractors or subcontractors engaged in any type of building operation or the repair of buildings or other improvements upon real estate shall be deemed sales for consumption and not for further processing or manufacturing. The terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(5) The terms "sell at wholesale," "sales at wholesale," and "wholesale sales" shall mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchase for purposes for resale or further processing or manufacturing, provided, however, that sales to contractors engaged in any type of building operation or the repair of buildings or other improvements upon real estate regardless of further processing or manufacturing of the material sold, shall be deemed retail sales and not wholesale sales. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(6) The term "retailers" shall mean and include every person, partnership, corporation or association engaged in the business of making sales at retail within this state provided that, in the case of a person, partnership, corporation or association engaged in the business of making sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business.

(7) The term "wholesaler" shall mean and include every person, partnership, corporation or association engaged in the business of making sales at wholesale within the state, provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such terms shall be applied only to the wholesale portion of such business.

§ 3. It is hereby declared that any advertising, offer to sell, or

sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this Act, with the intent, or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, and are unfair competition and contrary to public policy and the policy of this Act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce. The inhibition against sales below cost as defined herein, shall embrace any scheme of special rebate, collateral contract or any device of any nature whereby such result is, in substance or in fact, effected in violation of the spirit and intent of this Act.

§ 4. Any retailer or wholesaler who shall advertise, offer to sell, or sell any article of merchandise at less than cost to such retailer or wholesaler as defined in this Act, or who gives, offers to give, or advertises the intent to give away any article of merchandise, with the intent, or with the effect of injuring competitors and destroying competition shall be guilty of a misdemeanor. Proof of any such advertising, offer to sell or to give away, or sale or gift of any article of merchandise by any retailer or wholesaler at less than cost as defined in this Act, shall be prima facie evidence of a sale below cost.

§ 5. In addition to the penalties provided, the Courts of this State are invested with the jurisdiction to prevent and restrain violations of this Act by injunctive proceedings, and it shall be the duty of the Attorney-General and the several State's Attorneys to institute suits in equity in behalf of the State, to prevent and restrain violations hereof. Any person damaged, or who is threatened with loss or injury, by reason of a violation of this Act, shall be entitled to sue for and have injunctive relief in the District Court against any damage or threatened loss or injury by reason of a violation hereof.

§ 6. The provisions of this Act shall not apply to sales at retail or sales at wholesale; (a) where merchandise is sold in bona fide clearance sales, if advertised, marked and sold as such; (b) where perishable merchandise must be sold promptly in order to forestall loss; (c) where merchandise is imperfect or damaged, or is being discontinued and is advertised, marked and sold as such; (d) where merchandise is sold upon the final liquidation of any business; (e) where merchandise is sold for charitable purposes or to relief agencies; (f) where merchandise is sold on contract to departments of the government or government institutions; (g) where the price of merchandise is made in good faith to meet legal competition; (h) where merchandise is sold by any officer acting under the

order or direction of any court; provided, however, that any retailer or wholesaler claiming the benefits of any of the exemptions herein above provided, shall have the burden of proof of facts entitling such retailer or wholesaler to any of the benefits of said exemptions.

§ 7. Any party of record to any civil action or proceedings instituted or brought pursuant to the provisions of this Act may be required to testify in such proceedings and to produce books, papers, tariffs, contracts, agreements and documents before the Court in such proceedings, providing, however, that no person compelled under the provisions of this section to testify or produce evidence tending to incriminate him shall be prosecuted for any crime which such testimony or evidence tends to prove or to which the same relates. This section shall not exempt any person from prosecution for perjury.

§ 8. If any section, sentence, clause or provision of this Act shall, for any reason, be held invalid or unconstitutional, the validity of the remaining parts hereof shall not be affected thereby.

Approved March 17, 1941.

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## VALIDATIONS

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### CHAPTER 292

S. B. No. 136—(Committee on Judiciary)

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#### LEGALIZING CERTAIN ACKNOWLEDGEMENTS ON DEEDS

An Act to legalize the execution and acknowledgment of certain deeds, mortgages and other instruments in writing, and the record thereof, and making the same or certified copies thereof, admissible in evidence.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. ACKNOWLEDGMENT, FILING AND RECORDING LEGALIZED.] The execution, acknowledgment, filing and recording of all deeds, leases, including oil and gas leases, mortgages and other instruments in writing affecting the title of real property in this State, in good faith made, taken or certified to prior to the first day of January, 1941, and which have been filed or recorded in the proper counties of this State, be, and the same are hereby declared to be legal and valid for all purposes, anything in the laws of the State of North Dakota, or of any other state, territory or country at the