

SALES AND EXCHANGE

CHAPTER 308

H. B. No. 761

(Bloom, Lynch, Glaspey, Renfrow)

LICENSING AND BONDS OF AUCTIONEERS

AN ACT

To amend and reenact section 51-05-13 of the North Dakota Century Code, relating to the licensing and bonding of auctioneers, and providing a penalty.

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

§ 1. **Amendment.)** Section 51-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05-13. Auctioneer's License—Fee—Bond—Penalty.) No person shall conduct any auction sale in this state as an auctioneer until he has filed with the public service commission an application for an annual auctioneer's license at least ten days prior to the date such applicant is to conduct his first auction sale. The application shall be in writing, verified, and filed annually, showing the name, residence and post-office address of the applicant. The fee for the annual license or renewal thereof is ten dollars which shall accompany the application. The license number shall appear on all advertising of sales conducted by such auctioneer, immediately following the name of such auctioneer.

At the time of filing the application the applicant shall file with the public service commission a surety bond in the penal sum of one thousand dollars, running to the state of North Dakota for the use and benefit of any person who might be injured by said licensee's improper conduct of such auction sale.

Nonresident auctioneers may conduct sales within the state only if the state of residence of such nonresident auctioneers grants similar privileges to North Dakota resident auctioneers. A nonresident thus authorized to conduct sales within the state shall be subject to the same requirements of law as is a resident auctioneer.

Nothing in this section shall require an executor or administrator of an estate, or any sheriff or other person selling

property pursuant to execution or other court order, to be licensed in order to conduct such sale in connection with their official duty, nor shall the provisions of this section apply to the selling at auction of purebred or registered livestock.

Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars. Each such sale held without the payment of a license fee as herein required shall constitute a separate offense.

Approved March 7, 1961.

CHAPTER 309

H. B. No. 721

(Goebel, Anderson of McHenry, Alme, Backes, Christensen of Ward,)
(Hagen, Bader, Halcrow, Miller of Walsh, Tough,)
(Mueller, Schuler, Reimers)

IMPLEMENT AND CAR DEALERS

AN ACT

To amend and reenact sections 51-07-01, 51-07-02, and 51-07-03 of the North Dakota Century Code, relating to retail implement or car dealer, prices of implements, machinery, and automobiles, and failure to pay sum specified on cancellation of contract.

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

§ 1. **Amendment.)** Section 51-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-01. Retail Implement or Car Dealer May Recover Price of Articles Upon Discontinuance of Contract by Wholesaler or Retail Dealer.) Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements, or in the business of selling and retailing automobiles, or trucks, or repair parts for automobiles or trucks, enters into a written contract evidenced by franchised agreement whereby such retailer agrees to maintain a stock of parts or complete or whole machines, and attachments with any wholesaler, manufacturer, or distributor of farm implements and machinery or repair parts for farm implements and machinery, or automobiles or trucks or repair parts for automobiles or trucks, and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such

wholesaler, manufacturer, or distributor, shall pay to such retailer unless the retailer should desire to keep such merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements and machinery and attachments including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts listed in current price list or catalogue for farm implements and machinery in stock and for all automobiles or trucks or repair parts for automobiles or trucks previously purchased from such wholesaler, manufacturer or distributor, and held by such retailer on the date of the cancellation or the discontinuation of such contract. The wholesaler, manufacturer or distributor shall also pay such retailer a sum equal to 5% of the current net price of all parts returned for the handling, packing and loading of such parts back to the wholesaler, manufacturer or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of such farm implements, farm machinery, plus freight charges and eighty-five percent of the current net prices on repair parts, plus 5% handling and loading costs on repair parts only, or automobiles or trucks, plus freight charges, or repair parts therefor, plus 5% handling and loading costs on repair parts only, the title to such farm implements, farm machinery, and repair parts, or automobiles, or trucks or parts therefor, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such farm implements or automobiles or trucks, or repair parts therefor.

The provisions of this section relating to a retailer's right to cancel or discontinue a contract and receive payment for machines, attachments, and parts returned shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after July 1st, 1961. Any contract in force and effect on July 1st, 1961, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to the 1961 amendment.

§ 2. **Amendment.)** Section 51-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-02. Prices of Implements, Machinery, Automobiles and Parts—How Determined.) The prices of farm implements, machinery, and repair parts therefor, and of automobiles, trucks, and repair parts therefor, required to be paid to any retail dealer as provided in section 51-07-01, shall be determined by taking the net cost on farm implements, machinery, and attachments, automobiles and trucks, and eighty-five percent

of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the time such contract is canceled or discontinued.

§ 3. **Amendment.)** Section 51-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-03. Failure to Pay Sum Specified on Cancellation of Contract—Liability.) In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery, and farm implements, or of automobiles, trucks, and repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler or distributor, fails or refuses to make payment to such dealer as is required by section 51-07-01, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements or automobiles or trucks, or repair parts therefor, to any retailer of such products, who may have a retail sales contract dated after July 1st, 1961, or a contract with no expiration date or a continuing contract in force or effect on the effective date of the 1961 amendment, with such manufacturer, wholesaler, or distributor, such manufacturer, wholesaler or distributor shall be liable in a civil action to be brought by such retailer for eighty-five percent of the current net price of repair parts and the net cost of such farm implements, farm machinery and attachments plus freight charges which may have been paid by the retailer, or repair parts plus 5% of the current net price of all parts returned, or automobiles or trucks, plus freight charges which may have been paid by the retailer or parts therefor, plus 5% of the net current price of all such parts returned, as may be on hand on the date of the cancellation or discontinuation of such contract. Provided further that either party shall give at least ninety days notice to the other of their intention to cancel or terminate any contract under the provisions of this Act.

Approved March 16, 1961.

CHAPTER 310

H. B. No. 662

(Burk)

FALSE ADVERTISING

AN ACT

To create and enact sections 51-12-08, 51-12-09, 51-12-10, 51-12-11, 51-12-12, 51-12-13, 51-12-14, and 51-12-15 of the North Dakota Century Code, relating to false advertising in general, and particular offenses, providing for injunctions and providing a penalty therefor; and to repeal sections 51-12-01, 51-12-02, and 51-12-03 of the North Dakota Century Code, relating to false advertising.

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

§ 1.) Sections 51-12-08, 51-12-09, 51-12-10, 51-12-11, 51-12-12, 51-12-13, 51-12-14, and 51-12-15 of the North Dakota Century Code are hereby created and enacted to read as follows:

51-12-08. False Advertising—Generally.) It is unlawful for any person with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

51-12-09. Representation as to Worth or Value.) For the purpose of this Act the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

This section does not apply to any publisher of a newspaper, magazine, or other publication, who publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

51-12-10. Real Estate.) It is unlawful for any person to make or disseminate any statement or assertion of fact in a newspaper, circular, form letter or other publication published or circulated in any language in this state, concerning the extent, location, ownership, title or other characteristic, quality or attribute of any real estate located in this state or elsewhere, which is known to him to be untrue and which is made or disseminated with the intention of misleading.

Nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest either as owner or agent, in the real estate so advertised.

51-12-11. Used Merchandise or "Seconds".) It is unlawful for any person in any newspaper, magazine, circular, form letter or any open publication, published, distributed or circulated in this state or on any billboard, card, label or other advertising medium, or by means of any other advertising device, to advertise, call attention to or give publicity to the sale of any merchandise, which merchandise is second-hand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as "seconds", or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there be conspicuously displayed directly in connection with the name and description of such merchandise and each specified article, unit or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that such merchandise or each article, unit or part thereof so advertised is second-hand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof, as the fact shall be.

51-12-12. Newspaper — Misrepresenting Circulation.) It is unlawful for any proprietor or publisher of any newspaper or periodical willfully and knowingly to misrepresent the circulation of the newspaper or periodical, for the purpose of securing advertising or other patronage.

51-12-13. Penalty.) Any person, firm, corporation, partnership or association or any employee or agent thereof who violates any of the provisions of sections 51-12-08 through 51-12-13 is guilty of a misdemeanor and shall be punished by

a fine of not to exceed one hundred dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

51-12-14. Injunction.) Any person who violates or proposes to violate any of the provisions of sections 51-12-08 through 51-12-13 may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in this state in the name of the people of the state of North Dakota upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

§ 2. Repeal.) Sections 51-12-01, 51-12-02, and 51-12-03 of the North Dakota Century Code are hereby repealed.

Approved March 16, 1961.