

SALES AND EXCHANGE

CHAPTER 497

HOUSE BILL NO. 1330
(Koski, Martinson, Vig)

AUCTIONEER'S BONDING REQUIREMENT

AN ACT to amend and reenact section 51-05.1-01 of the North Dakota Century Code, relating to exemption of financial institutions from bonding requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-01 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-01. AUCTIONEER'S LICENSE - CLERK'S LICENSE - FEES - BONDS. No person shall conduct a sale in this state as an auctioneer or clerk the same until he has filed with the public service commission an application for an annual auctioneer's or clerk's license. The original applications shall be in writing, verified, and filed showing the name, residence, and post-office address of the applicant. Applications for renewals of said annual licenses shall be on such forms as may be designated by the commission. The fee for the annual licenses or renewals thereof is ten dollars which shall accompany the applications. The names shall appear on all advertising of sales conducted by such auctioneer and clerk.

At the time of filing the applications the auctioneer and clerk shall file with the public service commission a surety bond issued by an insurer authorized to transact business in North Dakota. The bond shall be in the amount of one thousand dollars for an auctioneer and five thousand dollars for a clerk with the state of North Dakota as obligee for the use and benefit of any person who might be injured by said licensee's improper conduct of such auction sale. The applications for license and bond must be filed at least ten days prior to the date such applicant is to conduct or clerk his first auction sale.

Nonresident auctioneers and clerks upon complying with the foregoing requirements may conduct sales within the state and shall

be subject to the same requirements of law as is a resident auctioneer or clerk.

Nothing in this section shall require an executor or an administrator of an estate, any sheriff or other person selling property pursuant to execution or other court order, or any federal, state, or other public official to be licensed in order to conduct such sale in connection with their official duties, nor shall any ~~state-ex-national-bank~~ federally insured financial institution be required to be bonded as provided herein in order to conduct a sale in this state as a clerk, but shall otherwise comply with all other provisions of this chapter, nor shall the provisions of this chapter apply to the selling at auction of purebred or registered livestock.

Approved March 5, 1981

CHAPTER 498

SENATE BILL NO. 2308
(Senators Melland, Lodoen, Quail)
(Representative Hedstrom)

RETAIL INSTALLMENT CONTRACT
FINANCE CHARGE

AN ACT to amend and reenact section 51-13-03 of the North Dakota Century Code, relating to charges on retail installment contracts; and to repeal section 51-13-06 of the North Dakota Century Code, relating to refinancing retail installment contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 51-13-03 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-03. FINANCE CHARGE LIMITATION.

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the credit service charge computed on the principal balance of the contract or obligation from the date thereof until paid, at not exceeding eighteen percent simple interest per annum upon the unpaid balance of the contract. A retail seller who complies with the disclosure provisions of this chapter is deemed a regulated lender under section 47-14-09.
2. The finance charge shall be computed on the amount financed as determined under subsection 4 of section 51-13-02. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.
3. When a retail installment contract provides for unequal or irregular installments, the finance charge shall be at the effective rate provided in subsection 1, having due regard for the schedule of installments.

* NOTE: Subsection 1 of section 51-13-03 was also amended by section 42 of House Bill No. 1069, chapter 91.

4. The finance charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section and in subsection 6 of section 51-13-02 and ~~in section 51-13-06~~ and for those items expressly provided for in the retail installment contract as set forth in subsection 4 of section 51-13-02.

SECTION 2. REPEAL. Section 51-13-06 of the 1979 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 31, 1981

CHAPTER 499

HOUSE BILL NO. 1375
(Representatives Peltier, D. Olson)
(Senator Nelson)

HEAVY CONSTRUCTION EQUIPMENT FRANCHISE TERMINATION

AN ACT to provide for the discontinuation and termination of written contracts between wholesalers and retail dealers dealing in heavy construction equipment, to define heavy construction equipment, and to set out retail dealer redress procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS. As used in this Act, unless the context requires otherwise:

1. "Distributor" means any person involved in manufacturing, wholesaling, or distributing heavy construction equipment or repair parts for heavy construction equipment, or both equipment and parts, who is authorized to, and does, enter into a written contract with a retail dealer.
2. "Heavy construction equipment" means self-propelled or pull-type construction machinery, and accessories therefor, primarily used in projects requiring paving, earthmoving, or bridge, road, highway, and commercial building construction.
3. "Person" includes any individual, firm, partnership, joint venture, association, corporation, or other business entity.
4. "Retail dealer" means every person engaged in the business of selling heavy construction equipment at retail.

SECTION 2. RETAIL DEALERS MAY RECOVER COST OF EQUIPMENT AND PARTS UPON DISCONTINUANCE OF CONTRACT WITH DISTRIBUTOR. If a retail dealer has entered into a written contract with a distributor wherein the retail dealer agrees to maintain a stock of heavy construction equipment, repair parts, or both heavy construction equipment and repair parts, and either the distributor or the retail dealer desires to cancel or discontinue the contract, the distributor shall pay to the retail dealer, unless the retail dealer

desires to keep the equipment or repair parts, the following amounts:

1. A sum equal to one hundred percent of the net cost of all unused, complete heavy construction equipment.
2. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor, and were in the retail dealer's inventory on the date of cancellation or discontinuance of the contract, or were thereafter received by the retail dealer from the distributor.
3. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts.
4. Any freight charges on the equipment or repair parts paid by the retail dealer.

When a distributor has made payment in accordance with this section, title to the heavy construction equipment and repair parts shall pass to the distributor, and the distributor shall be entitled to possession of the heavy construction equipment and repair parts. This section is supplemental to any provisions contained in any contract between the retail dealer and the distributor relating to the return of heavy construction equipment and repair parts. Thus, the retail dealer can elect to pursue his remedy under this section, or under the contract relating to return of heavy construction equipment and repair parts. An election by a retail dealer to pursue a contractual remedy shall not bar his right to the remedy provided by this section with respect to those pieces of heavy construction equipment and repair parts not affected by the contract remedy.

The provisions of this section apply to every contract now in effect which has no stated expiration date, and to all other contracts entered into after June 30, 1981. Contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981, shall be governed by the law existing prior to July 1, 1981.

SECTION 3. TERMINATION OF CONTRACTUAL ARRANGEMENTS TO BE DONE WITH GOOD CAUSE - DEFINITION OF GOOD CAUSE.

1. Any distributor of heavy construction equipment, repair parts, or both who enters into a written contract with any retail dealer in heavy construction equipment, repair parts, or both, in which the retail dealer agrees to maintain a stock of heavy construction equipment, repair parts, or both, may not terminate, cancel, or fail to renew the contract without good cause.

2. As used in this section, "good cause" means that the retail dealer has failed to comply with the requirements imposed upon him by the terms of the written contract between the retail dealer and the distributor. The determination by the distributor that the distributor has good cause for termination, cancellation, or nonrenewal must be made in good faith.
3. In any civil action against a distributor for violating this section, the distributor must establish that the contract termination, cancellation, or nonrenewal was made in good faith for good cause. If the distributor fails to establish good cause for its termination, cancellation, or nonrenewal action, the distributor shall be liable for all special and general damages sustained by the retail dealer, including, but not limited to, the costs of the litigation and reasonable attorney's fees for prosecuting the civil action. In addition, the retail dealer, where appropriate, shall be entitled to injunctive relief. The provisions of this section apply to contracts in effect on July 1, 1981, which have no expiration date and are continuing contracts, and to all other contracts entered into, amended, or renewed after June 30, 1981. This section does not apply to contracts in force and effect on June 30, 1981, which by their terms will terminate on a date subsequent to June 30, 1981. Those contracts shall be governed by the law as it existed prior to July 1, 1981.

SECTION 4. DETERMINATION OF RETAIL DEALERS REIMBURSEMENT. The extent of reimbursement of the retail dealer for heavy construction equipment and repair parts pursuant to section 2 of this Act, shall be determined by taking one hundred percent of the net cost on unused, complete heavy construction equipment, and eighty-five percent of the current net price of repair parts, as shown in the distributor's price lists or catalogs in effect at the time the contract was canceled, terminated, or not renewed.

SECTION 5. FAILURE TO MAKE REIMBURSEMENT ON CANCELLATION OF CONTRACT - LIABILITY. If any heavy construction equipment distributor fails or refuses, upon cancellation, termination, or nonrenewal of a contract by either a retail dealer or the distributor, to make payment to the retail dealer as required by section 2 of this Act, the distributor shall be liable in a civil action brought by the retail dealer for one hundred percent of the net cost of the unused, complete heavy construction equipment, plus transportation charges paid by the retail dealer; and eighty-five percent of the current net price of repair parts, plus five percent of that current net price for handling and loading plus freight charges on the repair parts which have been paid by the retail dealer. A distributor shall be liable for equivalent amounts in a civil action if he refuses to supply heavy construction equipment, repair parts, or both, to a retail dealer who has a contract dated after June 30, 1981, or a contract with no expiration date which is continuing in force on July 1, 1981.

Approved March 5, 1981

CHAPTER 500

SENATE BILL NO. 2051
(Legislative Council)
(Interim Data Processing Committee)

DATA PROCESSING INFORMATION
CONFIDENTIALITY

AN ACT to prohibit disclosure by any business entity offering data processing services except upon written consent and to provide a civil penalty for violation of this chapter.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS. As used in this chapter:

1. "Business entity" means a sole proprietorship, partnership, corporation, association or other group, however organized and whether or not organized to operate at a profit, doing business in this state.
2. "Data processing services" means any systematic sequence of operations, including but not limited to bookkeeping functions, inventory control, storage, or manipulation and retrieval of management or personnel information, performed upon data by electronic devices which perform logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. The term does not include operations performed by telecommunication devices.
3. "Individual" means a natural person.
4. "Person" means any natural person, corporation, partnership, firm, association, or governmental entity.
5. "Record" means any item, collection, or grouping of information about an individual or business entity.

SECTION 2. PROHIBITION AGAINST DISCLOSURE EXCEPT UPON WRITTEN
CONSENT - APPLICATION OF SECTION.

1. No business entity which charges a fee for data processing services performed shall disclose in whole or in part the contents of any record, including the disclosure of

information contained in the record through inclusion in any composite of information, which is prepared or maintained by such business entity to any person, other than the individual or business entity which is the subject of the record, without the express written consent of such individual or business entity.

2. This section shall not apply to the following:
 - a. A disclosure to any person pursuant to a subpoena or court order.
 - b. A disclosure which is discoverable pursuant to the North Dakota Rules of Civil Procedure.
 - c. A disclosure to any person pursuant to a lawful search warrant.

SECTION 3. INITIATION OF CIVIL ACTION - LIABILITY FOR DAMAGES - LIMITATION.

1. A person may initiate a civil action against a business entity in accordance with state law whenever a business entity violates the provisions of section 2.
2. In any suit brought pursuant to the provisions of subsection 1 a business entity which has violated section 2 shall be liable to the person in an amount equal to the actual damages sustained by the person as result of such violation, but in no case less than five hundred dollars.
3. An action to enforce any liability created under this Act may be brought in any court of competent jurisdiction within two years from the date on which the cause of action arose.

Approved March 19, 1981