

SALES AND EXCHANGE

CHAPTER 329

S. B. No. 57

(Morgan, Roen, Torgerson, Nelson, Weber, Robinson)

LABELING OF IMPORTED MEATS

AN ACT

Requiring the display of signs and labels when imported meats are sold and providing for penalty for the violation thereof.

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

§ 1. Labeling Imported Meats Sold.) No person, firm, or corporation shall knowingly sell or offer for sale in the state of North Dakota any meat, whether fresh, frozen, or cured which is imported from outside the boundaries of the United States, or any meat product containing in whole or in part such imported meat, without first indicating this fact by placing labels on each quarter, half, or whole carcass of such meat, or on each case, package, tray or display containing such imported meat.

§ 2. Penalty.) Any person, firm, or corporation who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and upon the first conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days, or by both such fine and imprisonment. For each second or successive conviction of such offense against the provisions of this Act, the fine shall not be less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ninety days, or by both such fine and imprisonment.

Approved March 19, 1965.

CHAPTER 330

H. B. No. 800

(Dornacker, Dick, Hardmeyer, Olienyk, Elkin, Strand, Streibel,
(Fossum, Bowles, Opedahl, Glaspey, Loerch, Collette, Staven,)
(Vogel, Gudajtes, Krenz, Lundene, Schaffer, Welder, Bergman,)
(Knudsen, Stenhjem, Wagner, Haugen, Coles, Boustead,)
(Stallman, Tweten, Dahlen)

NORTH DAKOTA TRADE COMMISSION

AN ACT

Amending section 51-10-06 of the North Dakota Century Code, relating to enforcement of the provisions of the unfair trade practices law, and creating the North Dakota Trade Commission, its powers, duties, and procedures, providing for licensure of retailers, and providing penalties and an appropriation.

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

§ 1. **Amendment.)** Section 51-10-06 of the North Dakota Century code is hereby amended and reenacted to read as follows:

51-10-06. Injunctional Relief May be Had in Addition to Other Penalties—Duty to Commence Actions.) In addition to the penalties provided in this chapter, the courts of this state are invested with the jurisdiction to prevent and restrain violations of this chapter by injunctional proceedings. The attorney general and the several state's attorneys shall institute suits in behalf of this state, to prevent and restrain violations of the provisions of this chapter. Any person damaged, or who is threatened with loss or injury, by reason of a violation of the provisions of this chapter, 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.

1. The North Dakota trade commission shall have the administration of this Act; and the members thereof shall not receive any additional compensation for their services other than ten dollars per day and their necessary expenses in attending meetings. Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.
2. Whenever the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act

or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time upon at least five days' notice to the parties and at least five days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may, upon notice, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

3. Any person, firm or corporation required by an order of the commission to cease and desist from any such act or conduct may obtain a review of such order in any district court of the state of North Dakota within any district where the act or conduct in question was done or carried on, or where such person, firm or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and

order of the commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*.

4. To the extent that the order of the commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by sufficient evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon appeal as in other cases of judgments of such courts; provided, however, that said appeal shall be taken within thirty days from the date of the entry of such judgment or decree.
5. Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership or corporation at his or its

residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

6. An order of the commission to cease and desist shall become final (a) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; (b) upon the expiration of the time allowed for filing a notice of appeal to the supreme court, if the order of the commission has been affirmed, or the petition for review dismissed by the district court and no notice of appeal to the supreme court has been duly filed, or (c) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court, if such court directs that the order of the commission be affirmed or the petition for review dismissed.
7. If the supreme court directs that the order of the commission be modified or set aside, the order of the commission rendered in accordance with the mandate of the supreme court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission shall become final when so corrected.
8. If the order of the commission is modified or set aside by the district court and if (a) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed or (b) the decision of the district court has been affirmed by the supreme court, then the order of the commission rendered in accordance with the mandate of the district court shall become final on the expiration of thirty days from the time such order of the commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission shall become final when so corrected.
9. If the supreme court orders a rehearing; or if the case is remanded by the district court to the commission for a rehearing, and if (a) the time for filing a notice of appeal to the supreme court has expired and no such notice of

appeal has been duly filed, or (b) the decision of the court has been affirmed by the supreme court, then the order of the commission rendered upon such rehearing shall become final in the same manner as though no prior order of the commission had been rendered.

10. Any person, firm or corporation who violates an order of the commission to cease and desist after it has become final, and while such order is in effect shall forfeit and pay to the state of North Dakota a penalty of not more than five hundred dollars for each violation, which shall accrue to the state of North Dakota and may be recovered in a civil action brought by the state of North Dakota.

The remedies and method of enforcement of this chapter provided for in this section shall be deemed concurrent and in addition to the other remedies provided in this chapter.

§ 2. Proof of Intent—Cost Surveys.) In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this Act.

§ 3. Procedure for Establishing Cost Survey—Hearing—Notice.) The North Dakota trade commission is hereby empowered and directed whenever application therefor shall have been made by ten or more persons, firms or corporations within any particular retail trade or business to establish the cost survey provided for in section 2 of this Act. When petition for such cost survey has been so presented to the commission, the commission shall, as soon as possible, fix a time for a public hearing upon the question of whether such cost survey should be established. Such hearing shall be held at the office of said commission and upon such notice as the commission may by rule require; provided, however, that notice of such hearing shall be published for at least two successive weeks in such daily newspaper or newspapers as the commission may designate as most commonly circulated in the counties to be affected by such cost survey. Said notice shall further state the locality or area in respect to which said cost survey is proposed to be established and the particular trade or business to be affected thereby.

1. At the time fixed in said notice any person, firm or corporation shall be entitled to appear and be heard by the commission upon all questions to be determined by it as provided in this section. If the commission shall determine that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected thereby, determine and delimit the particular area within which such trade or business shall be so affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by an efficient person, firm or corporation within such trade or business within such area.
2. Provided, however, that where the commission shall determine that the probable "cost of doing business" or "overhead expense", stated in percentage or percentages of invoice or replacement cost which would probably be incurred by an efficient person, firm or corporation in such trade or business is the same for the entire state, then and in that event the commission may, upon proper notice having been given as hereinbefore provided, create one trade area which shall embrace the entire state.
3. The percentage or percentages so fixed and determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm or corporation in such trade or business and within the area, affected by such cost survey.

§ 4. Hearings and Investigations—Contempts.) The North Dakota trade commission for the purpose of conducting hearings and investigations which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by this chapter shall have the following powers:

1. The commission, or its duly authorized agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the commission, or before its duly authorized agent conducting the investigation. Any member of the

commission or any agent, duly authorized by the commission for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place within the state of North Dakota at any designated place of hearing.

2. In any case of contumacy or refusal to obey a subpoena issued to any person, any district court of the state of North Dakota, within any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person, an order requiring such person to appear before the commission, or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

The provisions of section 51-10-08 shall apply to the administration and enforcement of this Act.

§ 5. North Dakota Trade Commission.) The North Dakota trade commission shall consist of five retail distributors, each of whom shall have had at least three consecutive years of practical experience in North Dakota as a retail distributor immediately preceding his appointment, and shall be actively engaged in the distribution of retail products.

§ 6. Appointment and Term of Members.) The members of the trade commission shall be appointed by the governor, one in each year, each to serve for a term of five years and until his successor shall have been appointed and qualified except that the first five appointees hereunder shall be appointed for a staggered term of from one to five years so that one term expires each year. Vacancies shall be filled by appointment for the unexpired term. Any member of the commission who, during his incumbency, ceases to be actively engaged in the distribution of goods in this state, shall be automatically disqualified from membership. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office. Each North Dakota association of retailers shall recommend three names for each appointment to be made, from which list the governor shall select the membership of the commission which shall have as broad a representation of the retailers of the state as practical. The commission shall annually elect from its members a

president, a vice president, a treasurer, and a secretary, who may or may not be a member. The office of treasurer or secretary may be held simultaneously by any other officer. The secretary shall receive a salary to be fixed by the commission and all expenses necessarily incurred by him in the performance of his duties. He shall give such a bond as the commission may from time to time require, which bond shall be approved by the commission.

§ 7. Retailer's License—Penalty.) The state trade commission shall require and provide for the annual registration and licensing of every retailer now or hereafter doing business within this state which license shall not be transferable. Upon the payment of an annual fee of two dollars and fifty cents, the state trade commission shall issue an annual license to such persons as may be qualified by law to engage in the business of making sales at retail. Every person, firm, or corporation engaging in business as a retailer without procuring a current and valid license as provided in this Act shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars.

§ 8. Disbursement of Funds.) The secretary shall collect the fees provided by this Act and deposit such funds in the state treasury in a special fund to be known as the Trade Commission Fund. Expenditures, within the limits of legislative appropriation, shall be made upon vouchers approved by the secretary after approval by the state auditing board upon warrant-checks prepared by the department of accounts and purchases.

§ 9. Appropriation.) There is hereby appropriated out of any moneys in the trade commission funds the sum of \$50,000.00, or so much thereof as may be necessary, for expenditure during the biennium beginning July 1, 1965, and ending June 30, 1967, for the purpose of carrying out the provisions of this Act.

Approved March 20, 1965.

CHAPTER 331

H. B. No. 813
(Wagner, Welder)

FAIR TRADE LAW

AN ACT

To create and enact section 51-11-02.1 and to amend and reenact section 51-11-04 of the North Dakota Century Code, relating to fair trade.

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

§ 1.) Section 51-11-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-11-02.1. Contract by Acts of the Parties.) A producer and a buyer may become subject to the provisions of this chapter and a contract shall result by the following acts:

1. Annual notification from the producer to a buyer by certified mail giving notice to the buyer of those commodities which are allowed by this chapter to be sold at a stipulated selling price; and
2. The buyer upon receipt of such notice sells such commodity.

§ 2. **Amendment.)** Section 51-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-11-04. Unfair Competition — What Constitutes — Action for Damages.) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of this chapter is unfair competition and is actionable at the suit of any person damaged thereby.

Approved March 19, 1965.

CHAPTER 332

H. B. No. 568

(Brown, Boustead, Wagner, Lang)

CONSUMER FRAUD AND UNLAWFUL CREDIT PRACTICES

AN ACT

Relating to the prevention of consumer fraud and unlawful credit practices.

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

§ 1. Definitions.) In this Act unless the context or subject matter otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;
2. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, or services;
3. "Person" means any natural person or his legal representative, partnership, corporation, company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof;
4. "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration;
5. "Attorney general" means the attorney general of North Dakota or his authorized delegate.

§ 2. Unlawful Practices—Fraud—Misrepresentation.) The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

§ 3. Advertising Media Excluded.) Nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publication of printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement

when the owner, publisher, or operator has no knowledge of the intent, design, or purpose of the advertiser.

§ 4. Powers of Attorney General.) When it appears to the attorney general that a person has engaged in, or is engaging in any practice declared to be unlawful by this Act or any of the provisions of chapter 51-13 or 51-14 or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice, he may:

1. Require such person to file on such forms as he prescribes a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;
2. Examine under oath any person in connection with the sale or advertisement of any merchandise;
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as he may deem necessary;
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to such practice and retain the same in his possession until the completion of all proceedings undertaken under this section or in the courts.

§ 5. Subpoena—Hearing—Rules.) To accomplish the objectives and to carry out the duties prescribed as this Act and the provisions of chapter 51-13 or 51-14, the attorney general, in addition to other powers conferred upon him by this Act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force of law.

§ 6. Failure to Supply Information or Obey Subpoena.) If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereon, request an order:

1. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

2. Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice;

3. Granting such other relief as may be required;

until the person files the statement or obeys the subpoena.

§ 7. Remedies — Injunction — Other Relief — Receiver.)

Whenever it appears to the attorney general that a person has engaged in, or is engaging in any practice declared to be unlawful by this Act or the provisions of chapter 51-13 or 51-14, he may seek and obtain in an action in a district court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof after appropriate notice to such person. Such notice shall state generally the relief sought and be served at least ten days prior to the hearing of such action. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys, or property, real or personal, which may have been acquired by means of any practice in this Act declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in or is engaging in a practice declared to be unlawful by this Act or the provisions of chapter 51-13 or 51-14 and that such person is about to conceal his assets or his person or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of such person. Upon a showing made by affidavit or other evidence that such person has engaged in or is engaging in a practice declared to be unlawful by this Act and that such person is about to conceal his assets or his person or leave the state, the court shall order the appointment of a receiver to receive the assets of such person.

§ 8. Powers of Receiver.) When a receiver is appointed by the court pursuant to this Act, he shall have the power to sue for, collect, receive, or take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be unlawful by this Act or the provisions of chapter 51-13 or 51-14, including property

with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

§ 9. Claims Not Barred.) The provisions of this Act shall nor bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

§ 10. Costs Recoverable.) In any action brought under the provisions of this Act, the attorney general is entitled to recover costs for the use of the state.

Approved March 19, 1965.