

SALES AND EXCHANGE

CHAPTER 386

SENATE BILL NO. 2142
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

AUCTIONEERS' LICENSES

AN ACT to amend and reenact section 51-05-13 of the North Dakota Century Code, relative to license applications for auctioneers and renewal thereof.

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

SECTION 1. AMENDMENT.) Section 51-05-13 of the 1971 Supplement to 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 original application shall be in writing, verified, and filed, showing the name, residence and postoffice address of the applicant. Applications for renewal of said annual license shall be on such forms as may be designated therefor by the commission. 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 8, 1973

CHAPTER 387

HOUSE BILL NO. 1518
(Bridston, Hilleboe, Marsden)

TRADE COMMISSION POWERS

AN ACT to amend and reenact section 51-10-06 of the North Dakota Century Code, relating to powers of the trade commission.

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

SECTION 1. AMENDMENT.) Section 51-10-06 of the 1971 Supplement to 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 injunctive 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 chapter; 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 applying for 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 applied for 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 cause to be served on such person, firm, or corporation a copy of its findings. The commission may then apply for an order requiring such person, firm, or corporation to cease and desist from such acts or conduct. The order shall be applied for in the district court of the judicial 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. 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 made or issued by it under this section.

3. Any person, firm, or corporation required by an order to cease and desist from any such act or conduct may obtain a review of such order by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order 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, 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. 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 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 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 or other process registered and mailed as aforesaid shall be proof of the service of the same.
6. An order 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 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 be affirmed or the petition for review dismissed.

7. If the supreme court directs that the order be modified or set aside, the order 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 shall become final when so corrected.
8. If the order 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 shall become final on the expiration of thirty days from the time such order 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 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 rendered upon such rehearing shall become final in the same manner as though no prior order had been rendered.
10. Any person, firm, or corporation who violates an order 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.

Approved March 28, 1973

CHAPTER 388

SENATE BILL NO. 2244
(Litten)

MULTILEVEL DISTRIBUTORSHIPS AND
CHAIN SALES SCHEMES

AN ACT to prohibit referral sales, multilevel sales distributorships, and chain sales schemes, and to provide penalties for such sales.

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

SECTION 1. REFERRAL AND CHAIN REFERRAL SELLING PROHIBITED.)

1. With respect to any sale or lease, a seller or lessor may not give or offer a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earnings of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease.
2. a. It shall be unlawful for any seller or lessor to operate or attempt to operate any plans or schemes for the disposal or distribution of property or franchises, or both, whereby a purchaser or lessee gives or agrees to give a valuable consideration:
 - (1) For the chance to receive something of value for inducing one or more other persons to also give a valuable consideration in order to participate in the plan or scheme; or
 - (2) For the chance to receive something of value when a person induced by the purchaser or lessee induces still another person to give such valuable consideration.

As used in this subdivision, the phrase "plans or schemes" shall include such plans or schemes known as "chain referrals", "pyramid sales", or "multilevel distributorships".

- b. The phrase "something of value" as used in subdivision a above, does not mean or include payment based upon sales made to persons who are not purchasing in order to participate in the prohibited plan or scheme.
3. If a buyer or lessee is induced by a violation of this Act to enter into a sale or lease, the agreement is unenforceable and the buyer or lessee, at his option, may rescind the agreement with the seller or lessor and, upon tendering the property received, or what remains of it, obtain full or in the case of remains, a proportional refund of all sums paid, or retain the goods delivered and the benefit of any services performed without any further obligation to pay for them.
4. With respect to a sale or lease in violation of this Act, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this subsection can only be asserted as a matter of defense to or set-off against a claim by the assignee.
5. This Act shall not apply to the owner or publisher of any newspaper, magazine, or other printed material wherein an advertisement appears concerning action prohibited by this Act, nor shall this Act apply to the owner or operator of a radio or television station which broadcasts such an advertisement, if such owner, publisher, or operator is not otherwise involved in actions prohibited by this Act.

SECTION 2. PENALTY.) Any seller violating any of the provisions of this Act shall, upon conviction, be sentenced to pay a fine of not less than five hundred dollars nor more than five thousand dollars; or to imprisonment in state penitentiary for not more than five years, or in the county jail for not more than one year; or to both such fine and imprisonment.

Nothing in this Act shall limit the enforcement of any statutory or common law right of any person in any court, for any violation of the provisions of this Act; and any person injured due to a violation of the provisions of this Act may bring an action for three times the actual amount of damages, if any, sustained by the plaintiff, plus costs and reasonable attorney's fees.

Approved March 10, 1973

CHAPTER 389

SENATE BILL NO. 2364
(Hoffner, Freed)

SALE OF CHECKS ACT

AN ACT, not applicable to banks and certain other financial businesses, in relation to the definition, licensing, and regulating of the business of selling, issuing or delivering checks, drafts, and money orders as a service or for a fee or other consideration; to provide for the licensing of such business; and to prescribe remedies and penalties.

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

SECTION 1. CITATION.) This Act may be cited as
"The Sale of Checks Act".

SECTION 2. DEFINITIONS.) Terms used in this title are
defined as follows:

1. "Person" shall mean any individual, partnership, association, joint stock association, trust, corporation or any other form of business enterprise, but does not include the government of the United States or North Dakota.
2. "State examiner" shall mean the commissioner of banking and financial institutions.
3. "Licensee" means a person duly licensed by the state examiner pursuant to this Act.
4. "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money.
5. "Personal money order" means any instrument for the transmission or payment of money which is signed by the purchaser or remitter, whether or not he thereby appoints the seller of the money order as his agent for the receipt, transmission, or handling of money, and whether or not such instrument is also signed by some other person in addition to the purchaser or remitter.

6. "Sell" means to sell, to issue, or to deliver a check.
7. "Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

SECTION 3. INAPPLICABILITY.) This Act shall not apply to banks, trust companies, building and loan associations, savings and loan associations, or credit unions, if organized under the laws of this state or the United States, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for immediate transmission by telegraph. Nothing in this Act shall enlarge or diminish the rights, authorities and powers which the foregoing entities may otherwise have.

SECTION 4. LICENSE REQUIRED.) No person, except those specified in section 3 or agents of a licensee as specified in section 11, shall engage in the business of selling checks as a service or for a fee or other consideration without having first obtained a license hereunder. Any person engaged in said business on the effective date of this Act may continue to engage without a license therein until the state examiner shall have acted upon the principal's application for a license, provided that such application be filed within sixty days after the effective date of this Act.

SECTION 5. QUALIFICATIONS.) To qualify for a license hereunder an applicant shall meet the following requirements:

1. The applicant shall have a net worth of at least one hundred thousand dollars computed according to generally accepted accounting principles.
2. The financial responsibility, financial condition, and business experience, and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the state examiner, the state examiner may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

SECTION 6. APPLICATIONS.) Each application for such a license shall be made in writing and under oath to the state examiner in such form as he may prescribe. The application shall state the full name and business address of:

1. The proprietor, if the applicant is an individual.
2. Every member, if the applicant is a partnership or association.
3. Every trustee and officer if the applicant is a trust.
4. The corporation and each officer and director thereof, if the applicant is a corporation.

SECTION 7. ACCOMPANYING FEE, STATEMENTS AND BOND.) Each application for a license shall be accompanied by:

1. An investigation fee of two hundred fifty dollars which shall not be subject to refund but which, if the license be granted, shall be in addition to license fee for the first license year or part thereof.
2. Financial statements reasonably satisfactory to the state examiner.
3. A surety bond issued by a company authorized to issue such bonds in this state, in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location in this state, in excess of one, through which the applicant proposes to sell checks as provided in section 11, but in no event shall the bond be required to be in excess of two hundred fifty thousand dollars. If the bond accompanying the application be in a principal sum of less than two hundred fifty thousand dollars, the application shall also be accompanied by a list of the locations through which the business is to be conducted in this state. The bond shall be in form satisfactory to the state examiner and shall run to the state for the protection and benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Such claimants against the applicant or his agents may themselves bring suit directly on the bond, or the attorney general may bring suit thereon in behalf of such claimants, either in one action or successive actions. The surety on the bond shall have the right to cancel such bond upon giving thirty days notice to the state examiner and thereafter shall be relieved of liability for any breach of condition occurring after the

effective date of said cancellation.

4. In lieu of such corporate surety bond or bonds, the applicant may deposit with the state examiner or with such bank as the state examiner may approve bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, school district or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond. The securities shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the state examiner, to substitute other securities for those deposited, and shall be required so to do on written order of the state examiner made for good cause shown.

SECTION 8. INVESTIGATION - GRANTING OF LICENSE.)

Upon the filing of an application in due form, accompanied by the fee and documents mentioned in section 7, the state examiner shall investigate to ascertain whether the qualifications prescribed by section 5 have been met. If he finds that such qualifications have been met, and if he approves the said documents and finds that said bond or deposit is in the prescribed amount, he shall issue to the applicant a license to engage in the business of selling checks in this state.

SECTION 9. MAINTENANCE OF BOND OR SECURITIES.) After a license has been granted; the licensee shall maintain said bond or securities in the amount prescribed by section 7, as follows:

1. Each licensee who does not have on file or deposit a bond or securities, as aforesaid, in the undiminished principal sum of two hundred fifty thousand dollars, shall file quarterly reports with the state examiner setting forth the locations at which he sells checks in this state as of January 1, April 1, July 1, and October 1 in each year, the report for each such date being due on or before the fifteenth day thereafter. Within ten days following the filing of such a report, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations, and may be decreased to reflect any decrease in the number of locations.
2. If the state examiner shall at any time reasonably determine that the bond or securities

aforesaid are insecure, deficient in amount, or exhausted in whole or in part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this Act, such order to be complied with within thirty days following service thereof upon the licensee.

SECTION 10. ANNUAL LICENSE FEE.) Each licensee shall pay to the state examiner annually on or before June 15 of each year a license fee of two hundred fifty dollars.

SECTION 11. AGENTS.) A licensee may conduct his business at one or more locations within this state through or by means of such agents as the licensee may from time to time designate and appoint, and such agents shall not be required to obtain a license under this Act; provided, however, that no agent shall at the same time be the agent of more than one person.

SECTION 12. LIABILITY OF LICENSEES.) Each licensee shall be liable for the payment of all checks which he sells, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instrument laws of this state; and a licensee who sells a check, whether directly or through an agent, upon which he is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if he had signed same as the drawer thereof.

SECTION 13. DISCLOSURE OF RESPONSIBILITY.) Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

SECTION 14. EXAMINATION OF BOOKS AND RECORDS.) The state examiner shall have the right, reasonably, to examine the books and records of any licensee operating in accordance with the provisions of this Act at such licensee's expense, and if it appears that such licensee's net worth is less than one hundred thousand dollars or that his financial affairs are unsound in such degree and manner as to affect the solvency of such licensee's operations, the state examiner is authorized to obtain a restraining order, or a temporary or permanent injunction without bond, in any court of competent jurisdiction to prevent such licensee, or any of his agents, from continuing in business.

SECTION 15. REVOCATION OF LICENSE - INVESTIGATIONS.) The state examiner may revoke a license on any ground on which he may refuse to grant a license or for violation of any provision of this Act. In furtherance of the foregoing, the state examiner, if he has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books and records of the licensee. The reasonable costs of an investigation hereunder shall be borne by the licensee.

SECTION 16. HEARINGS.) No license shall be denied or revoked except after a hearing thereon. The state examiner shall give the applicant or licensee at least twenty days written notice of the time and place of such hearing by certified mail addressed to the principal place of business of such applicant or licensee. Any order of the state examiner denying or revoking such license shall state the grounds upon which it is based, shall not be effective until twenty days after written notice thereof has been sent by certified mail to the applicant or licensee at such principal place of business, and shall be subject to judicial review.

SECTION 17. PENALTY.) Any person who shall violate any provision of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment.

SECTION 18. SAVINGS CLAUSE.) If any section, sentence, or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the Act.

Approved March 15, 1973

CHAPTER 390

SENATE BILL NO. 2109
(Litten)

REGULATION OF HOME SOLICITATION SALES

AN ACT to regulate, not prohibit, home solicitation sales by:

1. Granting the buyer a statutory period during which time the contract may be cancelled.
2. Providing that any transfer of a note or other evidence of indebtedness shall be deemed an assignment only and all claims and defenses of the buyer against the seller shall be applicable against the transferee.
3. Prohibiting referral selling in conjunction with a home solicitation sale.

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

SECTION 1. DEFINITIONS.) In this chapter, unless the context otherwise requires:

1. "Home solicitation sale" means a sale of goods or services in which the seller or his representative personally solicits the sale and the buyer's agreement or offer to purchase is made at a home other than that of the person soliciting the same and that agreement or offer to purchase is there given to the seller or his representative and all or any part of the purchase price is payable in installments, or a debt incurred for payment of the purchase price is payable in installments. A sale which otherwise meets the definition of a home solicitation sale, except that it is a cash sale, shall be deemed to be a home solicitation sale if the buyer pays the purchase price in cash or the seller makes or provides a loan to the buyer or obtains or assists in obtaining a loan for the buyer to pay the purchase price. A sale is not a "home solicitation" sale if it is pursuant to a pre-existing account with a seller whose primary business is that of selling goods or services

at a fixed location or if it is a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

2. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

SECTION 2. CANCELLATION PERIOD; METHOD OF CANCELLATION; INTENT.)

- A. In addition to any right otherwise to revoke an offer, the buyer may cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement subject to the provisions of this chapter.
- B. Cancellation shall occur when the buyer gives written notice of cancellation to the seller at the address specified for notice of cancellation provided by the seller or when such written notice bearing such address is deposited in a mail box by:
 1. Ordinary mail at the time and place stamped on a receipt received from the United States post office on form 3817.
 2. Registered mail, return receipt requested, at the time and place stamped on a receipt received from the United States post office on form 3806-S.
- C. Notice of cancellation given by the buyer shall be effective if it indicates the intention on the part of the buyer not to be bound by the home solicitation sale.

SECTION 3. REFERRAL SALES, REBATE OR DISCOUNT VIOLATIONS.)

No seller in a home solicitation sale shall offer to pay a commission or give a rebate or discount to the buyer in consideration of the buyer's giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale to another person, if the earning of the commission, rebate or discount is contingent upon an event that is to happen subsequent

to the time the buyer agrees to buy. Any sale made in respect to which a commission, rebate or discount is offered in violation of the provisions of this chapter shall be voidable at the option of the buyer.

SECTION 4. AGREEMENT REQUIREMENT.) No agreement of the buyer in a home solicitation sale shall be effective unless it is dated, signed by the buyer and contains a conspicuous notice as follows:

NOTICE TO BUYER

1. Do not sign this agreement if any of the spaces intended for the agreed terms to the extent of then available information are left blank.
2. You are entitled to a copy of this agreement at the time you sign it.
3. You may pay off the full unpaid balance due under this agreement at any time, and in so doing you may receive a full rebate of the unearned finance and insurance charges.
4. You may cancel this agreement if it has been signed in your home without prior negotiations at the seller's place of business or without having made the sale pursuant to your preexisting account with the seller, provided you notify the seller, at his main office or branch office shown in the agreement, by ordinary mail using United States post office form 3817 or, by registered mail, return receipt requested, which shall be posted not later than midnight of the third business day after the day on which the buyer signs the agreement.
5. It shall not be legal for the seller to enter your premises unlawfully or commit any breach of the peace to repossess goods purchased under this agreement.

SECTION 5. TRANSFER.)

- A. A note or other evidence of indebtedness given by a buyer in respect of a home solicitation sale shall be dated not earlier than the date of the agreement or offer to purchase. Any transfer of a note or other evidence of indebtedness bearing the statement required by subsection B of this section shall be deemed an assignment only and any right, title or interest which the transferee may acquire thereby shall be subject to all claims and defenses of the buyer against the seller pursuant to the provisions of this chapter.

- B. Each note or other evidence of indebtedness given by a buyer in respect of a home solicitation sale shall bear on its face a conspicuous statement as follows: "This instrument is based upon a home solicitation sale, which is subject to the provisions of the North Dakota Century Code. This instrument is not negotiable."
- C. Compliance with the requirements of this section shall be a condition precedent to any right of action by the seller or any transferee of an instrument bearing the statement required under subsection B of this section against the buyer upon such instrument and shall be pleaded and proved by any person who may institute an action or suit against a buyer in respect thereof.

SECTION 6. TIME LIMITATION; DISPOSITION OF GOODS.)

- A. Except as provided in this section, within ten days after a home solicitation sale has been canceled, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.
- B. If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.
- C. The buyer may retain possession of goods delivered to him by the seller and has a lien on the goods for any recovery to which he is entitled until the seller has complied with the obligations imposed by this section.

SECTION 7. BUYER RESPONSIBILITY; SERVICES.)

- A. Except as provided in subsection C of section 5 of this chapter, within twenty days after a home solicitation sale has been canceled, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his own address. If the seller fails to take possession of such goods within twenty days after cancellation the goods shall become the property of the buyer without obligation to pay for them.
- B. The buyer shall take reasonable care of the goods in his possession both prior to cancellation and during the following twenty-day period. During the twenty-day period after cancellation, except

for the buyer's duty of care, the goods are at the seller's risk.

- C. If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to a cancellation fee of five percent of the cash price, fifteen dollars, or the amount of the cash down payment, whichever is less. If the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was in at the time the services were rendered.
- D. The buyer may not cancel a home solicitation sale if he requests the seller to provide goods or services without delay because of an emergency and the seller in good faith makes a substantial beginning of performance before notice of cancellation, and the goods cannot be returned to the seller in substantially as good condition as when the buyer received them.

SECTION 8. EXCEPTION.) The provisions of this chapter shall not apply to sales of insurance; nor shall it apply to sales of goods or services with a purchase price of less than twenty-five dollars.

SECTION 9. PENALTY.) Any person who violates any provision of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than three hundred dollars or imprisonment not to exceed ninety days, or both.

Approved March 27, 1973