

SALES AND EXCHANGE

CHAPTER 449

SENATE BILL NO. 2173

(Committee on Industry, Business, and Labor)
(At the request of the Public Service Commission)

AUCTIONEERS AND CLERKS

AN ACT to create and enact chapter 51-05.1 of the North Dakota Century Code, relating to auctioneers and auction sales and the licensing of auctioneers and clerks, and providing for a penalty; and to repeal chapter 51-05 of the North Dakota Century Code.

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

SECTION 1.) Chapter 51-05.1 of the North Dakota Century Code is hereby created and enacted 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 or national bank 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.

51-05.1-02. LICENSE STANDARDS.)

1. Licenses shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk in such manner as to safeguard the interest of the public and whose license has not been revoked in this or any other state within two years prior to the date of application.
2. In addition to the requirements established for subsection 1 of this section, an applicant for a license must be at least eighteen years of age and shall be a citizen of the United States. Every applicant for a license as an auctioneer shall have either:
 - a. Been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of this application; or
 - b. Shall furnish a certificate that he has attended and passed an approved course of study relating to auctioneers.

51-05.1-03. INVESTIGATION, GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION OF LICENSE - HEARING ON APPEAL.)

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke a license when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission;

- b. Making any substantial and willful misrepresentation with reference to any auction sale which is injurious to the party for which he acts as agent;
 - c. Making any false promise of a character such as to influence, persuade, or induce a party to an auction sale to his injury or damage;
 - d. Failure to account for or to remit, within a reasonable time, not exceeding fifteen days, any moneys coming into his possession belonging to another, or subsequent to the effective date of this chapter commingling funds of others with his own, failing to keep such funds or others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposits, which shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto;
 - e. Been convicted or plead guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other like offense;
 - f. Failing or refusing upon demand to produce any document, book, or records in his possession or under his control, concerning any auction sale under investigation by the commission;
 - g. Failure by a licensee to deliver to the seller in every auction sale, a complete, detailed closing statement, showing all the receipts and disbursements handled by such licensee for the seller, and to retain true copies of such statements in his files for two years;
 - h. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
2. If the commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant filed within twenty days after the receipt of such notice, shall fix a time and place for a hearing, of which twenty days' notice shall be given to such applicant and to other persons interested or protesting, to offer such evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within

sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all of the applicable provisions of this chapter have been met, or it may sustain its prior decision refusing to approve the application.

3. No license shall be revoked or suspended except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining the charges for suspension or revocation. The provisions of chapter 28-32 of this code, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals shall apply to and govern all proceedings for suspension or revocation of license, except where inconsistent with this chapter.

51-05.1-04. DEFINITIONS.)

1. An auctioneer within the meaning of this chapter is a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.
2. A clerk within the meaning of this chapter is any person, firm, partnership, copartnership, association, or corporation, who for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, the buyer's name or number, to collect all proceeds of said sale, to pay all expenses connected with the sale, to prepare a full closing statement of all receipts and disbursements, and make settlement thereon to parties properly entitled thereto within a reasonable length of time.
3. A single act performed, or isolated transactions in the selling of property at auction for another shall not constitute the person performing, offering, or attempting to perform any of the acts enumerated herein, an auctioneer within the meaning of this chapter.

51-05.1-05. HANDLING OF FUNDS BY CLERK OF AUCTION SALE.)

Every clerk of an auction sale shall, at all times, maintain in his name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which he shall immediately deposit all funds not his own, including funds in which he may have some future

interest or claim. No clerk shall commingle his personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one hundred dollars in such account from his personal funds, which sum shall be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, he shall maintain at his usual place of business, books, records, and other documents so that the adequacy of such account may be determined at any time. Trust accounts and other records shall be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the clerks usual place of business.

51-05.1-06. LICENSE LIST.) The public service commission shall compile annually, on or before April first, a list of the names and addresses of all licensees licensed by the commission under the provisions of this chapter. One each of such lists shall be mailed to the clerk of the district court in each county of the state and shall be held by said clerk of court as a public record. Such lists shall also be mailed by the commission to any person in this state upon request, and to all licensees without charge.

51-05.1-07. PENALTY.) Any person violating any of the provisions of this chapter shall be guilty of an infraction.

*SECTION 2. REPEAL.) Chapter 51-05 of the North Dakota Century Code is hereby repealed.

Approved April 8, 1975

*NOTE: Sections 51-05-01 through 51-05-04 were also repealed by section 2 of House Bill No. 1597, chapter 524.

CHAPTER 450

HOUSE BILL NO. 1380
(Dotzenrod, Erickson, Gronneberg, Weber)

TERMINATION OF FRANCHISES

AN ACT to create and enact section 51-07-01.1 of the North Dakota Century Code, relating to franchise and other sales arrangements between retailers and distributors, manufacturers, and wholesalers; providing that such arrangements cannot be terminated except for good cause; and defining good cause.

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

SECTION 1.) Section 51-07-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-07-01.1. TERMINATION OF FRANCHISES TO BE DONE IN GOOD FAITH - DEFINITION OF GOOD FAITH.)

1. Any manufacturer, wholesaler, or distributor of farm implements, machinery, and repair parts therefor, or of automobiles, trucks, and repair parts therefor, who enters into a contract with 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 whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments, automobiles, or trucks, shall not terminate, cancel, or fail to renew any such contract with the person, firm, or corporation without good cause.
2. For the purpose of this section, good cause for terminating, cancelling, or failing to renew a contract shall be limited to failure by the person, firm, or corporation in the business of selling and retailing to comply with those requirements imposed by the written contract between the parties. Further, the determination by the manufacturer, wholesaler, or distributor of good cause for such termination, cancellation, or failure to renew must be made in good faith.

In any action against a manufacturer, wholesaler, or distributor for violation of this Act, the manufacturer, wholesaler, or distributor must establish that the termination, cancellation,

or failure to renew was made in good faith for good cause as that term is defined in this section. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, it shall be liable for all special and general damages sustained by the plaintiff, including, but not limited to, the costs of the litigation and reasonable attorneys' fees for prosecuting the action, and the plaintiff, where appropriate, shall be entitled to injunctive relief. The provisions of this section shall apply to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after July 1, 1975. Any contract in force and effect on July 1, 1975, which by its terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to July 1, 1975.

Approved March 18, 1975

CHAPTER 451

HOUSE BILL NO. 1574
(Bunker)

SALE OF CHECKS ACT AMENDMENTS .

AN ACT to amend and reenact subsection 1 of section 51-17-05, subsection 3 of section 51-17-07, and sections 51-17-10 and 51-17-14 of the North Dakota Century Code, relating to qualifications under the Sale of Checks Act, bond required, annual license fee, and examination of books and records.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 51-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The applicant shall have a net worth of at least fifty thousand dollars computed according to generally accepted accounting principles.

SECTION 2. AMENDMENT.) Subsection 3 of section 51-17-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A surety bond issued by a company authorized to issue such bonds in this state, in the principal sum of twenty-five 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 51-17-11, 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.

SECTION 3. AMENDMENT.) Section 51-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-17-10. ANNUAL LICENSE FEE.) Each licensee shall pay to the state examiner annually on or before June fifteenth of each year a license fee of one hundred dollars.

SECTION 4. AMENDMENT.) Section 51-17-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-17-14. 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 chapter at such licensee's expense, and if it appears that such licensee's net worth is less than fifty 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.

Approved April 8, 1975

CHAPTER 452

SENATE BILL NO. 2479
(Barth, Fritzell, Homuth, Reiten)

FRANCHISE INVESTMENT LAW

AN ACT regulating the offer, sale, and purchase of franchises;
providing penalties; and providing an appropriation.

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

SECTION 1. SHORT TITLE.) This Act shall be known and may be
cited as the "Franchise Investment Law".

SECTION 2. DEFINITIONS.) When used in this Act, unless the
context otherwise requires:

1. "Advertisement" means any written or printed communication by means of recorded telephone messages or spoken on radio, television, or similar communications media published in connection with an offer or sale of a franchise.
2. "Area franchise" means any contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.
3. "Business days" are all days other than every Saturday, every Sunday, and such other days as are specified or provided for as holidays in the North Dakota Century Code.
4. "Commissioner" means the commissioner of securities.
5. a. "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
 - (1) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
 - (2) The operation of the franchisee's business pursuant to such plan or system is substantially

associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

- (3) The franchisee is required to pay, directly or indirectly, a franchise fee.
- b. Where used in this Act, unless specifically stated otherwise, "franchise" includes "area franchise".
6. "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any such payment for such goods and services. However, the following shall not be considered the payment of a franchise fee:
 - a. The purchase or agreement to purchase goods at a bona fide wholesale price if no obligation is imposed upon the purchaser to purchase or pay for a quantity of such goods in excess of that which a reasonable businessman normally would purchase by way of a starting inventory or supply or to maintain a going inventory or supply.
 - b. The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card.
 - c. Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services.
 - d. Any other consideration which the commissioner by rule excludes from "franchise fee".
7. "Franchisee" means a person to whom a franchise is granted.
8. "Franchisor" means a person who grants a franchise.
9. "Fraud" and "deceit" are not limited to common law fraud and deceit.
10. "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the commissioner.
11. "Person" means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.
12. "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

13. "Rule" means any published regulation or standard of general application issued by the commissioner.
14. a. (1) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of a franchise or interest in a franchise for value.
- (2) "Offer" or "offer to sell" includes every attempt to offer to dispose of or solicitation of an offer to buy a franchise or interest in a franchise for value. The terms defined in this subsection do not include the renewal or extension of an existing franchise where there is no interruption of the operation of the franchised business by the franchisee.
- (3) "Offer to purchase" includes every attempt to offer to acquire, or solicitation of an offer to sell, a franchise or interest in a franchise for value.
- b. (1) An offer or sale of a franchise is made in this state when an offer to sell is made in this state or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.
- (2) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and it is received at the place to which it is directed.
- (3) An offer to sell is not made in this state merely because the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation outside this state during the past twelve months, or a radio or television program originating outside this state is received in this state.
15. "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.
16. "Subfranchisor" means a person to whom an area franchise is granted.

SECTION 3. REGISTRATION OF OFFER.) It shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this Act or exempted under section 4.

SECTION 4. EXEMPTIONS.)

1. There shall be exempted from the provisions of section 3 the offer to sell, the offer to purchase, the sale, and the purchase of a franchise if the franchisor:
 - a. Has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars; or the franchisor has a net worth according to its most recent financial statement of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars; and
 - b. Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; or if any corporation which owns at least eighty percent of the franchisor has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale.
2. The offer or sale of a franchise by a franchisee for his own account or the offer or sale of the entire area franchise owned by a subfranchisor for his own account is exempted from the provisions of section 3 if the sale is not effected by or through a franchisor; provided, however, that no franchisee or subfranchisor may offer or sell a franchise under this subsection without first obtaining the written approval of the commissioner. The commissioner may require that the franchisee or subfranchisor and the franchisor provide the prospective purchaser and the commissioner with such information and disclosures as he deems necessary or appropriate to carry out the purposes of this Act. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.
3. There shall be exempted from the provisions of section 3 any other transaction which the commissioner by rule exempts as not being comprehended within the purposes of this Act and the registration of which he finds is not

necessary or appropriate in the public interest or for the protection of investors.

SECTION 5. EXEMPTION PROCEEDINGS.) The commissioner may by order deny or revoke any exemption specified in section 4 with respect to the offer or sale of a specific franchise. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered and the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated section 3 by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care would not have known, of the order.

SECTION 6. APPLICATION FOR REGISTRATION.) The application for registration of an offer shall be filed with the commissioner and shall contain the following:

1. The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.
2. The franchisor's principal business address and the name and address of its agent in this state authorized to receive service of process.
3. The business form of the franchisor, whether corporate, partnership, or otherwise.
4. Such information concerning the identity and business experience of persons affiliated with the franchisor as the commissioner may by rule prescribe.
5. a. A statement whether any person identified in the application for registration:
 - (1) Has been convicted of a felony or pleaded nolo contendere to a felony charge or held liable in a civil action by final judgment if such felony or civil action involved fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, or misappropriation of property; or

- (2) Has pending against him any indictment or information or complaint relating to a felony or is the subject of a civil action involving fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, or misappropriation of property; or
 - (3) Is subject to any currently effective order of the securities and exchange commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment adviser, or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or
 - (4) Is subject to any currently effective order or ruling of the federal trade commission; or
 - (5) Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by any public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesman.
- b. Such statement shall set forth the court, the nature of the matter, the date of conviction or judgment or current status of any pending action or proceeding, and any penalty imposed or damages assessed.
6. The business experience of the franchisor, including the length of time the franchisor has conducted business of the type to be operated by the franchisees, has granted franchises for such business, and has granted franchises in other lines of business.
 7. A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The commissioner may by rule or order prescribe the form and content of financial statements required under this Act, the circumstances under which consolidated financial statements shall be filed, and the circumstances under which financial statements shall be audited by independent certified public accountants or public accountants.
 8. A copy of the typical franchise contract or agreement proposed for use or in use in this state, including all amendments thereto.

9. A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases; a statement indicating whether and under what conditions all or part of the initial franchise fee may be returned; and a statement of the estimated total investment to be made for:
 - a. The initial franchise fee and other fees, whether payable in one sum or in installments;
 - b. Fixed assets other than real property and leases for real property, whether or not financed by contract or installment purchase, leasing, or otherwise;
 - c. Working capital, deposits, and prepaid expenses;
 - d. Real property, whether or not financed by contract or installment purchase or otherwise, and leases for real property; and
 - e. All other goods and services which the franchisee will be required to purchase or lease.
10. A statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.
11. A statement of the conditions under which the franchise agreement may be terminated or renewal refused or repurchased at the option of the franchisor, of any limitations on the right of the franchisee to sell, transfer, assign, move, renew, or terminate the franchise, and of any provisions regarding franchisee equity upon sale, termination, refusal to renew, or repurchase.
12. A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by him to his customers.
13. A statement of any conditions imposed by the franchisor, whether by the terms of the franchise agreement or by other device or practice, whereby the franchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or his designee, together with a statement of whether and of the means by which the franchisor derives income from such purchases.

14. A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his agent or affiliate.
15. A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee or subfranchisor in whole or in part.
16. A copy of any statement of estimated or projected franchisee earnings prepared for presentation to prospective franchisees or subfranchisors or other persons, together with a statement setting forth the data upon which such estimation or projection is based and explaining clearly the manner and extent to which such data relates to the actual operations of businesses conducted by the franchisor or its franchisees.
17. A statement describing the training program, supervision, and assistance the franchisor has provided and will provide the franchisee.
18. A statement of any compensation or other benefit given or promised to a public figure arising in whole or in part from the use of the public figure in the name or symbol of the franchise or the endorsement or recommendation of the franchise by the public figure in advertisements, and the extent to which such public figure is involved in the actual management of the franchisor.
19. A statement of the number of franchises presently operating and proposed to be sold.
20. A statement of business failures of franchisees, resales to the franchisor, sales of the franchise to others, and transfers in this state during the two-year period preceding the date of the statement.
21. A list of the names, addresses, and telephone numbers of all operating franchise businesses under franchise agreement with the franchisor located in this state.
22. A statement explaining the terms and effects of any covenant not to compete which is or will be included in the franchise or other agreement to be executed by the franchisee.
23. A statement as to whether franchisees or subfranchisors receive an exclusive area or territory, and, if so, a map thereof.
24. Any other information the commissioner may require.
25. Any other information the franchisor may desire to present.

26. When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section.

SECTION 7. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY.)

1. Applications for registration, registration renewal statements, and amendments thereto shall be signed and notarized by the franchisor or by the subfranchisor.
2. If the commissioner finds that it is necessary and appropriate for the protection of prospective franchisees or subfranchisors because the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the commissioner may by rule or order require the escrow or impoundment of franchise fees and other funds paid by the franchisee or subfranchisor until such obligations have been satisfied. The franchisor may, at his option, furnish an adequate surety bond as provided by rule of the commissioner.
3. The commissioner shall have power to place such conditions, limitations, and restrictions on any registration as may be necessary to carry out the purposes of this Act.
4.
 - a. If no stop order under section 9 is in effect under this Act, registration of the offer of franchises automatically becomes effective at twelve o'clock noon of the fifteenth business day after the filing of the application for registration or the last amendment thereto or at such earlier time as the commissioner determines. The registrant may request in writing a delay in effectiveness which will suspend the operation of this subdivision.
 - b. A franchise offering shall be deemed duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.
5.
 - a. The registration may be renewed for additional periods of one year each, unless the commissioner by rule or order specifies a different period, by submitting to the commissioner a registration renewal statement no later than fifteen business days prior to the expiration of the registration unless such period is waived by order of the commissioner. If no stop order or other order under section 9 is in effect under this Act, registration of the offer of the franchises automatically becomes renewed effective at twelve o'clock noon of the date on which the prior registration is

due to expire or at such earlier time as the commissioner determines.

- b. The registration renewal statement shall be in the form prescribed by the commissioner and shall be accompanied by a proposed prospectus. Each such registration renewal statement shall be accompanied by the fee prescribed in section 17.
6. a. A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended, or renewed. The commissioner may by rule further define what shall be considered a material change for such purposes and the circumstances under which a revised prospectus must accompany such application.
- b. An amendment to an application filed after the effective date of the registration of the sale of franchises, if such amendment is approved by the commissioner, shall become effective on such date as the commissioner may determine, having due regard for the public interest and the protection of franchisees.

SECTION 8. PROSPECTUS REQUIREMENTS.)

1. The application for registration shall be accompanied by a proposed prospectus which shall contain the material information set forth in the application for registration, as specified by rule of the commissioner, and such additional disclosures as the commissioner may require.
2. Except as otherwise provided in this Act, no part of the prospectus shall be underscored, italicized, or printed in larger or bolder type than the rest of the prospectus unless the commissioner requires or permits it. The prospectus shall recite in bold type of not less than ten-point type that registration does not constitute approval, recommendation, or endorsement by the commissioner.
3. The commissioner may by rule or order require that specified parts of the prospectus be emphasized by italics, bold-faced type, or other means, that earnings or sales projections or estimates be qualified by appropriate legend and by the filing with the commissioner of such other information or documents as are necessary or appropriate in the public interest or for the protection of prospective franchisees or subfranchisors and may require that such additional information or documents be furnished to prospective franchisees or subfranchisors as part of the prospectus.

4. The commissioner may by rule or order provide that any information required to be included in the prospectus need not be included in respect of any class of franchisees if he finds that such information is inappropriate to such class and that disclosure adequate for the protection of prospective franchisees or subfranchisors is otherwise included within the prospectus.
5. The commissioner may accept, in lieu of the prospectus meeting the requirements set forth in this Act, a prospectus which complies with the requirements of any federal law or administrative rule or with the law of any other state requiring substantially the same disclosure of information as is required under this Act.
6. It shall be unlawful to sell any franchise in this state which is subject to registration under this Act without first providing the prospective franchisee at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement or at least seven days prior to the receipt of any consideration, whichever occurs first, a copy of the prospectus, together with a copy of all proposed agreements relating to the sale of the franchise. The franchisee shall be permitted to retain the prospectus prior and subsequent to the execution of any franchise or other agreement. The person offering or selling the franchise shall obtain a receipt signed by the prospective franchisee acknowledging that he has received a copy of the prospectus as required under this subsection. The receipt shall be kept in the possession of the person offering or selling the franchise, subject to inspection by the commissioner, for a period of three years from the date the receipt is taken.

SECTION 9. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION OR EXEMPTION.)

1. a. The commissioner may summarily issue a stop order denying the effectiveness of any registration or of any exemption under section 5 if he finds:
 - (1) That there has been a failure to comply with any of the provisions of this Act or the rules of the commissioner pertaining thereto.
 - (2) That the offer, sale, or purchase of the franchise would constitute misrepresentation to or deceit or fraud upon purchasers thereof or has worked or tended to work a fraud upon purchasers or would so operate.
 - (3) That any person is engaging or about to engage in false, fraudulent, or deceptive practices in connection with the offer, sale, or purchase of a franchise.

- (4) That any person identified in an application for registration has been charged with or convicted of a felony or a civil action or proceeding is then pending against him or he is subject to an order or has had a civil judgment entered against him as described in subsection 5 of section 6 and the involvement of such person in the sale of franchises or the business of the franchisor creates a substantial risk to prospective franchisees.
 - (5) That the applicant or registrant has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this paragraph and shall vacate any such order when the deficiency has been corrected.
 - (6) That advertising prohibited by section 10 has been used in connection with the offer, sale, or purchase of franchises.
 - (7) That the financial condition of the franchisor adversely affects or would adversely affect the ability of the franchisor to fulfill obligations under the franchise agreement.
 - (8) That the franchisor's enterprise or method of business includes or would include activities which are illegal where performed.
 - (9) That the method of sale or proposed method of sale of franchises or the operation of the business of the franchisor or any term or condition of the franchise agreement or any practice of the franchisor is or would be unfair, unjust, or inequitable to franchisees.
2. a. The commissioner may issue a summary order denying, postponing, suspending, or revoking the effectiveness of the registration pending final determination of any proceeding under this subsection. Upon the entry of an order, the commissioner shall promptly notify each person specified in subdivision b that it has been entered and the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person specified in subdivision b, may modify or vacate the order or extend it until final determination.

- b. No stop order may be entered under this section, except under subdivision a, without appropriate prior notice to the applicant or registrant and the person on whose behalf the franchise is to be or has been offered, opportunity for hearing, and written findings of fact and conclusions of law.
- c. The commissioner may vacate or modify an order entered under section 5 or this section if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

SECTION 10. ADVERTISEMENT.)

1. No person shall publish in this state any advertisement offering a franchise subject to the registration requirements of this Act unless a true copy of the advertisement has been filed with the office of the commissioner at least five business days prior to the first publication or such shorter period as the commissioner by rule or order may allow or unless such advertisement has been exempted by rule of the commissioner.
2. No person shall publish any advertisement concerning any franchise in this state after the commissioner finds that the advertisement contains any statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice of hearing. At any time after the issuance of a notification under this subsection, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within fifteen business days after such receipt unless the person making the request consents to a later date. After such hearing, the commissioner shall determine whether to affirm and continue or to rescind such order.

SECTION 11. FRAUDULENT AND PROHIBITED PRACTICES.)

1. It shall be unlawful for any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, notice, report, or other document filed under any provision of this Act or to omit to state any material statement or fact in any such application, financial statement, notice, report, or document which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to fail to notify the commissioner of any material change as required under subsection 6 of section 7.
2. It shall be unlawful for any person in connection with the

offer, sale, or purchase of any franchise, directly or indirectly:

- a. To employ any device, scheme, or artifice to defraud; or
 - b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
 - c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
3. It shall be unlawful for any person to violate any order of the commissioner or condition to the effectiveness of the registration of the offer or sale of franchises.
 4. It shall be unlawful for any person to effect or attempt to effect a sale of a franchise in this state unless such person is identified in an application or amended application or prospectus filed with the commissioner.
 5. It shall be unlawful for any person to represent or cause to be represented to any prospective purchaser of a franchise that the filing of any document under this Act or the registration or exemption from registration of a franchise constitutes a finding by the commissioner that any document filed under this Act is true, complete, and not misleading, or that the commissioner has passed in any way upon the merits of any franchise, or that a franchise is registered or exempted from registration when in fact such is not the case.

SECTION 12. CIVIL LIABILITY.)

1. Any person who violates any provision of this Act or any rule or order issued by the commissioner thereunder shall be liable to the franchisee or subfranchisor who may bring an action for damages, for rescission, or for such other relief as the court may deem appropriate.
2. Every person who directly or indirectly controls a person liable under subsection 1, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, and every employee of a person so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in

the existence of the facts by reason of which the liability is alleged to exist.

3. In any action under this section, the franchisee or subfranchisor, if successful, shall also be entitled to costs and disbursements plus reasonable attorney's fees.
4. No franchisee or subfranchisor may file or maintain an action under this section if he received a written offer before the action was commenced and at a time when he owned the franchise to refund the consideration paid together with interest at the rate of seven percent per annum from the date of purchase, less the amount of income received on the franchise, conditioned only upon tender by the franchisee or subfranchisor of all items received by him for the consideration and not sold, and failed to accept the offer within thirty days of its receipt or if the franchisee received the offer before the action was commenced and at a time when he did not own the franchise, unless he rejected the offer in writing within thirty days of its receipt; provided that in either instance the offering documents and rescission prospectus must be submitted to the commissioner for approval at least fifteen days prior to submission to the franchisee or subfranchisor. The rescission offer shall recite the provisions of this section. If the franchise involves a substantial building or substantial equipment and a significant period of time has elapsed since the sale of the franchise, the commissioner, in approving a rescission offer, may approve an equitable offer recognizing depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisor.
5. No action shall be brought under this section after three years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based.
6. Except as explicitly provided in this section, no civil liability in favor of any private party shall arise against any person by implication from or as a result of the violation of any provision of this Act or any rule or order issued by the commissioner thereunder. Nothing herein shall limit any liability which may exist by virtue of any other statute or under common law if this Act were not in effect.

SECTION 13. POWERS OF THE COMMISSIONER.)

1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or

any rule or order hereunder, he may in his discretion bring an action in the name of the people of the state of North Dakota in the district court to enjoin the acts or practices or to enforce compliance with this Act or any rule or order hereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond.

2. a. The commissioner may in his discretion make such public and private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or order hereunder or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder and publish information concerning the violation of this Act or any rule or order hereunder.
- b. The commissioner may require or permit any person to file a statement under oath or otherwise subject to the penalties of perjury as the commissioner requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to reply with all required information to the commissioner's letter within fifteen days after receipt thereof shall be the basis for issuance of a cease and desist order.
- c. For the purpose of any investigation or proceeding under this Act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
- d. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court upon application by the commissioner may issue to the person an order requiring him to appear before the commissioner or the officer designated by him there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.
- e. No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him or in any proceeding instituted by the commissioner on the

ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

- f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this Act and it is being or has been offered for sale without such offer first being registered, the commissioner may order the franchisor or offeror of such franchise to desist and refrain from the further offer or sale of such franchise unless and until such offer has been duly registered under this Act. If, after such an order has been made, a request for a hearing is filed in writing by the person to whom such order was directed, a hearing shall be held; unless such hearing is commenced within fifteen business days after the request is made or the person affected consents to a later date, such order shall be deemed rescinded.
- g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this Act is being or has been offered for sale without complying with the provisions of section 4 or subsection 2 of section 11, the commissioner may order the franchisor or offeror of such franchise to desist and refrain from the further offer or sale of such franchise unless and until such offer is made in compliance with this Act. If, after such an order has been made, a request for a hearing is filed in writing by the person to whom such order was directed, a hearing shall be held. Unless such hearing is commenced within fifteen business days after the date, such order shall be deemed rescinded.
- h. The commissioner may refer such evidence as is available concerning any violation of this Act or of any rule or order hereunder to the county attorney of the county in which the violation occurred who may, with or without such a reference, institute appropriate criminal proceedings under this Act.

SECTION 14. CRIMINAL PENALTIES.)

- 1. Any person who willfully violates any provision of this Act or who willfully violates any rule or order under

this Act shall be guilty of a class B felony; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

2. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise shall be guilty of a class B felony.
3. Nothing in this Act limits the power of the state to punish any person for any conduct which constitutes a crime.

SECTION 15. SERVICE OF PROCESS.)

1. Every applicant for registration of an offer to sell franchises under this Act, other than a domestic corporation, shall file with the commissioner in such form as he shall prescribe an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator, which arises under this Act or any rule or order hereunder after the consent has been filed with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration under this Act need not file another. Service may be made by leaving a copy of the process in the office of the commissioner but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the commissioner and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this Act or any rule or order hereunder, whether or not he has filed a consent to service of process under subsection 1 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or

proceeding against him or his successor, executor, or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective until the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice and the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, and within such further time as the court allows.

SECTION 16. GENERAL PROVISIONS.)

1. Every franchisor or subfranchisor offering franchises for sale in this state shall at all times keep and maintain a complete set of books, records, and accounts of such sales, which shall at all times be open to inspection by the commissioner, and shall make and file with the commissioner such reports as he may by rule or order prescribe.
2. The commissioner may accept and act upon the opinions, appraisals, and reports of any engineers, appraisers, or other experts which may be presented by an applicant or any interested party on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisals, and reports, the commissioner may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon, and certified to him by engineers, appraisers, or other experts selected by him.
3. Any document filed under this Act may be incorporated by reference in a subsequent application filed under this Act if it was filed within four years prior to the filing of such application or is otherwise available in the files of the commissioner, to the extent that the document is currently accurate.
4. In any proceeding under this Act, the burden of proving an exemption or exception from a definition is upon the person claiming it.
5. The commissioner in his discretion may honor requests from interested persons for interpretive opinions.
6. No provision of this Act imposing any liability applies to any act done or omitted in good faith in conformity

with any rule, form, order, or written interpretive opinion of the commissioner or any opinion of the attorney general, notwithstanding that the rule, form, order, or written interpretive opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

7. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any rule or order hereunder is void.
8. Every final order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with chapter 28-32 of the North Dakota Century Code.

SECTION 17. ADMINISTRATION.)

1. This Act shall be administered by the commissioner of securities.
2.
 - a. The commissioner shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the state treasurer and shall be credited to the general fund.
 - b. The fee for filing an application for registration of the sale of franchises is two hundred and fifty dollars.
 - c. The fee for filing an application for renewal of an application is one hundred dollars.
 - d. The fee for filing an amendment to the application is fifty dollars.
 - e. The expenses reasonably attributable to the investigation or examination of any matter arising under this Act shall be charged to the applicant or registrant involved, but the expenses so charged shall not exceed such maximum amounts as the commissioner by rule prescribes.
3.
 - a. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Act, including rules and forms governing applications and reports and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the provisions of this Act.
 - b. All rules of the commissioner, other than those

relating solely to the internal administration of his office, shall be made, amended, or rescinded in accordance with chapter 28-32 of the North Dakota Century Code.

4. a. All applications, reports, and other papers and documents filed with the commissioner under this Act shall be open to public inspection, except that the commissioner may, in his discretion, withhold from public inspection any information the disclosure of which is, in the judgment of the commissioner, not necessary in the public interest or for the protection of investors. The commissioner may publish any information filed with him or obtained by him, if, in the judgment of the commissioner, such action is in the public interest. No provision of this Act authorizes the commissioner or any of his assistants, clerks, or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this Act or to other federal or state regulatory agencies. No provision of this Act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his assistants, clerks, or deputies.
- b. It shall be unlawful for the commissioner or any of his assistants, clerks, or deputies to use for personal benefit any information which is filed with or obtained by the commissioner and which is not then generally available to the public.
5. A document is filed when it is received by the commissioner.
6. Upon request and at such reasonable charges as he prescribes by rule, the commissioner shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any document which is retained as a matter of public record except that he shall not charge or collect any fee for photostatic or other copies of any document furnished to public officers for use in their official capacity. In any judicial proceeding or prosecution, any copy so certified is prima facie evidence of the contents of the document certified.

SECTION 18. APPROPRIATION.) The sums hereinafter named only, or so much thereof as may be necessary, are hereby appropriated out of the general fund in the state treasury to the commissioner of securities for the purpose of defraying the additional expenses of this office for the purposes provided by law for the biennium beginning July 1, 1975, and ending June 30, 1977.

Salaries and wages	\$62,100
Fees and services	20,000
Supplies and materials	5,000
Equipment	1,500
Total general fund appropriation	\$88,600

Approved April 9, 1975

CHAPTER 453

HOUSE BILL NO. 1407
(Rued)

RECREATION VEHICLE FRANCHISES

AN ACT to provide that franchise dealers in recreation vehicles shall be reimbursed for vehicles and equipment inventory on hand when franchise or dealership arrangement is cancelled.

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 manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
2. "Dealer" means a person, partnership, corporation, or other business entity which sells at retail and services new recreation vehicles.
3. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; motorcycles as defined in section 39-01-01, subsection 32a; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed thirty-five feet in length; and motor boats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.

SECTION 2. RECREATION VEHICLE DEALERS MAY RECOVER VALUE OF VEHICLES OR PARTS FROM DISTRIBUTOR IN CERTAIN CASES.)

1. Whenever:

- a. A distributor cancels or discontinues a contractual arrangement; or
- b. A dealer cancels or discontinues a contractual arrangement because the distributor entered into a contractual arrangement with another dealer to sell in the same geographical area for which the first dealer had an exclusive dealership,

the dealer may recover from the distributor the net cost to him of all new and unused recreation vehicles, and parts for such vehicles, held by him at the time of cancellation or discontinuance of the contractual arrangement. The dealer may enforce the right given under this section by civil action commenced in the district court in the county where the dealer has his principal place of business in North Dakota.

2. The provisions of this section shall be supplemental to any contractual rights which the dealer may have with respect to reimbursement for equipment and parts inventory held by him at cancellation or discontinuance of a contractual arrangement. The dealer may elect to pursue his rights under the contractual arrangement and under this section, but his total recovery shall not exceed the net cost of the equipment and parts remaining in his hands at the time of cancellation or discontinuance, plus legal costs awarded by the court.

Approved April 8, 1975

CHAPTER 454

HOUSE BILL NO. 1518
(Royse, Olin, Laske)

RETAIL THEFT ACT

AN ACT to create and enact the Retail Theft Act; to provide civil penalties; and to repeal section 29-06-27 of the North Dakota Century Code, relating to the powers and duties of peace officers and merchants with respect to shoplifters.

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. "Merchandise" means any item of tangible personal property, and specifically includes shopping carts.
2. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, franchisee, or independent contractor or such owner or operator.
3. "Retail mercantile establishment" means any place where merchandise is displayed, held, offered, or stored for sale to the public.
4. "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant, or on behalf of a merchant, for the parking of vehicles for the convenience of the patrons of said retail mercantile establishment.
5. "Person" means any natural person or individual.
6. "Full retail value" means the merchant's stated or advertised price of the merchandise.
7. "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drugstores, or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

8. An item is "concealed" within the meaning of this Act if, even though there is some notice of its presence, the item itself is not visible through ordinary observation.

SECTION 2. PRESUMPTION.) Any person concealing upon his person or among his belongings, or causing to be concealed upon the person or among the belongings of another, unpurchased merchandise displayed, held, offered, or stored for sale in a retail mercantile establishment and removing it to a point beyond the last station for receiving payments in that retail mercantile establishment shall be prima facie presumed to have so concealed such merchandise with the intention of permanently depriving the merchant of possession or of the full retail value of such merchandise.

SECTION 3. DETENTION OF SUSPECT - PROCEDURE.) Any peace officer or merchant who reasonably believes that a person has committed, or is in the process of committing, theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

1. To require the person to identify himself.
2. To verify such identification.
3. To determine whether such person has in his possession unpurchased merchandise and, if so, to recover such merchandise.
4. To inform a peace officer of the detention of the person and surrender custody of that person to a peace officer.
5. In the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor of this detention and to surrender custody of said minor to the person informed.

SECTION 4. CIVIL AND CRIMINAL IMMUNITY FOR ACTS OF DETENTION.) Any peace officer or merchant who detains any person as permitted under section 3 of this Act shall not be held civilly or criminally liable for any cause of action allegedly arising from such detention.

SECTION 5. CIVIL REMEDY AGAINST ADULT SHOPLIFTERS.) An adult who commits the offense of theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of suit, and reasonable attorney's fees.

SECTION 6. REPEAL.) Section 29-06-27 of the North Dakota Century Code is hereby repealed.

Approved April 8, 1975