

# SALES AND EXCHANGES

## CHAPTER 587

HOUSE BILL NO. 1234  
(Committee on Industry, Business and Labor)  
(At the request of the Attorney General)

### TRANSIENT MERCHANT LICENSING

AN ACT to amend and reenact sections 51-04-01, 51-04-03, 51-04-08, and 51-04-09 of the North Dakota Century Code, relating to the definition of transient merchant, licensing of transient merchants by the attorney general, certain excepted sales, and regulation of transient merchants by a city or other municipality.

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

SECTION 1. AMENDMENT. Section 51-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Merchandise" shall not include any livestock or agricultural product.
2. "Transient merchant" includes any person, individual, copartnership, or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling, or soliciting orders for future delivery of goods, wares, merchandise, personal property, and personal services including, but not limited to, spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, ~~and~~ pest or rodent control, and taking photographs for present or future delivery, who does not intend to become and does not become a permanent merchant of such place.

SECTION 2. AMENDMENT. Section 51-04-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-03. License fee - Bond or cash surety - License issuance. An applicant for a transient merchant's license shall pay to the attorney general a license fee of ~~five~~ two hundred dollars to cover the cost of licensing and shall give a surety bond, or the deposit of cash in lieu thereof, which shall be not less than one thousand dollars nor more than fifty thousand dollars, the surety on which shall be a surety company authorized to transact business in the state of North Dakota. The contents and surety therein shall be subject to the approval of the attorney general, and be conditioned that the applicant will in all things conform to the laws relating to transient merchants and further conditioned upon full compliance with all material oral or written statements and representations made by the applicant, his agents, representatives, or auctioneers with reference to merchandise sold or offered for sale, and on faithful performance under all warranties made with reference thereto. The bond shall not be revocable nor terminate prior to passage of two years' time after the expiration of the license issued pursuant thereto nor until due notice that the terms of the bond are to be canceled has been given to the attorney general.

No license shall be valid for more than one person unless he shall be a bona fide member of a copartnership. Licenses issued by the attorney general shall be valid in all counties of the state and shall expire after one year from the dates of their issuance.

No sale under the purview of this chapter shall be conducted in the name of any person other than the bona fide owner of the goods, wares, and merchandise.

The files and records of the attorney general pertaining to transient merchants shall be kept in convenient form and open for public inspection.

SECTION 3. AMENDMENT. Section 51-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-08. Certain excepted sales. The provisions of this chapter shall ~~do not~~ apply to ~~sales~~ the following:

1. Sales made to dealers by commercial travelers or selling agents in the usual course of business.
2. Sales made by persons soliciting orders of goods, wares, merchandise, or personal property for future delivery, and not from a stock or supply carried by the solicitor or otherwise available for immediate delivery to the purchaser, in which the solicitor does not demand or accept payment of any money or deposit in advance or on delivery without first providing the purchaser with the privilege of examination of the goods, wares, merchandise, or personal property.
3. Sales made by a person who has a sales or use tax permit in accordance with chapter 57-39.2 or 57-40.2, pays

contributions to job service North Dakota for unemployment compensation in accordance with chapter 52-04, and who has reported to the workmen's compensation bureau in accordance with chapter 65-04.

4. Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises.

SECTION 4. AMENDMENT. Section 51-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-09. Regulation by city or other municipality. Nothing in this chapter shall be construed as prohibiting, or in any way limiting or interfering with, the right of any city or other municipal corporation or governmental subdivision of the state, to regulate or license the carrying on within such municipality the business of a transient merchant in any case where authority has been, or shall hereafter be, conferred upon it so to do, but the requirements of this chapter shall be in addition thereto. The governing body of a city or other municipal corporation or governmental subdivision, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city limits to comply with any reasonable regulations, in addition to this chapter, as that body may deem necessary for their local control and may require the payment by every such merchant of a per diem license fee not exceeding twenty-five dollars. Every such merchant making sales or offering to do so without complying with the regulations applicable to transient merchants shall be subject to the penalty provided as if no ~~county~~ state license had been issued by the attorney general.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 588

HOUSE BILL NO. 1223  
(Committee on Industry, Business and Labor)  
(At the request of the Public Service Commission)

## AUCTIONEER'S AND CLERK'S LICENSES

AN ACT to create and enact sections 51-05.1-01.1 and 51-05.1-01.2 of the North Dakota Century Code, relating to auctioneer's and clerk's licenses; to amend and reenact sections 15-20.4-02, 51-05.1-01, 51-05.1-02, and 51-05.1-06 of the North Dakota Century Code, relating to exemptions from standards for postsecondary educational institutions, and auctioneer's and clerk's licenses; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 15-20.4-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-20.4-02. Exemptions. The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided such the education is not advertised or promoted as leading toward educational credentials.
5. Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, as determined by the board and any

educational consortium that includes one or more of such  
the institutions.

6. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as such the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
7. Schools of barbering regulated under chapter 43-04.
8. Schools of cosmetology regulated under chapter 43-11.
9. Schools of nursing regulated under chapter 43-12.1.
10. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.
11. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.

SECTION 2. AMENDMENT. Section 51-05.1-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-01. Auctioneer's license - Clerk's license - Fees - Bonds. No person shall conduct a sale in this state as an auctioneer or clerk the same until he has filed with the public service commission an application for an annual auctioneer's or clerk's license. The original applications shall be in writing, verified, and filed showing the name, residence, and post-office address of the applicant. Applications for renewals of said annual licenses shall be on such forms as may be designated by the commission. The fee for the annual licenses or renewals thereof is twenty-five dollars which shall accompany the applications. The names and license numbers 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 three thousand dollars for an auctioneer and ten 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 federally insured financial institution be required to be bonded as provided herein in order to conduct a sale in this state as a clerk, but shall otherwise comply with all other provisions of this chapter, nor shall the provisions of this chapter apply to the selling at auction of purebred or registered livestock.

Auctioneering or clerking without a license prohibited. No person may conduct a sale as an auctioneer or clerk unless licensed by the public service commission.

SECTION 3. Section 51-05.1-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is twenty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk.

When filing an application an auctioneer or clerk must file a corporate surety bond of three thousand dollars for an auctioneer and ten thousand dollars for a clerk with the state of North Dakota as obligee for the benefit of any person injured by the licensee's improper conduct.

SECTION 4. Section 51-05.1-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-05.1-01.2. Exemptions. A license under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section must comply with all other provisions of this chapter.

SECTION 5. AMENDMENT. Section 51-05.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, an 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 either:
  - a. Have been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of this application; or
  - b. Furnish a certificate that he has attended and passed proof of satisfactory completion of an approved course of study relating to auctioneers.

SECTION 6. AMENDMENT. Section 51-05.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 589

SENATE BILL NO. 2288  
(Senators Wright, Langley)  
(Representatives Dotzenrod, Haugland)

### FRANCHISE TERMINATION

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, and 51-07-03 of the North Dakota Century Code, relating to sales and exchanges between wholesalers, manufacturers, distributors, and retailers.

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

SECTION 1. AMENDMENT. Section 51-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-01. Retail implement or car dealer may recover price of articles upon discontinuance of contract by wholesaler or retail dealer. Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements, or in the business of selling and retailing automobiles or trucks, or repair parts for automobiles or trucks, enters into a written contract whereby such retailer agrees to maintain a stock of parts or complete or whole machines, or attachments with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, or repair parts, or automobiles, trucks, or repair parts, and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor, shall pay to such retailer unless the retailer should desire to keep such merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, automobiles, and trucks including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from such wholesaler, manufacturer, or distributor, and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts back to the



wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of such farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net prices on repair parts, plus freight charges which have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on repair parts only, the title to such farm implements, farm machinery, attachments, automobiles, trucks, or repair parts, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor, shall be entitled to the possession of such farm implements, machinery, attachments, automobiles, trucks, or repair parts. All payments required to be made under this section must be made within thirty days after the final settlement between the retailer and the wholesaler, manufacturer, or distributor.

The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, automobiles, trucks, and repair parts so that the retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments, automobiles, trucks, and repair parts not affected by the contract remedy.

The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after ~~July 1, 1971~~ June 30, 1987. Any contract in force and effect on July 1, ~~1971~~ 1987, which by its own terms will terminate on a date subsequent thereto ~~shall be~~ is governed by the law as it existed ~~prior to the 1971 amendment~~ before July 1, 1987.

SECTION 2. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-01.1. Termination of franchises to be done in good faith - Definition of good cause.

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, canceling, 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 section, 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 obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor. 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~~ June 30, 1987. Any contract in force and effect on July 1, 1975 1987, which by its terms will terminate on a date subsequent thereto ~~shall be~~ is governed by the law as it existed ~~prior to~~ before July 1, 1975 1987.

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

**51-07-03. Failure to pay sum specified on cancellation of contract - Liability.** In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery, and farm implements, or of automobiles, trucks, and repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as is required by section

51-07-01, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements or automobiles or trucks, or repair parts therefor, to any retailer of such products, who may have a retail sales contract dated after July 1, 1963 June 30, 1987, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1963 1987, with such manufacturer, wholesaler, or distributor, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for one hundred percent of the net cost of such farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net price of repair parts, plus five percent for handling and loading plus freight charges which have been paid by the retailer. The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

Approved March 26, 1987

Filed March 30, 1987

## CHAPTER 590

SENATE BILL NO. 2101  
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

### UNIFORM STATE ANTITRUST ACT

AN ACT to adopt the Uniform State Antitrust Act, relating to prohibitions against restraint of trade; to repeal chapter 51-08 of the North Dakota Century Code, relating to the prohibition against certain business pools and trusts; and to provide a penalty.

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

SECTION 1. Definitions. As used in this Act:

1. "Person" means an individual, corporation, business trust, partnership, association, or any other legal entity.
2. "Relevant market" means the geographical area of actual or potential competition in a line of commerce, all or any part of which is within this state.

SECTION 2. Contract, combination, or conspiracy to restrain or monopolize trade. A contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market is unlawful.

SECTION 3. Establishment, maintenance, or use of monopoly. The establishment, maintenance, or use of a monopoly, or an attempt to establish a monopoly, of trade or commerce in a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices, is unlawful.

SECTION 4. Exclusions.

1. Labor of a human being is not a commodity or an article of commerce.
2. Nothing in this Act forbids the existence and operation of any labor, agricultural, or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects.

**SECTION 5. Judicial jurisdiction.** An action for violation of this Act must be brought in district court.

**SECTION 6. Official investigation.**

1. If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this Act, the attorney general may serve upon the person, before bringing any action in the district court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand must:
  - a. Be served upon the person in the manner required for service of process in this state;
  - b. Describe the nature of the conduct constituting the violation under investigation;
  - c. Describe the document or object with sufficient definiteness to permit it to be fairly identified;
  - d. Contain a copy of the written interrogatories;
  - e. Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the attorney general at or before the designated time;
  - f. Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and
  - g. Contain a copy of subsection 2.
2. If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides or in which the person maintains a principal place of business within this state a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court

finds that the demand is proper, there is reasonable cause to believe there has been a violation of this Act, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

3. Any procedure, testimony taken, or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this Act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.
4. The investigatory authority provided by this section may be invoked by the attorney general only after a district court has reviewed the information gathered by the attorney general and has determined that there is reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to a possible violation of this Act. The submission of the information by the attorney general to the district court shall be made ex parte and shall be kept confidential until such time as the matter may be the subject of an action filed pursuant to section 8 of this Act.

**SECTION 7. Civil penalty and injunctive enforcement by state.** The attorney general, or a state's attorney with the permission or at the request of the attorney general, may bring an action for appropriate injunctive relief and civil penalties in the name of the state for a violation of this Act. The trier of fact may assess for the benefit of the state a civil penalty of not more than fifty thousand dollars for each violation of this Act.

**SECTION 8. Damages and injunctive relief.**

1. The state, a political subdivision, or any public agency threatened with injury or injured in its business or property by a violation of this Act may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by the court, taxable costs and reasonable attorney's fees.
2. A person threatened with injury or injured in that person's business or property by a violation of this Act may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by

the court, taxable costs and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the damages sustained.

**SECTION 9. Judgment in favor of state as prima facie evidence.** A final judgment or decree determining that a person has violated this Act in an action brought by the state under section 7 or under subsection 1 of section 8, other than a consent judgment or decree entered before any testimony has been taken, is prima facie evidence against that person in any other action against that person under section 8 as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto. This section does not affect the application of collateral estoppel or issue preclusion.

**SECTION 10. Limitation of actions.**

1. An action under section 7 to recover a civil penalty is barred if it is not commenced within four years after the claim for relief accrues.
2. An action under section 8 to recover damages is barred if it is not commenced within four years after the claim for relief accrues, or within one year after the conclusion of any timely action brought by the state under section 7 or 8 based in whole or in part on any matter complained of in the action for damages, whichever is later.

**SECTION 11. Remedies cumulative.** The remedies provided in this Act are cumulative.

**SECTION 12. Rights, privileges, and immunities.** Nothing in this Act shall be construed so as to abrogate an individual's constitutionally guaranteed rights, privileges, and immunities.

**SECTION 13. REPEAL.** Chapter 51-08 of the North Dakota Century Code is hereby repealed.

Approved March 26, 1987  
Filed March 30, 1987

## CHAPTER 591

SENATE BILL NO. 2381  
(Schoenwald)

## RETAIL INSTALLMENT CONTRACT PREPAYMENT

AN ACT to amend and reenact section 51-13-05 of the North Dakota Century Code, relating to prepayment of retail installment contracts.

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

SECTION 1. AMENDMENT. Section 51-13-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-05. Prepayment of retail installment contract -- ~~Application of Rule of 78's.~~

1. At any time before maturity, a buyer may pay in full the remaining principal due on a retail installment contract and is entitled to a refund of finance charges as follows:
  - a. ~~For a retail installment contract where the amount financed is not more than ten thousand dollars, the refund must, after deducting an acquisition cost of not more than fifteen dollars, be at least as great a proportion of the finance charge as the sum of the periodic time balances after the month in which the prepayment is made bears to the sum of all the periodic time balances under the scheduled installments in the original retail installment contract.~~
  - ~~b. For a retail installment contract where the amount financed is greater than ten thousand dollars, the The refund must be at least the finance charge paid in excess of that computed under the actuarial method, using the annual percentage rate disclosed under federal law to the nearest one-fourth of one percent.~~
  - b. For a retail installment contract in which the amount financed is not more than ten thousand dollars, an



acquisition cost of at most fifteen dollars may be deducted from the refund.

- c. A For all retail installment contracts, a refund is not required if it is less than one dollar.
2. Notwithstanding section 51-13-06.2, this section applies to retail installment contracts for agricultural purposes and to retail installment contracts for more than twenty-five thousand dollars.

Approved April 1, 1987  
Filed April 2, 1987

## CHAPTER 592

SENATE BILL NO. 2483  
(Nelson)

## ILLEGAL SALES SCHEMES

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to pyramid promotional schemes and referral sales schemes; to repeal chapter 51-16 of the North Dakota Century Code, relating to multilevel distributorships and chain sales schemes; and to provide a penalty.

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

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Definitions.** As used in this Act, unless the context or subject matter otherwise requires:

1. "Compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment.
2. "Consideration" means the payment of cash or the purchase of goods, services, or intangible property but does not include:
  - a. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or
  - b. Time and effort spent in pursuit of sales or recruiting activities.
3. "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services, or intangible property

by the participant or other persons introduced into the plan or operation.

**Pyramid promotional schemes prohibited - Defenses excluded.**

1. No person shall establish, operate, advertise, or promote a pyramid promotional scheme.
2. It is not a defense to a criminal or civil prosecution under this section that:
  - a. The plan contains a limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation; or
  - b. A participant, on giving consideration, obtains any goods, services, or intangible property in addition to the right to receive compensation.

**Referral selling prohibited.** No seller or lessor may give or offer a rebate, discount, or anything of value to a 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 to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to the sale or lease.

**Penalty - Civil remedies.** Any person, including the officers and directors of any company, violating any of the provisions of this chapter is:

1. Guilty of a class A misdemeanor, but a person who has been previously convicted of a class A misdemeanor under this chapter may be charged with and convicted of a class C felony for any violation which occurs after the previous conviction;
2. Deemed to have committed an unlawful practice in violation of section 51-15-02 and subject to all provisions, procedures, and penalties of chapter 51-15; and
3. Notwithstanding any agreement to the contrary, subject to the right of any purchaser in a pyramid promotional scheme or referral selling scheme to declare the sale or contract void and also subject to an action in a court of competent jurisdiction by any purchaser to recover three times the damages sustained by the purchaser in participating in the scheme, plus reasonable attorney's fees and costs.

**Scope of remedies.**

1. The rights and remedies that this chapter grants to purchasers in pyramid promotional schemes and referral selling schemes are independent of and supplemental to any other right or remedy available to them in law or equity, and nothing contained herein may be construed to diminish or to abrogate any such right or remedy.
2. The provisions of this chapter are in addition to all other causes of action, remedies, and penalties available to the state or any of its governmental agencies.

**SECTION 2. REPEAL.** Chapter 51-16 of the North Dakota Century Code is hereby repealed.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 593

SENATE BILL NO. 2403  
(Senator Todd)  
(Representative Whalen)

## FRANCHISE DISCONTINUANCE

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to allowing retail dealers to return merchandise upon discontinuance of a franchise.

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

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Definitions.** As used in this chapter, unless the context requires otherwise:

1. "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 merchandise 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 merchandise and, if the dealer is to perform service, an inventory of parts for that merchandise.
2. "Dealer" means a person, partnership, corporation, or other business entity which sells at retail and services new merchandise and is not engaged in the business of home solicitation sales.
3. "Distributor" means any manufacturer, wholesaler, or distributor of merchandise who has a contractual arrangement with a dealer for such merchandise.
4. "Merchandise" includes all new products of inventory intended for resale or retail sale by franchised dealers.

Dealers may recover value of merchandise 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 merchandise, and parts for such merchandise, 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 district court in the county where the dealer has his principal place of business in North Dakota.

2. The provisions of this section are supplemental to any contractual rights which the dealer may have with respect to reimbursement for merchandise 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 may not exceed the net cost of the merchandise and parts, plus freight costs for return of the merchandise and parts, remaining in his hands at the time of cancellation or discontinuance, plus legal costs awarded by the court.

**Exception.** The provisions of this chapter do not apply to chapters 51-07, 51-19, 51-20, and 51-20.1.

Approved April 1, 1987  
Filed April 2, 1987