

SALES AND EXCHANGES

CHAPTER 590

SENATE BILL NO. 2206
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

AUCTIONEERS AND CLERKS

AN ACT to create and enact a new subsection to section 51-05.1-04 and a new section to chapter 51-05.1 of the North Dakota Century Code, relating to auctioneers and auction clerks and related definitions; to amend and reenact subdivision b of subsection 1 of section 51-05.1-03 and section 51-05.1-07 of the North Dakota Century Code, relating to auctioneers and auction clerks; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 51-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Made any a substantial and willful misrepresentation with reference relating to any an auction sale which is injurious to injures the party for which he acts as agent.

SECTION 2. A new subsection to section 51-05.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Seller" means the owner or consignor of property to be sold at auction.

SECTION 3. A new section to chapter 51-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Written contracts. No auctioneer may sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The contract must identify the property, commission rate, any restrictions on sale, whether the auctioneer is authorized to purchase for the auctioneer at the sale, and payment of sale expenses and proceeds. The auctioneer shall retain a copy of each contract for two years after the auction. This section does not apply to livestock markets.

SECTION 4. AMENDMENT. Section 51-05.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-07. Penalty. Any person violating any of the provisions of this chapter shall be is guilty of an infraction a class B misdemeanor.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 591

HOUSE BILL NO. 1353
(Representative Ulmer)
(Senator Mushik)

MOTOR VEHICLE RETURNS

AN ACT to amend and reenact subsection 3 of section 51-07-18 and section 51-07-22 of the North Dakota Century Code, relating to the location of dispute settlement hearings when a consumer seeks to return a defective motor vehicle and disclosure upon resale of returned vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 51-07-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a manufacturer has established or participates in an informal dispute settlement procedure which that substantially complies with the substantive rules of the federal trade commission, 16 CFR 703, or if the manufacturer participates in a consumer and industry appeals, arbitration, or mediation appeals board whose decisions are binding on the manufacturer, the remedy under subsection 1 is not available to a consumer who has not first resorted to that procedure. If the consumer requests an oral presentation before the board or dispute settlement mechanism, the hearing must take place in the state in which the consumer resides. The attorney general shall, on application, issue a determination of whether an informal dispute resolution mechanism qualifies under this subsection.

SECTION 2. AMENDMENT. Section 51-07-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-22. Resale of returned passenger motor vehicles prohibited - Penalty. A person may not sell in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22. A person may not ship or deliver for resale in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer. Violation of this section is a class B misdemeanor.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 592

SENATE BILL NO. 2178
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

FRANCHISE INVESTMENT

AN ACT to amend and reenact subsection 1 of section 51-19-04 and subsection 2 of section 51-19-17 of the North Dakota Century Code, relating to requirements of, and exemptions from, the franchise investment law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 51-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There shall be exempted from the provisions of section 51-19-03 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; and
 - c. Except as provided in subdivision d, discloses in writing to each 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, the following information:
 - (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) The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, has granted franchises for such business, and has granted franchises in other lines of business.
 - (5) A copy of the typical franchise contract or agreement proposed for use or in use in this state.
 - (6) 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.
 - (7) 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 that the franchisor collects in whole or in part on behalf of a third party or parties.
 - (8) A statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor.
 - (9) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or the franchisor's designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description thereof.
 - (10) 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 the franchisee to customers.
 - (11) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
 - (12) As statement of any past or present practice 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.

- (13) If any statement of estimated or projected franchisee earnings is used, a statement of such estimation or projection and the data upon which it is based.
- (14) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory; and
- d. In the case of a material modification of an existing franchise, discloses in writing to each franchisee information concerning the specific sections of the franchise agreement proposed to be modified and such additional information as may be required by rule or order of the commissioner. Any agreement by such franchisee to such material modifications is not binding upon the franchisee if the franchisee, within ten business days after the receipt of such writing identifying the material modification, notifies the franchisor in writing that the agreement to such modification is rescinded. A writing identifying the material modification is received when delivered to the franchisee. A written notice by the franchisee rescinding an agreement to a material modification is effective when delivered to the franchisor or when deposited in the mail, postage prepaid, and addressed to the franchisor in accordance with any notice provisions in the franchise agreement, or when delivered or mailed to the person designated in the franchise agreement for the receipt of notices on behalf of the franchisor; and
- e. Has filed with the commissioner a notice of exemption and paid the fee required by section 51-19-17 prior to the offer or sale of a franchise in this state. Any notice of exemption and the renewal must 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) A copy of the typical franchise contract or agreement proposed for use or in use in this state.
 - (5) Information sufficient to establish that the franchisor satisfies the exemption conditions contained in subdivisions a and b of subsection 1.
- Any notice of exemption remains in effect for a period of one year from the date the notice is received by the commissioner.

SECTION 2. AMENDMENT. Subsection 2 of section 51-19-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 fee for filing a notice of exemption is one hundred dollars.
- f. The fee for filing for renewal of a notice of exemption is fifty dollars.
- g. The expenses reasonably attributable to the investigation or examination of any matter arising under this chapter 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.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 593

HOUSE BILL NO. 1213
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

COMMODITIES ACT OF 1989

AN ACT to create and enact chapter 51-23 of the North Dakota Century Code, relating to the regulation of certain commodities transactions; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-23-01. Title. This chapter shall be known as the Commodities Act of 1989.

51-23-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.
2. "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on the effective date of this chapter.
3. "Commissioner" means the securities commissioner of this state.
4. "Commodity" means, except as otherwise specified by the commissioner by rule or order, any agricultural, grain, or livestock product or byproduct; any metal or mineral, including a precious metal; any gem or gemstone, whether characterized as precious, semiprecious, or otherwise; any fuel whether liquid, gaseous, or otherwise; any foreign currency; and all other goods, articles, products or items of any kind. The term commodity does not include:
 - a. A numismatic coin with a fair market value at least fifteen percent higher than the value of the metal it contains;
 - b. Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or

- c. Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner.
5. "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold must, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract may not include any contract or agreement which requires, and under which the purchaser receives within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.
6. "Commodity Exchange Act" means the act of Congress known as the Commodity Exchange Act, as amended to the effective date of this chapter.
7. "Commodity futures trading commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.
8. "Commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by CFTC rule:
 - a. Futures commission merchant.
 - b. Commodity pool operator.
 - c. Commodity trading advisor.
 - d. Introducing broker.
 - e. Leverage transaction merchant.
 - f. An associated person of any of the foregoing.
 - g. Floor broker.
 - h. Any other person other than a futures association required to register with the commodity futures trading commission.
9. "Commodity option" means any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. "Financial institution" means a bank, savings institution, or trust company organized under, or supervised under, the laws of the United States or of any state.
11. "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.
12. "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision or a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity.
13. "Precious metal" means the following in either coin, bullion, or other form: silver, gold, platinum, palladium, copper, and such other items as the commissioner may specify by rule or order.
14. "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

51-23-03. Unlawful commodity transactions. Except as otherwise provided in section 51-23-04 or 51-23-05, no person may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

51-23-04. Exempt person transactions. The prohibitions in section 51-23-03 do not apply to any transaction offered by and in which any of the following persons or any employee, officer, or director thereof acting solely in that capacity is the purchaser or seller:

1. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.
2. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.
3. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2.
4. A person who is a member of a contract market designated by the commodity futures trading commission or any clearinghouse thereof.
5. A financial institution.
6. A person registered under the laws of this state as a securities dealer whose activities require such registration.
7. A public warehouseman as defined in section 60-02-01.

The exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

51-23-05. Exempt transactions.

1. The prohibitions in section 51-23-03 do not apply to the following:
 - a. An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.
 - b. A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery must be deemed to have occurred if, within such twenty-eight-day period, such quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either:
 - (1) A financial institution;
 - (2) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;
 - (3) A storage facility licensed or regulated by the United States or any agency thereof; or
 - (4) A depository designated by the commissioner;and such depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.
 - c. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any byproduct thereof.
 - d. A commodity contract under which the offeree or the purchaser is a person referred to in section 51-23-04 of this chapter, an insurance company, or an investment company as defined in the Investment Company Act of 1940.

2. The commissioner may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

51-23-06. Unlawful commodity activities.

1. No person may engage in a trade or business or otherwise act as a commodity merchant unless such person:
 - a. Is registered or temporarily licensed with the commodity futures trading commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or
 - b. Is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.
2. No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation has not been vacated, suspended, or revoked.

51-23-07. Fraudulent conduct. No person may, directly or indirectly:

1. Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;
2. Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
3. Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or
4. Misappropriate or convert the funds, security or property of any other person;

in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to the provisions of section 51-23-03 or 51-23-04, or subdivision b or d of subsection 1 of section 51-23-05.

51-23-08. Liability of principals, controlling persons, and others.

1. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office must be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.
2. Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, and every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

51-23-09. Securities laws unaffected. Nothing in this chapter impairs, derogates, or otherwise affects the authority or powers of the commissioner under the Securities Act of 1951 or the application of any provision thereof to any person or transaction subject thereto.

51-23-10. Purpose. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' law and the administration and enforcement thereof. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

51-23-11. Investigations.

1. The commissioner may make investigations, within or without this state, as the commissioner finds necessary or appropriate to:
 - a. Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner.
 - b. Aid in enforcement of this chapter.
2. The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner.
3. For purposes of any investigation or proceeding under this chapter, the commissioner or any officer or employee designated by rule or order, 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 finds to be relevant or material to the inquiry.
4. a. If a person does not give testimony or produce the documents required by the commissioner or a designated employee pursuant to an administrative subpoena, the commissioner or designated

employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

- b. The request for order of compliance may be addressed to either:
 - (1) The district court of Burleigh County, North Dakota, or the district court of any county in this state, where service may be obtained on the person refusing to testify or produce, if the person is within this state; or
 - (2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

51-23-12. Enforcement of chapter.

1. If the commissioner believes, whether or not based upon an investigation conducted under section 51-23-11, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the commissioner may:
 - a. Issue a cease and desist order;
 - b. Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation, or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; and
 - c. Initiate any of the actions specified in subsection 2 of this section.
2. The commissioner may institute any of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:
 - a. A declaratory judgment;
 - b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the commissioner;
 - c. An action for disgorgement; and
 - d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

51-23-13. Power of court to grant relief.

1. a. Upon a proper showing by the commissioner that a person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner, the district court of Burleigh County, North Dakota, may grant appropriate legal or equitable remedies.

- b. Upon showing of violation of this chapter or a rule or order of the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:
 - (1) Imposition of a civil penalty in an amount that may not exceed ten thousand dollars for any single violation, or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;
 - (2) Disgorgement;
 - (3) Declaratory judgment;
 - (4) Restitution to investors wishing restitution; and
 - (5) Appointment of a receiver or conservator for the defendant or the defendant's assets.
- c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the commissioner must be limited to:
 - (1) A temporary restraining order;
 - (2) A temporary or permanent injunction;
 - (3) A writ of prohibition or mandamus; and
 - (4) An order appointing a receiver or conservator for the defendant or the defendant's assets.
2. The court may not require the commissioner to post a bond in any official action under this chapter.
3. a. Upon a proper showing by the commissioner or securities or commodity agency of another state that a person other than a government or governmental agency or instrumentality has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or securities or commodity agency of that state, the district court of Burleigh County, North Dakota, may grant appropriate legal and equitable remedies.
- b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:
 - (1) Disgorgement; and

- (2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.
- c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state must be limited to:
- (1) A temporary restraining order;
 - (2) A temporary or permanent injunction;
 - (3) A writ of prohibition or mandamus; and
 - (4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

51-23-14. Criminal penalties.

1. Any person who willfully violates any provision of this chapter, or any rule or order of the commissioner under this chapter, is guilty of a class B felony.
2. Any person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves he had no knowledge of the rule or order.

51-23-15. Administration of chapter.

1. This chapter must be administered by the securities commissioner.
2. Neither the commissioner nor any employees of the commissioner may use any information which is filed with or obtained by the commissioner which is not public information for personal gain or benefit, nor may the commissioner nor any employees of the commissioner conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.
3.
 - a. Except as provided in subdivision b of subsection 3 of this section, all information collected, assembled, or maintained by the commissioner is public information and is available for the examination of the public.
 - b. The commissioner may, in his discretion, keep confidential information obtained in private investigations pursuant to this chapter and information obtained from federal agencies which may not be disclosed under federal law.
 - c. No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.

51-23-16. Cooperation with other agencies.

1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the commodity futures trading commission, the securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.
2. The cooperation authorized by subsection 1 includes, but need not be limited to, the following:
 - a. Making joint examinations or investigations;
 - b. Holding joint administrative hearings;
 - c. Filing and prosecuting joint litigation;
 - d. Sharing and exchanging personnel;
 - e. Sharing and exchanging information and documents;
 - f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases; and
 - g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

51-23-17. General authority to adopt rules, forms, and orders.

1. In addition to specific authority granted elsewhere in this chapter, the commissioner may make, amend, and rescind rules and orders as are necessary to carry out the provisions of this chapter.
2. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the commissioner, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

51-23-18. Consent to service of process. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the commissioner, the engaging in the conduct constitutes the appointment of the commissioner as the person's attorney to receive service of any lawful process in a noncriminal proceeding

against the person, a successor, or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the commissioner with the same force and validity as if served personally.

51-23-19. Scope of this chapter.

1. Sections 51-23-03, 51-23-06, and 51-23-07 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.
2. Sections 51-23-03, 51-23-06, and 51-23-07 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.
3. For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state, or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.
4. For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present 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, or at any post office in this state in the case of a mailed acceptance.
5. An offer to sell or to buy is not made in this state when:
 - a. 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 is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months; or
 - b. A radio or television program originating outside this state is received in this state.

51-23-20. Procedure for entry of an order.

1. The commissioner shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.
2. Upon entry of a notice of intent or summary order, the commissioner shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the commissioner

shall inform all interested parties of the date, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the commissioner shall inform all interested parties that they have thirty business days from the entry of the order to file a written request for a hearing on the matter with the commissioner and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request.

3. If the proceeding is pursuant to a summary order, the commissioner, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the commissioner's own motion.
4. If no hearing is requested and none is ordered by the commissioner, the summary order will automatically become a final order after thirty business days.
5. If a hearing is requested or ordered, the commissioner, after extending notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.
6. No final order or order after hearing may be returned without:
 - a. Appropriate notice to all interested persons;
 - b. Opportunity for hearing by all interested persons; and
 - c. Entry of written findings of fact and conclusions of law.

Every hearing in an administrative proceeding under this chapter must be public unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately.

51-23-21. Pleading exemptions. It is not necessary to negative any of the exemptions of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption is upon the party claiming the same.

51-23-22. Affirmative defense. It is a defense in any complaint, information, indictment, or any writ or proceeding brought under this chapter alleging a violation of section 51-23-03 based solely on the failure in an individual case to make physical delivery within the applicable time period under subsection 5 of section 51-23-02 or subdivision b of subsection 1 of section 51-23-05 if:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the sellers affiliates, subsidiaries, or successors; and
2. Physical delivery was completed within a reasonable time under the applicable circumstances.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989
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