

SENATE BILL NO. 2182

Introduced by

Senators Poolman, Casper, Nelson

Representatives K. Koppelman, Kretschmar, Amerman

1 A BILL for an Act to amend and reenact sections 51-04-10 and 51-15-02, subsection 2 of
2 section 51-18-02, and sections 51-18-04 and 51-18-04.1 of the North Dakota Century Code,
3 relating to transient merchants, unlawful practices, and home solicitation sales; and to provide a
4 penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 51-04-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **51-04-10. Penalty.**

9 Any person violating any of the provisions of this chapter, for which another penalty is not
10 specifically provided, is guilty of a class B misdemeanor. The state's attorney or attorney
11 general may enforce this chapter. The attorney general in enforcing this chapter has all the
12 powers provided in this chapter and chapter 51-15 and may seek all remedies in this chapter
13 and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The
14 remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition
15 to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by
16 law. The attorney general may bring an action pursuant to this section in either the county
17 where the transient merchant conducted business or Burleigh County.

18 **SECTION 2. AMENDMENT.** Section 51-15-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **51-15-02. Unlawful practices - Fraud - Misrepresentation - Unconscionable.**

21 The act, use, or employment by any person of any deceptive act or practice, fraud, false
22 pretense, false promise, or misrepresentation, with the intent that others rely thereon in
23 connection with the sale or advertisement of any merchandise, whether or not any person has
24 in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The

1 act, use, or employment by any person of any act or practice, in connection with the sale or
2 advertisement of any merchandise, which is unconscionable or which causes or is likely to
3 cause substantial injury to a person which is not reasonably avoidable by the injured person
4 and not outweighed by countervailing benefits to consumers or to competition, is declared to be
5 an unlawful practice.

6 **SECTION 3. AMENDMENT.** Subsection 2 of section 51-18-02 of the North Dakota Century
7 Code is amended and reenacted as follows:

- 8 2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at
9 the address or electronic mail address specified for notice of cancellation provided by
10 the seller by any of the following methods:
- 11 a. Delivering written notice to the seller.
 - 12 b. Mailing written notice to the seller.
 - 13 c. Sending a ~~telegram~~ an electronic mail message to the seller.

14 **SECTION 4. AMENDMENT.** Section 51-18-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **51-18-04. Agreement requirement.**

17 No agreement of the buyer in a personal solicitation sale is enforceable unless it is in
18 writing, dated, contains the signature of the buyer, and contains a conspicuous notice in
19 substantially the following form:

20 NOTICE TO BUYER

- 21 1. Do not sign this agreement if any of the spaces intended for the agreed terms to the
22 extent of then available information are left blank.
- 23 2. You are entitled to a copy of this agreement at the time you sign it.
- 24 3. You may pay off the full unpaid balance due under this agreement at any time, and in
25 so doing you may receive a full rebate of the unearned finance and insurance charges.
- 26 4. You may cancel this transaction at any time prior to midnight of the third business day
27 after the date of this transaction. See the attached notice of cancellation form for an
28 explanation of this right.
- 29 5. The seller cannot enter your premises unlawfully or commit any breach of the peace to
30 repossess goods purchased under this agreement.

31 The agreement must also have attached the following completed form, in duplicate:

NOTICE OF CANCELLATION

(Enter date of transaction)

1. You may cancel this transaction, without any penalty or obligation, within three business days from the above date.
2. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.
3. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.
4. If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.
5. Buyer acknowledges receiving an oral notification that the buyer may cancel this transaction at any time before midnight of the third business day after the date of this transaction or fifteen business days if the buyer is sixty-five years of age or older.

(Date)

(Buyer's signature)

6. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a ~~telegram~~ electronic mail message to (electronic mail address of seller), to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)

If the buyer is sixty-five years of age or older, and the purchase price of the product is greater than fifty dollars, the agreement required by this chapter must either state that the buyer

1 may cancel the agreement within fifteen business days in accordance with this chapter, or state
2 in a conspicuous manner that if the buyer is not satisfied with the product for any reason, the
3 buyer may contact the seller within a period of not less than thirty days from the date of
4 purchase for a full refund of the purchase price, if the product has not been intentionally
5 damaged or misused.

6 **SECTION 5. AMENDMENT.** Section 51-18-04.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter.**

9 In addition to the requirements of section 51-18-04, an agreement by a consumer to obtain
10 a consumer good or service from a telepromoter, seller, or seller's representative is not
11 enforceable unless it contains the following information:

- 12 1. The name, address, and telephone number of the telepromoter, seller, or seller's
13 representative;
- 14 2. A statement of the price or fee, including any handling, shipping, delivery, or other
15 charge being requested;
- 16 3. A detailed description of the consumer good or service; and
- 17 4. In a type size in a minimum of twelve points, in a space immediately preceding the
18 space allotted for the consumer signature, the statement: "YOU ARE NOT
19 OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND
20 RETURN IT TO THE SELLER."