

# SALES AND EXCHANGES

## CHAPTER 422

### HOUSE BILL NO. 1339

(Representative M. Johnson)  
(Senator Sorvaag)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to reimbursement for warranty.

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

**SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

#### **Parts, equipment, and accessory dealers reimbursed for warranty repair.**

1. As used in this section:

- a. "Commercial equipment dealer" means a person that engages in the business of:
- (1) Selling, at retail, parts for any new or used commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo; or
  - (2) Repairing new or used commercial motor vehicle, truck, or semitrailer parts, or vehicular implements, commercial equipment or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- b. "Commercial distributor" means any person that offers for sale, sells, or distributes to a dealer parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- c. "Commercial manufacturer" means any person engaged in the business of manufacturing or assembling parts for any new commercial motor vehicle, truck, or semitrailer, or vehicular implements, commercial equipment, or accessories, or attachment units, designed and used primarily for transporting commodities, merchandise, or commercial cargo.
- d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or semitrailer components.

2. A commercial manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work

compensation. In addition, a commercial manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a commercial manufacturer to the commercial equipment dealer for warranty services may not be less than the average rate charged by the commercial equipment dealer for like service to nonwarranty customers for nonwarranty service. A commercial manufacturer may not reimburse a commercial equipment dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the commercial equipment dealer for these parts as provided under subsection 5.

3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made by a commercial equipment dealer under this section within thirty days of the approval of the claim. The commercial manufacturer either shall approve or disapprove a claim within thirty days after the claim is submitted to the commercial manufacturer. The commercial manufacturer may prescribe the manner in which and the forms on which the commercial equipment dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the commercial manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
4. A commercial manufacturer, commercial distributor, or commercial distributor branch shall compensate fully its commercial equipment dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the commercial equipment dealer or imposing a separate charge, surcharge, or other imposition by which the commercial manufacturer seeks to recover the costs of complying with this section from the commercial equipment dealer.
5. The retail rate customarily charged by the commercial equipment dealer for parts is established by the commercial equipment dealer submitting to the commercial manufacturer or commercial distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
6. The retail rate customarily charged by the commercial equipment dealer for labor must be established using the same process as provided under subsection 5 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.
7. In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the following work may not be included in the calculation:
  - a. Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional discounts for retail customer repairs;

- b. Parts sold at wholesale; and
- c. Nuts, bolts, fasteners, and similar items that do not have an individual part number.
8. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer's approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other commercial equipment dealers in an economically similar area of the state offering the commercial equipment dealer's declaration of the same part, or vehicular implement, equipment, accessory, or attachment unit. If the average parts markup rate or average labor rate, or both are rebutted, the commercial manufacturer or commercial distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
9. Each commercial manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not obligate any commercial equipment dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating commercial equipment dealers to engage in transaction-by-transaction or part-by-part calculations.
10. A commercial dealer or commercial manufacturer may demand the average parts markup or average labor rate be calculated using the process provided under subsections 5 and 6; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the commercial equipment dealer or commercial manufacturer, the commercial equipment dealer shall determine the repair orders to be included in the calculation under subsections 5 and 6.

Approved April 8, 2019

Filed April 9, 2019

## CHAPTER 423

### HOUSE BILL NO. 1161

(Representatives B. Koppelman, Beadle, Jones, K. Koppelman, Louser, Schauer)  
(Senators Hogue, Luick, Poolman, Schaible)

AN ACT to create and enact a new section to chapter 51-28 of the North Dakota Century Code, relating to prohibiting inaccurate information from being entered into a telephone caller identification system with the intent to defraud; and to provide a penalty.

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

**SECTION 1.** A new section to chapter 51-28 of the North Dakota Century Code is created and enacted as follows:

##### **Telephone caller identification system fraud - Exceptions - Definitions.**

1. A person may not, in connection with any telecommunications service or internet protocol enabled voice service, knowingly cause any telephone caller identification system to:
  - a. Transmit misleading or inaccurate caller identification information with the intent to defraud or cause harm; or
  - b. Use or display a telephone number the caller does not own or has not received consent to use from the owner of the telephone number.
2. This section does not apply to:
  - a. The blocking of caller identification information;
  - b. A law enforcement agency of the federal, state, county, or municipal government;
  - c. An intelligence or security agency of the federal government;
  - d. A telecommunications, broadband, or voice over internet protocol service provider acting solely as an intermediary for the transmission of telephone service between the caller and the recipient;
  - e. Activity engaged in under a court order that specifically authorizes the use of caller manipulation; or
  - f. A caller who, based on the telephone number called, reasonably believes the recipient of the call is not physically within the state.
3. Any person who receives a call in violation of subsection 1 may bring a civil action in a court of this state in the county in which the call recipient resides to enjoin such action, or for damages, or both. If the plaintiff prevails, the court must award the plaintiff the plaintiff's actual damages or damages in an amount not less than five thousand dollars and not more than ten thousand

dollars per violation, whichever is greater. Each call is a separate violation under this chapter. The court shall award the plaintiff's costs, expenses, and reasonable attorney's fees. The relief provided in this section is in addition to all remedies available to the attorney general under this chapter in any investigation or action brought by the attorney general against the caller in the plaintiff's private action. This section may not be interpreted to limit any other claims the person may have against the caller or any other claims the attorney general may bring under this chapter, chapter 51-15, or any other state or federal laws.

4. In addition to the remedies and penalties provided in this chapter, a person violating subsection 1 is guilty of a class A misdemeanor, and the venue must be in the county in which the call recipient received the call or the county in which the call recipient resides.
5. As used in this section:
  - a. "Call" means any type of telephonic communication made using a public switched telephone network, wireless cellular telephone service, or voice over internet protocol service that has the capability of accessing users on the public switched telephone network or a successor network.
  - b. "Caller" means a person that places a call, whether by telephone, over a telephone line, or on a computer.
  - c. "Defraud" means taking anything of value, including money, property, or time, without consent from the recipient of a call.
  - d. "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number shown to a recipient of a call when it is received.

Approved April 10, 2019

Filed April 11, 2019

## CHAPTER 424

### HOUSE BILL NO. 1195

(Representatives Keiser, D. Ruby)

AN ACT to create and enact section 51-07-30 and chapter 51-37 of the North Dakota Century Code, relating to customer contract clauses and the use of certain marketing practices involving automatic renewal; to provide a penalty; and to provide for application.

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

**SECTION 1.** Section 51-07-30 of the North Dakota Century Code is created and enacted as follows:

#### **51-07-30. Customer contract clauses - Billing examples - Enforcement - Penalty.**

1. As used in this section:
  - a. "Customer" means a person that borrows, buys, leases, or obtains services or property under a service contract. The term does not include a government entity.
  - b. "Service contract" means a written agreement between a customer and a party acting in the usual course of business in which a customer borrows, buys, leases, or obtains personal property, real property, or services for valuable consideration.
  - c. "Terms and conditions" means general and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of an agreement or contract.
2. If a service contract contains terms and conditions clauses, the service contract must be accepted by the customer for the service contract to be enforceable.
3. If a service contract contains a liquidated damages clause, the clause must provide specific examples of how any fees or charges will be calculated.
4. The attorney general may enforce this section. The attorney general, in enforcing this section, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this section constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

**SECTION 2.** Chapter 51-37 of the North Dakota Century Code is created and enacted as follows:

#### **51-37-01. Definitions.**

As used in this chapter:

1. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed for a period of more than one month at the end of a definite period for a subsequent period.
2. "Clear and conspicuous" means in a larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size or symbols or other marks, in a manner that clearly calls attention to the language and makes the language readily apparent, readable, and understandable to the person to which the language is disclosed. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable. A statement that contradicts or is inconsistent with any other information with which the statement is presented is not clear and conspicuous.

### **51-37-02. Use of automatic renewal.**

1. A person that sells or offers to sell merchandise for a specified period under an agreement containing a provision for automatic renewal shall:
  - a. Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer;
  - b. Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer; and
  - c. Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the acknowledgment required by subdivision b.
2. A person that sells or offers to sell merchandise for a specified period under an agreement that contains a provision for automatic renewal for a period of more than six months at the end of the time period specified in the agreement shall provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal.
  - a. The written notice must be provided by:
    - (1) First-class mail;
    - (2) Electronic mail; or
    - (3) Any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in such form.
  - b. The written notice must include the procedure for canceling and must be given at least thirty days and not more than sixty days before the date upon which the agreement will be renewed or the expiration of the period for cancellation.

3. If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.
4. A person that sells or offers to sell merchandise for a specified period under an agreement that contains a provision for automatic renewal may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has complied with the requirements of subsection 1 and obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.
5. The renewal period in a provision for automatic renewal of an agreement for sale of merchandise may not exceed twelve months.

#### **51-37-03. Exceptions.**

This chapter does not apply to:

1. The sale of insurance regulated under title 26.1;
2. The sale of public utilities regulated under title 49 or the federal communications commission, or services provided by the public utilities; or
3. A bank, bank holding company, credit union, or other financial institution or trust company regulated under title 6.

#### **51-37-04. Remedies.**

An agreement for sale of merchandise in violation of this chapter is unenforceable and void. If a person sends merchandise as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the merchandise is considered to be an unconditional gift to the buyer who may dispose of the gift in any manner the buyer sees fit without any obligation to the person.

#### **51-37-05. Enforcement - Powers - Remedies - Penalty.**

The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has the powers provided in chapter 51-15 and may seek the remedies in chapter 51-15. Each act in violation of this chapter constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

#### **51-37-06. Private enforcement.**

A person aggrieved by a violation of this chapter may bring an action to enjoin the violation or for restitution, or both. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section does not limit any other claims the plaintiff may have against a seller subject to this chapter.

**SECTION 3. APPLICATION.** This Act applies to contracts entered after July 31, 2019.

Approved April 8, 2019

Filed April 9, 2019