

SALES AND EXCHANGE

CHAPTER 301

H. B. No. 638
(Nygaard, Paulson, Bye)

LICENSING AND REGULATION OF TRANSIENT MERCHANTS

AN ACT

Relating to licensing and regulation of transient merchants doing business by auction or otherwise, and repealing chapter 51-04 of the North Dakota Revised Code of 1943 and sections 51-0401 and 51-0402 of the 1953 Supplement to the North Dakota Revised Code of 1943.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) In this chapter, unless the context or subject matter otherwise requires:

1. "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 goods, wares, and merchandise, who does not intend to become and does not become a permanent merchant of such place, and who, for the purpose of carrying on such business, hires, leases, occupies, or uses a building, structure, lot, tract, railroad car, or motor vehicle for the exhibition and sale of such goods, wares, and merchandise.
2. "Merchandise" shall not include any livestock or agricultural product.

§ 2. Application For License.) Any transient merchant desiring to engage in, do, or transact business by auction or otherwise, in any county in this state, shall file an application for a license for that purpose with the auditor of that county which shall be in writing and include the following:

1. Applicant's name, present residence, present home address, and present business address;
2. Applicant's residence and business address for the prior two year period, if different from the present residence and address;

3. Type of business in which applicant has been engaged in the previous two years;
4. Proposed location of the business to be licensed;
5. Kind of business to be conducted;
6. Length of time desired or estimated for completion of sale in the county;
7. Name and address of the auctioneer, if any, who will conduct the sale; and
8. An itemized list of merchandise to be offered for sale reciting as to each item a description thereof including serial number, if any, the owner's actual cost thereof, and a designation by number corresponding with a number to be affixed to each item by a tag which shall be kept fastened to the item at all times until sold.

§ 3. License Fee, Bond, Issuance.) An applicant for a transient merchant's license shall pay to the treasurer of the county of application a license fee of one hundred fifty dollars, any personal property taxes payable by him pursuant to statute, and shall give a surety bond to the county in an amount to be determined by the county treasurer which shall be not less than one thousand dollars nor more than three 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 county treasurer, 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 county auditor.

The county treasurer shall issue to the applicant receipts for the foregoing payments and when the applicant files these receipts, and his application, with the county auditor, the auditor may issue to the applicant a transient merchant's license to do business as such at the place described in the application, and the kind of business to be done shall be described therein.

No license shall be valid for more than one person unless he shall be a bona fide member of a copartnership, nor for

more than one place, and shall not be valid outside the county for which it is issued. The license shall expire after one year from date of 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 county treasurer and auditor pertaining to transient merchants shall be kept in convenient form and open for public inspection.

§ 4. Affidavit Required For Certain Sales.) It shall be unlawful for any transient merchant to advertise, represent, or hold forth as being sold for an insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesaler, or manufacturer, or closing out sale, or as a sale of any goods, wares, and merchandise damaged by smoke, fire, water, or otherwise, or in any similar form, unless such transient merchant shall file with his application for a transient merchant license an affidavit showing all the facts relating to the reasons and character of the sale so to be advertised or represented, and showing that the sale is in fact as it is to be advertised and represented, including a statement of:

1. The names of the persons from whom the goods, wares, and merchandise were obtained;
2. The date of their delivery to the applicant;
3. The place from which the goods, wares, and merchandise were last taken; and
4. All details necessary to exactly locate and fully itemize all goods, wares, and merchandise to be sold.

§ 5. Failure Of Affidavit; Penalty.) If the affidavit filed as prescribed in section 4 shows that the sale is not of the kind or character proposed to be advertised or represented, or fails to disclose the facts as required, then the county auditor shall refuse the applicant a license for the sale. Should a license be issued to the applicant, it shall state that the applicant is authorized and licensed to sell such goods, wares, and merchandise, and advertise and represent and hold forth the same as being sold as such insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesaler or manufacturer, or closing out sale, or as a sale of any goods, wares and merchandise damaged by smoke, fire, water, or otherwise, as shown in the affidavit.

The affidavit shall be sworn to by the applicant before a person authorized to administer oaths. Every person making a false statement of any fact in such affidavit shall be guilty of perjury and shall be punished for such offense as is provided by the criminal code of this state.

§ 6. Evidence). When it appears that any stock of goods, wares, and merchandise has been brought into any county of this state by a person not a resident of the county, and that it is claimed, represented, or advertised that such stock is to be closed out at reduced prices, such facts shall be prima facie evidence that the person, copartnership, corporation, or agency so offering the goods, wares, and merchandise for sale is a transient merchant.

§ 7. Service of Process.) Prior to the issuance of a transient merchant license and approval of his bond, the applicant shall in writing appoint the county auditor his agent to accept service of process in any action or proceeding involving the applicant and arising out of the sale for which the license is sought. Such action shall be brought in the county where the sale was held.

§ 8. Certain Excepted Sales.) The provisions of this chapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares, and merchandise by sample for future delivery, or to hawkers on the street, or to peddlers from vehicles, baskets, or packs carried on their backs, or to sheriffs, constables, or other public officers or their agents, or to administrators or executors selling goods, wares, and merchandise according to law, nor to bona fide receivers or assignees selling goods, wares, and merchandise for the benefit of creditors.

§ 9. Regulation By City, Village, Municipality.) Nothing in this chapter shall be construed as prohibiting, or in any way limiting or interfering with, the right of any city, village, 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 village, by resolution, ordinance, or order, may require transient merchants licensed under this chapter and making or intending to make sales within the city or village 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 city or village regulations applicable to transient merchants shall be subject to the penalty provided as if no county license had been issued.

§ 10. Penalty.) Any person violating any of the provisions of this chapter, except where other penalty is provided, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

§ 11. Repeal.) Chapter 51-04 of the North Dakota Revised Code of 1943 and sections 51-0401 and 51-0402 of the 1953 Supplement to the North Dakota Revised Code of 1943 are hereby repealed.

Approved March 3, 1955.

CHAPTER 302

S. B. No. 225
(Foss, Dewing)

LICENSING TRADING STAMPS OR DEVICES; PENALTY

AN ACT

Relating to premium or trading stamps or devices, and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. License Required To Use Trading Stamps; Exceptions.) Every person who shall use, or furnish to any other person to use, in, with, or for the sale of any goods, wares, or merchandise, any stamps, coupons, tickets, certificates, cards, or other similar schemes or devices which shall entitle the purchaser receiving the same with such sale of goods, wares, or merchandise to procure from any person any goods, wares, or merchandise, free of charge or for less than the retail market price thereof, upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar devices, before so furnishing, selling, or using the same, shall obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place, for each and every store or place of business in that county, owned or conducted by such person, from which such furnishing or

selling, or in which such using, shall take place. The provisions of this section shall not apply to using or furnishing coupons, tickets, certificates, cards, or similar devices contained in or attached to the original package of said goods, wares, or merchandise, by the manufacturer, jobber, distributor, or packer thereof, and directly redeemable by the manufacturer, jobber, distributor, packer or retailer of such goods, wares, or merchandise.

§ 2. Application, Fee, And Issuance Of License.) An applicant for a license under the provisions of this chapter shall pay to the county treasurer of the county for which such license is sought, the sum of six thousand dollars. Upon such payment to the county treasurer, he shall issue his receipt therefor. Upon presentation of such receipt to the county auditor of the same county, such county auditor shall issue to the applicant making such payment a license to furnish or sell, or a license to use, for one year the stamps, coupons, tickets, certificates, cards, or other similar devices mentioned in section 1.

§ 3. Contents Of License: Use Of License In Other Place Prohibited.) The license provided for in this chapter shall contain:

1. The name of the grantee thereof;
2. The date of issue;
3. The date of expiration; and
4. The city or village in which, and the location at which, the same shall be used.

Such license shall be used at no place other than that mentioned therein.

§ 4. Sales Of Stamps Forbidden.) No person shall furnish or sell to any other person to use, in, with, or for the sale of any goods, wares, or merchandise, any stamps, coupons, tickets, certificates, cards, or other similar devices provided for in this chapter, for use in any village, city, or county in this state other than that in which such furnishing or selling shall take place.

§ 5. Penalty For Violation Of Chapter.) Any person violating any of the provisions of this chapter is guilty of a misdemeanor.

Approved March 5, 1955.

CHAPTER 303

H. B. No. 837

(Roen, Ettestad, Fleenor, Rose and Laske)

UNFAIR TRADE PRACTICES IN DAIRY INDUSTRY

AN ACT

Relating to unfair trade practices in the dairy industry.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Unfair Trade Practices In The Dairy Industry.)

1. As used in this section the term "dairy products" includes milk, cream, butter, cheese, cheese food, ice cream, frozen desserts, ice milk, sherbet, and any other edible products manufactured or processed which has any of such products as its principal ingredients.
2. Each of the practices described in this subsection is declared to be an unfair trade practice. It shall be unlawful for any person to be engaged in such practices. No person who is a dealer in or a vendor of dairy products, for sale to a retailer or who sells dairy products to any person for retail sales shall:
 - a. Give or extend discounts on dairy products sold to retail outlets, except for standard printed public discounts which fairly represents costs savings which may be passed on to the consumer.
 - b. Furnish, give, lend, sell, or rent any advertising materials or matter except materials or matter advertising the vendor's own products, providing that not more than one-third of the space or cost in the advertising material or matter be used to identify the retailer.
 - c. Make payments of money, credit, gifts, or loans to retail outlets as rental for the storage or display of dairy products on the premises where they are offered for sale.
 - d. Loan or underwrite loans except that vendors can help retailers buy dairy refrigeration, storage, display and selling equipment, when the loan is for no more than ninety percent of the purchase price, secured by a chattel mortgage bearing five percent interest rate and payable in not more than thirty-six months.

- e. Furnish, sell, give, lend, or rent any equipment to a retail outlet. Except that a vendor may sell for cash or terms as heretofore explained under subsection (d), dairy refrigeration display and storage equipment, the selling price of which shall be the cost to the vendor plus at least ten percent to cover transportation and installation costs, less one percent per month depreciation but in no event shall it be less than fifty dollars per unit. Subsection (e) shall not apply to coin vending machines where the product vended is consumed on the premises.
 - f. Maintain or make repairs of any equipment owned by a retail outlet, except that used exclusively for dairy products, charging comparative, competitive commercial fees and charges for the service and parts.
 - g. Extend or give credit to any retail outlet in excess of thirty days payable fifteen days thereafter.
 - h. Give any gift of money, merchandise, services or materials of any value to any retail outlet, except bona fide charities, except such services heretofore specifically permitted.
3. Nothing in this section shall be interpreted to prohibit the operation of a retail outlet by a person who is also a dealer in or a vendor of retail products for sale to a retailer or for retail sales or to prohibit the use by him in such retail outlet any equipment or advertising or miscellaneous matter owned by him provided that such retail outlet is under direct control and management of the dealer.
 4. Nothing in this section shall be interpreted to prohibit the giving away of merchandise to be consumed on the premises.
 5. For the purpose of this section any subsidiary or affiliate corporation, cooperative, officer, director or partner of a corporation, a cooperative, or partnership which is a dealer in or a vendor of dairy products shall be deemed to be a dealer in or vendor of dairy products.

§ 2.) All contracts and agreements made in violation of this Act shall be void. All contracts and arrangements in effect on the date this Act becomes effective and in violation of this Act shall be void within six months.

§ 3.) Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished

by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

§ 4.) The attorney general shall be responsible for the enforcement of this Act. Prosecution of violators of this Act shall be under the supervision of the state's attorney of the county in which the violation occurred.

Approved March 11, 1955.