

# SALES AND EXCHANGE

## CHAPTER 515

SENATE BILL NO. 2267  
(Committee on Industry, Business and Labor)  
(At the request of the Attorney General)

### TRANSIENT MERCHANT LICENSURE

AN ACT to create and enact a new section to chapter 51-04 of the North Dakota Century Code, relating to optional licensing of transient merchants by the attorney general; and to amend and reenact subsection 1 of section 51-04-01 of the North Dakota Century Code, relating to the definition of transient merchants; to amend and reenact section 51-04-02 of the North Dakota Century Code, relating to the application for a transient merchants license; to amend and reenact section 51-04-03 of the North Dakota Century Code, relating to license fees and issuance of a bond; to amend and reenact section 51-04-05 of the North Dakota Century Code, relating to the failure of a transient merchant's affidavit for certain sales; to amend and reenact section 51-04-07 of the North Dakota Century Code, relating to service of process; and to amend and reenact section 51-04-08 of the North Dakota Century Code, relating to certain excepted sales from the transient merchants law.

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

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

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, 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, 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.~~

SECTION 2. AMENDMENT.) Section 51-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-02. 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, or with the attorney general as provided in section 7 of this ACT, 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.

SECTION 3. AMENDMENT.) Section 51-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-03. 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~~ twenty-five dollars, ~~any personal property taxes payable by him pursuant to statute,~~ and shall give a surety bond, or the deposit of cash in lieu thereof, 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~~ twenty 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, except that licenses issued by the attorney general shall be valid in all counties of the state. 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.

SECTION 4. AMENDMENT.) Section 51-04-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-05. FAILURE OF AFFIDAVIT - PENALTY.) If the affidavit filed as prescribed in section 51-04-04 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 or the attorney general 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.

SECTION 5. AMENDMENT.) Section 51-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-07. 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, or the attorney general where the attorney general has issued the license, 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.

SECTION 6. 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 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.~~

SECTION 7.) A new section to chapter 51-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

APPLICATION TO ATTORNEY GENERAL FOR LICENSE.) Any transient merchant desiring to engage in, do, or transact business by auction or otherwise, in two or more counties in this state, may file an application for a license for that purpose with the attorney general. In such case, the license fees shall be paid to, and the bond subject to the approval of, the attorney general. The amount of the license fee and surety bond shall be determined by the provisions of section 51-04-03.

Approved March 23, 1979

## CHAPTER 516

HOUSE BILL NO. 1457  
(Richie)

### FAIR TRADE LAW REPEALED

AN ACT to repeal chapter 51-11 of the North Dakota Century Code, relating to fair trade.

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

SECTION 1. REPEAL.) Chapter 51-11 of the North Dakota Century Code is hereby repealed.

Approved March 15, 1979

## CHAPTER 517

SENATE BILL NO. 2404  
(Melland)

## RETAIL INSTALLMENT SALES

AN ACT to create and enact five new sections to chapter 51-13 of the North Dakota Century Code, relating to retail installment contract prohibited provisions, payments to last known contract holders, statements of unpaid balance, authority to purchase contracts, and applicability; and to amend and reenact sections 51-13-01, 51-13-02, 51-13-03, and 51-13-06 of the North Dakota Century Code, relating to retail installment contract definitions, contents, finance charges, and refinancing.

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

SECTION 1. AMENDMENT.) Section 51-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-01. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Retail buyer" or "buyer" means a person who buys personal property from a retail seller ~~and who executes in a retail installment contract in connection therewith,~~ sale.
2. "Retail seller" or "seller" means a person who sells personal property to a retail buyer ~~under or subject to a retail installment contract,~~ .
3. "Retail installment sale" or "sale" means a sale, other than for the purpose of resale, of personal property by a retail seller to a retail buyer for a ~~time-sale price payable in one or more installments, payment of which is secured by a retail installment contract,~~ price payable in one or more deferred payments.
4. "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to ~~the property in~~ or a lien upon the personal property, which is the subject matter of a retail

- installment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. ~~The term includes a chattel mortgage, a conditional sales contract and, or a contract for the bailment or leasing of personal property by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the personal property upon full compliance with the terms of the contract.~~
5. "Cash sale price" means the cash sale price stated in a retail installment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the personal property which is the subject matter of the contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes, ~~registration, license and other fees and charges~~ and cash prices for accessories and ~~their installation and for delivering, servicing or improving the personal property~~ included in a retail installment sale.
  6. "Time-sale Deferred payment price" means the sum total of the cash sale price, and the amount amounts, if any, included for insurance and ~~other benefits~~, official fees, and the ~~credit service~~ finance charge.
  7. "Finance charge" means the amount which the retail buyer contracts to pay or pays for the privilege of purchasing the personal property to be paid for by the buyer in installments; it does not include the amounts, if any, charged for insurance premiums, delinquency charges, attorney's fees, court costs, collection expenses, or official fees.
  8. "Amount financed" or "unpaid balance" means the cash price of the personal property which is the subject matter of the retail installment sale, plus the amounts, if any, included in a retail installment sale for insurance and official fees, minus the amount of the buyer's downpayment in money or goods.
  9. "Total of payments" or "time balance" means the total of the unpaid balance and the amount of the finance charge, if any, payable by the buyer.
  10. "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien retained or taken by a seller under the retail installment contract, and to file or record a release, satisfaction, or discharge of the contract, and license,

certificate of title, and registration fees imposed by law.

~~8. "Credit service charge" means that part of the time sale price by which it exceeds the aggregate of the cash sale price and the amount, if any, included in a retail installment sale for insurance and other benefits and official fees.~~

9. 11. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes ~~but is not limited to~~ a bank, trust company, finance company, or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail installment contracts acquired from retail buyers. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

~~10.~~ 12. ~~The "holder" of a retail installment contract~~ "Holder" means the seller of the personal property under or subject to the contract, or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee.

~~11.~~ 13. "Person" means an individual, partnership, corporation, association or other group, however organized.

~~12. "Motor vehicle, new and used" as used in this chapter shall include automobiles, motor trucks, motorcycles, house trailers, trailer coaches, cabin trailers, semitrailers, trailers, road tractors, farm tractors, farm machinery mounted upon, drawn by, or attached to farm tractors, and all vehicles with any power, other than muscular power, except, however, any vehicles which run only on rails.~~

SECTION 2. AMENDMENT.) Section 51-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-02. REQUIREMENTS AS TO RETAIL INSTALLMENT CONTRACTS.)

1. A retail installment contract shall be dated and in writing, shall be dated, and shall contain all the agreements of the parties and shall be signed by the buyer and the seller with respect to the cost and terms of payment for the personal property, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction.

2. The printed portion of the contract shall be in at least eight-point type. The contract shall contain printed or written in a size equal to at least ten-point bold type:

- a. Both Either at the top of the contract and or directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT"7.
  - b. A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and
  - c. The following notice: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) right to pay off in advance the full amount due and to obtain a partial refund of the ~~credit-service~~ finance charge; (b) to redeem the property if repossessed for a default within the time provided by law; (c) to require, under certain conditions, a resale of the property if repossessed. 4. If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request."
3. The seller shall deliver to the buyer, ~~ex-mail-to-him-at his-address-shown-on-the-contract,~~ a legible copy of the contract ~~signed-by-the-seller~~ or any other document the seller has required or requested the buyer to sign. Until the seller does so, a buyer who has not received delivery of the personal property ~~shall-have~~ has an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, shall also appear directly above the ~~legend-required-above~~ space reserved for the buyer's signature ~~by-subsection-2(a)-of-this-section.~~ The buyer's written acknowledgment of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subsection in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.
4. The contract shall contain ~~the~~:
- a. The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the personal property including its make, year model, model and identification numbers or marks, if any, and whether it is new or used.

~~5. The contract shall contain the following items:~~

- a. b. The cash sale price of the personal property which is the subject matter of the retail installment sale.
- b. c. The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- e. d. The difference between items a b and b c, which is the unpaid balance of cash price.
- d. e. The amount, if any, included for insurance and ~~other benefits~~, specifying the coverages ~~and benefits~~ and ~~the cost of each type of coverage or benefit~~, ~~except that motor vehicle material damage premiums need not be separately specified.~~
- e. f. The amount, if any, of official fees, ~~as defined in section 51-13-01.~~
- f. g. The ~~principal balance~~ amount financed, which is the sum of items e, d, and e, d, e, and f.
- g. h. The amount of the ~~credit service~~ finance charge, if any.
- h. i. The ~~time balance~~ total of payments, which is the sum of items f g and g h, payable ~~in installments~~ by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
- i. j. The ~~time sale price~~ deferred payment price, which is the sum of the amounts determined in items b, e, f, and h.
- j. k. If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in at least ten-point bold type or typewritten: "THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS", followed, if there be but one larger installment, by: "AN INSTALLMENT OF \$ \_\_\_\_\_ WILL BE DUE ON \_\_\_\_\_", or, if there be more than one larger installment, by: "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: \_\_\_\_\_", in such latter case inserting the amount of every larger installment and its due date.
- l. Any balloon payments. If any payment under a contract is more than twice the amount of an otherwise regularly scheduled equal payment, the seller shall identify the amount of such payment by the term "balloon payment".

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the calculations involved in determining the stated-time balance amount to be paid by the buyer.

~~The amount of the credit service charge may be expressed as a simple interest charge not exceeding seven percent per year computed on the principal balance unpaid from time to time, if so expressed, the time balance and the time sale price need not be set forth.~~

~~6. The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the insurance commissioner for similar insurance. The~~

5. If the cost of any insurance is included in the contract and a separate charge is made to the buyer for the insurance:

a. The contract shall state whether the insurance is to be procured by the buyer or the seller.

b. If the insurance is to be procured by the seller or financing agency holder, if insurance on the personal property is included in a retail installment contract, the seller or holder shall within thirty days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state and sold by a licensed insurance agent, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of personal property under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller, provided, however that the inclusion of the insurance premium in the retail installment contract when the buyer selects the agent, broker or company, shall be optional with the seller and in such case the seller or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance. Nothing contained in this subsection however shall be deemed to modify, limit or in any way contravene the provisions of title 26, insurance, of this code.

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing

installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.

- 7- 6. A contract ~~or obligation~~ may provide for the payment by the buyer of a delinquency and collection charge on each installment in default ~~when such default continues for a period of more than ten days in an amount not in excess of five percent of each installment or five dollars, whichever is less~~ equal to ten percent of the delinquent installment payment or ten dollars, whichever is less, provided that only one such delinquency and collection charge may be collected on ~~any such~~ each installment ~~regardless of the period during which it remains in default~~ in addition to interest accruing thereon.
- 8- 7. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the personal property is not made at the time of the execution of the contract, the identifying numbers or marks of the property or similar information and the due date of the first installment may be inserted in the contract after its execution. ~~The buyer's written acknowledgment, conforming to the requirements of subsection 3 of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subsection in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.~~
- 9- ~~Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law~~
- a- ~~A financing agency may purchase a retail installment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon, and~~
- b- ~~No filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or over the personal property if repossessed by the seller, shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.~~
- 10- ~~Unless the buyer has notice of actual or intended assignment of a retail installment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees.~~

11. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.
12. No provision in a retail installment contract by which, in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance shall be enforceable.
13. No provision in a retail installment contract for confession of judgment, power of attorney therefor, or wage assignment shall be enforceable in this state.
14. No provision in a retail installment contract which authorizes a seller or holder of the contract or other person acting on his behalf to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of personal property shall be enforceable.
15. No provision in a retail installment contract by which the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the personal property shall be enforceable.
16. No provision in a retail installment contract for the subsequent inclusion of title to or a lien upon any goods, other than the personal property which is the subject matter of the retail installment sale, or accessories therefor or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any thereof, as security for payment of the time sale price, shall be enforceable.
17. No provision in a retail installment contract by which the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the personal property shall be enforceable.
18. No provision in a retail installment contract relieving the seller from liability for any legal remedies which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith, shall be enforceable.

SECTION 3.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

RETAIL INSTALLMENT CONTRACTS - PROHIBITED PROVISIONS.) No contract shall contain any provision by which:

1. In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance owing thereunder.
2. A power of attorney is given to confess judgment in this state, or an assignment of wages is given.
3. The buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the personal property.
4. The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the personal property.
5. The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith.
6. The buyer may subsequently include the title to or a lien upon any goods, other than the personal property which is the subject matter of the retail installment sale and any accessories or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any thereof, as security for payment of the deferred payment price.

\* SECTION 4. AMENDMENT.) Section 51-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-03. CREDIT-SERVICE FINANCE CHARGE LIMITATION.)

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the credit service charge computed on the principal balance of the contract or obligation from the date thereof ~~to--and including--the--date--when--the--final--instalment--is--payable~~ until paid, at not exceeding ~~the--following--rates+~~ eighteen percent simple interest per annum upon the unpaid balance of the contract.

\* NOTE: Section 51-13-03 was also amended by section 2 of House Bill No. 1388, chapter 518.

## A--As-to-motor-vehicles

Class-1--Any-motor-vehicle-designated-by-the manufacturer-by-a-year-model-not earlier-than-the-year-in-which-the-sale is-made, not-more-than-seven-dollars per-one-hundred-dollars-

Class-2--Any-motor-vehicle-not-in-Class-1 designated-by-the-manufacturer-by-a year-model-of-not-more-than-four-years prior-to-the-year-in-which-the-sale is-made, not-more-than-ten-dollars per-one-hundred-dollars-

Class-3--Any-motor-vehicle-not-in-Class-1-or-2, not-more-than-thirteen-dollars per-one-hundred-dollars-

B--As-to-goods-other-than-motor-vehicles, ten-dollars-per one-hundred-dollars-per-annum-

2. ~~Such--credit--service~~ The finance charge shall be computed on the principal-balance amount financed as determined under subsection 5 4 of section 51-13-02 on contracts payable-in-successive-monthly--installments--substantially equal--in--amount--extending-for-a-period-of-one-year--On contracts--providing--for--installments--extending--for--a period--less--than--or--greater--than-one-year, the-credit service-charge-shall-be--computed--proportionately. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.
3. When a retail installment contract provides for unequal or irregular installments, the ~~credit-service~~ finance charge shall be at the effective rate provided in subsection 1, having due regard for the schedule of installments.
4. The ~~credit--service~~ finance charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section and in subsection 7 6 of section 51-13-02 and in section 51-13-06 and for those items expressly provided for in the retail installment contract as set forth in subsection 5 4 of section 51-13-02.

SECTION 5.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

PAYMENT TO LAST KNOWN HOLDER.) Unless the buyer has notice of actual or intended assignment of a retail installment contract,

payment made by the buyer to the last known holder of the contract is binding upon all subsequent holders or assignees.

SECTION 6.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

STATEMENT OF UNPAID BALANCE.) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer shall be given a written receipt for any payment when made in cash.

SECTION 7. AMENDMENT.) Section 51-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-06. REFINANCING RETAIL INSTALLMENT CONTRACTS.) The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date, or defer the scheduled payment of all or part of any installment or installments, or renew the balance of such contract. In any such case, the holder may restate the amount of the installments and the time schedule therefor, and collect as a refinance charge for such extension, deferment or renewal, a flat service fee not to exceed five dollars and a total additional charge not exceeding an amount equal to one and one-half percent per month simple interest on the respective descending balances computed from the date of such agreement of extension, deferment or renewal. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract or obligation, subject to the provisions of subsection 6 of section 51-13-02.

SECTION 8.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

AUTHORITY TO PURCHASE RETAIL INSTALLMENT CONTRACTS.) Notwithstanding any contrary provision of law:

1. A financing agency may purchase a retail installment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon.
2. No filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or over the personal property if repossessed by the seller, shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

\* SECTION 9.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

APPLICABILITY.) No provision of this chapter shall apply to a retail installment sale of personal property if:

1. The cash price of the personal property exceeds thirty-five thousand dollars; and
2. The personal property is to be used primarily for a business or commercial purpose, not a personal, family, household or agricultural purpose.

Approved April 10, 1979

\* NOTE: A similar section was also created by section 1 of House Bill No. 1388, chapter 518.

## CHAPTER 518

HOUSE BILL NO. 1388  
(Conmy)

## RETAIL INSTALLMENT SALE SERVICE CHARGE

AN ACT to create and enact a new section to chapter 51-13 of the North Dakota Century Code, relating to applicability; and to amend and reenact section 51-13-03 of the North Dakota Century Code, relating to the credit service charge allowed on retail installment sales.

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

\* SECTION 1.) A new section to chapter 51-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

APPLICABILITY.) No provision of this chapter shall apply to a retail installment sale of personal property if:

1. The cash price of the personal property exceeds twenty-five thousand dollars; and
2. The personal property is to be used primarily for a business or commercial purpose, not a personal, family, household or agricultural purpose.

\*\* SECTION 2. AMENDMENT.) Section 51-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-03. CREDIT SERVICE CHARGE LIMITATION.)

~~1.~~ A retail seller may contract for in a retail installment contract and charge, receive, and collect the credit service charge computed on the principal balance of the contract or obligation from the date thereof ~~to--and including--the--date--when--the--final--installment--is--payable~~ until paid, at not exceeding ~~the--following--rates:~~

~~A--As--to--meter--vehicles~~

~~Class--1--Any--meter--vehicle--designated--by--the~~

\* NOTE: A similar section was also created by section 9 of Senate Bill No. 2404, chapter 517.

\*\* NOTE: Section 51-13-03 was also amended by section 4 of Senate Bill No. 2404, chapter 517.

- ~~manufacturer-by-a-year-model-not-earlier than-the-year-in-which-the-sale-is made, not-more-than-seven-dollars per-one-hundred-dollars.~~  
 Class-2---Any-motor-vehicle-not-in-Class-1-designated by-the-manufacturer-by-a-year-model of-not-more-than-four-years-prior to-the-year-in-which-the-sale-is made, not-more-than-ten-dollars-per one-hundred-dollars.  
 Class-3---Any-motor-vehicle-not-in-Class-1-or-2, not-more-than-thirteen-dollars-per one-hundred-dollars.  
 B---As-to-goods-ether-than-motor-vehieles, ten-dollars-per one-hundred-dollars-per-annum.
- 2---Such-credit-service-charge-shall-be-computed-on-the principal-balance-as-determined-under-subsection-5-of section-51-13-02-on-contracts-payable-in-successive monthly-installments-substantially-equal-in-amount extending-for-a-period-of-one-year---On-contracts providing-for-installments-extending-for-a-period-less than-or-greater-than-one-year, the-credit-service-charge shall-be-computed-proportionately.
- 3---When-a-retail-installment-contract-provides-for-unequal-or irregular-installments, the-credit-service-charge-shall-be at-the-effective-rate-provided-in-subsection-1, having-due regard-for-the-schedule-of-installments.
- 4---The-credit-service-charge-shall-be-inclusive-of-all charges-incident-to-investigating-and-making-the-contract, and-for-the-extension-of-the-credit-provided-for-in-the contract-and-no-fee, expense-or-other-charge-whatsoever shall-be-taken, received, reserved-or-contracted-for except-as-provided-in-this-section-and-in-subsection-7-of section-51-13-02-and-in-section-51-13-06-and-for-these items-expressly-provided-for-in-the-retail-installment contract-as-set-forth-in-subsection-5-of-section-51-13-02 eighteen percent simple interest per annum upon the unpaid balance of the contract. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.

Approved March 21, 1979

## CHAPTER 519

HOUSE BILL NO. 1544  
(Representatives Stenehjem, Houmann, Swiontek)  
(Senator Holmberg)

## CONSUMER FRAUD ACTIONS

AN ACT to create and enact two new sections to chapter 51-15 of the North Dakota Century Code, relating to assurance of discontinuance and civil penalties in cases of consumer fraud; and to amend and reenact section 51-15-10 of the North Dakota Century Code, relating to costs recoverable in cases of consumer fraud.

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

SECTION 1.) A new section to chapter 51-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

ASSURANCE OF DISCONTINUANCE.) The attorney general may accept an assurance of discontinuance of any act or practice he deems to be in violation of any provision of this chapter or any of the provisions of chapters 51-12, 51-13, or 51-14 from any person he alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or in Burleigh County. An assurance of discontinuance shall not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court shall be punishable as criminal contempt.

SECTION 2.) A new section to chapter 51-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

CIVIL PENALTIES.) The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapters 51-12, 51-13, or 51-14. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapters 51-12, 51-13, or 51-14.

SECTION 3. AMENDMENT.) Section 51-15-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-15-10. COSTS RECOVERABLE.) In any action brought under the provisions of this chapter, the attorney general is entitled to recover costs ~~for the use of the state~~, expenses and attorney's fees incurred by the attorney general in the investigation and prosecution of such action.

Approved March 19, 1979

## CHAPTER 520

HOUSE BILL NO. 1400  
(Representatives Stenehjem, Houmann, Swiontek)  
(Senators Holmberg, Farrington, Lodoen)

## PERSONAL SOLICITATION SALES

AN ACT to amend and reenact subsection 1 of section 51-18-01 of the North Dakota Century Code, relating to definitions, regulation of home solicitation sales; to amend and reenact section 51-18-02 of the North Dakota Century Code, relating to cancellation period, method of cancellation and intent, regulation of home solicitation sales; to amend and reenact section 51-18-03 of the North Dakota Century Code, relating to referral sales, rebate or discount violations, regulation of home solicitation sales; to amend and reenact section 51-18-04 of the North Dakota Century Code, relating to agreement requirement, regulation of home solicitation sales; to amend and reenact section 51-18-05 of the North Dakota Century Code, relating to evidence of indebtedness, regulation of home solicitation sales; to amend and reenact subsection 1 of section 51-18-06 of the North Dakota Century Code, relating to time limitation, regulation of home solicitation; to amend and reenact section 51-18-07 of the North Dakota Century Code, relating to buyer responsibility, services, regulation of home solicitation sales.

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

SECTION 1. AMENDMENT.) Subsection 1 of section 51-18-01 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "~~Deer-to-deer~~ Personal solicitation sale" means a sale, lease, or rental of consumer goods or services in which the seller or his representative personally solicits the sale, lease, or rental, by telephone or in person, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the person soliciting the same and that agreement or offer to purchase is there given to the seller or his representative. A transaction is not a ~~deer-to-deer~~ personal solicitation sale if it is made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods

or services are offered or exhibited for sale, lease, or rental.

SECTION 2. AMENDMENT.) Section 51-18-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-18-02. CANCELLATION PERIOD - METHOD OF CANCELLATION - INTENT.)

1. In addition to any right otherwise to revoke an offer, the buyer may cancel a ~~deed-to-deed~~ personal solicitation sale until midnight of the third business day after the day on which the buyer enters into an enforceable agreement subject to this chapter. In addition to other requirements of this chapter, the seller shall orally inform the buyer, at the time the transaction is entered into, of the buyer's right to cancel.
2. Cancellation shall occur when the buyer gives written notice of cancellation to the seller at the address specified for notice of cancellation provided by the seller by any of the following methods:
  - a. Delivering written notice to the seller.
  - b. Mailing written notice to the seller.
  - c. Sending a telegram to the seller.
3. Notice of cancellation given by the buyer shall be effective if it indicates the intention on the part of the buyer not to be bound by the ~~deed-to-deed~~ personal solicitation sale.

SECTION 3. AMENDMENT.) Section 51-18-03 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-18-03. REFERRAL SALES - REBATE OR DISCOUNT VIOLATIONS.) No seller in a ~~deed-to-deed~~ personal solicitation sale shall offer to pay a commission or give a rebate or discount to the buyer in consideration of the buyer's giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale to another person, if the earning of the commission, rebate, or discount is contingent upon an event that is to happen subsequent to the time the buyer agrees to buy. Any sale made in respect to which a commission, rebate, or discount is offered in violation of this chapter shall be voidable at the option of the buyer.

SECTION 4. AMENDMENT.) Section 51-18-04 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-18-04. AGREEMENT REQUIREMENT.) No agreement of the buyer in a ~~door-to-door~~ personal solicitation sale shall be effective enforceable unless it is in writing, dated, entered-into-by contains the signature of the buyer, and contains a conspicuous notice in substantially the following form:

## NOTICE TO BUYER

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

The agreement shall 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. 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, 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)

SECTION 5. AMENDMENT.) Section 51-18-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-18-05. EVIDENCE OF INDEBTEDNESS.)

1. A note or other evidence of indebtedness given by a buyer in respect of a ~~deex-te-deex~~ personal solicitation sale shall be dated not earlier than the date of the agreement or offer to purchase. Any transfer of a note or other evidence of indebtedness bearing the statement required by subsection 2 shall be deemed an assignment only and any right, title, or interest which the transferee may acquire thereby shall be subject to all claims and defenses of the buyer against the seller pursuant to this chapter.
2. Each note or other evidence of indebtedness given by a buyer in respect of a ~~deex-te-deex~~ personal solicitation sale shall bear on its face a conspicuous statement as follows: "This instrument is based upon a ~~deex-te-deex~~ personal solicitation sale, which is subject to the provisions of the North Dakota Century Code. This instrument is not negotiable."
3. Compliance with the requirements of this section shall be a condition precedent to any right of action by the seller or any transferee of an instrument bearing the statement required under subsection 2 against the buyer upon such instrument and shall be pleaded and proved by any person who may institute an action or suit against a buyer in respect thereof.

SECTION 6. AMENDMENT.) Subsection 1 of section 51-18-06 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as provided in this section, within ten days after a ~~deer-to-deer~~ personal solicitation sale has been canceled, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness and shall take any action necessary to promptly terminate any security interest created in the transaction.

SECTION 7. AMENDMENT.) Section 51-18-07 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-18-07. BUYER RESPONSIBILITY - SERVICES.)

1. Except as provided in subsection 3 of section 51-18-05, within twenty days after a ~~deer-to-deer~~ personal solicitation sale has been canceled, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his own address. If the seller fails to take possession of such goods within twenty days after cancellation, the goods shall become the property of the buyer without obligation to pay for them.
2. The buyer shall take reasonable care of the goods in his possession both prior to cancellation and during the following twenty-day period. During the twenty-day period after cancellation, except for the buyer's duty of care, the goods are at the seller's risk.
3. If the seller has performed any services pursuant to a ~~deer-to-deer~~ personal solicitation sale prior to its cancellation, and if the seller's services result in the alteration of property of the buyer, the seller shall restore the property to substantially as good condition as it was in at the time the services were rendered.
4. The buyer may not cancel a ~~deer-to-deer~~ personal solicitation sale if he initiates the contract with the seller and requests the seller to provide goods or services without delay because of an emergency and the seller in good faith makes a substantial beginning of performance before notice of cancellation, and the goods cannot be returned to the seller in substantially as good condition as when the buyer received them.

Approved March 19, 1979

## CHAPTER 521

HOUSE BILL NO. 1368  
(Representatives Dietz, Conmy)  
(Senators Schirado, Sands)

## CIVIL REMEDY AGAINST SHOPLIFTER'S PARENT

AN ACT to amend and reenact section 51-21-05 of the North Dakota Century Code, relating to civil remedies against adult shoplifters or against the parent or guardian of a minor shoplifter.

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

SECTION 1. AMENDMENT.) Section 51-21-05 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-21-05. CIVIL REMEDY AGAINST ADULT SHOPLIFTERS OR THE PARENT OF A MINOR SHOPLIFTER.) An adult who commits the offense of theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of suit, and reasonable attorney's fees. The parent or legal guardian of an unemancipated minor who while living with the parent or legal guardian commits the offense of theft from a merchant shall be civilly liable to the merchant for the retail value of the merchandise, plus exemplary damages of not more than two hundred fifty dollars, costs of suit, and reasonable attorney's fees. A conviction or plea of guilty for the theft is not a prerequisite to the bringing of a suit hereunder. A parent or legal guardian of an unemancipated minor shall not be civilly liable under this section if it is determined by the court that one of the principal rationales for the shoplifting was a desire on the part of the minor to cause his parent or legal guardian to be liable under this section.

Approved March 19, 1979