

SALES AND EXCHANGE

CHAPTER 529

HOUSE BILL NO. 1165
(Committee on Industry, Business, and Labor)
(At the request of the Attorney General)

TRANSIENT MERCHANT LICENSE

AN ACT to create and enact a new section to chapter 51-04 of the North Dakota Century Code, relating to the licensure of transient merchants; and to amend and reenact sections 51-04-02, 51-04-03, and 51-04-07 of the North Dakota Century Code, relating to the licensure of transient merchants; and to repeal section 51-04-02.1 of the North Dakota Century Code, relating to applications for multicounty transient merchant licenses.

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

SECTION 1. 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 ~~51-04-02-1~~ 51-04-07, which shall be in writing and include the following:

1. Applicant's name, present residence, present home address, and present business address, and current telephone numbers.
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 state.
7. Name and address of the auctioneer, if any, who will conduct the sale.
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 2. 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 or cash surety - License issuance. An applicant for a transient merchant's license shall pay to the treasurer of the county of application attorney general a license fee of twenty-five dollars 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 ~~twenty~~ fifty 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 attorney general, 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 attorney general.

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.~~ Licenses issued by the attorney general shall be valid in all counties of the state. The ~~license~~ and shall expire after one year from date the dates of their 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~~ attorney general pertaining to transient merchants shall be kept in convenient form and open for public inspection.

SECTION 3. 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.

1. A transient merchant may not engage in any temporary business, or be licensed by any city, without first having complied with this section.
2. 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.~~
3. Each transient merchant required by the attorney general to do so shall appoint an agent in this state who is a resident of this state. The agent shall accept service of process on behalf of the transient merchant in any suit filed against the transient merchant and the agent is responsible for processing any warranty, claim, or merchandise sold by the transient merchant.
4. The name and street address of the agent must be filed with the attorney general's office. In addition, the name and address of the agent must be furnished in writing to each person purchasing an item from the transient merchant along with a written statement that the agent is the proper person to accept service of process in any suit filed against the vendor, and is the proper person to process any warranty claim.

SECTION 4. A new section to chapter 51-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

License to be carried by licensee and exhibited on demand. Every transient merchant licensed under this Act must have the license in immediate possession at all times when engaging in or transacting any business regulated by this Act. The licensee must display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed court costs if the license is produced in court or to

the arresting officer and if the license was valid at the time of the arrest.

SECTION 5. REPEAL. Section 51-04-02.1 of the North Dakota Century Code is hereby repealed.

Approved April 14, 1983

CHAPTER 530

SENATE BILL NO. 2130
(Committee on Industry, Business, and Labor
(At the request of the Public Service Commission)

AUCTIONEER'S AND CLERK'S LICENSES

AN ACT to amend and reenact section 51-05.1-01 of the North Dakota Century Code, relating to auctioneer's license, clerk's license, fees, and bonds.

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

SECTION 1. AMENDMENT. Section 51-05.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-01. Auctioneer's license - Clerk's license - Fees - Bonds. No person shall conduct a sale in this state as an auctioneer or clerk the same until he has filed with the public service commission an application for an annual auctioneer's or clerk's license. The original applications shall be in writing, verified, and filed showing the name, residence, and post-office address of the applicant. Applications for renewals of said annual licenses shall be on such forms as may be designated by the commission. The fee for the annual licenses or renewals thereof is ~~ten~~ twenty-five dollars which shall accompany the applications. The names and license number shall appear on all advertising of sales conducted by such auctioneer and clerk.

At the time of filing the applications the auctioneer and clerk shall file with the public service commission a surety bond issued by an insurer authorized to transact business in North Dakota. The bond shall be in the amount of ~~one~~ three thousand dollars for an auctioneer and ~~five~~ ten thousand dollars for a clerk with the state of North Dakota as obligee for the use and benefit of any person who might be injured by said licensee's improper conduct of such auction sale. The applications for license and bond must be filed at least ten days prior to the date such applicant is to conduct or clerk his first auction sale.

Nonresident auctioneers and clerks upon complying with the foregoing requirements may conduct sales within the state and shall

be subject to the same requirements of law as is a resident auctioneer or clerk.

Nothing in this section shall require an executor or an administrator of an estate, any sheriff or other person selling property pursuant to execution or other court order, or any federal, state, or other public official to be licensed in order to conduct such sale in connection with their official duties, nor shall any federally insured financial institution be required to be bonded as provided herein in order to conduct a sale in this state as a clerk, but shall otherwise comply with all other provisions of this chapter, nor shall the provisions of this chapter apply to the selling at auction of purebred or registered livestock.

Approved February 2, 1983

CHAPTER 531

HOUSE BILL NO. 1464
(Whalen, Thompson)

ITEM PRICE MARKING

AN ACT providing for the marking of item prices in stores that use electronic or magnetic checkout scanners; and to provide a penalty.

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

SECTION 1. Use of electronic or magnetic scanners - Item pricing required - Exceptions. Except as otherwise provided in this section, every retail store which uses electronic or magnetic scanners to read prices must clearly post the selling price of each item in Arabic numerals, by stamp, tag, label, or other conspicuous marking device. If a product is packaged for sale in quantities of more than one, the total price must be posted. The posting must be by a label securely affixed on each item or by a label posted on the shelf edge immediately below or above the item. Compliance with this section is not required for items not marked in accordance with a uniform products code or any similar marking system designed to be scanned by electronic or magnetic checkout equipment.

SECTION 2. PENALTY. Any person who violates this Act is guilty of an infraction.

Approved March 4, 1983

CHAPTER 532

SENATE BILL NO. 2053
(Legislative Council)
(Interim Financial Institutions Committee)

RETAIL INSTALLMENT CONTRACT REQUIREMENTS

AN ACT to amend and reenact section 51-13-02 of the North Dakota Century Code, relating to retail installment contract requirements; and declaring an emergency.

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

SECTION 1. 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, and shall contain all the agreements of the parties 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. a. If the retail installment sale for which the retail installment contract is made is not subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], this subsection applies. 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- (1) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT".
 - b- (2) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.
 - e- (3) 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) to pay off in advance the full amount due and to obtain a partial refund of the 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- b. The seller shall deliver to the buyer a legible copy of the contract 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 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 space reserved for the buyer's signature. 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 subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.
- 4- c. The contract shall contain:
- a- (1) 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.
- b- (2) The cash price of the personal property which is the subject matter of the retail installment sale.
- e- (3) The amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

- d- (4) The difference between items b (2) and e (3), which is the unpaid balance of cash price.
- e- (5) The amount, if any, included for insurance, specifying the coverages.
- f- (6) The amount, if any, of official fees.
- g- (7) The amount financed, which is the sum of items d, e, and f (4), (5), and (6).
- h- (8) The amount of the finance charge, if any.
- i- (9) The total of payments, which is the sum of items g and h (7) and (8), payable 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.
- j- (10) The deferred payment price, which is the sum of the amounts determined in items b, e, f, and h (2), (5), (6), and (8).
- k- (11) If any installment substantially exceeds in amount any prior installment other than the downpayment, 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- (12) 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 amount to be paid by the buyer.

- 5- d. If the cost of any insurance is included in the contract and a separate charge is made to the buyer for the insurance:
- a- (1) The contract shall state whether the insurance is to be procured by the buyer or the seller.

b- (2) If the insurance is to be procured by the seller or holder, 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.

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.

6- e. A contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of more than ten days in an amount 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 each installment in addition to interest accruing thereon.

7- f. 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.

3. If a retail installment sale is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with the disclosure requirements of subsection 2, comply with all requirements of the Truth in Lending Act. A seller who complies with the Truth in Lending Act still must comply with the provisions of this section governing matters other than disclosure.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and shall be in effect from and after its passage and approval.

Approved March 4, 1983

CHAPTER 533

HOUSE BILL NO. 1400
(Brokaw, O'Shea, A. Meier, Riehl, W. Williams)

RETAIL INSTALLMENT CONTRACT PREPAYMENT

AN ACT to amend and reenact section 51-13-05 of the North Dakota Century Code, relating to prepayment of retail installment contracts and computation of interest due at time of repayment; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 51-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-05. Credit upon anticipation of payments. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation. The amount of such refund credit shall represent at least as great a proportion of the credit service charge after first deducting from such credit service charge an acquisition cost of fifteen dollars, as the sum of the periodic time balances after the month in which prepayment is made, bears to the sum of all the periodic time balances under the schedule of installments in the original contract. Where the amount of the credit for anticipation of payment is less than one dollar, no refund need be made. Prepayment of retail installment contract.

1. At any time before maturity, a buyer may pay in full the remaining principal due on a retail installment contract and is entitled to a refund of finance charges as follows:
 - a. For a retail installment contract where the amount financed is not more than ten thousand dollars, the refund must, after deducting an acquisition cost of not more than fifteen dollars, be at least as great a proportion of the finance charge as the sum of the periodic time balances after the month in which the prepayment is made bears to the sum of all the periodic time balances under the scheduled

- installments in the original retail installment contract.
- b. For a retail installment contract where the amount financed is greater than ten thousand dollars, the refund must be at least the finance charge paid in excess of that computed under the actuarial method, using the annual percentage rate disclosed under federal law to the nearest one-fourth of one percent.
- c. A refund is not required if it is less than one dollar.
2. Notwithstanding section 51-13-06.2, this section applies to retail installment contracts for agricultural purposes and to retail installment contracts for more than twenty-five thousand dollars.

SECTION 2. APPLICATION. Subdivisions a and b of subsection 1 of section 51-13-05 apply to retail installment contracts made after September 30, 1983.

Approved April 13, 1983

CHAPTER 534

HOUSE BILL NO. 1522
(Representative Unhjem)
(Senator Olson)

RETAIL INSTALLMENT SALE OF PERSONAL PROPERTY

AN ACT to amend and reenact section 51-13-06.2 of the North Dakota Century Code, relating to applicability of a retail installment sale of personal property.

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

SECTION 1. AMENDMENT. Section 51-13-06.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-13-06.2. 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~~ twenty-five thousand dollars; and or
2. The personal property is to be used primarily for a ~~business or~~ commercial, or agricultural purpose, not a personal, family, or household; ~~or agricultural~~ purpose.

Approved March 14, 1983