

SALES AND EXCHANGES

CHAPTER 520

SENATE BILL NO. 2356
(Senators Marks, Bowman)
(Representative Erickson)

AUCTION CONTRACTS

AN ACT to amend and reenact section 51-05.1-04.1 of the North Dakota Century Code, relating to written contracts for the sale of property by auctioneers and auction clerks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts. ~~No~~ An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The contract must identify the property, commission rate, any restrictions on sale, whether the auctioneer is authorized to purchase ~~for the auctioneer~~ at the sale, and payment of sale expenses and proceeds. The auctioneer shall retain a copy of each contract for two years after the auction. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. This section does not apply to livestock markets.

Approved March 18, 1991
Filed March 19, 1991

CHAPTER 521

SENATE BILL NO. 2553
(Krebsbach, Bowman)

FARM EQUIPMENT FRANCHISE PRACTICES

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to prohibited practices for manufacturers, wholesalers, or distributors of farm implements, machinery, or repair parts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Prohibited practices under farm equipment dealership contracts. A manufacturer, wholesaler, or distributor of farm implements, machinery, or repair parts who enters into a contract with any person engaged in the business of selling and retailing farm implements and repair parts for farm implements may not:

1. Coerce or attempt to coerce the farm equipment dealer to accept delivery of farm equipment, parts, or accessories that the farm equipment dealer has not voluntarily ordered.
2. Condition or attempt to condition the sale of farm equipment on a requirement that the farm equipment dealer also purchase other goods or services, except that a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer.
3. Coerce or attempt to coerce a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.
4. Discriminate in the prices charged for farm equipment of like grade and quality sold by the farm equipment manufacturer to similarly situated farm equipment dealers. This subsection does not prevent the use of differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered by the farm equipment manufacturer. This section does not diminish the manufacturer's, wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special machine ordering programs commonly used in the industry.
5. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the

dealership contract for any reason other than failure of the farm equipment dealer to comply with the terms of the written contract between the parties or if the attempt or threat is based on the results of a circumstance beyond the farm equipment dealers' control, including a sustained drought or other natural disaster in the dealership market area or a labor dispute.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 522

SENATE BILL NO. 2585

(David, Langley)

(Approved by the Committee on Delayed Bills)

RESALE OF RETURNED VEHICLES

AN ACT to amend and reenact section 51-07-22 of the North Dakota Century Code, relating to the resale of returned passenger motor vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-22 of the North Dakota Century Code is amended and reenacted as follows:

51-07-22. Resale of returned passenger motor vehicles - Penalty.

1. A person may not sell in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22, unless the manufacturer provides:
 - a. The same express warranty it provided to the original purchaser, except the term of the warranty must be for at least twelve thousand miles or twelve months after the date of resale, whichever is earlier; and
 - b. The purchaser a statement on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE DEFECTS COVERED BY THE MANUFACTURER'S EXPRESSED WARRANTY WERE NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY NORTH DAKOTA LAW".
2. A person may not ship or deliver for resale in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer.
3. Violation of this section is a class B misdemeanor.

Approved April 5, 1991

Filed April 8, 1991

CHAPTER 523

SENATE BILL NO. 2262
(Vosper)

UNSOLICITED TELEFACSIMILE ADVERTISING

AN ACT relating to regulation of unsolicited telefacsimile advertising.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Unsolicited telefacsimile advertising. It is unlawful for any person to initiate the unsolicited transmission of a telefacsimile message promoting a good or service for purchase by the recipient of the message. The term "telefacsimile" as used in this section means any process in which an electronic signal is transmitted by telephone line for conversion into written text. This section does not apply to a telefacsimile message sent to a recipient with whom the initiator has had a prior contractual or business relationship, nor does it apply to transmissions not exceeding two pages which are transmitted between the hours of nine p.m. and six a.m. Notwithstanding the above, it is unlawful to initiate a telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive any telefacsimile from the initiator. A person who transmits an unsolicited telefacsimile message in violation of this section is liable to the recipient of that message for fifty dollars per month for each month in which the recipient receives the unsolicited message.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 524

HOUSE BILL NO. 1178
(Committee on Judiciary)
(At the request of the Attorney General)

ANTITRUST INJURY TO INDIRECT PURCHASER

AN ACT to create and enact two new subsections to section 51-08.1-08 of the North Dakota Century Code, relating to recovery of damages for antitrust injury by an indirect purchaser.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 51-08.1-08 of the North Dakota Century Code are created and enacted as follows:

In any action for damages under this section, the fact that the state, political subdivision, public agency, or person threatened with injury or injured in its business or property by any violation of the provisions of this chapter, has not dealt directly with the defendant does not bar recovery.

In any action for damages under this section, any defendant, as a partial or complete defense against a claim for damages, is entitled to prove that the plaintiff purchaser, or seller in the chain of manufacture, production, or distribution, who paid any overcharge or received any underpayment passed on all or any part of the overcharge or underpayment to another purchaser or seller in that action.

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 525

SENATE BILL NO. 2182
(Committee on Industry, Business and Labor)
(At the request of the Attorney General)

BELOW COST SELLING

AN ACT to create and enact three new sections to chapter 51-10 of the North Dakota Century Code, relating to replacing the functions of the North Dakota trade commission with authority of the attorney general regarding below cost selling; to amend and reenact section 51-10-06 and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to elimination of the North Dakota trade commission; and to repeal sections 51-10-09, 51-10-10, 51-10-11, 51-10-12, 51-10-13, 51-10-14, and 51-10-15 of the North Dakota Century Code, relating to the North Dakota trade commission and regulation of below cost selling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new sections to chapter 51-10 of the North Dakota Century Code are created and enacted as follows:

Powers of attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice the attorney general may:

1. Require that person to file on forms prescribed by the attorney general, a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise at less than cost as defined in this chapter and any other data and information the attorney general may deem necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise at less than cost as defined in this chapter.
3. Examine any merchandise or sample of merchandise, record, book, document, account, or paper as the attorney general may deem necessary.
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to such practice and retain it until completion of all relevant proceedings under this chapter.

Subpoena - Hearing - Rules. The attorney general may issue subpoenas to any person, administer an oath or affirmation to any person, conduct

hearings in the aid of any investigation of inquiry, prescribe forms, and adopt necessary rules.

Failure to display information or obey subpoena. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may file in the district court a petition for an order directing the person to file the required statement or report or to obey the subpoena. The order may be granted by the district court after notice and hearing.

SECTION 2. AMENDMENT. Section 51-10-06 of the North Dakota Century Code is amended and reenacted as follows:

51-10-06. Injunctinal relief may be had in addition to other penalties - Duty to commence actions. In addition to the penalties provided in this chapter, the courts of this state are invested with the jurisdiction to prevent and restrain violations of this chapter by injunctinal proceedings. The attorney general and the several state's attorneys shall institute suits in behalf of this state, to prevent and restrain violations of the provisions of this chapter. Any person damaged, or who is threatened with loss or injury, by reason of a violation of the provisions of this chapter, is entitled to sue for and have injunctive relief in the district court against any damage or threatened loss or injury by reason of a violation hereof.

- 1- ~~The North Dakota trade commission shall have the administration of this chapter; and the members thereof may not receive any additional compensation for their services other than ten dollars per day and their necessary expenses in attending meetings. Said commission is empowered and directed to prevent any person, firm, or corporation from violating any of the provisions of this chapter.~~
- 2- ~~Whenever the commission has reason to believe that any such person, firm, or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it appears to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time upon at least five days' notice to the parties and at least five days prior to applying for an order based thereon. The person, firm, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be applied for by the commission requiring such person, firm, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding must be reduced to writing and filed in the office of the commission. If upon such hearing the commission is of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state~~

its findings as to the facts and shall cause to be served on such person, firm, or corporation a copy of its findings. The commission may then apply for an order requiring such person, firm, or corporation to cease and desist from such acts or conduct. The order must be applied for in the district court of the judicial district where the act or conduct in question was done or carried on, or where such person, firm, or corporation resides or carries on business. Until a transcript of the record in such hearing has been filed in a district court, as hereinafter provided, the commission may, upon notice, modify or set aside, in whole or in part, any report made or issued by it under this section.

- 3- Any person, firm, or corporation required by an order to cease and desist from any such act or conduct may obtain a review of such order by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order be set aside. A copy of such petition must be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commission. Upon such filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*.
- 4- If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by sufficient evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon appeal as in other cases of judgments of such courts, provided, however, that said appeal must be taken within thirty days from the date of the entry of such judgment or decree.
- 5- Complaints and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; (b) by leaving a copy thereof at the residence or the principal office or place of business of such

person; partnership; or corporation; or (c) by registering and mailing a copy thereof addressed to such person; partnership; or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint or other process setting forth the manner of said service shall be proof of the same; and the return post-office receipt for said complaint or other process registered and mailed as aforesaid shall be proof of the service of the same.

6. An order to cease and desist becomes final (a) upon the expiration of the time allowed for filing a petition for review; if no such petition has been duly filed within such time; (b) upon the expiration of the time allowed for filing a notice of appeal to the supreme court; if the order has been affirmed; or the petition for review dismissed by the district court; and no notice of appeal to the supreme court has been duly filed; or (c) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court; if such court directs that the order be affirmed or the petition for review dismissed.
7. If the supreme court directs that the order be modified or set aside; the order rendered in accordance with the mandate of the supreme court becomes final upon the expiration of thirty days from the time it was rendered; unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate; in which event the order becomes final when so corrected.
8. If the order is modified or set aside by the district court and if (a) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed; or (b) the decision of the district court has been affirmed by the supreme court; then the order becomes final on the expiration of thirty days from the time such order was rendered; unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate; in which event the order becomes final when so corrected.
9. If the supreme court orders a rehearing; or if the case is remanded by the district court to the commission for a rehearing; and if (a) the time for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed; or (b) the decision of the court has been affirmed by the supreme court; then the order rendered upon such rehearing becomes final in the same manner as though no prior order had been rendered.
10. Any person; firm; or corporation who violates an order to cease and desist after it has become final; and while such order is in effect shall forfeit and pay to the state of North Dakota a penalty of not more than five hundred dollars for each violation; which must accrue to the state of North Dakota and may be recovered in a civil action brought by the state of North Dakota.

The remedies and method of enforcement of this chapter provided for in this section shall be deemed concurrent and in addition to the other remedies provided in this chapter.

* SECTION 3. AMENDMENT. Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09.1-02, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, ~~51-10-13~~, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk stabilization board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The board of pardons.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The teachers' professional practices commission.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. The educational telecommunications council.
 - m. The state game and fish advisory board.
 - n. The health council.
 - o. The air pollution control advisory council.
 - p. The board of animal health.
 - q. The administrative committee on veterans' affairs.
 - r. The governor's council on human resources.
 - ~~s. The North Dakota trade commission.~~
 - ~~t. s.~~ s. The North Dakota council on the arts.
 - ~~u. t.~~ t. The state historical board.
 - ~~v. u.~~ u. The Yellowstone-Missouri-Fort Union commission.
 - ~~w. v.~~ v. The state water commission.

* NOTE: Subsection 1 of section 54-07-01.2 was also amended by section 28 of Senate Bill No. 2068, chapter 54.

~~x~~ w. The state water pollution control board.

SECTION 4. REPEAL. Sections 51-10-09, 51-10-10, 51-10-11, 51-10-12, 51-10-13, 51-10-14, and 51-10-15 of the North Dakota Century Code are repealed.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 526

SENATE BILL NO. 2431
(Senators Holmberg, Kelsh, Ingstad)
(Representatives Nicholas, DeMers, Jensen)

POPCORN TOPPING

AN ACT relating to popcorn toppings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Popcorn toppings - Advertisement - Sale. No person advertising, offering for sale, or selling popcorn intended for consumption on the premises where purchased may use the word butter, or any derivative of the word butter, to describe a topping placed on popcorn, unless the topping is real butter or unless the word butter, or derivative of the word butter, is a part of the commercial brand name of the topping product. The allowable use under this section of the word butter, or any derivative of the word butter, as part of the commercial brand name of a topping product is limited to use in that manner and popcorn with such a topping may not be described as buttered popcorn.

SECTION 2. Penalty. Any person who violates section 1 of this Act is guilty of an infraction.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 527

HOUSE BILL NO. 1315
(Martinson)

REVOLVING CHARGE ACCOUNT LEGAL COMPLIANCE

AN ACT to amend and reenact section 51-14-02 of the North Dakota Century Code, relating to revolving charge account requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-14-02 of the North Dakota Century Code is amended and reenacted as follows:

51-14-02. Contents of revolving charge agreements - Requirements for delivery of monthly statements - Exception. Every revolving charge agreement must be in writing and must be signed by the retail buyer. A copy of any such agreement must be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. Such agreements must state the amount and rate of the credit service charge to be charged and paid pursuant thereto. Such credit service charge must be set forth in such revolving charge agreement in terms of a monthly percentage rate to be applied to the balance outstanding from time to time thereunder, as of the beginning or end of each billing period. The retail seller under a revolving charge agreement shall promptly supply the retail buyer under such agreement with a statement as of the end of each monthly period or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder. Such statement must recite the following:

1. The unpaid balance under the revolving charge agreement at the beginning or end of the period.
2. An identification of the goods or services purchased, the cash purchase price and the date of each purchase, unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise.
3. The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period.
4. The amount of the credit service charge, if any, and also the percentage annual simple interest equivalent of such amount.
5. A legend to the effect that the retail buyer may at any time pay his total indebtedness.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer. If a revolving charge or credit account is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with this section, comply with all requirements of the Truth in Lending Act.

Approved March 8, 1991
Filed March 8, 1991

CHAPTER 528

HOUSE BILL NO. 1411
(Representatives Peterson, Oban, Payne)
(Senators Dotzenrod, Thane)

CHECK ACCEPTANCE

AN ACT relating to prohibiting conditioning acceptance of a check on being supplied a credit card number; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Acceptance of check not conditioned on disclosure of credit card number - Use of credit card for identification allowed. A person may not require, as a condition of acceptance of a check or other draft, that the person presenting the check provide a credit card number; nor may the person accepting the check or other draft record the credit card number. A person may request the person presenting the check to display a credit card as evidence of credit worthiness or as additional identification; however, only information concerning the type and issuer of the credit card may be recorded.

SECTION 2. Use of credit card where issuer guarantees cardholder checks allowed. This Act does not prohibit a person from recording a credit card number as a condition for cashing or accepting the check or other draft where that person has agreed with the card issuer to cash or accept checks or other drafts from the issuer's cardholders and the issuer guarantees cardholder checks or other drafts cashed or accepted by that person.

SECTION 3. Penalty. Any person who violates any provision of this Act is guilty of an infraction.

Approved March 19, 1991
Filed March 19, 1991

CHAPTER 529

HOUSE BILL NO. 1255
(Representatives Oban, Byerly, Clayburgh)
(Senators DeKrey, Jerome, Kelly)

CONSUMER PROTECTION VIOLATION AWARDS

AN ACT to amend and reenact section 51-15-09 of the North Dakota Century Code, relating to remedies for violation of consumer protection provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-15-09 of the North Dakota Century Code is amended and reenacted as follows:

51-15-09. Claims not barred. The provisions of this chapter do not bar any claim for relief by any person against any person who has acquired any moneys or property, ~~real or personal~~, by means of any practice ~~herein~~ declared to be unlawful ~~in this chapter~~. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 530

HOUSE BILL NO. 1317
(Representatives Dalrymple, Rydell, Scherber)
(Senators Marks, Evanson, Maxson)

SENIOR CITIZEN CONTRACT CANCELLATION

AN ACT to amend and reenact sections 51-18-02 and 51-18-04 of the North Dakota Century Code, relating to the time period for cancellation of a home solicitation sale agreement by a person sixty-five years of age or older.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 51-18-02 of the North Dakota Century Code is amended and reenacted 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 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. A buyer sixty-five years of age or older may cancel a personal solicitation sale of a product with a purchase price greater than fifty dollars until midnight of the fifteenth business day after the day on which the buyer enters into an enforceable agreement subject to this chapter, or must be provided a written agreement that meets the requirements of section 51-18-04. 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 occurs 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 is effective if it indicates the intention on the part of the buyer not to be bound by the personal solicitation sale.

SECTION 2. AMENDMENT. Section 51-18-04 of the North Dakota Century Code is amended and reenacted as follows:

* NOTE: Section 51-18-02 was also amended by section 1 of House Bill No. 1367, chapter 531.

51-18-04. Agreement requirement. No agreement of the buyer in a personal solicitation sale is enforceable unless it is in writing, dated, 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 must also have attached the following completed form, in duplicate:

NOTICE OF CANCELLATION

(enter date of transaction)

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

If the buyer is sixty-five years of age or older, and the purchase price of the product is greater than fifty dollars, the agreement required by this chapter must either state that the buyer may cancel the agreement within fifteen business days in accordance with this chapter, or state in a conspicuous manner that if the buyer is not satisfied with the product for any reason, the buyer may contact the seller within a period of not less than thirty days from the date of purchase for a full refund of the purchase price, if the product has not been intentionally damaged or misused.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 531

HOUSE BILL NO. 1367
(Representatives Gorman, Carlisle, Gabrielson)
(Senators Graba, Krebsbach)

PERSONAL SOLICITATION SALE CANCELLATION

AN ACT to amend and reenact subsection 1 of section 51-18-02 and subsection 4 of section 51-18-07 of the North Dakota Century Code, relating to cancellation of personal solicitation sales.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 51-18-02 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any right otherwise to revoke an offer, the buyer may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer ~~enters into an enforceable agreement subject to~~ signs an agreement that complies with 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.

SECTION 2. AMENDMENT. Subsection 4 of section 51-18-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The buyer may not cancel a personal solicitation sale if ~~he~~ the buyer 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 25, 1991
Filed March 26, 1991

* NOTE: Section 51-18-02 was also amended by section 1 of House Bill No. 1317, chapter 530.

CHAPTER 532

SENATE BILL NO. 2275
(Senators Stenehjem, Tallackson, Maxson)
(Representatives Clayburgh, Schneider, Byerly)

TELEPROMOTER SALES

AN ACT to create and enact sections 51-18-04.1, 51-18-04.2, and 51-18-04.3 and two new sections to chapter 51-18 of the North Dakota Century Code, relating to telepromoting transactions; to amend and reenact sections 51-15-04, 51-15-05, 51-15-06.1, 51-15-07, 51-15-08, 51-15-11, 51-18-01, and 51-18-08 of the North Dakota Century Code, relating to the authority of the attorney general, enforcement of remedies, the definition of a telepromoter, and exceptions from regulation of home solicitation sales; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-15-04 of the North Dakota Century Code is amended and reenacted as follows:

51-15-04. Powers of attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or any of the provisions of chapter 51-13 ~~or~~, 51-14, or 51-18 or when ~~he~~ the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any ~~such~~ unlawful practice under chapter 51-13, 51-14, or 51-18, ~~he~~ the attorney general may:

1. Require ~~such that~~ person to file, on ~~such~~ forms ~~as he~~ the attorney general prescribes, a statement or report in writing, under oath or otherwise, ~~as to of~~ all the facts and circumstances concerning the sale or advertisement of merchandise by ~~such that~~ person, ~~and such as well as~~ other data and information ~~as he~~ the attorney general may ~~deem~~ determine necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as ~~he~~ the attorney general may ~~deem~~ determine necessary.
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to ~~such that~~ practice and retain the same in ~~his~~ the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.

SECTION 2. AMENDMENT. Section 51-15-05 of the North Dakota Century Code is amended and reenacted as follows:

51-15-05. Subpoena - Hearing - Rules. To accomplish the objectives and to carry out the duties prescribed by this chapter ~~and the provisions of~~ or chapter 51-13 ~~or~~, 51-14, or 51-18, the attorney general, in addition to other powers conferred upon ~~him~~ the attorney general by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe ~~such~~ forms and ~~promulgate such~~ adopt rules and regulations as may be necessary, ~~which rules and regulations have the force of law.~~

SECTION 3. AMENDMENT. Section 51-15-06.1 of the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of any act or practice ~~he deems the attorney general determines~~ to be in violation of ~~any provision of~~ this chapter or ~~any of the provisions of~~ chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18 from any person ~~he~~ the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has ~~his~~ as a principal place of business or in Burleigh County. An assurance of discontinuance may 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 is punishable as criminal contempt.

SECTION 4. AMENDMENT. Section 51-15-07 of the North Dakota Century Code is amended and reenacted as follows:

51-15-07. Remedies - Injunction - Other relief - Receiver. Whenever it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, ~~he~~ or 51-18, the attorney general may seek and obtain in an action in a district court an injunction prohibiting ~~such that person from continuing such practices the unlawful practice or engaging therein in the unlawful practice or doing any acts act in furtherance thereof of the unlawful practice after appropriate notice to such that person.~~ Such notice The notice must state generally the relief sought and be served at least ten days prior to before the hearing of ~~such~~ the action. The court may make ~~such orders or judgments an order or judgment~~ as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any ~~moneys money~~, or property, ~~real or personal, which~~ that may have been acquired by means of any practice in this chapter declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, or 51-18, and that ~~such~~ the person is about to conceal ~~his~~ assets or his person or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of ~~such~~ that person. Upon a showing made by affidavit or other evidence that ~~such~~ the person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter and that ~~such~~ the person is

about to conceal his assets or his person or leave the state, the court shall order the appointment of a receiver to receive the assets of such the person.

SECTION 5. AMENDMENT. Section 51-15-08 of the North Dakota Century Code is amended and reenacted as follows:

51-15-08. Powers of receiver. When a receiver is appointed by the court pursuant to this chapter, ~~he shall have the power to the receiver may~~ sue for, collect, receive, or take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, or 51-18, including property with which such the property has been mingled if it cannot be identified in kind because of such the commingling, and ~~to~~ sell, convey, and assign the same property and hold and dispose of the proceeds ~~thereof~~ under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that ~~he that person~~ has in fact been damaged may participate with general creditors in the distribution of the assets to the extent ~~he that person~~ has sustained out-of-pocket losses. The court ~~shall have~~ has jurisdiction of all questions arising in such these proceedings and may make such orders and judgments therein as may be required.

SECTION 6. AMENDMENT. Section 51-15-11 of the North Dakota Century Code is amended and reenacted as follows:

51-15-11. 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 chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18.

SECTION 7. AMENDMENT. Section 51-18-01 of the North Dakota Century Code is amended and reenacted as follows:

51-18-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
2. "Person" includes a corporation, company, partnership, firm, association, or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state, or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership, or any association of persons.

3. "Personal solicitation sale" means a sale, lease, or rental of consumer goods or services in which the seller or his representative 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 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.
4. "Telepromoter" means any person who, individually, through salespersons or agents, or through the use of an automatic dialing-announcing device initiates telephone contact with a consumer or who by written notice requests that the consumer contact the person by telephone and who represents one or more of the following:
- a. That if the consumer buys one or more items from the telepromoter, the consumer will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of those items.
 - b. That a consumer will receive a prize, premium, or gift if the telepromoter also encourages the consumer to do either of the following:
 - (1) Purchase or rent any goods or services.
 - (2) Pay any money, including a delivery or handling charge.
 - c. That the consumer has in any manner been specially selected to receive the written notice or the offer contained in the written notice.

The term does not include any nonprofit or charitable organization exempt from federal taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. section 501(c)(3)].

SECTION 8. Section 51-18-04.1 of the North Dakota Century Code is created and enacted as follows:

51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter. In addition to the requirements of section 51-15-04, an agreement by a consumer to obtain a consumer good or service from a telepromoter is not enforceable unless it contains the following information:

1. The name, address, and telephone number of the telepromoter;
2. A statement of the price or fee, including any handling, shipping, delivery, or other charge being requested;
3. A detailed description of the consumer good or service; and

4. In a type size in a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature, the statement: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE SELLER."

SECTION 9. Section 51-18-04.2 of the North Dakota Century Code is created and enacted as follows:

51-18-04.2. Credit card charges. A telepromoter may not make or submit any charge to the consumer's credit card account until the telepromoter has received from the consumer an original copy of a contract that complies with this section.

SECTION 10. Section 51-18-04.3 of the North Dakota Century Code is created and enacted as follows:

51-18-04.3. Agreement by telepromoter in violation of chapter void. Any agreement for sale, lease, or rent of a consumer good or service by a telepromoter in violation of this chapter is unenforceable and void.

SECTION 11. AMENDMENT. Section 51-18-08 of the North Dakota Century Code is amended and reenacted as follows:

51-18-08. ~~Exception~~ Exceptions. The provisions of this chapter do not apply to ~~sales~~:

1. Sales of insurance; ~~nor does it apply to sales~~
2. Sales of goods or services with a purchase price of less than twenty-five dollars;
3. Sales of services provided by a cable television system licensed or franchised by any city;
4. Sale of a subscription to or advertising in a newspaper of general circulation; or
5. Sales of services or advertising by a broadcaster licensed by the federal communications commission.
6. Telecommunications companies regulated by the public service commission under chapter 49 or regulated by the federal communications commission.

SECTION 12. Two new sections to chapter 51-18 of the North Dakota Century Code are created and enacted as follows:

Place of transaction. Any sale subject to this chapter is considered to have taken place in the state where the consumer resides, regardless of the location of the seller.

Waiver. Any waiver of this chapter is unenforceable and void.

Approved April 5, 1991
Filed April 8, 1991