

SALES AND EXCHANGES

CHAPTER 388

HOUSE BILL NO. 1192

(Representatives Ruby, Delmore, Kasper, Sukut)
(Senators Hogue, Klein, Lyson)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to motor vehicle warranty reimbursement; and to declare an emergency.

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:

Warranty work compensation.

1. A motor vehicle manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a motor vehicle manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a motor vehicle manufacturer to the dealer for warranty services may not be less than the average rate charged by the dealer for like service to nonwarranty customers for nonwarranty service as provided under subsection 5. A motor vehicle manufacturer may not reimburse a dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the dealer for these parts as provided under subsection 4.
2. A motor vehicle manufacturer shall pay a dealer on a claim made by a dealer under this section within thirty days of the approval of the claim. The manufacturer shall either approve or disapprove a claim within thirty days after the claim is submitted to the manufacturer. The manufacturer may prescribe the manner in which and the forms on which the dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
3. A motor vehicle manufacturer, factory branch, distributor, or distributor branch shall fully compensate its motor vehicle dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the dealer or imposing a separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover the costs of complying with this section from the dealer.

4. The retail rate customarily charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
5. The retail rate customarily charged by the dealer for labor must be established using the same process as provided under subsection 4 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection 4.
6. In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:
 - a. Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
 - b. Parts sold at wholesale;
 - c. Routine maintenance not covered under any retail customer warranty, including fluids, filters and belts not provided in the course of repairs;
 - d. Nuts, bolts, fasteners, and similar items that do not have an individual part number;
 - e. Tires; and
 - f. Vehicle reconditioning.
7. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must go into effect thirty days following the manufacturer's approval. A manufacturer or distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar area of the state offering the dealer's declaration of the same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
8. Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.
9. A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under

subsections 4 and 5; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections 4 and 5.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 2013
Filed April 16, 2013

CHAPTER 389

SENATE BILL NO. 2260

(Senators Flakoll, Unruh, Warner)
(Representatives Beadle, Heilman, Oversen)

AN ACT to amend and reenact sections 13-07-01, 13-11-01, 51-15-06.1, 51-28-01, and 51-28-02 of the North Dakota Century Code, relating to consumer credit counseling services, debt settlement providers, assurance of discontinuance, and telephone solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-07-01 of the North Dakota Century Code is amended and reenacted as follows:

13-07-01. Consumer credit counseling service - Definition.

As used in this chapter, "consumer credit counseling service" means a ~~nonprofit corporation~~ person whose agreements contemplate that a debtor will liquidate the debtor's debts by structured installments or that a creditor will reduce finance charges or fees for late payments, default, or delinquency. ~~For purposes of this chapter, a nonprofit corporation means an entity that is:~~

- ~~1. Organized and properly operating as a nonprofit entity under the laws of the state in which it was formed;~~
- ~~2. Exempt from taxation under the federal Internal Revenue Code [26 U.S.C. 501]; and~~
- ~~3. Not owned, operated, managed by, or affiliated with a for-profit entity.~~

SECTION 2. AMENDMENT. Subsection 7 of section 13-11-01 of the North Dakota Century Code is amended and reenacted as follows:

7. a. "Debt-settlement service" means:
 - (1) Offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt;
 - (2) Offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

- (3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation.
- b. "Debt-settlement service" does not include:
- (1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;
 - (2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state;
 - (3) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner, by rule, determines are:
 - (a) Licensed by this state;
 - (b) Subject to a disciplinary mechanism;
 - (c) Subject to a code of professional responsibility; and
 - (d) Subject to a continuing education requirement; or
 - (4) A ~~nonprofit corporation~~ person engaged in consumer credit counseling services under chapter 13-07.

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~~ voluntary compliance.

The attorney general may accept an assurance of ~~discontinuance of~~ voluntary compliance for any act or practice the attorney general determines to be in violation of this chapter, or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, ~~51-28, 51-29, 51-30, 51-31, 51-33, or 51-34,~~ from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of ~~discontinuance~~ voluntary compliance 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 as a principal place of business, ~~conducts business,~~ or in Burleigh County. ~~An assurance of discontinuance may not be considered an admission of a violation. However, failure~~ Failure to comply with an assurance of ~~discontinuance~~ voluntary compliance which has been approved by the district court is contempt of court.

SECTION 4. AMENDMENT. Section 51-28-01 of the North Dakota Century Code is amended and reenacted as follows:

51-28-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, including voice, text, or other electronic communication, regardless of its content.
6. "Subscriber" means a person who has subscribed to a residential telephone line or the other persons living or residing with the subscribing person.
7. "Telephone line" means a telephone service to a subscriber, regardless of the technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet protocol telephone service.
8. "Telephone solicitation" means any voice, text, or other electronic communication over a telephone line for the purpose of encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise, including as defined in subsection 3 of section ~~54-45-0351-15-01~~, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device, or by other means. Telephone solicitation does not include communications:
 - a. To any subscriber with that subscriber's prior express written request, consent, invitation, or permission.
 - b. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
 - c. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
 - (1) The telephone call is made by a volunteer or employee of the charitable organization; and
 - (2) The person who makes the telephone call immediately discloses the following information upon making contact with the consumer:

- (a) The person's true first and last name; and
- (b) The name, address, and telephone number of the charitable organization.
- d. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions, or votes, unless the communication is ~~made through an automatic dialing-announcing device in a manner prohibited by section 51-28-02a~~ text message.
- e. By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who makes the initial call and the prospective purchaser, unless the communication is a text message.
- f. By or on behalf of a political party, candidate, or other group with a political purpose, as defined in section 16.1-08.1-01, unless the communication is a text message.

SECTION 5. AMENDMENT. Section 51-28-02 of the North Dakota Century Code is amended and reenacted as follows:

51-28-02. Use of prerecorded or synthesized voice messages.

A caller may not use or connect to a telephone line an automatic dialing-announcing device or deliver a prerecorded or synthesized voice message to a subscriber unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

Approved March 19, 2013
Filed March 19, 2013

CHAPTER 390

SENATE BILL NO. 2151

(Senators J. Lee, Carlisle, O'Connell)
(Representatives B. Koppelman, Streyle, Delmore)

AN ACT to provide for regulation of scrap metal purchases by scrap metal dealers; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Alloy" means a combination of a metal and carbon or other metals.
2. "Business records" means records of any purchase or transaction that involves the receipt of scrap metals made in the ordinary course of business and includes written receipts, books or similar records, or electronically stored records, but does not include correspondence, tax returns, or financial statements.
3. "Ferrous metals" means those metals that will attract a magnet, and includes alloys of those metals.
4. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
5. "Nonferrous metals" means those metals that will not normally attract a magnet, including copper, brass, aluminum, bronze, lead, zinc, platinum, nickel, and includes alloys of those metals.
6. "Scrap metal" means ferrous or nonferrous metals purchased primarily for reuse or recycling, including metals combined with other materials at the time of purchase or acquisition, and including insulated and uninsulated wire and cable. Scrap metal does not include automobiles, automobile hulks, or any aluminum food or beverage containers.
7. "Scrap metal dealer" means a person, as defined in subsection 8 of section 1-01-49, engaged in the business of purchasing, selling, trading, or bartering scrap metal, and includes all employees of the scrap metal dealer.

SECTION 2.**Records of purchase, trade, barter, or transaction required.**

1. Every scrap metal dealer shall keep business records of any purchase, trade, barter, or other transaction that involves the receipt of scrap metals worth over twenty-five dollars. The business records must include the following information:
 - a. The date, time, and place of each purchase or transaction;
 - b. A description of the scrap metal received and the weight and type of scrap metal received;
 - c. The amount paid to the person selling or delivering the scrap metal, and the manner of payment, including check or electronic transfer;
 - d. The name and address of the person selling or delivering the scrap metal; and
 - e. A photocopy of a valid government-issued identification card or driver's license and which must include the seller's or deliverer's full name, photograph, date of birth, and signature.
2. Every scrap metal dealer shall keep the business records required under this section at the business premises of the scrap metal dealer or other reasonably available location within this state for seven years after the date of each purchase or transaction for which business records are required under this section.
3. A scrap metal dealer may not pay cash for scrap metal purchases or transactions over one thousand dollars, but may only pay by check or electronic transfer.
4. Each scrap metal dealer's premises must be kept open during regular business hours for inspection by a law enforcement officer and each scrap metal dealer's business records and business inventory must be made available for inspection by a law enforcement officer at all times during reasonable business hours or at reasonable times if ordinary hours of business are not kept.
5. Before a law enforcement officer may conduct an inspection under this section, the law enforcement officer shall inform the scrap metal dealer that the individual is a law enforcement officer and shall inform the scrap metal dealer of the purpose of the inspection. The law enforcement officer shall comply with all reasonable and customary safety requirements of the scrap metal dealer on the business premises.
6. The scrap metal dealer may require a law enforcement officer to sign an inspection log that includes the officer's name and serial or badge number and the date, time, and purpose for the inspection.
7. The provisions of this chapter shall take precedence over and supersede any local ordinance adopted by a political subdivision that regulates scrap metal transactions.

SECTION 3.**Exemptions.**

Section 2 of this Act does not apply to:

1. Purchases from another scrap metal dealer who regularly conducts scrap metal business in this state.
2. Purchases from government agencies.
3. Purchases from persons regularly engaged in the business of manufacturing metals or regularly engaged in the business of selling metals at retail or wholesale, including scrap processing or manufacturing that produces byproducts for scrap.
4. Purchases from persons regularly engaged in the generation or transmission of electricity, or in telephone, telegraph, or cable communications, if the person provides the scrap metal dealer with a bill of sale or other written evidence of ownership of the scrap metal purchased from the person.

SECTION 4.**Penalty.**

1. A scrap metal dealer who willfully fails to comply with section 2 of this Act is guilty of a class B misdemeanor.
2. A scrap metal dealer who willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal is less than five hundred dollars in value is guilty of a class A misdemeanor.
3. A scrap metal dealer who willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal exceeds five hundred dollars in value, is guilty of a class C felony.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on May 1, 2013.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 2013
Filed April 1, 2013