

SALES AND EXCHANGES

CHAPTER 350

SENATE BILL NO. 2182

(Senators Poolman, Casper, Nelson)
(Representatives K. Koppelman, Kretschmar, Amerman)

AN ACT to amend and reenact sections 51-04-10 and 51-15-02, subsection 2 of section 51-18-02, and sections 51-18-04 and 51-18-04.1 of the North Dakota Century Code, relating to transient merchants, unlawful practices, and home solicitation sales; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-04-10 of the North Dakota Century Code is amended and reenacted as follows:

51-04-10. Penalty.

Any person violating any of the provisions of this chapter, for which another penalty is not specifically provided, is guilty of a class B misdemeanor. The state's attorney or attorney general may enforce this chapter. The attorney general in enforcing this chapter has all the powers provided in this chapter and chapter 51-15 and may seek all remedies in this chapter and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county where the transient merchant conducted business or Burleigh County.

SECTION 2. AMENDMENT. Section 51-15-02 of the North Dakota Century Code is amended and reenacted as follows:

51-15-02. Unlawful practices - Fraud - Misrepresentation - Unconscionable.

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice.

SECTION 3. AMENDMENT. Subsection 2 of section 51-18-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address or electronic mail 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~~ electronic mail message to the seller.

SECTION 4. AMENDMENT. Section 51-18-04 of the North Dakota Century Code is amended and reenacted as follows:

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. Buyer acknowledges receiving an oral notification that the buyer may cancel this transaction at any time before midnight of the third business day after the date of this transaction or fifteen business days if the buyer is sixty-five years of age or older.

(Date)

(Buyer's signature)

6. 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 or electronic mail message to (electronic mail address of seller), 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.

SECTION 5. AMENDMENT. Section 51-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter.

In addition to the requirements of section 51-18-04, an agreement by a consumer to obtain a consumer good or service from a telepromoter, seller, or seller's representative is not enforceable unless it contains the following information:

1. The name, address, and telephone number of the telepromoter, seller, or seller's representative;
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."

Approved April 8, 2015
Filed April 8, 2015

CHAPTER 351

HOUSE BILL NO. 1346

(Representatives Vigesaa, M. Nelson, Trottier)
(Senators Burckhard, Klein, O'Connell)

AN ACT to amend and reenact subsection 2 of section 51-13-02 and section 51-13-07 of the North Dakota Century Code, relating to retail installment sales contracts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 51-13-02 of the North Dakota Century Code is amended and reenacted as follows:

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. 1601-1667ef], or if the retail installment sale is subject to that Act and the seller does not comply with all the requirements of that Act, this subsection applies.
 - a. The printed portion of the contract must be in at least eight-point type. The contract must contain printed or written in a size equal to at least ten-point bold type:
 - (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".
 - (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.
 - (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."
 - 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 must be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, must 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 is 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 the assignee purchases the contract.

c. The contract must contain:

- (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.
- (2) The cash price of the personal property which is the subject matter of the retail installment sale.
- (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.
- (4) The difference between paragraphs 2 and 3, which is the unpaid balance of cash price.
- (5) The amount, if any, included for insurance, specifying the coverages.
- (6) The amount, if any, of official fees.
- (7) The amount financed, which is the sum of paragraphs 4, 5, and 6.
- (8) The amount of the finance charge, if any.
- (9) The total of payments, which is the sum of paragraphs 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.
- (10) The deferred payment price, which is the sum of the amounts determined in paragraphs 2, 5, 6, and 8.
- (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.
- (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.

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

- 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.
- f. No retail installment contract may 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.

SECTION 2. AMENDMENT. Section 51-13-07 of the North Dakota Century Code is amended and reenacted as follows:

51-13-07. Enforcement - Powers - Remedies - Penalties.

Any person who willfully violates this chapter is guilty of a class A misdemeanor. A willful violation of section 51-13-02 or 51-13-03 by any person bars that person's recovery of any finance charge or delinquency or collection charge on the retail installment contract involved. A state's attorney or the attorney general may enforce this chapter. The attorney general in enforcing this chapter has all the powers provided in this chapter and chapter 51-15 and may seek all remedies in this chapter and chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

Approved March 12, 2015
Filed March 12, 2015

CHAPTER 352

SENATE BILL NO. 2214

(Senators Casper, Burckhard, Robinson)
(Representatives Beadle, Oversen, Silbernagel)

AN ACT to amend and reenact subsection 4 of section 51-30-01 and section 51-30-02 of the North Dakota Century Code, relating to security breach notification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
 - (1) The individual's social security number;
 - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
 - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
 - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
 - (5) The individual's date of birth;
 - (6) The maiden name of the individual's mother;
 - (7) Medical information;
 - (8) Health insurance information;
 - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
 - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

SECTION 2. AMENDMENT. Section 51-30-02 of the North Dakota Century Code is amended and reenacted as follows:

51-30-02. Notice to attorney general and consumers.

Any person ~~that conducts business in this state, and~~ that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of the state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. In addition, any person that experiences a breach of the security system as provided in this section shall disclose to the attorney general by mail or email any breach of the security system which exceeds two hundred fifty individuals. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in section 51-30-04, or any measures necessary to determine the scope of the breach and to restore the integrity of the data system.

Approved April 13, 2015

Filed April 13, 2015

CHAPTER 353

HOUSE BILL NO. 1163

(Representatives Keiser, Delmore, K. Koppelman)
(Senators Armstrong, Grabinger, Hogue)

AN ACT to create and enact chapter 51-36 of the North Dakota Century Code, relating to bad faith assertions of patent infringement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-36 of the North Dakota Century Code is created and enacted as follows:

51-36-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Demand letter" means a letter, email, or other communication asserting or claiming the target engaged in patent infringement.
2. "Target" means any person:
 - a. That receives a demand letter or against whom an assertion or allegation of patent infringement is made;
 - b. That is threatened with litigation or against whom a lawsuit is filed alleging patent infringement; or
 - c. Whose customer receives a demand letter asserting that the person's product, service, or technology infringes a patent.

51-36-02. Bad faith assertion of patent infringement prohibited.

A person may not make a bad faith assertion of patent infringement as prohibited by this chapter.

51-36-03. Factors for bad faith assertion of infringement.

A court may consider any of the following factors as evidence a person made a bad faith assertion of patent infringement:

1. The demand letter does not contain the following information:
 - a. The patent number;
 - b. The name and address of the patent owner and assignee, if any; or
 - c. Factual allegations concerning the specific areas in which the target's product, service, or technology infringe the patent or are covered by the claim in the patent.

2. Before sending the demand letter, the person fails to conduct an analysis comparing the claim in the patent to the target's product, service, or technology, or such an analysis was done but does not identify the specific area in which the product, service, or technology is covered by the claim in the patent.
3. The demand letter lacks the information described in subsection 1, the target requests the information, and the person fails to provide the information within a reasonable period of time.
4. The demand letter demands payment of a license fee or a response within an unreasonably short period of time.
5. The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.
6. The claim of patent infringement is unenforceable and the person knew, or should have known, the claim is unenforceable.
7. The claim of patent infringement is deceptive.
8. The person, a subsidiary, or an affiliate previously filed or threatened to file a lawsuit based on the same or a similar claim of patent infringement and:
 - a. The threat or lawsuit lacked the information described in subsection 1; or
 - b. The person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be unenforceable.
9. The person making the assertion of infringement of a patent does not own or have the right to enforce or license the patent.
10. The person sent the same demand or substantially same demand to multiple recipients and made assertions against a variety of products and systems without reflecting product and system differences in a reasonable manner in the demands.
11. The person threatens legal action that cannot legally be taken or that is not intended to be taken.
12. The person represents a complaint has been filed alleging the target has infringed the patent when no complaint has been filed.
13. The claim of patent infringement is based on a patent or a claim of a patent that has expired or previously been held invalid or unenforceable in a final unappealable or unappealed judicial or administrative decision.
14. Any other factor the court finds relevant.

51-36-04. Factors for claim of patent infringement not made in bad faith.

A court may consider the following factors as evidence a person has not made a bad faith assertion of patent infringement:

1. The demand letter contains all of the information described in subsection 1 of section 51-36-03.

2. If the demand letter lacks the information described in subsection 1 of section 51-36-03 and the target requests the information, the person provides the information within a reasonable period of time.
3. The person engages in a good faith effort to establish the target has infringed the patent and to negotiate an appropriate remedy.
4. The person makes a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent.
5. The person is:
 - a. The inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or
 - b. An institution of higher education or a technology transfer organization owned or affiliated with an institution of higher education.
6. The person has:
 - a. Demonstrated good faith business practices in previous efforts to enforce the patent or a substantially similar patent; or
 - b. Successfully enforced the patent, or a substantially similar patent, through litigation.
7. Any other factor the court finds relevant.

51-36-05. Bond.

Upon motion by a target and a finding by the court that the target has established a reasonable likelihood a person has made a bad faith assertion of patent infringement in violation of this chapter, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under this chapter, conditioned upon payment of any amounts finally determined to be due to the target. The court shall hold a hearing to determine the amount of the bond on the request of either party. A bond ordered under this section may not exceed two hundred fifty thousand dollars. The court may waive the bond requirement if the court finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

51-36-06. Private right of action.

A target of conduct involving assertions of patent infringement or a person aggrieved by a violation of this chapter may bring an action in a court of proper jurisdiction. A court may award the following remedies to a plaintiff that prevails in an action brought pursuant to this section:

1. Equitable relief;
2. Damages;
3. Costs and fees, including reasonable attorney fees; and

4. Exemplary damages in an amount equal to fifty thousand dollars or three times the total of damages, costs, and fees, whichever is greater.

51-36-07. Enforcement - Powers - Remedies - Penalty.

The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. Each act in violation of this chapter constitutes a separate violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

51-36-08. Exceptions.

This chapter does not apply to:

1. Any person that owns or has the right to license or enforce a patent to notify another of that ownership or right of license or enforcement, to notify another that the patent is available for license or sale; notify another of the infringement of that patent pursuant to the provisions of title 35 of the United States Code; or seek compensation on account of a past or present infringement, or for a license, if it is reasonable to believe that the person from whom compensation is sought may owe such compensation.
2. Any demand letter sent by:
 - a. Any corporation traded on a public stock exchange or any entity owned or controlled by such corporation;
 - b. An owner of the patent which is using the patent in connection with the substantial research, commercial development, production, manufacturing, processing, or delivery of products or materials;
 - c. Any institution of higher education as that term is defined in section 101 of the federal Higher Education Act of 1965 [20 U.S.C. 1001]; or
 - d. Any technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

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