

SALES AND EXCHANGES

CHAPTER 416

HOUSE BILL NO. 1225

(Representatives Nottestad, Galvin, Keiser)
(Senator Mutch)

INSURANCE DEDUCTIBLE PAYMENT PROHIBITED

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to the paying of an insurance deductible or offering of a rebate by a seller of goods or services; and to provide a penalty.

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:

Insurance claims for excessive charges - Penalty.

1. A person who sells goods or services may not:
 - a. Advertise or promise to provide a good or service, paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles, and to pay all or part of any applicable insurance deductible or to pay a rebate in an amount equal to all or part of any applicable insurance deductible; and
 - b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by that person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by that person on behalf of an insured or remitted to an insured by that person as a rebate.
2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.
3. A violation of this section is a class B misdemeanor.

Approved March 25, 1997
Filed March 25, 1997

CHAPTER 417**HOUSE BILL NO. 1181**

(Representatives Svedjan, Carlson, Mahoney)
(Senators Sand, Thompson)

FUEL FRANCHISE SECURITY DEPOSITS

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to security deposits for motor vehicle fuel franchise agreements.

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:

Motor vehicle fuel franchise agreements. A motor vehicle fuel franchise agreement may not require a security deposit except for the purpose of securing against loss of or damage to property. The dealer may satisfy any security deposit required by depositing cash or pledging a savings account or its equivalent in a financial institution in this state. Earnings accruing on a savings account or its equivalent are the property of the dealer and the dealer may withdraw the earnings annually from the account.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 418

HOUSE BILL NO. 1213

(Representatives Carlson, Belter, Thorpe)
(Senators Krebsbach, Tallackson)

VEHICLE DEALERSHIP SUCCESSION

AN ACT to create and enact two new sections to chapter 51-07 of the North Dakota Century Code, relating to succession to ownership of an automobile, truck, or farm equipment dealership.

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:

Succession to ownership of an automobile, truck, or farm equipment dealership.

1. The owner of an automobile, truck, or farm equipment dealership may appoint by trust, will, or any other valid written instrument a successor to the owner's dealership interest upon the owner's death or incapacity.
2. Unless the manufacturer, wholesaler, or distributor has good cause to refuse to honor the succession, the successor may succeed to the ownership of the dealership under the existing franchise if:
 - a. Within ninety days of the owner's death or incapacity, the successor gives written notice of the successor's intent to succeed to ownership of the dealership; and
 - b. The successor agrees to be bound by all the terms and conditions of the franchise agreement with the prior owner.
3. Upon request, the successor shall promptly provide the manufacturer, wholesaler, or distributor evidence of the successorship appointment, as well as personal and financial information reasonably necessary to determine whether the succession should be honored by the manufacturer, wholesaler, or distributor.

SECTION 2. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Refusal to honor succession.

1. If a manufacturer, wholesaler, or distributor believes that good cause exists to refuse to honor the intended succession under section 1 of this Act, then the manufacturer, wholesaler, or distributor shall serve the named successor written notice of refusal to honor the intended succession within sixty days of its receipt of the notice of the intended succession. The notice must contain specific grounds for the refusal to honor the succession.

2. If notice of refusal to honor the intended succession is not timely served upon the intended successor, the successor may continue the franchise subject only to termination as permitted otherwise in this chapter.
3. In determining whether good cause exists for the refusal to honor the intended succession, the manufacturer, wholesaler, or distributor has the burden of proving that the intended successor is not a person of good moral character or does not meet the franchisor's existing and reasonable standards. Good cause for refusal to honor succession does not include the owner's dealership being dualled with another manufacturer's line.

Approved April 2, 1997

Filed April 3, 1997

CHAPTER 419

HOUSE BILL NO. 1274

(Representative Keiser)
(Senator Krebsbach)

REVOLVING CHARGE ACCOUNT CHARGES

AN ACT to create and enact two new sections to chapter 51-14 of the North Dakota Century Code, relating to additional charges on revolving charge accounts and revolving charge agreement credit extensions; and to amend and reenact sections 51-14-01, 51-14-02, and 51-14-03 of the North Dakota Century Code, relating to revolving charge agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-14-01 of the North Dakota Century Code is amended and reenacted as follows:

51-14-01. Definitions. In this chapter, unless the context ~~or subject matter~~ otherwise requires:

1. "Credit service charge" means the amount, however expressed, which the retail buyer contracts to pay or pays the retail seller in excess of the ~~cash sale price of personal property~~ amount of credit extended, representing the total charges by the retail seller incident to investigating and ~~making a retail installment sale~~ extending credit under a revolving charge agreement and for extending to the retail buyer the privilege of paying ~~in installments~~ over a period of time therefor.
2. "Retail buyer" or "buyer" means a person who buys personal property from a retail seller, or to whom a retail seller otherwise extends credit, pursuant to a revolving charge agreement.
3. "Retail seller" or "seller" means a person who agrees to sell or sells goods or services pursuant to a revolving charge agreement; ~~including without limitation,~~ and a state-chartered or national bank in issuing bank credit cards for that extends credit by the advancement of moneys thereunder or the sale of goods or services thereunder payment for goods or services under a revolving charge agreement.
4. "Revolving charge agreement" means a written instrument, defining the terms of ~~retail installment sales made~~ credit extended from time to time pursuant thereto, pursuant to which the buyer's total unpaid balance thereunder, whenever incurred, is payable ~~in installments~~ over a period of time and under the terms of which a credit service charge, other than the portion thereof consisting of late payment or other charges, is to be computed in relation to the buyer's unpaid balance from time to time.

SECTION 2. AMENDMENT. Section 51-14-02 of the 1995 Supplement to 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~~ accepted by the retail buyer. As used in this section, "accepted" means the buyer has signed the revolving charge agreement, the buyer has used the account issued under a revolving charge agreement, or within thirty days from the date of issuance the buyer has not canceled by written notice a credit card or other access device issued under a revolving charge agreement. A copy of any such the revolving charge agreement must be delivered or mailed to the retail buyer by the retail seller ~~prior to~~ before the date on which the first payment is due ~~thereunder~~ under the agreement. ~~Such agreements~~ A revolving charge agreement must state the amount and rate of the credit service charge to be charged and paid ~~pursuant thereto~~ under the agreement. ~~Such~~ The credit service charge, exclusive of late payment or other fees included therein, must be set forth in ~~such~~ the revolving charge agreement in terms of a monthly or annual percentage rate to be applied to the balance outstanding from time to time ~~thereunder~~ under the agreement, as of the beginning or end of each billing period or on a daily basis. Upon written notice, a seller may change the terms of any revolving charge agreement, including the credit service charge, if this right of amendment has been reserved. A change under this authority is effective as to existing balances, if within twenty-five days of the effective date of the change, the buyer does not furnish written notice to the seller that the buyer does not agree to abide by the changes. Upon receipt of this written notice by the seller, the buyer has the remainder of the time under the existing terms in which to pay all sums owed to the seller. Any request for additional credit under a revolving charge agreement, including use of a credit card issued under the agreement, after the effective date of the change of terms, including a change in the credit service charge, is deemed to be an acceptance of the new terms, even though the twenty-five days has not expired. The retail seller under a revolving charge agreement shall promptly supply the retail buyer under ~~such~~ the 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~~ this amount.
5. A legend to the effect that the retail buyer may at any time pay ~~his~~ the 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.

SECTION 3. AMENDMENT. Section 51-14-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-14-03. Limitation of credit service charge. ~~A seller may, in~~ In a revolving charge agreement, a seller may contract for and, if so contracted for, the seller or holder ~~thereof~~ of the agreement may charge, receive, and collect the service charge authorized by this section. The service charge may not exceed the amount agreed to by the parties ~~computed on the outstanding indebtedness from month to month~~. In the event any payment by a buyer is insufficient to pay both the credit service charge and that portion of the outstanding indebtedness then due, ~~such~~ the payments must first be applied to the credit service charge then due.

SECTION 4. A new section to chapter 51-14 of the North Dakota Century Code is created and enacted as follows:

Additional charges on revolving charge accounts. The seller or holder of a revolving charge account may collect a late payment or other charge not to exceed the amount agreed to by the parties in the revolving charge account agreement.

SECTION 5. A new section to chapter 51-14 of the North Dakota Century Code is created and enacted as follows:

Application of other provisions. Credit extended by a seller or holder of a revolving charge agreement to a buyer is not subject to chapter 13-03, 13-03.1, or 47-14.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 420

SENATE BILL NO. 2286

(Senators Wanzek, Mathern, Nething)
(Representatives Aarsvold, Kretschmar, Murphy)

ASSISTIVE TECHNOLOGY DEVICE WARRANTIES

AN ACT to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to assistive technology device warranties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. In this chapter, unless the context otherwise requires:

1. "Assistive technology device" means any item, piece of equipment, or product system that a consumer purchases or accepts transfer of in this state and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities.
 - a. The term includes:
 - (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility or positioning of an individual, such as positioning features, the switches and controls for any motorized or nonmotorized features, and hydraulic or nonhydraulic lifts or elevators designed to transport an individual from one location or level to another in private personal vehicles or private residences.
 - (2) Telephone communication devices for the deaf, assistive listening devices, and other aids that enhance an individual's ability to hear, except for hearing instruments excluded by subdivision b.
 - (3) Voice-synthesized computer modules, optical scanners, talking software, braille printers, artificial larynges, voice amplification devices, alternative augmentative communication devices, and other devices that enhance an individual's ability to communicate, except for those items excluded by subdivision b.
 - (4) Voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers.
 - (5) Adapted environmental control units.
 - (6) Any other assistive device, instrument, apparatus, or any component, part, or accessory that enables an individual with

a disability to perform tasks such as communicating, speaking, seeing, hearing, maneuvering, moving, walking, standing, reaching, grasping, working, sleeping, learning, or caring for oneself, or which are used or intended to be used to assist, affect, or replace the structure or any function of the body of an individual with a disability, except for those items excluded by subdivision b.

- b. The term does not include:
 - (1) Devices that are modified or customized pursuant to consumer design and specifications;
 - (2) Hearing instruments as defined in subsection 2 of section 43-33-01;
 - (3) Eyeglasses;
 - (4) A surgical implant performed by a physician or surgeon; or
 - (5) A restoration or dental prosthesis provided by a dentist.
2. "Commercial lessor" means a person who is in the business of leasing assistive technology devices to consumers, or who holds the lessor's rights.
3. "Commercial seller" means a person who is in the business of selling or manufacturing assistive technology devices.
4. "Consumer" means:
 - a. The purchaser of an assistive technology device from a commercial seller for personal use;
 - b. A person to whom an assistive technology device is transferred for personal use when all express warranties have not yet expired;
 - c. A person who may enforce the warranty on an assistive technology device;
 - d. A person who leases an assistive technology device from a commercial lessor; or
 - e. The parent or guardian of a person who is a consumer under subdivisions a through d.
5. a. "In need of repair" means:
 - (1) A specific condition, generic defect, or malfunction that substantially impairs the use, value, or safety of an assistive technology device or any of its component parts; or
 - (2) The assistive technology device or a component of the assistive technology device fails to conform to:
 - (a) Any applicable express warranties; or

- (b) Any implied warranties including the implied warranty of merchantability described in section 41-02-31 and the implied warranty of fitness for a particular purpose described in section 41-02-32.
- b. The term does not include a condition or defect that is the result of abuse or unforeseen alteration of the assistive technology device by the consumer.
- 6. "Loaner" means an assistive technology device that is loaned to the user without charge while repairs are made to the user's assistive technology device. A loaner must:
 - a. Be in good working order;
 - b. Perform the essential functions of the assistive technology device that is being repaired, considering the needs of the user; and
 - c. Not create a threat to the safety of the user.
- 7. "Manufacturer" means:
 - a. A person who manufactures or assembles assistive technology devices;
 - b. A person who manufactures or assembles any part of an assistive technology device; and
 - c. All persons involved in the manufacture, distribution, or sales of assistive technology devices up to the final retail seller or commercial lessor.
- 8. "Reasonable attempt to repair" means that, within one year after first delivery of the assistive technology device to a consumer or within the life of an express warranty, whichever is longer:
 - a. The assistive technology device is presented to the commercial seller in need of repair at least four times and it is again in need of repair; or
 - b. The assistive technology device is in need of repair and available to the seller for repair for at least thirty days. These thirty days may be consecutive or nonconsecutive.
- 9. "Transaction costs" means expenses caused by a covered repair including the costs of a loaner.

Express written warranties for assistive technology devices.

- 1. A manufacturer who sells an assistive technology device to a consumer, either directly or through another commercial seller, shall furnish the consumer with an express written warranty to preserve and maintain the utility and performance of the assistive technology device.
- 2. The express written warranty must be in effect for at least one year after first delivery of the assistive technology device to the consumer.

3. If a manufacturer fails to furnish an express written warranty to the consumer, the assistive technology device must be covered by an express warranty that meets the requirements of this section.
4. An express written warranty must guarantee that the assistive technology device:
 - a. Has no defects in parts or performance; and
 - b. Is free from any condition and defect that would substantially impair the device's use, value, or safety to the consumer.

Warranty claims.

1. A consumer may present a warranty claim for an assistive technology device by:
 - a. Reporting the warranty problem to the manufacturer, the commercial lessor, or the commercial seller within the life of the express warranty; and
 - b. Making the assistive technology device reasonably available to the manufacturer, the commercial lessor, or the commercial seller for repair.
2. If the terms of a warranty are invoked and a warranty claim is made, the assistive technology device must be repaired at no charge to the consumer, including parts, labor, shipping, delivery, and all other costs, regardless of whether the repairs are made after the expiration of the warranty period.
3. The commercial seller or the commercial lessor shall provide the consumer with a loaner and with reimbursement for transaction costs to the consumer from the repair:
 - a. If the repair period is expected to be at least ten days; or
 - b. If the repair period is not expected to be ten days but actually is ten days or more.
4. The costs of any warranty repair, loaner, or transaction costs due the consumer from the repair are to be borne in the first instance by the commercial seller or commercial lessor. The commercial seller and the commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller or commercial lessor are not affected by this chapter.

Remedies - Sales.

1. If, after a reasonable attempt to repair by the commercial seller or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.

2. If the warranty is breached, the consumer may return the assistive technology device to the commercial seller that sold the device and the consumer may choose to either:
 - a. Receive a new replacement assistive technology device from the commercial seller and be reimbursed by the commercial seller for transaction costs; or
 - b. Receive a full refund of the purchase price plus any finance charges from the commercial seller, and be reimbursed by the commercial seller for transaction costs.
3. The following conditions apply to the remedies in this section:
 - a. The commercial seller is allowed up to thirty days after return of the original assistive technology device to pay transaction costs to the consumer and to provide the consumer with either a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
 - b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial seller must provide a loaner to the consumer to use until the commercial seller has provided to the consumer a new replacement assistive technology device or a full refund of the purchase price plus any finance charges.
 - c. The consumer may not be required to deal directly with any person other than the commercial seller that sold the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the sales or distribution chain. If the commercial seller is no longer selling assistive technology devices, the consumer may deal with the seller's successor.
 - d. The costs of a new replacement assistive technology device, a full refund, any loaner, and transaction costs due the consumer are to be borne in the first instance by the commercial seller. The commercial seller may have rights to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. Those rights of the commercial seller are not affected by this chapter.

Remedies - Leases.

1. If, after a reasonable attempt to repair by the commercial lessor or manufacturer, the assistive technology device is not repaired, the warranty is considered breached.
2. If the warranty is breached, the consumer may return the assistive technology device to the commercial lessor that leased the device and the consumer may choose to either:
 - a. Receive a new replacement assistive technology device from the commercial lessor; or

- b. Receive a full refund from the commercial lessor of all moneys paid under the lease, including all finance charges.
3. The following conditions apply to the remedies in this section:
 - a. The commercial lessor is allowed up to thirty days after return of the original assistive technology device to provide to the consumer either a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
 - b. If a new replacement assistive technology device is not provided or if a full refund is not paid when the consumer returns the original assistive technology device, the commercial lessor shall provide a loaner to the consumer to use until the lessor has provided to the consumer a new replacement assistive technology device or a full refund of all moneys paid under the lease, including any finance charges.
 - c. The consumer may not recover transaction costs and the commercial lessor may not recover for use of the assistive technology device before the return of the device on a warranty claim.
 - d. The consumer may not be required to deal directly with any person other than the commercial lessor that leased the assistive technology device. If agreeable, the consumer may deal with the manufacturer or other prior parties in the leasing, sales, or distribution chain. If the commercial lessor is no longer dealing in assistive technology devices, the consumer may deal with the lessor's successor.
 - e. The costs of a new replacement assistive technology device, a full refund, and any loaner are to be borne in the first instance by the commercial lessor. The commercial lessor may have rights to reimbursement or compensation from the manufacturer or other prior parties in the leasing, sales, or distribution chain. Those rights of the commercial lessor are not affected by this chapter.

Thirty-day return. A commercial seller or commercial lessor who sells or leases an assistive technology device to a consumer may not refuse to accept a return of the assistive technology device within thirty days after the purchase or lease if the assistive technology device has not met the needs of the consumer.

Sale or lease of a returned assistive technology device. No assistive technology device returned by a consumer or lessor may be sold or leased again in this state unless full disclosure of the reasons for the return of the device is made to the consumer.

Other remedies - Penalties.

1. This chapter does not limit rights or remedies available to a consumer under any other law or contract.
2. Any waiver of rights by a consumer under this chapter, any waiver of the implied warranty of merchantability for an assistive technology device, and any waiver of the implied warranty of fitness for a particular purpose for an assistive technology device is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action to recover damages caused by a violation of this chapter twice the amount of any pecuniary loss together with costs, disbursements, reasonable attorney fees, and any equitable relief that the court finds appropriate.
4. Any right to bring a class action under this chapter is properly regulated by the judiciary. The supreme court, acting in its rulemaking capacity or otherwise, has full authority under the Constitution of North Dakota to regulate class actions.

Approved March 20, 1997

Filed March 20, 1997