

SALES AND EXCHANGE

CHAPTER 322

H. B. No. 811
(Beede, Link, Nygaard)

RETAIL INSTALLMENT SALES ACT

AN ACT

Relating to installment and conditional sales contracts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Definitions.) In this Act, unless the context or subject matter otherwise requires:

1. "Retail buyer" or "buyer" means a person who buys personal property from a retail seller and who executes a retail installment contract in connection therewith;
2. "Retail seller" or "seller" means a person who sells personal property to a retail buyer under or subject to a retail installment contract;
3. "Retail installment sale" or "sale" means a sale, other than for a commercial or business use or for the purpose of resale, of personal property by a retail seller to a retail buyer for a time sale price payable in two or more installments, payment of which is secured by a retail installment contract;
4. "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon personal property, which is the subject matter of a retail installment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of personal property by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the personal property upon full compliance with the terms of the contract;

5. "Cash sale price" means the cash sale price stated in a retail installment contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the personal property which is the subject matter of the contract if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes, registration, license and other fees and charges for accessories and their installation and for delivering, servicing or improving the personal property;
6. "Time sale price" means the sum of the cash sale price, the amount if any included for insurance and other benefits, official fees, and the credit service charge;
7. "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien retained or taken by a seller under the retail installment contract, and to file or record a release, satisfaction or discharge of the contract;
8. "Credit service charge" means that part of the time sale price by which it exceeds the aggregate of the cash sale price and the amount, if any included in a retail installment sale for insurance and other benefits and official fees;
9. "Financing agency" means a person engaged in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, building and loan association, credit union, industrial bank or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of holding retail installment contracts acquired from retail buyers. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon;
10. The "holder" of a retail installment contract means the seller of the personal property under or subject to the contract, or, if the contract is purchased by a financing agency or other assignee, the financing agency or other assignee;
11. "Person" means an individual, partnership, corporation, association or other group, however organized.

§ 2. Requirements As To Retail Installment Contracts.)

1. A retail installment contract shall be in writing, shall contain all the agreements of the parties and shall be signed by the buyer and the seller.

2. The printed portion of the contract shall be in at least eight-point type. The contract shall contain printed or written in a size equal to at least ten-point bold type:

- a. Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT";
- b. A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and
- c. 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 credit service charge; (b) To redeem the property if repossessed for a default; (c) To require, under certain conditions, a resale of the property if repossessed."

3. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the personal property shall have an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded-in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by subsection 2 (a) of this section.

4. The contract shall contain 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.

5. The contract shall contain the following items:
 1. The cash sale price of the personal property which is the subject matter of the retail installment sale;
 2. The amount of the buyer's down payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded-in;
 3. The difference between items 1 and 2;
 4. The amount, if any, included for insurance and other benefits, specifying the coverages and benefits;

5. The amount of official fees, as defined in section 1;
6. The principal balance, which is the sum of items 3, 4 and 5;
7. The amount of the credit service charge;
8. The time balance, which is the sum of items 6 and 7, payable in installments 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;
9. The time sale price.

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 stated time balance to be paid by the buyer.

6. The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the insurance commissioner for similar insurance. The seller or financing agency, if insurance on the personal property is included in a retail installment contract, 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, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of personal property under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller; provided, however that the inclusion of the insurance premium in the retail installment contract when the buyer selects the agent, broker or company, shall be optional with the seller and in such case the seller or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance. Nothing contained in this subsection however shall be deemed to modify, limit or in any way contravene the provisions of title 26, Insurance, in the Code.

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them.

7. The holder of a retail installment contract may, if the contract so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days in an amount not in excess of five percent of each installment or five dollars, whichever is less. In addition to such delinquency and collection charge, the retail installment contract may provide for the payment of attorneys' fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs.

8. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the personal property is not made at the time of the execution of the contract, the identifying numbers or marks of the property or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subsection 3 of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery and of compliance with this subsection in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

9. No retail installment contract shall require or entail the execution of any note or series of notes by the buyer, which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller. An agreement by the buyer in a retail installment contract not to assert against an assignee a claim or defense arising out of the sale shall be enforceable only by an assignee who acquires the contract in good faith and for value and who has no notice of the facts giving rise to the claim or defense within ten days after he mails to the buyer, at his address shown on the contract, notice of the assignment identifying the contract.

10. Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law: (a) A financing agency may purchase a retail installment contract from a seller on such terms and conditions and for such price as may be mutually agreed upon; and (b) no filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract or over the personal property if repossessed by the seller, shall be necessary to the validity of a written assignment of a retail installment contract as against

creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

11. Unless the buyer has notice of actual or intended assignment of a retail installment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees.

12. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

13. No provision in a retail installment contract by which, in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance shall be enforceable.

14. No provision in a retail installment contract for confession of judgment, power of attorney therefor, or wage assignment shall be enforceable in this state.

15. No provision in a retail installment contract which authorizes a seller or holder of the contract or other person acting on his behalf to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of personal property shall be enforceable.

16. No provision in a retail installment contract by which the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the personal property shall be enforceable.

17. No provision in a retail installment contract for the subsequent inclusion of title to or a lien upon any goods, other than the personal property which is the subject matter of the retail installment sale, or accessories therefor or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any thereof, as security for payment of the time sale price, shall be enforceable.

18. No provision in a retail installment contract by which the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of the personal property shall be enforceable.

19. No provision in a retail installment contract relieving the seller from liability for any legal remedies which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith, shall be enforceable.

§ 3. Credit Service Charge Limitation.)

1. A retail seller may contract for in a retail installment contract and charge, receive and collect the credit service charge, authorized by this Act at not exceeding the following rates:

Class 1. Any new property designated by the manufacturer by a year model not earlier than the year in which the sale is made, not more than seven dollars per one hundred dollars.

Class 2. Any new property not in Class 1 and any used property designated by the manufacturer by a year model of the same or two years prior to the year in which the sale is made, not more than ten dollars per one hundred dollars.

Class 3. Any used property not in Class 2, not more than thirteen dollars per one hundred dollars.

2. Such credit service charge shall be computed on the principal balance as determined under subsection 5 of section 2 on contracts payable in successive monthly installments substantially equal in amount extending for a period of one year. On contracts providing for installments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. When a retail installment contract provides for unequal or irregular installments, the credit service charge shall be at the effective rate provided in subsection 1, having due regard for the schedule of installments.

4. The credit service charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section and in subsection 7 of sections 2 and 6 and for those items expressly provided for in the retail installment contract as set forth in subsection 5 of section 2.

§ 4. Cancellation Of Contract.) After the payment of all sums for which the buyer is obligated under a retail installment contract, and upon written demand made by the buyer,

the holder of such contract shall mail to the buyer at his last known address, good and sufficient instruments to indicate payment in full and to release all security in the personal property.

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

§ 6. Refinancing Retail Installment Contracts.) The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date, or defer the scheduled payment of all or part of any installment or installments, or renew the balance of such contract. In any such case, the holder may restate the amount of the installments and the time schedule therefor, and collect as a refinance charge for such extension, deferment or renewal, a flat service fee not to exceed five dollars and a total additional charge not exceeding an amount equal to one percent per month simple interest on the respective descending balances computed from the date of such agreement of extension, deferment or renewal.

§ 7. Penalties.) Any person who shall willfully and intentionally violate any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars.

A willful violation of sections 2 or 3 of this Act by any person shall bar his recovery of any credit service charge, delinquency or collection charge or refinancing charge on the retail installment contract involved.

Notwithstanding the provisions of this section any failure to comply with any provisions of this Act may be corrected within ten days after the holder is notified thereof in writing by the buyer, and, if so corrected, neither the seller nor the holder shall be subject to any penalty.

§ 8. Waiver.) Any waiver of the provisions of this Act shall be unenforceable and void.

§ 9. **Exceptions.**) The provisions of section 6 and of subsection 10 of section 2 shall apply to an installment sale of personal property for any use or with a cash sale price exceeding three thousand dollars.

§ 10. **Short Title.**) This Act may be cited as the "Retail Installment Sales Act".

Approved March 18, 1957.

CHAPTER 323

S. B. No. 151
(Luick, Morgan and Miller)

AUCTIONEER LICENSE

AN ACT

To amend and reenact section 51-0513 of the North Dakota Revised Code of 1943, relating to auctioneer licenses.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 51-0513 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

51-0513. Fee For Licensing Of Auctioneers In The State Of North Dakota; Providing For Posting Of A Bond; Exceptions; Penalty.) Before any person, whether a resident or non-resident of the state of North Dakota, shall conduct any auction sale in this state as an auctioneer, he shall, at least ten days prior to the first auction sale which he is to conduct as such auctioneer any year, file with the public service commission of the state of North Dakota an application for an auctioneer's license; such application shall be in writing and duly verified by such person, showing the name, the residence and the postoffice address of the applicant. Such license shall be an annual license, and the applicant shall remit with such application the annual license fee of ten dollars.

At the time of filing of such application, and as a part thereof, the applicant shall file with the public service commission of the state of North Dakota a surety bond in the penal sum of one thousand dollars, running to the state of North Dakota for the use and benefit of any person who might be injured by said licensee's improper conduct of such auction sale.

Provided, however, that nothing in this Act shall require an executor or administrator of an estate, or any sheriff or other person selling property pursuant to execution or other court order, to be licensed in order to conduct such sale in connection with their official duty, nor shall the provisions of this Act apply to the selling at auction of purebred or registered livestock.

Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars. Each such sale held without the payment of a license fee as herein required shall constitute a separate offense.

Approved March 22, 1957.

CHAPTER 324

S. B. No. 83

(Olson, Klefstad, Wolf, Fraser, Thomas, Miller, Berube, Tuff, Roen,) (Larson, Longmire, Dolan, Hernet, Kiele, Dewing, Knudson, Luick,) (Foss, Nelson, Wadeson, Kusler, Morgan, Johnson, Kee, Trenbeath,) (Sayer, Vendsel, Erickson, Schrock, Yunker, Gilbertson, Wenstrom,) (Saumur, Leier, Krause, Fiedler, Wartner, George, Livingston,) (Torno, O'Brien, Holand, Garaas, Freed)

TRADING STAMPS

AN ACT

Relating to the face value and redemption of trading stamps and similar devices and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Cash Value Of Trading Stamps; Redemption.) All stamps, coupons, tickets, certificates, cards or similar devices, hereinafter called trading stamps, which are furnished to any person in the course of the sale of goods or merchandise which may entitle the person holding such trading stamps to receive or procure from any person goods or merchandise free of charge or for less than the retail market price thereof, the value of such trading stamps excluded, shall have the cash value of each trading stamp stated on the face thereof. All such trading stamps shall, at the option of the holder, be redeemable in cash at any office or agency of the trading stamp company redeeming the trading stamps in merchandise or at any business establishment furnishing such trading stamps with the sale of merchandise. Provided further, that the provisions of this Act shall not apply to any coupon, ticket,

certificate, card, or other similar device issued or distributed by a manufacturer or packer, which is redeemable for any goods, wares, or merchandise, either by the manufacturer or packer, or their agents, or an independent contractor acting for redemption.

§ 2. Retention Of Redemption Funds.) Any person, firm, corporation or association furnishing trading stamps to retailers and agreeing to redeem trading stamps as provided in this Act shall not discontinue the redemption of trading stamps without first notifying the secretary of state of such intention to discontinue redemption. Upon such notice, the secretary of state shall direct that all funds set aside by the person, firm, corporation or association for the redemption of trading stamps and such additional funds as in the judgment of the secretary of state may be necessary, be retained by such person, firm, corporation or association responsible for the redemption of trading stamps for a period of six months for the purpose of redeeming outstanding stamps in merchandise or reimbursing the holders thereof in cash. The secretary of state may in his discretion require the filing of an acceptable surety bond conditioned upon the redemption of outstanding trading stamps or the reimbursement of the holders thereof.

§ 3. Penalty.) Any person, firm, partnership, association or corporation issuing or furnishing trading stamps who shall violate any of the provisions of this Act shall be punished by a fine of not more than one hundred dollars or by imprisonment of not more than thirty days or by both such fine and imprisonment.

Approved March 23, 1957.

CHAPTER 325

S. B. No. 224

(Hernett, Meidinger, Roen and Schrock)

OPTICAL APPLIANCES

AN ACT

Prohibiting persons, firms, partnerships, companies or corporations from soliciting the sale of spectacles, eye glasses, lenses, frames, mountings, prisms or any other optical appliances or devices, eye examinations or visual services by means of advertisement or the use of any other method or means of baiting, persuading or enticing the public into buying the same and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Prohibiting Solicitation Of Sale Of Optical Appliances And Visual Services By Means Of Advertisement Or Otherwise.) It shall be unlawful for any person, firm, partnership, company or corporation to solicit the sale of eye glasses, spectacles, lenses, frames, mountings, prisms or any other optical appliances or devices, eye examinations or visual services, by newspaper, radio, window display, television, telephone directory display advertisement, or any other means of advertisement; or to use any other method or means of baiting, persuading, or enticing the public into buying eye glasses, spectacles, lenses, frames, mountings, prisms, or other optical appliances or devices for visual correction. Provided, however, that the provisions of this Act shall not render any advertising media liable for publishing any advertising furnished them by a vendor of said commodity or material; nor shall anything in this Act prevent ethical educational publicity or advertising by legally qualified health groups that does not violate presently existing laws of North Dakota, nor prevent the proper use of ethical professional notices. Nothing in this Act shall prohibit the sale of ready-to-wear glasses equipped with convex-spherical lenses, nor sunglasses equipped with plano lenses, nor industrial glasses or goggles with plano lenses used for industrial eye protection, when sold as merchandise at any established places of business and where the selection of the glasses is at the discretion of the purchaser. The penalties provided in section 43-1327 of the North Dakota Revised Code of 1943 and amendments thereof shall apply to any violation of this Act.

Approved March 12, 1957.