

SALES AND EXCHANGE

CHAPTER 350

H. B. No. 539

(Brown, Neukircher, Fitch)
(From LRC Study)

REVOLVING CHARGE ACCOUNTS

AN ACT

To provide for the regulation of revolving charge account agreements.

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 pursuant to a revolving charge agreement;
2. "Retail seller" or "seller" means a person who agrees to sell or sells goods or services pursuant to a revolving charge agreement;
3. "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, representing the total charges by the retail seller incident to investigating and making a retail installment sale under a revolving charge agreement and for extending to the retail buyer the privilege of paying in installments therefor;
4. "Revolving charge agreement" means a written instrument, defining the terms of retail installment sales made 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 is to be computed in relation to the buyer's unpaid balance from time to time.

§ 2. Contents of Revolving Charge Agreements; Requirements for Delivery of Monthly Statements.) Every revolving charge agreement shall be in writing and shall be signed by the retail buyer. A copy of any such agreement shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. All

agreements executed on or after the effective date of this Act shall state the amount and rate of the credit service charge to be charged and paid pursuant thereto. Such credit service charge shall be set forth in such revolving charge agreement in terms of a monthly percentage rate to be applied to the balance outstanding from time to time thereunder, as of the beginning or end of each billing period. The retail seller under a revolving charge agreement shall promptly supply the retail buyer under such agreement with a statement as of the end of each monthly period or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder. Such statement shall recite the following:

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

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer.

§ 3. Limitation of Credit Service Charge.) A seller may, in a revolving charge agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive and collect the service charge authorized by this section. The service charge shall not exceed one and one-half percent per month 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 payments shall first be applied to the credit service charge then due.

§ 4. Scope of Act; Effective Date.) The service charge allowed in section 3 of this Act shall be allowed to a seller or holder only:

- a. If the seller enters into an agreement subject to the provisions of this Act with any buyer on or after July 1, 1959; or

- b. In the case of any buyer who had entered into an agreement with a seller prior to July 1, 1959, if the seller or holder delivers or mails to the buyer a copy of a retail installment credit agreement in conformity with this Act duly executed on behalf of the seller and the seller or holder thereafter complies with all the other provisions of this Act.

Nothing in this section contained shall be construed to affect the validity or invalidity of any agreement or alleged agreement made prior to July 1, 1959.

§ 5. Penalty.) Any person who shall 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, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Any revolving charge account or any act in the making or collection of any revolving charge account which violates the provisions of this Act shall result in the forfeiture of all credit service charges that have been paid or that may become due or payable thereunder, and in the event that such violation is willful, the retail seller shall have no right to collect, receive, or retain any principal, credit service charge, interest, or other charge whatsoever.

Approved March 5, 1959.

CHAPTER 351

S. B. No. 85
(Longmire)

SALE OF CONTRACEPTIVES THROUGH VENDING MACHINES

AN ACT

To prohibit the sale of contraceptives through vending machines, and providing a penalty.

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

§ 1. Contraceptives; Sale Through Vending Machines Prohibited.) No person, firm or corporation shall purchase, rent or have in his or its possession or under his or its control, any vending machine, or other mechanism or means so designed and constructed as to contain and hold any contraceptive and to release the same upon the deposit therein of a coin or other thing of value. As used in this section the word "contraceptive"

means any article or device of any nature intended for or having special utility for preventing pregnancy or venereal disease.

§ 2. Penalty.) Any person violating the provisions of this statute shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than thirty days or by a fine of not more than one hundred dollars or by both such fine and imprisonment.

Approved March 4, 1959.

CHAPTER 352

H. B. No. 538
(Brown, Neukircher, Fitch)
(From LRC Study)

INSTALLMENT AND CONDITIONAL SALES CONTRACTS

AN ACT

To amend and reenact chapter 51-13 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to installment and conditional sales contracts.

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

§ 1. Amendment.) Chapter 51-13 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

51-1301. Definitions.) In this chapter, 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 the purpose of resale, of personal property by a retail seller to a retail buyer for a time sale price payable in one 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, finance company 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;
12. "Motor vehicle, new and used", as used in this Act, shall include automobiles, motor trucks, motorcycles, house trailers, trailer-coaches, cabin trailers, semi-trailers, trailers, road tractors, farm tractors, farm machinery mounted upon, drawn by, or attached to farm tractors, and all vehicles with any power, other than muscular power, except, however, any vehicles which run only on rails.

51-1302. Requirements as to Retail Installment Contracts.)

1. A retail installment contract shall be in writing, shall be dated, 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 within the time provided by law; (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, if any.
5. The contract shall contain the following items:
 - a. The cash sale price of the personal property which is the subject matter of the retail installment sale;
 - b. 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;
 - c. The difference between items a and b;
 - d. The amount, if any, included for insurance and other benefits, specifying the coverages and benefits and the cost of each type of coverage or benefit, except that motor vehicle material damage premiums need not be separately specified;
 - e. The amount of official fees, as defined in section 1;
 - f. The principal balance, which is the sum of items c, d, and e;
 - g. The amount of the credit service charge;
 - h. The time balance, which is the sum of items f and g, 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;
 - i. The time sale price;
 - j. If any installment substantially exceeds in amount any prior installment other than the down payment, 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."

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.

The amount of the credit service charge may be expressed as a simple interest charge not exceeding seven percent per

year computed on the principal balance unpaid from time to time; if so expressed, the time balance and the time sale price need not be set forth.

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 and sold by a licensed insurance agent, 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 anyway 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 holder of the contract or either of them.

7. A contract or obligation may provide for the payment by the buyer of a delinquency and collection charge on each installment in default when such default continues for a period of more than ten days in an amount not in excess of five percent of each installment or five dollars, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default.
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. 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.
10. 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.
11. 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.
12. 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.
13. No provision in a retail installment contract for confession of judgment, power of attorney therefor, or wage assignment shall be enforceable in this state.
14. 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.
15. 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.
 16. 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.
 17. 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.
 18. 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.

51-1303. 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 computed on the principal balance of the contract or obligation from the date thereof to and including the date when the final installment is payable, at not exceeding the following rates:
 - A. As to motor vehicles
 - Class 1. Any motor vehicle 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 motor vehicle not in Class 1 designated by the manufacturer by a year model of not more than four years prior to the year in which the sale is made, not more than ten dollars per one hundred dollars.
 - Class 3. Any motor vehicle not in Class 1 or 2, not more than thirteen dollars per one hundred dollars.

- B. As to goods other than motor vehicles, ten dollars per one hundred dollars per annum.
2. Such credit service charge shall be computed on the principal balance as determined under subsection 5 of section 51-1302 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 section 51-1302 and in section 51-1306 and for those items expressly provided for in the retail installment contract as set forth in subsection 5 of section 51-1302.

51-1304. 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.

51-1305. 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.

51-1306. 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. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract or obligation, subject to the provisions of subsection 6 of section 51-1302.

51-1307. Penalties.) Any person who shall willfully and intentionally violate any provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than one year or a fine not exceeding five hundred dollars, or by both such fine and imprisonment. A willful violation of sections 51-1302 or 51-1303 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.

51-1308. Waiver.) Any waiver of the provisions of this chapter shall be unenforceable and void.

51-1309. Short Title.) This chapter may be cited as the "Retail Installment Sales Act".

Approved March 16, 1959.