# Sixty-fourth Legislative Assembly of North Dakota
# In Regular Session Commencing Tuesday, January 6, 2015

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~~an 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~~an 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."

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2182.

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| Senate Vote: | Yeas 47 | Nays 0 | Absent 0 |
| House Vote: | Yeas 88 | Nays 3 | Absent 3 |

Secretary of the Senate

Received by the Governor at 4:40 P.M. on April 6, 2015.

Approved at 10:54 A.M. on April 8, 2015.

Governor

Filed in this office this 8th day of April, 2015,

at 3:30 o'clock P M.

Secretary of State