

## **CHAPTER 51-10 UNFAIR TRADE PRACTICES LAW**

### **51-10-01. Definitions.**

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

1. "Cost" means the actual invoice cost of the merchandise or the replacement cost of the merchandise, whichever is the lower, less all trade discounts, advertising allowances, including customary discounts for cash, to which must be added transportation, including cartage cost, not otherwise included in the invoice cost or the replacement cost of the merchandise. If a manufacturer publishes a list price, proof of such list price, less all discounts, is *prima facie* evidence of "cost".
2. "Replacement cost" means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time prior to the date of sale or the date upon which it is offered for sale by the seller.
3. "Retailers" means and includes every person, partnership, corporation, limited liability company, or association engaged in the business of making sales at retail within this state. In the case of a person, partnership, corporation, limited liability company, or association engaged in the business of making sales at retail and sales at wholesale, such term must be applied only to the retail portion of such business.
4. "Sell at retail", "sales at retail", and "retail sale" mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing, except that sales to contractors or subcontractors engaged in any type of building operation or the repair of buildings or other improvements upon real estate must be deemed sales for consumption and not for further processing or manufacturing. The terms include any transfer of such property when title is retained by the seller as security for the payment of the purchase price.
5. "Sell at wholesale", "sales at wholesale", and "wholesale sales" mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing, except that sales to contractors engaged in any type of building operation or the repair of buildings or other improvements upon real estate, regardless of further processing or manufacturing of the material sold, must be deemed retail sales and not wholesale sales. The terms include any transfer of such property when title is retained by the seller as security for the payment of the purchase price.
6. "Wholesaler" means and includes every person, partnership, corporation, limited liability company, or association engaged in the business of making sales at wholesale within this state. In the case of a person, partnership, corporation, limited liability company, or association engaged in the business of making both sales at wholesale and sales at retail, such terms must be applied only to the wholesale portion of such business.

### **51-10-02. Items advertised, offered for sale, or sold with other items at a combined price - Regulations governing.**

When one or more items are advertised, offered for sale, or sold with one or more other items at a combined price, or are advertised, offered as a gift, or given with the sale of one or more items, each and all of said items, for the purpose of this chapter, must be deemed to be advertised, offered for sale, or sold, and the price of each item named must be governed by the provisions of subsection 1 or 2 of section 51-10-01, respectively.

### **51-10-03. Unfair advertising, offer to sell, or sale.**

Any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this chapter, which has the intent or the effect of inducing the

purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impairs and prevents fair competition, injures public welfare, and is unfair competition and contrary to public policy and the policy of this chapter, if the result of such advertising, offer, or sale is to tend to deceive any purchaser or prospective purchaser, or substantially to lessen competition, or unreasonably to restrain trade, or to tend to create a monopoly in any line of commerce.

**51-10-04. Schemes or devices included within sales below cost.**

The inhibition against sales below cost, as defined in this chapter, shall embrace any scheme of special rebate, collateral contract, or any device of any nature by which such result is, in substance or in fact, effected in violation of the spirit and intent of this chapter.

**51-10-05. Advertising, offering, or selling article at less than cost - Penalty.**

Any retailer or wholesaler who shall advertise, offer to sell, or sell any article of merchandise at less than cost to such retailer or wholesaler as defined in this chapter, or who gives, offers to give, or advertises the intent to give away any article of merchandise, with the intent, or with the effect of injuring competitors and destroying competition, is guilty of a class A misdemeanor.

**51-10-05.1. Powers of attorney general.**

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice the attorney general may:

1. Require that person to file on forms prescribed by the attorney general, a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise at less than cost as defined in this chapter and any other data and information the attorney general may deem necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise at less than cost as defined in this chapter.
3. Examine any merchandise or sample of merchandise, record, book, document, account, or paper as the attorney general may deem necessary.
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to such practice and retain it until completion of all relevant proceedings under this chapter.

**51-10-05.2. Subpoena - Hearing - Rules.**

The attorney general may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in the aid of any investigation of inquiry, prescribe forms, and adopt necessary rules.

**51-10-05.3. Failure to display information or obey subpoena.**

If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may file in the district court a petition for an order directing the person to file the required statement or report or to obey the subpoena. The order may be granted by the district court after notice and hearing.

**51-10-06. Injunctive relief may be had in addition to other penalties - Duty to commence actions.**

In addition to the penalties provided in this chapter, the courts of this state are invested with the jurisdiction to prevent and restrain violations of this chapter by injunctive proceedings. The attorney general and the several state's attorneys shall institute suits in behalf of this state, to prevent and restrain violations of the provisions of this chapter. Any person damaged, or who is threatened with loss or injury, by reason of a violation of the provisions of this chapter, is entitled

to sue for and have injunctive relief in the district court against any damage or threatened loss or injury by reason of a violation hereof.

**51-10-07. Application of provisions of chapter.**

The provisions of this chapter do not apply to sales at retail or sales at wholesale, where:

1. Merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such.
2. Perishable merchandise must be sold promptly in order to forestall loss.
3. Merchandise is imperfect or damaged, or is being discontinued and is advertised, marked, and sold as such.
4. Merchandise is sold upon the final liquidation of any business.
5. Merchandise is sold for charitable purposes or to relief agencies.
6. Merchandise is sold on contract to departments of the government or government institutions.
7. The price of merchandise is made in good faith to meet legal competition.
8. Merchandise is sold by any officer acting under the order or direction of any court.

Any retailer or wholesaler claiming the benefits of any of the exemptions provided for in this section shall have the burden of proof of facts entitling such retailer or wholesaler to any of the benefits of said exemptions.

**51-10-08. No immunity from self-incrimination.**

No person subpoenaed or ordered may be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in any civil action or proceeding instituted or brought, pursuant to the provisions of this chapter, upon the ground that the testimony or evidence required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture. No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which that person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section do not exempt any person from prosecution or punishment for perjury.

**51-10-09. Proof of intent - Cost surveys.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-10. Procedure for establishing cost survey - Hearing - Notice.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-11. Hearings and investigations - Contempts.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-12. North Dakota trade commission.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-13. Appointment and term of members.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-14. Retailer's license - Penalty.**

Repealed by S.L. 1991, ch. 525, § 4.

**51-10-15. Disbursement of funds.**

Repealed by S.L. 1991, ch. 525, § 4.