



2021 South Dakota Legislature

Senate Bill 183

Introduced by: **Senator Schoenbeck**

1 **An Act to declare certain contract provisions regarding abortion as deceptive acts**
 2 **or practices.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That § 37-24-6 be AMENDED.

5 **37-24-6. Deceptive act or practice--Violation as misdemeanor or felony.**

6 It is a deceptive act or practice for any person to:

- 7 (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense,
 8 false promises, or misrepresentation or to conceal, suppress, or omit any material
 9 fact in connection with the sale or advertisement of any merchandise, regardless of
 10 whether any person has in fact been misled, deceived, or damaged thereby;
- 11 (2) Advertise price reductions without satisfying one of the following:
- 12 (a) Including in the advertisement the specific basis for the claim of a price
 13 reduction; or
- 14 (b) Offering the merchandise for sale at the higher price from which the reduction
 15 is taken for at least seven consecutive business days during the sixty-day
 16 period prior to the advertisement.

17 Any person advertising consumer property or services in this state, which
 18 advertisements contain representations or statements as to any type of
 19 savings claim, including reduced price claims and price comparison value
 20 claims, shall maintain reasonable records for a period of two years from the
 21 date of sale and advertisement, which records shall disclose the factual basis
 22 for such representations or statements and from which the validity of any
 23 such claim be established. However, these reasonable record provisions do
 24 not apply to the sale of any merchandise that is of a class of merchandise
 25 that is routinely advertised on at least a weekly basis in newspapers,

- 1 shopping tabloids, or similar publications and that has a sales price before
2 price reduction that is less than fifteen dollars per item;
- 3 (3) Represent a sale of merchandise at reduced rates due to the cessation of business
4 operations and after the date of the first advertisement remain in business under
5 the same, or substantially the same, ownership or trade name, or continue to offer
6 for sale the same type of merchandise at the same location for more than one
7 hundred twenty days;
- 8 (4) Give or offer a rebate, discount, or anything of value to a person as an inducement
9 for selling consumer property or services in consideration of giving the names of
10 prospective purchasers or otherwise aiding in making a sale to another person, if
11 the earning of the rebate, discount, or other thing of value is contingent upon the
12 occurrence of an event subsequent to the time the person agrees to the sale;
- 13 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
14 a participant pays a valuable consideration for the chance to receive compensation
15 primarily for introducing one or more additional persons into participation in the
16 planner's scheme or for the chance to receive compensation when the person
17 introduced by the participant introduces a new participant;
- 18 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any
19 bill or invoice for unordered property or unordered service provided;
- 20 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
21 accommodation which is not in fact available to the public under the terms
22 advertised. It is not a violation of this subdivision to establish contract rates which
23 are different than public rates;
- 24 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging
25 accommodation which is different than the rate, price, or fee charged on the first
26 night of the guest's stay unless, at the initial registration of the guest, a written
27 notification of each price, rate, or fee to be charged during the guest's reserved
28 continuous stay is delivered to the guest and an acknowledgment of receipt of the
29 notice is signed by the guest and kept by the innkeeper for the same period of time
30 as is required by § 34-18-21;
- 31 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written
32 confirmation of the date and rates of reservations made for any accommodation at
33 a hotel, motel, campsite, or other lodging accommodation when a written request
34 for confirmation is received from the future guest;

- 1 (10) Require money in advance of arrival or a handling fee in the event of cancellation
2 of any hotel, motel, campsite, or other lodging accommodation unless the innkeeper
3 has a written policy or a separate contract with the guest stating so that is mailed
4 or delivered by electronic means to the guest at or near the making of the
5 reservation;
- 6 (11) Knowingly advertise or cause to be listed through the internet or in a telephone
7 directory a business address that misrepresents where the business is actually
8 located or that falsely states that the business is located in the same area covered
9 by the telephone directory. This subdivision does not apply to a telephone service
10 provider, an internet service provider, or a publisher or distributor of a telephone
11 directory, unless the conduct proscribed in this subdivision is on behalf of the
12 provider, publisher, or distributor;
- 13 (12) Sell, market, promote, advertise, or otherwise distribute any card or other
14 purchasing mechanism or device that is not insurance that purports to offer
15 discounts or access to discounts from pharmacies for prescription drug purchases
16 if:
- 17 (a) The card or other purchasing mechanism or device does not expressly state
18 in bold and prominent type, prevalently placed, that discounts are not
19 insurance;
- 20 (b) The discounts are not specifically authorized by a separate contract with each
21 pharmacy listed in conjunction with the card or other purchasing mechanism
22 or device; or
- 23 (c) The discount or access to discounts offered, or the range of discounts or
24 access to the range of discounts, is misleading, deceptive, or fraudulent,
25 regardless of the literal wording.

26 The provisions of this subdivision do not apply to a customer discount or membership
27 card issued by a store or buying club for use in that store or buying club, or a patient
28 access program voluntarily sponsored by a pharmaceutical manufacturer, or a
29 consortium of pharmaceutical manufacturers, that provide free or discounted
30 prescription drug products directly to low income or uninsured individuals either
31 through a discount card or direct shipment;

- 32 (13) Send or cause to be sent an unsolicited commercial electronic mail message that
33 does not include in the subject line of such message "ADV:" as the first four
34 characters. If the message contains information that consists of explicit sexual
35 material that may only be viewed, purchased, rented, leased, or held in possession

1 by an individual eighteen years of age and older, the subject line of each message
 2 shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial
 3 electronic mail message does not include a message sent to a person with whom
 4 the initiator has an existing personal or business relationship or a message sent at
 5 the request or express consent of the recipient;

6 (14) Violate the provisions of § 22-25-52;

7 (15) Knowingly fail to disclose the amount of any mandatory fee when reservations are
 8 made by a future guest at a hotel, motel, campsite, or other lodging
 9 accommodations. A mandatory fee under this subdivision includes any resort fee or
 10 parking fee charged by the lodging accommodations whether or not the guest
 11 utilizes the amenities or the parking facility for which the fee is assessed; ~~or~~

12 (16) Cause misleading information to be transmitted to users of caller identification
 13 technologies or otherwise block or misrepresent the origin of a telephone
 14 solicitation. No provider of telephone caller identification services,
 15 telecommunications, broadband, or voice over internet protocol service may be held
 16 liable for violations of this subdivision committed by other individuals or entities. It
 17 is not a violation of this subdivision:

18 (a) For a telephone solicitor to utilize the name and number of the entity the
 19 solicitation is being made on behalf of rather than the name and number of
 20 the telephone solicitor;

21 (b) If an authorized activity of a law enforcement agency; or

22 (c) If a court order specifically authorizes the use of caller identification
 23 manipulation; or

24 (17) Include a provision in a contract that, under any circumstances, requires a woman
 25 to have an abortion, or is intended to compel a woman to have an abortion.

26 Each act in violation of this section under one thousand dollars is a Class 1
 27 misdemeanor. Each act in violation of this statute over one thousand dollars but under
 28 one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over
 29 one hundred thousand dollars is a Class 5 felony.

30 **Section 2.** That a NEW SECTION be added:

31 **53-9-13. Coerce or compel an abortion--Contract void.**

32 Other than a contract for an abortion, a contract is void and unenforceable if it, or
 33 any agreement associated with the contract, includes a provision which in any way:

- 1 (1) Coerces, compels, or attempts to compel a pregnant woman to undergo an
2 abortion;
- 3 (2) Results in a breach of any term of the contract if a pregnant woman's refuses to
4 undergo an abortion; or
- 5 (3) Results in the pregnant woman assuming any cost, obligation, or responsibility for
6 refusing to undergo an abortion.