



2023 South Dakota Legislature

Senate Bill 49

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 **An Act to prohibit the improper storage and disposal of records containing personal**
 2 **or protected information and provide a penalty therefor.**

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

4 **Section 1. That chapter 22-40 be amended with a NEW SECTION:**

5 A person, business, or governmental agency that uses records containing personal
 6 information or protected information, as defined in § 22-40-19, shall take all reasonable
 7 steps to:

8 (1) Secure and protect against unauthorized access to or use of the records until the
 9 entity is no longer required to retain the records; and

10 (2) Destroy or arrange for the destruction of the records the entity is no longer required
 11 to retain by burning, pulverizing, crosscut shredding, erasing, or otherwise
 12 modifying the information contained in the records to make the information
 13 unreadable or indecipherable by any means.

14 If a person, business, or governmental agency has engaged a third party business
 15 for the record destruction, the person, business, or governmental agency is not liable for
 16 the disposal of the records after the person, business, or governmental agency has
 17 relinquished control of the records to the third party for destruction.

18 If a person, business, or governmental agency comes into possession of records
 19 containing personal information or protected information, the entity is immune from civil
 20 liability unless the entity fails to dispose of the records as required by this section.
 21 Following the discovery of records disposed of in a manner contrary to this section, the
 22 discoverer shall give notification to the Office of the Attorney General within ten business
 23 days if the records contain personal information or protected information for two hundred
 24 fifty individuals or more.

25 A violation of this section is a deceptive act or practice as provided in § 37-24-6.

26 In addition to any remedy provided in chapter 37-24, the attorney general may bring an

1 action on behalf of the state to recover a civil penalty of not more than ten thousand
2 dollars per day per violation. The attorney general may recover attorney's fees and any
3 costs associated with any action brought under this section.

4 **Section 2. That § 37-24-6 be AMENDED:**

5 **37-24-6.** It is a deceptive act or practice for any person to:

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

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

- 27 (3) Represent a sale of merchandise at reduced rates due to the cessation of business
28 operations and after the date of the first advertisement remain in business under
29 the same, or substantially the same, ownership or trade name, or continue to offer
30 for sale the same type of merchandise at the same location for more than one
31 hundred twenty days;
- 32 (4) Give or offer a rebate, discount, or anything of value to a person as an inducement
33 for selling consumer property or services in consideration of giving the names of
34 prospective purchasers or otherwise aiding in making a sale to another person, if

- 1 the earning of the rebate, discount, or other thing of value is contingent upon the
2 occurrence of an event subsequent to the time the person agrees to the sale;
- 3 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
4 a participant pays a valuable consideration for the chance to receive compensation
5 primarily for introducing one or more additional persons into participation in the
6 planner's scheme or for the chance to receive compensation when the person
7 introduced by the participant introduces a new participant;
- 8 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed
9 any bill or invoice for unordered property or unordered service provided;
- 10 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
11 accommodation which is not in fact available to the public under the terms
12 advertised. It is not a violation of this subdivision to establish contract rates which
13 are different than public rates;
- 14 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging
15 accommodation which is different than the rate, price, or fee charged on the first
16 night of the guest's stay unless, at the initial registration of the guest, a written
17 notification of each price, rate, or fee to be charged during the guest's reserved
18 continuous stay is delivered to the guest and an acknowledgment of receipt of the
19 notice is signed by the guest and kept by the innkeeper for the same period of time
20 as is required by § 34-18-21;
- 21 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written
22 confirmation of the date and rates of reservations made for any accommodation at
23 a hotel, motel, campsite, or other lodging accommodation when a written request
24 for confirmation is received from the future guest;
- 25 (10) Require money in advance of arrival or a handling fee in the event of cancellation
26 of any hotel, motel, campsite, or other lodging accommodation unless the
27 innkeeper has a written policy or a separate contract with the guest stating so that
28 is mailed or delivered by electronic means to the guest at or near the making of
29 the reservation;
- 30 (11) Knowingly advertise or cause to be listed through the internet or in a telephone
31 directory a business address that misrepresents where the business is actually
32 located or that falsely states that the business is located in the same area covered
33 by the telephone directory. This subdivision does not apply to a telephone service
34 provider, an internet service provider, or a publisher or distributor of a telephone

1 directory, unless the conduct proscribed in this subdivision is on behalf of the
2 provider, publisher, or distributor;

3 (12) Sell, market, promote, advertise, or otherwise distribute any card or other
4 purchasing mechanism or device that is not insurance that purports to offer
5 discounts or access to discounts from pharmacies for prescription drug purchases
6 if:

7 (a) The card or other purchasing mechanism or device does not expressly state
8 in bold and prominent type, prevalently placed, that discounts are not
9 insurance;

10 (b) The discounts are not specifically authorized by a separate contract with
11 each pharmacy listed in conjunction with the card or other purchasing
12 mechanism or device; or

13 (c) The discount or access to discounts offered, or the range of discounts or
14 access to the range of discounts, is misleading, deceptive, or fraudulent,
15 regardless of the literal wording.

16 The provisions of this subdivision do not apply to a customer discount or
17 membership card issued by a store or buying club for use in that store or
18 buying club, or a patient access program voluntarily sponsored by a
19 pharmaceutical manufacturer, or a consortium of pharmaceutical
20 manufacturers, that provide free or discounted prescription drug products
21 directly to low income or uninsured individuals either through a discount
22 card or direct shipment;

23 (13) Send or cause to be sent an unsolicited commercial electronic mail message that
24 does not include in the subject line of such message "ADV:" as the first four
25 characters. If the message contains information that consists of explicit sexual
26 material that may only be viewed, purchased, rented, leased, or held in possession
27 by an individual eighteen years of age and older, the subject line of each message
28 shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial
29 electronic mail message does not include a message sent to a person with whom
30 the initiator has an existing personal or business relationship or a message sent at
31 the request or express consent of the recipient;

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

33 (15) Knowingly fail to disclose the amount of any mandatory fee when reservations are
34 made by a future guest at a hotel, motel, campsite, or other lodging
35 accommodations. A mandatory fee under this subdivision includes any resort fee

1 or parking fee charged by the lodging accommodations whether or not the guest
2 utilizes the amenities or the parking facility for which the fee is assessed; or

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

9 (a) For a telephone solicitor to utilize the name and number of the entity the
10 solicitation is being made on behalf of rather than the name and number of
11 the telephone solicitor;

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

13 (c) If a court order specifically authorizes the use of caller identification
14 manipulation;~~or~~ or

15 (17) Violate the provisions of section 1 of this Act.

16 Each act in violation of this section under one thousand dollars is a Class 1
17 misdemeanor. Each act in violation of this statute over one thousand dollars but under
18 one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over
19 one hundred thousand dollars is a Class 5 felony.