

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

400W0287

HOUSE JUDICIARY ENGROSSED NO. **SB 18** - 01/30/2015

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

1 FOR AN ACT ENTITLED, An Act to establish certain administrative provisions regarding
2 charitable raffles, lotteries, and bingo and to make violations of these provisions subject to
3 the Deceptive Trade Practice and Consumer Protection Act.

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

5 Section 1. That chapter 22-25 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 No lottery may continue for longer than eighteen months after the date on which the first
8 ticket is sold. If an organization determines that a drawing cannot be held within eighteen
9 months, the organization shall within thirty days notify all purchasers that the lottery cannot be
10 completed or prize awarded, and that each purchaser is entitled to a full refund of the ticket price
11 upon the submission of a request for refund. If a purchaser fails to contact the organization and
12 request a refund within one hundred eighty days after the notice was given, the organization
13 shall remit the unclaimed refund amount to the Office of State Treasurer as unclaimed property
14 pursuant to chapter 43-41B.



1 A violation of the provisions of this section constitutes a deceptive act or practice pursuant
2 to the provisions of § 37-24-6.

3 Section 2. That § 37-24-6 be amended to read as follows:

4 37-24-6. It is a deceptive act or practice for any person to:

5 (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense,
6 false promises, or misrepresentation or to conceal, suppress, or omit any material fact
7 in connection with the sale or advertisement of any merchandise, regardless of
8 whether any person has in fact been misled, deceived, or damaged thereby;

9 (2) Advertise price reductions without satisfying one of the following:

10 (a) Including in the advertisement the specific basis for the claim of a price
11 reduction; or

12 (b) Offering the merchandise for sale at the higher price from which the reduction
13 is taken for at least seven consecutive business days during the sixty-day
14 period prior to the advertisement.

15 Any person advertising consumer property or services in this state, which
16 advertisements contain representations or statements as to any type of savings claim,
17 including reduced price claims and price comparison value claims, shall maintain
18 reasonable records for a period of two years from the date of sale and advertisement,
19 which records shall disclose the factual basis for such representations or statements
20 and from which the validity of any such claim be established. However, these
21 reasonable record provisions do not apply to the sale of any merchandise ~~which:~~

22 ~~—————(a) Is that is of a class of merchandise that is routinely advertised on at least a~~
23 ~~weekly basis in newspapers, shopping tabloids, or similar publications; and~~

24 ~~—————(b) Has that has a sales price before price reduction that is less than fifteen dollars~~

- 1 per item;
- 2 (3) Represent a sale of merchandise at reduced rates due to the cessation of business
3 operations and after the date of the first advertisement remain in business under the
4 same, or substantially the same, ownership or trade name, or continue to offer for sale
5 the same type of merchandise at the same location for more than one hundred twenty
6 days;
- 7 (4) Give or offer a rebate, discount, or anything of value to ~~an individual~~ a person as an
8 inducement for selling consumer property or services in consideration of giving the
9 names of prospective purchasers or otherwise aiding in making a sale to another
10 person, if the earning of the rebate, discount, or other thing of value is contingent
11 upon the occurrence of an event subsequent to the time the ~~individual~~ person agrees
12 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

1 accommodation which is different than the rate, price, or fee charged on the first
2 night of the guest's stay unless, at the initial registration of the guest, a written
3 notification of each price, rate, or fee to be charged during the guest's reserved
4 continuous stay is delivered to the guest and an acknowledgment of receipt of the
5 notice is signed by the guest and kept by the innkeeper for the same period of time
6 as is required by § 34-18-21;

7 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written
8 confirmation of the date and rates of reservations made for any accommodation at a
9 hotel, motel, campsite, or other lodging accommodation when a written request for
10 confirmation is received from the future guest;

11 (10) Require money in advance of arrival or a handling fee in the event of cancellation of
12 any hotel, motel, campsite, or other lodging accommodation unless the innkeeper has
13 a written policy or a separate contract with the guest stating so that is mailed or
14 delivered by electronic means to the guest at or near the making of the reservation;

15 (11) Knowingly advertise or cause to be listed through the internet or in a telephone
16 directory a business address that misrepresents where the business is actually located
17 or that falsely states that the business is located in the same area covered by the
18 telephone directory. This subdivision does not apply to a telephone service provider,
19 an internet service provider, or a publisher or distributor of a telephone directory,
20 unless the conduct proscribed in this subdivision is on behalf of the provider,
21 publisher, or distributor;

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

- 1 (a) The card or other purchasing mechanism or device does not expressly state in
- 2 bold and prominent type, prevalently placed, that discounts are not insurance;
- 3 (b) The discounts are not specifically authorized by a separate contract with each
- 4 pharmacy listed in conjunction with the card or other purchasing mechanism
- 5 or device; or
- 6 (c) The discount or access to discounts offered, or the range of discounts or access
- 7 to the range of discounts, is misleading, deceptive, or fraudulent, regardless
- 8 of the literal wording.

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

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

24 (14) Violate the provisions of section 1 of this Act.

- 1 Each act in violation of this section under one thousand dollars is a Class 1 misdemeanor.
- 2 Each act in violation of this statute over one thousand dollars but under one hundred thousand
- 3 dollars is a Class 6 felony. Each act in violation of this section over one hundred thousand
- 4 dollars is a Class 5 felony.