

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

400P0309

HOUSE BILL NO. 1066

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding deceptive trade
2 practices.

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

4 Section 1. That § 37-24-6 be amended to read as follows:

5 37-24-6. ~~It~~ For purposes of any civil remedy available to the attorney general pursuant to this
6 chapter, it is a deceptive act or practice for any person to:

7 (1) Knowingly ~~and intentionally~~ act, use, or employ any deceptive or unfair act or
8 practice, fraud, false pretense, false promises, or misrepresentation or to conceal,
9 suppress, or omit any material fact in connection with the sale or advertisement of
10 any merchandise, regardless of whether any person has in fact been mislead,
11 deceived, or damaged thereby. Such a deceptive or unfair act or practice violates this
12 section whether it occurs before, during, or after a transaction or advertisement. The
13 term, unfair practice, means an act or practice which causes substantial, unavoidable
14 injury to consumers that is not outweighed by any consumer or competitive benefits
15 which the practice produces;



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

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

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

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

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

(b) Has a sales price before price reduction that is less than ~~fifteen~~ one hundred dollars per item;

(3) Represent a sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first advertisement remain in business under the same, or substantially the same, ownership or trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days;

(4) Give or offer a rebate, discount, or anything of value to ~~an individual~~ any person as an inducement for selling consumer property or services in consideration of the

1 person giving the names of prospective purchasers or otherwise aiding in making a
2 sale to another person, if the earning of the rebate, discount, or other thing of value
3 is contingent upon the occurrence of an event subsequent to the time the ~~individual~~
4 person agrees to the sale;

5 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
6 a participant pays a valuable consideration for the chance to receive compensation
7 primarily for introducing one or more additional persons into participation in the
8 planner's scheme or for the chance to receive compensation when the person
9 introduced by the participant introduces a new participant;

10 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any
11 unordered consumer property or service, or any bill or invoice for unordered
12 consumer property or service provided;

13 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
14 accommodation which is not in fact available to the public under the terms
15 advertised. It is not a violation of this subdivision to establish contract rates which
16 are different than public rates;

17 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging
18 accommodation which is different than the rate, price, or fee charged on the first
19 night of the guest's stay unless, at the initial registration of the guest, a written
20 notification of each price, rate, or fee to be charged during the guest's reserved
21 continuous stay is delivered to the guest and an acknowledgment of receipt of the
22 notice is signed by the guest and kept by the innkeeper for the same period of time
23 as is required by § 34-18-21;

24 (9) Knowingly and intentionally fail to mail to a future guest a written confirmation of

1 the date and rates of reservations made for any accommodation at a hotel, motel,
2 campsite, or other lodging accommodation when a written request for confirmation
3 is received from the future guest;

4 (10) Refuse to return or reverse the charge for a deposit upon any hotel, motel, campsite,
5 or other lodging accommodation which is canceled by the guest more than thirty days
6 before the date of the reservation. The innkeeper may establish a policy requiring a
7 longer time for notice of cancellation or a handling fee in the event of cancellation,
8 which may not exceed twenty-five dollars, if the policy is in writing and is delivered
9 or mailed to the guest at or near the making of the reservation;

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

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

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

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

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

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

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

~~Each~~ In addition to any civil remedy available to the attorney general pursuant to this chapter, each intentional act in violation of this section is a Class 2 misdemeanor. Any subsequent conviction of an intentional act in violation of this ~~statute~~ section, which occurs within two years is a Class 1 misdemeanor. Any subsequent conviction of an intentional act in violation of this ~~statute~~ section, which occurs within two years of a conviction of a Class 1 misdemeanor pursuant to this ~~statute~~ section, is a Class 6 felony.

1 Section 2. That § 37-24-31 be amended to read as follows:

2 37-24-31. Any person who claims to have been adversely affected by any intentional act or
3 a practice declared to be unlawful by § 37-24-6 ~~shall be permitted to~~ may bring a civil action
4 for the recovery of actual damages suffered as a result of ~~such~~ the intentional act or practice.

5 Section 3. That § 37-24-8 be amended to read as follows:

6 37-24-8. For the purposes only of actions brought by the attorney general under § 37-24-23
7 or by state's attorneys under § 37-24-24, the engaging in an act or practice declared to be
8 unlawful by § 37-24-6 shall be prima facie evidence that the act or practice was engaged in
9 knowingly ~~and intentionally~~. This section ~~shall~~ does not apply with respect to relief sought
10 under § 37-24-29, to private actions brought under § 37-24-31, and to the imposition of civil
11 penalties pursuant to §§ 37-24-26 and 37-24-27.