

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

553Z0691

## SENATE BILL NO. 153

Introduced by: Senator Novstrup and Representatives Wiese and Peterson (Sue)

1 FOR AN ACT ENTITLED, An Act to require disclosure of certain fees being imposed by  
2 overnight lodging accommodations.

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

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

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 fact  
8 in connection with the sale or advertisement of any merchandise, regardless of  
9 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 reduction  
14 is taken for at least seven consecutive business days during the sixty-day  
15 period prior to the advertisement.



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

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

16 (4) Give or offer a rebate, discount, or anything of value to a person as an inducement  
17 for selling consumer property or services in consideration of giving the names of  
18 prospective purchasers or otherwise aiding in making a sale to another person, if the  
19 earning of the rebate, discount, or other thing of value is contingent upon the  
20 occurrence of an event subsequent to the time the person agrees to the sale;

21 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby  
22 a participant pays a valuable consideration for the chance to receive compensation  
23 primarily for introducing one or more additional persons into participation in the  
24 planner's scheme or for the chance to receive compensation when the person

- 1 introduced by the participant introduces a new participant;
- 2 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any  
3 bill or invoice for unordered property or unordered service provided;
- 4 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging  
5 accommodation which is not in fact available to the public under the terms  
6 advertised. It is not a violation of this subdivision to establish contract rates which  
7 are different than public rates;
- 8 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging  
9 accommodation which is different than the rate, price, or fee charged on the first  
10 night of the guest's stay unless, at the initial registration of the guest, a written  
11 notification of each price, rate, or fee to be charged during the guest's reserved  
12 continuous stay is delivered to the guest and an acknowledgment of receipt of the  
13 notice is signed by the guest and kept by the innkeeper for the same period of time  
14 as is required by § 34-18-21;
- 15 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written  
16 confirmation of the date and rates of reservations made for any accommodation at a  
17 hotel, motel, campsite, or other lodging accommodation when a written request for  
18 confirmation is received from the future guest;
- 19 (10) Require money in advance of arrival or a handling fee in the event of cancellation of  
20 any hotel, motel, campsite, or other lodging accommodation unless the innkeeper has  
21 a written policy or a separate contract with the guest stating so that is mailed or  
22 delivered by electronic means to the guest at or near the making of the reservation;
- 23 (11) Knowingly advertise or cause to be listed through the internet or in a telephone  
24 directory a business address that misrepresents where the business is actually located

1 or that falsely states that the business is located in the same area covered by the  
2 telephone directory. This subdivision does not apply to a telephone service provider,  
3 an internet service provider, or a publisher or distributor of a telephone directory,  
4 unless the conduct proscribed in this subdivision is on behalf of the provider,  
5 publisher, or distributor;

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

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

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

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

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

23 (13) Send or cause to be sent an unsolicited commercial electronic mail message that does  
24 not include in the subject line of such message "ADV:" as the first four characters.

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

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

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

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