



2020 South Dakota Legislature

House Bill 1131

Introduced by: **Representative** Diedrich

1 **An Act to prohibit the use of misleading identification for telephonic**
 2 **communications.**

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

4 **Section 1.** That § 37-30A-1 be AMENDED:

5 **37-30A-1. Definitions.**

6 Terms used in this chapter mean:

- 7 (1) "Consumer," an actual or prospective purchaser, lessee, or recipient of consumer
 8 goods or services bought primarily for use for personal, family, or household
 9 purposes;
- 10 (2) "Consumer goods or services," any tangible personal property or services, including
 11 merchandise as defined by subdivision 37-24-1(7), normally used for personal,
 12 family, or household purposes, and not for resale or for use or consumption in a
 13 trade or business;
- 14 (3) "Consumer telephone call," a call made by a telephone solicitor or telemarketer for
 15 the purpose of soliciting a sale of any consumer goods or services to the person
 16 called, or for the purpose of soliciting an extension of credit for consumer goods or
 17 services to the person called, or for the purpose of obtaining information that may
 18 be used for the direct solicitation of a sale of consumer goods or services to the
 19 person called or an extension of credit for such purposes;
- 20 (4) "Telemarketer," any person or organization who individually or through
 21 salespersons, initiates the sale, lease, or rental of consumer goods or services, or
 22 offers gifts or prizes with the intent to sell, lease, or rent consumer goods or services
 23 by text, telephonic means, or by postcard or other written notice sent through the
 24 mail in which the goods and services and all the material terms of the transaction,
 25 including price and any fees or handling, shipping, or delivery charges, are not fully
 26 described and which request that the consumer contact the seller to initiate the

- 1 transaction. This term does not include any not-for-profit or charitable organization
 2 exempt from federal income taxation pursuant to section 501(c)(3) of the Internal
 3 Revenue Code of 1986 as of January 1, 1997;
- 4 (5) "Unsolicited consumer telephone ~~call~~ communication," a consumer telephone call or
 5 text other than a ~~call~~ communication made:
- 6 (a) In response to an express request of the person called or texted;
- 7 (b) Primarily in connection with an existing debt or contract, payment or
 8 performance of which has not been completed at the time of such ~~call~~
 9 communication;
- 10 (c) To any person with whom the telemarketer has an existing business
 11 relationship;
- 12 (d) By a newspaper publisher or such publisher's agent or employee in
 13 connection with such publisher's business; or
- 14 (e) To any person for the purpose of establishing a date and time for an
 15 appointment with a person licensed under Title 58 which will take place at a
 16 mutually agreeable physical location.

17 **Section 2.** That § 37-30A-2 be AMENDED:

18 **37-30A-2. Required Disclosures.**

19 Any telemarketer who makes an unsolicited consumer telephone ~~call~~
 20 communication to a residential telephone number shall:

- 21 (1) On caller identification technologies, use and display the telemarketer's authentic
 22 name or entity and telephone number;
- 23 (2) Immediately identify themselves with their true name, the true name of the
 24 telemarketer by whom they are employed, and the true name and address of the
 25 business on whose behalf the person is soliciting and the purpose of the ~~call~~
 26 communication;
- 27 ~~(2)~~(3) Within thirty seconds after beginning the conversation, inquire whether the person
 28 being solicited is interested in listening to a sales presentation and immediately
 29 discontinue the solicitation if the person being solicited gives a negative response;
 30 and
- 31 ~~(3)~~(4) Immediately hang up the telephone at any time during the solicitation that the
 32 consumer expresses a disinterest in the good or service offered.

33 **Section 3.** That § 37-30A-3 be AMENDED:

1 **37-30A-3. Unreasonable Telemarketer Practices.**

2 A telemarketer may not:

- 3 (1) Engage in unfair or deceptive telephone solicitation;
- 4 (2) Place unsolicited consumer telephone ~~calls~~ communications to any residence which
- 5 will be received before 9 a.m. or after 9 p.m. at the consumer's local time or place
- 6 any unsolicited consumer telephone ~~calls~~ communications on Sunday; ~~or~~
- 7 (3) Engage in any conduct which harasses, intimidates, or torments any person in
- 8 connection with the telephone ~~call~~ communication; or
- 9 (4) Cause misleading information to be transmitted to users of caller identification
- 10 technologies or otherwise block or misrepresent the identity of the caller or entity
- 11 as described in subdivision 37-24-6 (16).

12 **Section 4.** That § 37-30A-8 be AMENDED:

13 **37-30A-8. Excluded Transactions.**

14 The provisions of this chapter do not apply to a transaction:

- 15 (1) Made by a merchant who operates an established business that has a fixed
- 16 permanent location, who displays or offers consumer goods or services for sale on
- 17 a continuing basis, and less than twenty-five percent of total new sales are made
- 18 by unsolicited consumer telephone ~~calls~~ communications;
- 19 (2) In which the business establishment making the solicitation is establishing a
- 20 business-to-business relationship or has a clear, preexisting business relationship
- 21 with the consumer, if that relationship resulted in the consumer becoming aware of
- 22 the full name, business address, and telephone number of the establishment; or
- 23 (3) In which the consumer purchases goods or services pursuant to an examination of
- 24 a television, radio, or print advertisement or a sample, brochure, catalog, or other
- 25 mailing material of the telemarketer that contains:
- 26 (a) The name, address, and telephone number of the telemarketer;
- 27 (b) A full description of the goods or services being sold along with a list of all
- 28 prices or fees being requested, including any handling, shipping, sales tax, or
- 29 delivery charges; and
- 30 (c) Any limitations or restrictions that apply to the offer.

31 **Section 5.** That § 54-4-77 be AMENDED:

1 **54-4-77. Debt Collection--Prohibited Practices.**

2 No person employed by a licensee to collect or attempt to collect any debt owed or
3 due or asserted to be owed or due may:

4 (1) Harass, oppress, or abuse a borrower by:

5 (a) Using any threat of violence or harm;

6 (b) Publishing a list of names of borrowers who refuse to pay their debts absent
7 providing such information to credit reporting companies;

8 (c) Using obscene or profane language; or

9 (d) Repeatedly using the phone with the intent to annoy borrowers;

10 (2) Use any false statement when attempting to collect a debt by falsely:

11 (a) Claiming to be an attorney or government representative;

12 (b) Claiming that the borrower has committed a crime;

13 (c) Representing that the licensee operates or any person employed by the
14 licensee works for a credit reporting company;

15 (d) Representing the amount the borrower owes;

16 (e) Representing the nature and character of any forms sent to the borrower in
17 order to collect a debt;

18 (f) Indicating that the borrower will be arrested if the debt isn't paid;

19 (g) Using a company name;

20 (h) Indicating that the licensee will seize, garnish, attach, or sell a borrower's
21 property or wages unless the licensee is permitted by law to take the action
22 and the licensee intends to do so;

23 (i) Indicating that legal action will be taken against the borrower, if doing so
24 would be illegal or if the licensee does not intend to take the action;

25 (3) Give false credit information about the borrower to anyone, including a credit
26 reporting company;

27 (4) Attempt to collect any interest, fee, or other charge on top of the amount a borrower
28 owes unless the contract that created the debt or state law allows the charge;

29 (5) Deposit a post-dated check early;~~or~~

30 (6) Take or threaten to take the borrower's property unless it can be done legally; or

31 (7) Cause misleading information to be transmitted to users of caller identification
32 technologies or otherwise block or misrepresent the identity of the caller or entity
33 as described in subdivision 37-24-6 (16).

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

1 **37-24-6. Deceptive Act or Practice--Felony or Misdemeanor.**

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

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

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

- 24 (3) Represent a sale of merchandise at reduced rates due to the cessation of business
25 operations and after the date of the first advertisement remain in business under
26 the same, or substantially the same, ownership or trade name, or continue to offer
27 for sale the same type of merchandise at the same location for more than one
28 hundred twenty days;
- 29 (4) Give or offer a rebate, discount, or anything of value to a person as an inducement
30 for selling consumer property or services in consideration of giving the names of
31 prospective purchasers or otherwise aiding in making a sale to another person, if
32 the earning of the rebate, discount, or other thing of value is contingent upon the
33 occurrence of an event subsequent to the time the person agrees to the sale;
- 34 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
35 a participant pays a valuable consideration for the chance to receive compensation

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

1 discounts or access to discounts from pharmacies for prescription drug purchases
2 if:

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

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

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

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

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

33 (16) Cause misleading information to be transmitted to users of caller identification
34 technologies or otherwise block or misrepresent the origin of a telephone
35 solicitation. No provider of telephone caller identification services,

1 telecommunications, broadband, or voice over internet protocol service may be held
2 liable for violations of this subdivision committed by other individuals or entities. It
3 is not a violation of this subdivision:

4 (a) For a telephone solicitor to utilize the name and number of the entity the
5 solicitation is being made on behalf of rather than the name and number of
6 the telephone solicitor;

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

8 (c) If a court order specifically authorizes the use of caller identification
9 manipulation.

10 Each act in violation of this section under one thousand dollars is a Class 1
11 misdemeanor. Each act in violation of this statute over one thousand dollars but under
12 one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over
13 one hundred thousand dollars is a Class 5 felony.

14 **Section 7.** That § 37-30-18 be AMENDED:

15 **37-30-18. Attorney general may investigate complaint--Investigatory**
16 **powers.**

17 The attorney general may, upon receiving a complaint, conduct an investigation
18 under chapter 37-24 to determine whether any person has violated a provision of this
19 chapter or chapter 37-30A. For the purpose of any investigation or proceeding under this
20 section, the attorney general may administer oaths and affirmations, subpoena witnesses,
21 compel their attendance, take evidence and require the production of any books, papers,
22 correspondence, memoranda, agreements, or other documents or records which the
23 attorney general deems relevant or material to the inquiry.