

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

562B0340

SENATE COMMERCE COMMITTEE

ENGROSSED NO. **SB82** - 1/23/98

Introduced by: Senators Shoener, Flowers, Lawler, and Munson (David) and Representatives Pederson (Gordon), Brown (Gary), Crisp, Davis, Duniphan, Roe, Schaunaman, and Wick

1 FOR AN ACT ENTITLED, An Act to prohibit certain deceptive acts and practices with regard

2 to lodging establishments and campgrounds and to require that certain records be kept.

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 is a deceptive act or practice for any person to:

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

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

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

14 (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 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 as an inducement for selling consumer property or services in consideration of his giving the names of prospective purchasers or otherwise aiding in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the individual agrees to the sale;

(5) Engage in any scheme or plan for disposal or distribution of merchandise whereby 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; ~~or~~

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

7 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
8 accommodation which is not in fact available to the public under the terms advertised.

9 It is not a violation of this subdivision to establish contract rates which are different
10 than public rates;

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

18 (9) Fail to promptly mail to a future guest a written confirmation of the date and rates of
19 reservations made for any accommodation at a hotel, motel, campsite, or other
20 lodging accommodation when a written request for confirmation is received from the
21 future guest; or

22 (10) Refuse to return or reverse the charge for a deposit upon any hotel, motel, campsite,
23 or other lodging accommodation which is canceled by the guest more than thirty days
24 before the date of the reservation. The innkeeper may establish a policy requiring a
25 longer time for notice of cancellation or a handling fee in the event of cancellation,

1 which may not exceed twenty-five dollars, if the policy is in writing and is delivered
2 or mailed to the guest at or near the making of the reservation.

3 Each act in violation of this section is a Class 2 misdemeanor. Any subsequent conviction of
4 an act in violation of this statute, which occurs within two years is a Class 1 misdemeanor. Any
5 subsequent conviction of an act in violation of this statute, which occurs within two years of a
6 conviction of a Class 1 misdemeanor pursuant to this statute, is a Class 6 felony.

7 Section 2. That § 34-18-21 be amended to read as follows:

8 34-18-21. Each person conducting a lodging establishment or campground shall keep a
9 record of guests. Such a record may be kept in a register or on separate cards and shall be
10 opened for inspection and copying by the secretary of health for the purpose of protecting the
11 health or life of persons or for an emergency which may affect the public health. The inspection
12 and copying shall take place during business hours and shall be conducted by an authorized
13 department inspector after presentation of identification. The registry shall contain the name of
14 the guest, the number in the party, the place of permanent residence of the guest, the date of
15 registration, the date of departure, the daily rate charged, and the motor vehicle license number
16 of the registrant. The record shall also include each rate, price, or fee charged to the guest for
17 the guest's stay at the lodging establishment or campground, as required by subdivision 37-24-
18 6(8). These records shall be kept for a minimum of one year.

1 **BILL HISTORY**

2 1/17/98 First read in Senate and referred to Commerce. S.J. 68

3 1/22/98 Scheduled for Committee hearing on this date.

4 1/22/98 Commerce Do Pass Amended, Passed, AYES 5, NAYS 1. S.J. 161