

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.



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 that is of a class of merchandise that is routinely advertised on at least a weekly basis in newspapers, shopping tabloids, or similar publications and that 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 a person as an inducement for selling consumer property or services in consideration of 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 person 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 primarily for introducing one or more additional persons into participation in the 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.