

## 2021 South Dakota Legislature

**Senate Bill 183****AMENDMENT 183F FOR THE INTRODUCED BILL**

1 **An Act to declare certain contract provisions regarding abortion as ~~deceptive acts~~**  
2 **or practices unenforceable and to provide a penalty therefor.**

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

4 **Section 1.** That ~~§ 37-24-6~~ be AMENDED:

5 ~~37-24-6. Deceptive act or practice—Violation as misdemeanor or felony.~~

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

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

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

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

1 ~~on at least a weekly basis in newspapers, shopping tabloids, or similar publications and that~~  
2 ~~has a sales price before price reduction that is less than fifteen dollars per item;~~

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

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

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

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

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

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

28 ~~(9) Knowingly fail to mail or to deliver by electronic means to a future guest a written~~  
29 ~~confirmation of the date and rates of reservations made for any accommodation at a hotel,~~  
30 ~~motel, campsite, or other lodging accommodation when a written request for confirmation is~~  
31 ~~received from the future guest;~~

1 ~~(10) ————— Require money in advance of arrival or a handling fee in the event of~~  
2 ~~cancellation of any hotel, motel, campsite, or other lodging accommodation unless the~~  
3 ~~innkeeper has a written policy or a separate contract with the guest stating so that is mailed~~  
4 ~~or delivered by electronic means to the guest at or near the making of the reservation;~~

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

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

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

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

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

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

26 ~~(13) ————— Send or cause to be sent an unsolicited commercial electronic mail~~  
27 ~~message that does not include in the subject line of such message "ADV:" as the first four~~  
28 ~~characters. If the message contains information that consists of explicit sexual material that~~  
29 ~~may only be viewed, purchased, rented, leased, or held in possession by an individual~~  
30 ~~eighteen years of age and older, the subject line of each message shall include "ADV:ADLT"~~  
31 ~~as the first eight characters. An unsolicited commercial electronic mail message does not~~

1 ~~include a message sent to a person with whom the initiator has an existing personal or~~  
2 ~~business relationship or a message sent at the request or express consent of the recipient;~~

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

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

9 ~~(16) Cause misleading information to be transmitted to users of caller~~  
10 ~~identification technologies or otherwise block or misrepresent the origin of a telephone~~  
11 ~~solicitation. No provider of telephone caller identification services, telecommunications,~~  
12 ~~broadband, or voice over internet protocol service may be held liable for violations of this~~  
13 ~~subdivision committed by other individuals or entities. It is not a violation of this subdivision:~~

14 ~~(a) For a telephone solicitor to utilize the name and number of the entity the solicitation is~~  
15 ~~being made on behalf of rather than the name and number of the telephone solicitor;~~

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

17 ~~(c) If a court order specifically authorizes the use of caller identification manipulation; or~~

18 ~~(17) Include a provision in a contract that, under any circumstances, requires~~  
19 ~~a woman to have an abortion, or is intended to compel a woman to have an abortion.~~

20 ~~Each act in violation of this section under one thousand dollars is a Class 1 misdemeanor.~~  
21 ~~Each act in violation of this statute over one thousand dollars but under one hundred thousand~~  
22 ~~dollars is a Class 6 felony. Each act in violation of this section over one hundred thousand~~  
23 ~~dollars is a Class 5 felony.~~

24 **Section 1.** That a NEW SECTION be added:

25 **53-9-13. Coerce or compel an abortion.**

26 ~~Other than a contract for an abortion, a~~ A provision in a contract is void and  
27 unenforceable if it, or any agreement associated with the contract, includes a provision  
28 which in any way:

- 1        (1) Coerces, compels, or attempts to compel a pregnant woman to undergo an  
 2            abortion;  
 3        (2) Results in a breach of any term of the contract if a pregnant ~~woman's-woman~~  
 4            refuses to undergo an abortion; or  
 5        (3) Results in the pregnant woman assuming any cost, obligation, or responsibility for  
 6            refusing to undergo an abortion.

7        **Section 2.** That a NEW SECTION be added:

8            **22-17-14. Coercion--Abortion--Misdemeanor or felony.**

9            A person is guilty of a Class 1 misdemeanor if the person:

- 10        (1) Coerces, compels, or attempts to compel a pregnant woman to undergo an  
 11            abortion;  
 12        (2) Requires a pregnant woman to agree to a provision that if she refuses to undergo  
 13            an abortion, it is a breach of a contract; or  
 14        (3) Requires a pregnant woman to agree to a provision that results in her assuming  
 15            any cost, obligation, or responsibility for refusing to undergo an abortion.  
 16            A subsequent offense of this section is a Class 6 felony.

17        **Section 3.** That § 37-24-12 be AMENDED.

18            **37-24-12. Attorney general's investigative demand for report on suspect**  
 19            **practices.**

20            If the attorney general has reason to believe that a person has engaged in, is  
 21            engaging in, or is about to engage in any act or practice declared to be unlawful by § 37-  
 22            24-6 or has entered into a contract with a provision that is void and unenforceable under  
 23            § 53-9-13, and he believes it to be in the public interest that an investigation should be  
 24            made to ascertain whether a person has in fact engaged in, is engaging in, or is about to  
 25            engage in any such act-~~or~~, practice, or contract, he may execute in writing and cause to  
 26            be served upon any person who is believed to have information, documentary material,  
 27            or physical evidence relevant to the alleged violation, an investigative demand requiring  
 28            such person to furnish, under oath or otherwise, a report in writing setting forth the  
 29            relevant facts and circumstances of which he has knowledge, or to appear and testify, or  
 30            to produce relevant documentary material or physical evidence for examination, at such  
 31            reasonable time and place as may be stated in the investigative demand, concerning\_a  
 32            provision covered under § 53-9-13 or the advertisement, sale, or offering for sale of any  
 33            merchandise.