

Deceptive Trade Practices and Consumer Protection

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SOUTH DAKOTA OFFICE OF ATTORNEY GENERAL

**CONSUMER
PROTECTION**

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[37-24-1](#). Definition of terms.

Terms used in this chapter mean:

- (1) "Advertisement," the attempt by publication, dissemination, solicitation, or circulation, whether oral, visual, written, or otherwise, and whether in person, by telephone, or by any other means, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any merchandise;
- (2) "Business day," any calendar day except Sunday, or the following holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Native American Day, Veterans' Day, Thanksgiving Day, and Christmas Day;
- (3) Repealed by SL 2014, ch 191, § 2.
- (4) "Documentary material," the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, other tangible document or recording, reproductions of information stored magnetically, file lay-out, code conversion tables, computer programs to convert file to readable print-out, wherever situate;

- (5) "Examination" of documentary material, the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof;
- (6) "Goods or services," goods or services purchased, leased, or rented, including courses of instruction or training regardless of the purpose for which they are taken;
- (7) "Merchandise," any object, wares, goods, commodity, intangible, instruction, or service;
- (7A) "Organized retail crime," the theft of retail merchandise from a retail seller with the intent or purpose of reselling, distributing, or otherwise reentering the retail merchandise in commerce, including the transfer of the stolen retail merchandise to another retail seller or to any other person personally, through the mail, or through any electronic medium, including the internet, in exchange for anything of value;
- (8) "Person," a natural person or his legal representative, a partnership, a limited liability company (domestic or foreign), a corporation (domestic or foreign), a trust, an incorporated or unincorporated association, and any other legal entity;
- (9) "Place of business," the main or permanent branch office or local address of a seller;
- (10) "Price comparison," the comparison, whether or not expressed wholly or in part in dollars, cents, fractions or percentages, in any advertisement, of a seller's current price for consumer property or services with any other price or statement of value for such property or services, whether or not such prices are actually stated in the advertisement; or, the making of price reduction claims or savings claims with respect to the seller's current price. The term includes, but is not limited to, such comparisons as "50% off," "Up to 70% off," "Save 1/3," "Half-price sale," "30% to 70% off," "Was \$20, now half price," "Guaranteed Lowest Prices," "\$10 value, now \$8," "Was \$7, now \$6," "List Price \$50, Our Price \$29," "Clearance Price," or "Liquidation Price";
- (11) "Purchase price," the total price paid or to be paid for the goods or services, including all interest and service charges;
- (11A) "Retail merchandise," any article, product, commodity, item, or component intended to be sold in retail commerce;
- (11B) "Retail seller," any person that is in the business of selling retail merchandise at retail;
- (12) "Seller," any person, partnership, corporation, or association engaged in the door to door sale of goods or services;
- (13) "Trade" and "commerce," the advertising, offering for sale, attempting to sell, selling, or distributing of any services, or any property, tangible or intangible, personal, or mixed, or of any other article, commodity, or thing of value wherever situate, for cash, exchange of goods or services, or on credit, and shall include any trade or commerce directly or indirectly affecting the people of this state;
- (14) "Unordered," delivery of consumer property or services without prior expressed request or consent from the person receiving the consumer property or services, but not including consumer property sent or services performed by mistake, offered in good faith in substitution for property or services by prior expressed request or consent, or a bona fide gift. Unordered consumer property or services do not include consumer property or services sent pursuant to an agreement which is in compliance with the federal trade commission rule on use

of negative option plans by sellers in commerce as outlined in 16 C.F.R., section 425, as in effect on January 1, 1992.

Source: SL 1971, ch 218, § 1; SL 1975, ch 244, §§ 2 to 6; SL 1984, ch 258, § 1; SL 1987, ch 281, § 1; SL 1992, ch 278, § 2; SL 1994, ch 351, § 88; SL 2014, ch 191, § 2; SL 2019, ch 177, § 1.

[37-24-2](#). Unordered merchandise as gift--Right to refuse--Exceptions.

Unless otherwise agreed, if unordered merchandise is delivered in person or by mail or common carrier to a person, he has a right to refuse such merchandise and is not obligated to return such merchandise to the sender. Such unordered merchandise shall be deemed an unconditional gift to the recipient, who may use it in any manner without any obligation to the sender. This section does not apply if there is evidence of an obvious misdelivery, or the merchandise is offered in good faith in substitution for merchandise ordered.

Source: SL 1971, ch 218, § 2 (c); SL 1992, ch 278, § 4.

37-24-3 to 37-24-5. Repealed by SL 1975, ch 244, § 9

[37-24-5.1](#). "Door to door sale" defined.

In this chapter, unless the context otherwise requires, "door to door sale" means, except as provided by § [37-24-5.2](#), any sale, lease, or rental of goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

Source: SDCL, § [37-24-1](#) as added by SL 1975, ch 244, § 1; SL 1984, ch 258, § 2.

[37-24-5.2](#). Transactions not considered door to door sales.

The term "door to door sale" shall not include any transaction:

- (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or
- (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635); or
- (3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; or
- (4) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
- (5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or
- (6) Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Division of Insurance, Department of Labor and Regulation; or
- (7) Pertaining to the sale, lease or repair of motor vehicles, metal buildings, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods and services are offered on a continuing basis.

Source: SDCL § [37-24-1](#) as added by SL 1975, ch 244, § 1; SL 1976, ch 238; SL 1979, ch 260; SL 2003, ch 272 (Ex. Ord. 03-1), § 26; SL 2011, ch 1 (Ex. Ord. [11-1](#)), § 162, eff. Apr. 12, 2011; SL 2017, ch 231 (Ex. Ord. [17-2](#)), § 19, eff. Apr. 13, 2017.

[37-24-5.3](#). Door to door seller's failure to inform buyer of right to cancel.

It is a deceptive act or practice, within the meaning of § [37-24-6](#), for any seller, in connection with any door to door sale, to:

- (1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the

front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.";

- (2) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;
- (3) Misrepresent in any manner the buyer's right to cancel.

Source: SDCL, § [37-24-6](#) as added by SL 1975, ch 244, § 7 (a), (e), (f).

[37-24-5.4](#). Cancellation notice form to be furnished and filled in by door to door seller.

It is a deceptive act or practice, within the meaning of § [37-24-6](#), for any seller, in connection with any door to door sale, to:

- (1) Fail to furnish each buyer, at the time the buyer signs the door to door sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOU RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR

DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL, OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND AN ELECTRONIC NOTICE, TO (Name of seller) AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

(2) Fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of transaction, by which the buyer may give notice of cancellation.

Source: SDCL § [37-24-6](#) as added by SL 1975, ch 244, § 7 (b), (c); SL 1984, ch 258, § 3; SL 2019, ch 177, § 2.

[37-24-5.5](#). Deceptive to include confession of judgment or waiver of rights in door to door sale.

It is a deceptive act or practice, within the meaning of § [37-24-6](#), for any seller to include in any door to door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically his right to cancel the sale in accordance with the provisions of this chapter.

Source: SDCL, § [37-24-6](#) as added by SL 1975, ch 244, § 7 (d).

[37-24-5.6](#). Deceptive to fail to honor notice of cancellation of door to door sale--Notice of intent to repossess or abandon delivered goods.

It is a deceptive act or practice within the meaning of § [37-24-6](#), for any seller, in connection with any door to door sale, to:

- (1) Fail or refuse to honor any valid notice of cancellation by a buyer and within ten business days after the receipt of such notice, to refund all payments made under the contract or sale; return any goods or property traded in, in substantially as good condition as when received by the seller; cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;
- (2) Fail, within ten business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Source: SDCL, § [37-24-6](#) as added by SL 1975, ch 244, § 7 (g), (h).

[37-24-5.7](#). Criteria for compliance of door to door sales with notice requirements.

A door to door sale shall be deemed to be in compliance with the notice requirements of this chapter if:

- (1) The buyer may at any time:
 - (a) Cancel the sale; or
 - (b) Refuse to accept delivery of the goods without incurring any obligation to pay for them; or
 - (c) Return the goods to the seller and receive a full refund for any amount the buyer has paid; and
- (2) The buyer's right to cancel the sale, refuse delivery, or return the goods without obligation or charge at any time is clearly and unmistakably set forth on the face or reverse side of the receipt or contract.

Source: SL 1975, ch 244, § 8.

[37-24-6](#). Deceptive act or practice--Violation as misdemeanor or felony.

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

- (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or

advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby;

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

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

(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 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 introduced by the participant introduces a new participant;

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

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

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

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

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

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

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

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

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

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

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

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

(14) Violate the provisions of § [22-25-52](#);

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

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

- (a) For a telephone solicitor to utilize the name and number of the entity the solicitation is being made on behalf of rather than the name and number of the telephone solicitor;
- (b) If an authorized activity of a law enforcement agency; or
- (c) If a court order specifically authorizes the use of caller identification manipulation.

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

Source: SL 1971, ch 218, § 2 (a); SL 1977, ch 190, § 294; SL 1986, ch 324; SL 1987, ch 281, § 2; SL 1989, ch 338, § 1; SL 1992, ch 278, § 1; SL 1998, ch 243, § 1; SL 1999, ch 202, § 1; SL 2001, ch 214, §§ 1, 2; SL 2002, ch 185, § 1; SL 2007, ch 225, § 1; SL 2014, ch 191, § 1; SL 2015, ch 133, § 2; SL 2018, ch 239, § 1; SL 2020, ch 171, § 6.

[37-24-6.1](#). Electronic cash registers required to display transactions and issue receipts--Violation as petty offense.

Any person who owns or operates a retail outlet which uses an electronic cash register which does not provide each customer with a receipt for every transaction or does not display the transaction on the cash register so that it is visible to the customer commits a petty offense. Each violation of this section is a separate offense.

Source: SL 1976, ch 239; SL 1977, ch 190, § 295; SL 1992, ch 158, § 99.

[37-24-6.2](#). Advertisement at regular price not prohibited.

Nothing in § [37-24-6](#) shall prohibit the advertisement of merchandise at its regular price.

Source: SL 1989, ch 338, § 2.

[37-24-7](#). Other remedies unimpaired by definition of deceptive practices--Actions under chapter restricted.

The acts or practices listed in § [37-24-6](#) are in addition to and do not limit the types of practices actionable at common law or under other statutes of this state; provided, however, that actions brought pursuant to this chapter shall relate exclusively to practices declared to be unlawful by § [37-24-6](#).

Source: SL 1971, ch 218, § 2 (b).

[37-24-8](#). Prima facie knowledge of deceptive practice--Civil relief unaffected.

For the purposes only of actions brought by the attorney general under § [37-24-23](#) or by state's attorneys under § [37-24-24](#), the engaging in an act or practice declared to be unlawful by § [37-24-6](#) shall be prima facie evidence that the act or practice was engaged in knowingly and intentionally. This section shall not apply with respect to relief sought under § [37-24-29](#), to private actions brought under § [37-24-31](#), and to the imposition of civil penalties pursuant to §§ [37-24-26](#) and [37-24-27](#).

Source: SL 1971, ch 218, § 2 (d); SL 1992, ch 278, § 3.

37-24-9. Repealed by SL 1983, ch 277, § 2

[37-24-10](#). Lawful practices unaffected by chapter.

Nothing in this chapter applies to acts or practices required or permitted by or in accord with laws of this state or the United States or under rules, regulations, sub-regulatory policy, or decisions interpreting the same.

Source: SL 1971, ch 218, § 4 (a) (2); SL 2014, ch 191, § 11.

[37-24-11](#). Advertising media exempt without knowledge of unlawfulness.

Nothing in this chapter shall apply to publishers, broadcasters, printers, or other persons in so far as an unlawful act or practice as defined in § [37-24-6](#) involves information that has been disseminated or reproduced on behalf of others without knowledge that it is an unlawful act or practice.

Source: SL 1971, ch 218, § 4 (a) (1).

[37-24-12](#). Attorney general's investigative demand for report on suspect practices.

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

Source: SL 1971, ch 218, § 10 (a); SL 1987, ch 29, § 46; SL 2021, ch 206, § 3.

[37-24-13](#). Modification or setting aside of director's investigative demand.

At any time before the return date specified in an investigative demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the circuit court for the county where the person served with the demand resides or has his principal place of business or in the circuit court for Hughes County, South Dakota. At any time, an extension of the return date or a modification or setting aside of the demand may be made by agreement.

Source: SL 1971, ch 218, § 10 (b).

[37-24-14](#). Subpoena powers of attorney general--Hearings--Forms--Rules and regulations.

To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general, in addition to other powers conferred on him by this chapter, may issue subpoenas to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and, in compliance with chapter [1-26](#), promulgate rules governing:

- (1) The conduct of investigations;
- (2) When, what and to whom information concerning sellers will be released; and
- (3) The conditions under which assurances of voluntary compliance will be accepted.

Source: SL 1971, ch 218, § 11; revised pursuant to SL 1972, ch 15, § 4; SL 1987, ch 29, § 47.

[37-24-15](#). Self-incriminating evidence required on promise of immunity.

If any person refuses to answer any question or interrogatory, produce any document or otherwise comply with the written demand served upon him under § [37-24-12](#) on the ground of the privilege against self-incrimination, the testimony, answer to interrogatories or production of documents may be compelled in accordance with § [23A-14-29](#).

Source: SL 1971, ch 218, § 11; SL 1983, ch 277, § 1; SL 1985, ch 196, § 4; SL 1986, ch 27, § 44.

[37-24-16](#). Service of notice, demand, or subpoena.

Service of any notice, demand, or subpoena under this chapter shall be personally served within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (1) Personal service thereof without the state; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence, or abode of such persons for whom the same is intended; or
- (3) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding has been filed; or
- (4) Such service as the circuit court for Hughes County, South Dakota, may direct in lieu of personal service within this state.

Source: SL 1971, ch 218, § 12.

[37-24-17](#). Judicial enforcement of notice, demand or subpoena.

Any person refusing to obey such notice, demand, or subpoena, or to testify when subpoenaed, or to bring evidence required to be brought by said notice, demand, or subpoena, may be certified to the circuit court nearest to the point where the notice, demand, or subpoena requires appearance, and the said circuit court may then enforce compliance to said notice, demand, or subpoena by order, the noncompliance with which shall be treated the same as a contempt of said court.

Source: SL 1971, ch 218, § 13.

[37-24-18](#). Information disclosed only as necessary for enforcement.

Information obtained pursuant to the powers conferred by this chapter may not be made public or disclosed by the attorney general or his employees beyond the extent necessary for law enforcement purposes in the public interest.

Source: SL 1971, ch 218, § 11; SL 1987, ch 29, § 48.

[37-24-19](#). Acceptance of assurance of voluntary compliance authorized.

In the enforcement of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice alleged to be violative of the chapter from any person who has engaged in, is engaging in, or is about to engage in such act or practice.

Source: SL 1971, ch 218, § 9; SL 1987, ch 29, § 49.

[37-24-20](#). Form and contents of assurance of voluntary compliance--Approval by circuit court.

Any such assurance shall be in writing and be subject to the approval of the circuit court for the county in which the alleged violator resides or has his principal place of business or the circuit court for Hughes County, South

Dakota. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation and any action or proceeding by the attorney general, and any amount or amounts necessary to restore to any person any moneys or property which may have been acquired by such alleged violator by means of any such act or practice.

Source: SL 1971, ch 218, § 9; SL 1987, ch 29, § 50.

[37-24-21](#). Assurance not admission--Failure to comply prima facie evidence of violation.

An assurance of voluntary compliance may not be considered an admission of violation for any purpose. However, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of this chapter, and may not be disclosed unless such disclosure, in the opinion of the attorney general, would be in the public interest.

Source: SL 1971, ch 218, § 9; SL 1987, ch 29, § 51.

[37-24-22](#). Reopening of matters closed by acceptance of assurance.

Matters closed by the acceptance of an assurance of voluntary compliance may at any time be reopened by the attorney general for further proceedings in the public interest, pursuant to § [37-24-23](#).

Source: SL 1971, ch 218, § 9.

[37-24-23](#). Attorney general's action for injunction--Notice--Attorney fees.

If the attorney general has reason to believe that any person is using, has used, or is about to use any act or practice declared to be unlawful by § [37-24-6](#) and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of the act or practice, upon the giving of appropriate notice to that person. The notice shall state generally the relief sought and be served in accordance with § [37-24-16](#) and at least three days before any hearing in the action. The attorney general, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

Source: SL 1971, ch 218, § 5; SL 1978, ch 155, § 22; SL 2014, ch 191, § 3.

[37-24-24](#). State's attorneys to assist--Action by state's attorney.

It shall be the duty of state's attorneys to render to the attorney general such assistance as the attorney general may request in the commencement and prosecution by the attorney general of actions pursuant to this chapter. The state's attorney with prior approval of the attorney general may institute and prosecute actions hereunder in the same manner as provided for the attorney general and shall make a full report thereon to the attorney general, including the final disposition of the matter.

Source: SL 1971, ch 218, § 15.

[37-24-25](#). Venue of actions for injunction--Relief granted.

An action under § [37-24-23](#) may be brought in the circuit court for the county in which the alleged violator resides or has his place of business or in the circuit court for Hughes County, South Dakota. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter.

Source: SL 1971, ch 218, § 5; SL 1978, ch 155, § 23.

[37-24-26](#). Civil penalty for violation of injunction.

The attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five thousand dollars per violation from any person who violates the terms of an injunction issued under § [37-24-25](#).

Source: SL 1971, ch 218, § 14 (a).

[37-24-27](#). Civil penalty for intentional violations recovered in action for injunction.

In any action brought under § [37-24-23](#), if the court finds that a person is intentionally using or has intentionally used an act or practice declared to be unlawful by § [37-24-6](#), the attorney general, upon petition to the court,

may recover, on behalf of the state, a civil penalty of not more than two thousand dollars per violation. For purposes of this section, an intentional violation occurs when the party committing the violation knew or should have known that his conduct was a violation of § [37-24-6](#).

Source: SL 1971, ch 218, § 14 (b), (d); SL 1977, ch 190, § 296.

[37-24-28](#). Jurisdiction retained by court issuing injunction.

For the purposes of §§ [37-24-26](#) and [37-24-27](#), the court issuing an injunction shall retain jurisdiction, and the cause shall be continued.

Source: SL 1971, ch 218, § 14 (c).

[37-24-29](#). Additional judicial relief from unlawful practices--Appointment of receiver.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which the court finds to have been acquired by means of any act or practice declared to be unlawful by § [37-24-6](#). Such additional relief may include the appointment of a receiver whenever it shall appear to the satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose of his property to the damage of persons to whom restoration would be made under this section.

Source: SL 1971, ch 218, § 6.

[37-24-30](#). Powers of receiver.

When a receiver is appointed by the court pursuant to § [37-24-29](#), he shall have the power to sue for, collect, receive, and take into his possession all the goods and chattels, rights and credits, moneys and effects, land and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any act or practice declared to be unlawful by § [37-24-6](#), including property with which such property has been commingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

Source: SL 1971, ch 218, § 7.

[37-24-31](#). Action for damages brought by person adversely affected.

Any person who claims to have been adversely affected by any act or a practice declared to be unlawful by § [37-24-6](#) shall be permitted to bring a civil action for the recovery of actual damages suffered as a result of such act or practice.

Source: SL 1971, ch 218, § 8.

[37-24-32](#). Other private remedies unaffected.

Section [37-24-31](#) shall apply only to causes of action arising under § [37-24-6](#) and shall in no way affect causes of action arising under other laws of this state or under the common law, whether or not such other causes of action are included within the provisions of § [37-24-6](#).

Source: SL 1971, ch 218, § 8.

[37-24-33](#). Limitation of actions.

No action under this chapter may be brought more than four years after the occurrence or discovery of the conduct which is the subject of the action.

Source: SL 1971, ch 218, § 16; SL 2008, ch 206, § 1.

[37-24-34](#). Chapter not retroactive.

This chapter does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before July 1, 1971.

Source: SL 1971, ch 218, § 17.

[37-24-35](#). Severability of provisions.

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision of application, and to this end the provisions of this chapter are declared to be severable.

Source: SL 1971, ch 218, § 17.

37-24-36 to 37-24-40. Repealed by SL 2007, ch 226, §§ 9 to 13.

[37-24-41](#). Definitions.

Terms used in §§ [37-24-41](#) to [37-24-48](#), inclusive, mean:

- (1) "Advertiser," a person or entity that advertises through the use of commercial e-mail advertisements;
- (2) "Commercial e-mail advertisement," any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit;
- (3) "Direct consent," the recipient has expressly consented to receive e-mail advertisements from the advertiser, either in response to a clear and conspicuous request for the consent or at the recipient's own initiative;
- (4) "Domain name," any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic address on the internet;
- (5) "Electronic mail" or "e-mail," an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. Electronic mail, or e-mail, includes electronic messages that are transmitted through a local, regional, or global computer network;

- (6) "Electronic mail address" or "e-mail address," a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An electronic mail address, or e-mail address, consists of a user name or mailbox and a reference to an internet domain;
- (7) "Electronic mail service provider," any person, including an internet service provider, that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail;
- (8) "Initiate," to transmit or cause to be transmitted a commercial e-mail advertisement or assist in the transmission of a commercial e-mail advertisement by providing electronic mail addresses where the advertisement may be sent, but does not include the routine transmission of the advertisement through the network or system of a telecommunications utility or an electronic mail service provider through its network or system;
- (9) "Incident," a single transmission or delivery to a single recipient or to multiple recipients of an unsolicited commercial e-mail advertisement containing substantially similar content;
- (10) "Internet," the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web;
- (11) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser.

Commercial e-mail advertisements sent pursuant to the exemption that is provided for a preexisting or current business relationship shall provide the recipient of the commercial e-mail advertisement with the ability to opt-out from receiving further commercial e-mail advertisements by calling a toll-free telephone number or by sending an unsubscribe e-mail to the advertiser offering the products or services in the commercial e-mail advertisement. This opt-out provision does not apply to recipients who are receiving free e-mail service with regard to commercial e-mail advertisements sent by the provider of the e-mail service;

- (12) "Recipient," the addressee of an unsolicited commercial e-mail advertisement. If an addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses to which an unsolicited commercial e-mail advertisement is sent, the addressee is deemed to be a separate recipient for each e-mail address to which the e-mail advertisement is sent;
- (13) "Routine transmission," the transmission, routing, relaying, handling, or storing of an electronic mail message through an automatic technical process. Routine transmission does not include the sending, or the knowing participation in the sending, of unsolicited commercial e-mail advertisements;
- (14) "South Dakota electronic mail address" or "South Dakota e-mail address," any of the following:
- (a) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state;
 - (b) An e-mail address ordinarily accessed from a computer located in this state; or
 - (c) An e-mail address furnished to a resident of this state;

(15) "Unsolicited commercial e-mail advertisement," a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

- (a) The recipient has not provided direct consent to receive advertisements from the advertiser; or
- (b) The recipient does not have a preexisting or current business relationship with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

Source: SL 2007, ch 226, § 1.

[37-24-42](#). Unsolicited commercial e-mail advertisements restricted.

No person or entity may do any of the following unless the subject line complies with the requirements set forth in subdivision 37-24-6(13):

- (1) Initiate or advertise in an unsolicited commercial e-mail advertisement from South Dakota or advertise in an unsolicited commercial e-mail advertisement sent from South Dakota; or
- (2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a South Dakota electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a South Dakota electronic mail address.

Source: SL 2007, ch 226, § 2.

[37-24-43](#). Internet access service provider policy restricting e-mail permitted.

Nothing in §§ [37-24-41](#) to [37-24-48](#), inclusive, may be construed to limit or restrict the adoption, implementation, or enforcement by a provider of internet access service of a policy of declining to transmit, receive, route, relay, handle, or store certain types of electronic mail messages.

Source: SL 2007, ch 226, § 3.

[37-24-44](#). Collection of e-mail addresses to initiate unsolicited commercial e-mail advertisements prohibited.

No person may collect electronic mail addresses posted on the internet if the purpose of the collection is for the electronic mail addresses to be used to do either of the following:

- (1) Initiate or advertise in an unsolicited commercial e-mail advertisement from South Dakota, or advertise in an unsolicited commercial e-mail advertisement sent from South Dakota; or
- (2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a South Dakota electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to South Dakota electronic mail address.

Source: SL 2007, ch 226, § 4.

[37-24-45](#). Obtaining e-mail addresses by automated means to initiate unsolicited commercial e-mail advertisements prohibited.

No person may use an electronic mail address obtained by using automated means based on a combination of names, letters, or numbers to do either of the following:

- (1) Initiate or advertise in an unsolicited commercial e-mail advertisement from South Dakota, or advertise in an unsolicited commercial e-mail advertisement sent from South Dakota; or
- (2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a South Dakota electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a South Dakota electronic mail address.

Source: SL 2007, ch 226, § 5.

[37-24-46](#). Use of automated means to register multiple e-mail accounts from which to initiate unsolicited commercial e-mail advertisements prohibited.

No person may use scripts or other automated means to register for multiple electronic mail accounts from which to do, or to enable another person to do, either of the following:

- (1) Initiate or advertise in an unsolicited commercial e-mail advertisement from South Dakota, or advertise in an unsolicited commercial e-mail advertisement sent from South Dakota; or
- (2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a South Dakota electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a South Dakota electronic mail address.

Source: SL 2007, ch 226, § 6.

[37-24-47](#). Prohibited commercial e-mail advertisements.

No person may advertise in a commercial e-mail advertisement either sent from South Dakota or sent to a South Dakota electronic mail address under any of the following circumstances:

- (1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party;
- (2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information;
- (3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

Source: SL 2007, ch 226, § 7.

[37-24-48](#). Actions for damages--Attorney's fees and costs--Reduction of damages under certain circumstances.

The recipient of an unsolicited commercial e-mail advertisement, an electronic mail service provider, or the attorney general may bring an action against any person that violates [§37-24-42](#), [37-24-44](#), [37-24-45](#), [37-24-46](#), or [37-24-47](#) and may recover either or both of the following:

- (1) Actual damages; or
- (2) Liquidated damages of one thousand dollars for each unsolicited commercial e-mail advertisement transmitted in violation of such section, up to one million dollars per incident.

The recipient, an electronic mail service provider, or the attorney general, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

However, there may be no cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of §§ [37-24-41](#) to [37-24-48](#), inclusive, the court shall reduce the liquidated damages recoverable under this section to a maximum of one hundred dollars for each unsolicited commercial e-mail advertisement, or a maximum of one hundred thousand dollars per incident.

Source: SL 2007, ch 226, § 8.

[37-24-49](#). Contractor defined for §§ [37-24-50](#) and [37-24-51](#).

For the purposes of §§ [37-24-50](#) and [37-24-51](#), the term, contractor, is a residential building contractor who is providing roofing services, a residential remodeler who is providing roofing services, or a residential roofer.

Source: SL 2012, ch 198, § 3.

[37-24-50](#). Contractor rebate of insurance deductible prohibited.

No contractor providing residential roofing goods and services to any person or entity may advertise or promise to pay or rebate all or part of any applicable insurance deductible. If a contractor violates this section, any contract entered into between the contractor and that person or entity is null and void.

Source: SL 2012, ch 198, § 1.

[37-24-51](#). Cancellation of storm damage roofing repair contract.

Any person or entity that has entered into a written storm damage repair contract to obtain or provide residential roofing goods and services may cancel the contract within seventy-two hours after:

- (1) Entering into the contract; or
- (2) Being notified that the owner's property insurance carrier has denied coverage, in whole or in part, for that person's or entity's claim under a property insurance policy for goods and services to be provided pursuant to the residential roofing goods and services contract.

Cancellation is evidenced by the customer giving written notice of cancellation to the contractor at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox if properly addressed to the contractor and the postage is prepaid. Notice of cancellation is sufficient if the notice indicates, by any form of written expression, the intention of the customer that the customer does not wish to be bound by the contract, subject to the payment of the reasonable documented restocking fee by the third party supplier of the roofing materials, and the payment of the agreed upon or reasonable cost of any emergency repairs already performed by the contractor.

Before entering such a contract, the contractor shall:

(1) Furnish the customer with a statement in boldface type of a minimum size of ten points, in substantially the following form: "You may cancel this contract within seventy-two hours after you:

(a) Have entered into the contract; or

(b) Have been notified that your property insurance carrier has denied coverage for your claim, in whole or in part, to pay for the goods and services to be provided under this contract. See attached notice of cancellation form for an explanation of this right."; and

(2) Furnish each customer a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in boldface type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION

You may cancel this contract for any reason within seventy-two hours after entering into this contract. In addition, if your insurer denies coverage for your claim, in whole or in part, to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time within seventy-two hours after you have been notified that your claim has been denied. If you cancel, any payments made by you under the contract for any goods and services not actually performed will be returned within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

_____ (date)

_____ (Insured's signature)"

Within ten days after such a contract has been canceled, the contractor shall tender to the insured any payments made by the insured and any note or other evidence of indebtedness for any goods and services not actually performed.

Source: SL 2012, ch 198, § 2.

[37-24-52](#). Organized retail crime--Each act a misdemeanor or felony.

A person is guilty of organized retail crime if that person, alone or in association with another person, does any of the following:

(1) Knowingly commits an organized retail crime;

(2) Organizes, supervises, conspires, finances, or otherwise manages or assists another person in committing an organized retail crime;

(3) Removes, destroys, deactivates, or knowingly evades any component of an anti-shoplifting or inventory control device to prevent the activation of that device or to facilitate another person in committing an organized retail crime; or

(4) Knowingly causes a fire exit alarm to sound or otherwise activate, or deactivates or prevents a fire exit alarm from sounding, in the commission of an organized retail crime by another person.

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

Source: SL 2014, ch 191, § 6.

[37-24-53](#). Restitution and reimbursement for organized retail crime.

The court shall order a person who is found guilty of organized retail crime to make restitution to any retail seller victim and to reimburse the governmental entity for its expenses incurred as a result of the violation of § [37-24-52](#).

Source: SL 2014, ch 191, § 7.

[37-24-54](#). Defenses.

It is not a defense to a charge under this chapter that the property was not stolen, embezzled, or converted property at the time of the violation if the property was explicitly represented to the accused person as being stolen, embezzled, or converted property.

Source: SL 2014, ch 191, § 8.

[37-24-55](#). Charges not prohibited by chapter.

This chapter does not prohibit a person from being charged with, convicted of, or sentenced for any violation of statute arising out of the same criminal transaction that violates this chapter.

Source: SL 2014, ch 191, § 9.

[37-24-56](#). Aggregating amount involved to determine degree of punishment.

In calculating the amount involved in deceptive act violations pursuant to this chapter, whether from the same person or several persons, committed pursuant to one scheme or course of conduct, the amount may be aggregated in determining the degree of punishment of the scheme or course of conduct of the deceptive acts.

Source: SL 2014, ch 191, § 10.

[37-24-57](#). Report by financial institution of exploitation of elder or adult with disability.

A financial institution, as defined in 31 U.S.C. § 5312(a)(2), who voluntarily or mandatorily reports via a suspicious activity report, pursuant to 31 U.S.C. § 5318(g), any possible violation of law or regulation constituting exploitation, as defined in subdivision 22-46-1(5), may also report the information contained in the suspicious activity report to state or local law enforcement. A financial institution is immune from any civil or criminal liability that might otherwise result from complying with this section.

Source: SL 2016, ch 120, § 26.

[37-24-58](#). Cooperation of financial institution with investigation of abuse, neglect, or exploitation of elder or adult with disability.

A financial institution shall cooperate with any lead investigative agency, law enforcement, or prosecuting authority that is investigating the abuse, neglect, or exploitation of an elder or adult with a disability and comply with reasonable requests for the production of financial records. A financial institution is immune from any civil or criminal liability that might otherwise result from complying with this section.

Source: SL 2016, ch 120, § 27.