

## **CHAPTER 51-15 UNLAWFUL SALES OR ADVERTISING PRACTICES**

### **51-15-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.
2. "Attorney general" means the attorney general of North Dakota or the attorney general's authorized delegate.
3. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services.
4. "Person" means any natural person or the person's legal representative, partnership, corporation, limited liability company, company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or cestui que trust thereof.
5. "Sale" means any charitable solicitation or any sale, offer for sale, or attempt to sell any merchandise for any consideration.

### **51-15-02. Unlawful practices - Fraud - Misrepresentation - Unconscionable.**

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice.

#### **51-15-02.1. Use of check endorsements for advertising obligations prohibited.**

It is a deceptive act or practice in violation of this chapter for a person to offer, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of a check.

#### **51-15-02.2. Solicitation of payment by bill, invoice, or statement of account due.**

It is a deceptive act or practice in violation of this chapter for a person to send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

#### **51-15-02.3. Facilitating and assisting.**

It is a deceptive act or practice in violation of this chapter for any person to provide assistance or support to any person engaged in any act or practice in violation of this chapter when the person providing assistance or support knows or consciously avoids knowing that the other person is engaged in an act or practice in violation of this chapter. This section does not authorize a private claim for relief for a violation of this section and no entity other than the attorney general may enforce this section.

### **51-15-03. Advertising media excluded.**

Nothing herein contained applies to the owner or publisher of newspapers, magazines, publication of printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design, or purpose of the advertiser.

#### **51-15-04. Powers of attorney general.**

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or when the attorney general believes it to be in the public interest to investigate whether a person in fact has engaged in, is engaging in, or is about to engage in, any unlawful practice under this chapter or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may:

1. Require that person to file, on forms the attorney general prescribes, a statement or report in writing, under oath or otherwise, of all the facts and circumstances concerning the sale or advertisement of merchandise by that person, as well as other data and information the attorney general may determine necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as the attorney general may determine necessary.
4. Pursuant to an order of a district court impound any merchandise or sample thereof, record, book, document, account, or paper material to that practice and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.

#### **51-15-05. Subpoena - Hearing - Rules.**

To accomplish the objectives and to carry out the duties prescribed by this chapter or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general, in addition to other powers conferred upon the attorney general by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe forms and adopt rules as may be necessary.

#### **51-15-06. Failure to supply information or obey subpoena.**

If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereon, request an order:

1. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;
  2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
  3. Granting such other relief as may be required;
- until the person files the statement or obeys the subpoena.

#### **51-15-06.1. Assurance of voluntary compliance.**

The attorney general may accept an assurance of voluntary compliance for any act or practice the attorney general determines to be in violation of this chapter, or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, 51-18, 51-28, 51-29, 51-30, 51-31, 51-33, or 51-34, from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of voluntary compliance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business, conducts business, or in Burleigh County. Failure to comply with an assurance of voluntary compliance which has been approved by the district court is contempt of court.

**51-15-07. Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil penalties - Costs recoverable in adjudicative proceedings.**

Whenever it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may seek and obtain in an action in a district court an injunction prohibiting that person from continuing the unlawful practice or engaging in the unlawful practice or doing any act in furtherance of the unlawful practice after appropriate notice to that person. The notice must state generally the relief sought and be served at least ten days before the hearing of the action. The court may make an order or judgment as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any money, or property that may have been acquired by means of any practice in this chapter, or in other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, and that the person is about to conceal assets or oneself or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of that person. Upon a showing made by affidavit or other evidence that the person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter and that the person is about to conceal assets or oneself or leave the state, the court shall order the appointment of a receiver to receive the assets of the person.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or by an order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order, which the attorney general deems necessary or appropriate in the public interest, including if a person fails or refuses to file a statement or report, or to obey a subpoena issued by the attorney general under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. In addition to any other remedy authorized by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may impose by order and collect a civil penalty against a person found in an adjudicative proceeding to have violated a cease and desist order issued pursuant to this section, in an amount not more than one thousand dollars for each violation. The attorney general may bring an action in district court to recover penalties under this section. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein. If the attorney general prevails in an adjudicative proceeding pursuant to this section, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action.

**51-15-08. Powers of receiver.**

When a receiver is appointed by the court pursuant to this chapter, the receiver may sue for, collect, receive, or take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, including property with which the property has been commingled if it cannot be identified in kind because of the commingling, and sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that that person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent that person has

sustained out-of-pocket losses. The court has jurisdiction of all questions arising in these proceedings and may make orders and judgments therein as may be required.

**51-15-09. Claims not barred.**

Except as provided in section 51-15-02.3, this chapter does not bar any claim for relief by any person against any person who has acquired any moneys or property by means of any practice declared to be unlawful in this chapter. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

**51-15-10. Costs recoverable.**

In any action brought under the provisions of this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the court shall award to the attorney general reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. All attorney's fees, investigation fees, costs, and expenses received by the attorney general under this section must be deposited into the attorney general refund fund.

**51-15-11. Civil penalties.**

The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapter 51-12, 51-13, 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18.

**51-15-12. Limitation of actions.**

Notwithstanding chapter 28-01, an action for relief under this chapter is barred if the claim is not commenced within four years after the claim for relief accrues. The period of limitation for a claim for relief may not be deemed to have accrued until the aggrieved party discovers the facts constituting the violation of this chapter.