

## **ARTICLE 10-15 DECEPTIVE ACTS OR PRACTICES**

Chapter  
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### **CHAPTER 10-15-01 DECEPTIVE PRICING**

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#### **10-15-01-01. Definitions.**

All words used in this chapter which are defined in North Dakota Century Code chapter 51-15 have the meanings given in that chapter. As used in this chapter:

1. "Advertisement" includes statements and representations contained on any label, tag, or sign attached to, printed on, or accompanying merchandise offered for sale or printed in a catalog or any other sales literature.
2. "Clearly and conspicuously" means that the statement, representation, or term being disclosed is reasonably understandable, is in such size, color contrast, or audibility, and is so placed and presented as to be readily noticeable, and is in close proximity to the information it modifies.
3. "Comparable merchandise" means merchandise that is substantially similar in composition, style, design, model, kind, variety, service, or performance characteristics to the merchandise to which it is compared in any advertisement.
4. "Comparative price" means the price or other description of value of merchandise to which a seller compares its current price in any advertisement.
5. "List price" means a price given to a retailer by a manufacturer or other supplier as a suggested retail price for the merchandise and includes the term "manufacturer's suggested retail price".
6. "Price comparison" means an expressed or implied comparison in any advertisement (whether or not expressed wholly or in part in dollars, cents, fractions, or percentages) of a seller's current price for merchandise with any other price or statement of value, whether or not the price is actually stated in the advertisement.
7. "Seller" means any person who offers any merchandise for sale at any location and who disseminates advertisements for that product in North Dakota. Seller may include any officer, agent, employee, sales person, or representative of the seller, and any advertising agency employed by a seller.

8. "Trade area" means the geographic area where the seller's outlets are located or where the seller's advertisements are disseminated.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-01, 51-12-09, 51-15-02

#### **10-15-01-02. Identifying basis of price comparison.**

It is a deceptive act or practice for a seller to make a price comparison or claim a savings as to any merchandise offered for sale unless the seller clearly and conspicuously discloses the basis for or source of the price comparison or savings claim. However, a seller may make a price comparison or claim a savings without the required disclosure if the price comparison or savings claim is based on the seller's own former price as described in section 10-15-01-03. Terms such as "regular", "regularly", "formerly", "originally", "was", or words of similar meaning may be used by the seller to identify the seller's own former price.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-03. Comparison to seller's own former price.**

It is a deceptive act or practice for a seller to compare the seller's current price with the seller's former price for any merchandise unless:

1. The former price is a price at which a substantial number of sales were made by the seller during the three months immediately preceding the price comparison;
2. The former price is a price at which a substantial number of sales were made by the seller and the seller clearly and conspicuously discloses the dates during which a substantial number of sales were made by the seller at the former price; or
3. The former price is a price at which the seller offered the merchandise for a reasonably substantial period of time in the recent, regular course of its business, openly, actively, and in good faith, with an intent to sell the merchandise at that price.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-04. Comparison to seller's future prices.**

It is a deceptive act or practice for a seller to make an introductory offer or to compare its current price for merchandise with the price at which the merchandise will be offered in the future, unless:

1. The future price takes effect within a reasonable time after the introductory offer or price comparison is published; and
2. The future price of the merchandise is, subsequent to the end of the introductory sale, properly established as the seller's regular and customary price.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-05. Range of savings or price comparison claims.**

It is a deceptive act or practice for a seller to state or imply that any merchandise is being offered for sale at a range of prices, or at a range of percentage or fractional discounts, unless the highest price or the lowest discount in the range is clearly and conspicuously disclosed in the advertisement and a reasonable number of the items in the advertisement are offered with the largest advertised discount or the lowest advertised price. If at least five percent of the items in the advertisement are offered with the largest advertised discount or the lowest advertised price, a rebuttable presumption exists that a reasonable number were offered with at least the largest advertised discount or the lowest advertised price.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-06. Use of list price or similar comparisons.**

It is a deceptive act or practice for a seller to make a price comparison or to claim a savings, expressed or implied, from a list price or term of similar meaning, unless:

1. The list price does not exceed the highest price at which substantial sales of the merchandise have been made in the seller's trade area;
2. The list price is the price at which the seller offered the merchandise for a reasonably substantial period of time in the recent, regular course of its business, openly, actively, and in good faith, with an intent to sell the merchandise at that price;
3. The list price does not exceed the highest price at which the product is offered by a reasonable number of sellers in the seller's trade area for a reasonably substantial period of time in the recent, regular course of business; or
4. The list price does not exceed the seller's cost plus the percentage markup regularly used by the seller in the actual sale of such merchandise or merchandise of a similar class or kind, in the seller's recent, regular course of business.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-07. Comparison to competitor's price.**

It is a deceptive act or practice for a seller to compare the seller's price with a price currently being offered by another seller for merchandise unless the merchandise is comparable merchandise and the comparative price is at or below the price at which the comparable merchandise is currently being offered in the seller's trade area by a reasonable number of other sellers in the same trade area, or another identifiable seller.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-08. Bargain offers based on the purchase of other merchandise and use of the word free.**

It is a deceptive act or practice to use the word free, or words of similar meaning, or to represent bargain offers, including "buy one - get one free", "buy one - get one at half-price", "two for one", and "one cent sale", when describing merchandise to be given to a customer who purchases other

merchandise, if the seller recovers, in whole or in part, the cost of the free or bargain merchandise by marking up the price of the item which must be purchased, by substituting an inferior item or service, or otherwise. It is a deceptive act or practice to represent that other merchandise is being offered free or at a bargain price with the sale if the advertised merchandise can be purchased from the advertiser at a lesser price without the free or bargain merchandise, particularly if the merchandise is usually sold at a price arrived at through bargaining.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-09. Use of sale terminology.**

It is a deceptive act or practice for a seller to use terms such as "sale", "sales prices", "now only \$\_\_\_\_", or other words and phrases that imply a price savings unless the price of the merchandise is reduced by a reasonable amount from the former price of the merchandise. If the seller reduces the price by five percent or more from the former price, a rebuttable presumption exists that the price reduction was of a reasonable amount. However, the term "sale" may be used in an advertisement where not all items are offered at a reduction from regular price if the items are clearly and conspicuously identified.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-10. Use of term wholesale.**

It is a deceptive act or practice for a seller to use the term "wholesale" or words of similar meaning in connection with any merchandise offered for sale at retail.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02

#### **10-15-01-11. Reporting.**

Within twenty-one days after receipt of a written request from the attorney general, persons making price comparisons shall submit a report in writing setting forth substantiating information upon which the price comparison was based. The attorney general, for cause shown, may grant additional time to respond upon request.

**History:** Effective January 1, 1994.

**General Authority:** NDCC 51-12-09, 51-15-05, 54-12-17

**Law Implemented:** NDCC 51-12-09, 51-15-01, 51-15-02, 51-15-04