

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2228
(Senators Trenbeath, Holmberg, Urlacher)
(Representatives Belter, Grosz)

AN ACT to amend and reenact sections 44-04-18.12, 51-15-01, 51-15-04, 51-15-05, 51-15-06, 51-15-06.1, 51-15-07, 51-15-08, 51-15-10, and 51-15-11 of the North Dakota Century Code, relating to the confidentiality of agreements between a governmental agency in another jurisdiction and the attorney general and to unlawful sales or advertising practices; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.12 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.12. Cooperative investigations and litigation. A record acquired under ~~a written~~ an agreement between or involving a governmental agency in another jurisdiction and the attorney general is confidential, except for the purposes specified in the agreement, if the attorney general determines:

1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and
3. The record is treated as confidential by the provider of the records.

SECTION 2. AMENDMENT. Section 51-15-01 of the North Dakota Century Code is amended and reenacted as follows:

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 cestuique trust thereof.
5. "Sale" means any charitable solicitation, or any sale, offer for sale, or attempt to sell any merchandise for any consideration.

SECTION 3. AMENDMENT. Section 51-15-04 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~any of the~~

~~provisions of~~ 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 ~~that an investigation should be made to ascertain 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, or sample of merchandise 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.

SECTION 4. AMENDMENT. Section 51-15-05 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 5. AMENDMENT. Section 51-15-06 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 6. AMENDMENT. Section 51-15-06.1 of the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of 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, or 51-18, from any

person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance 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 or in Burleigh County. An assurance of discontinuance may not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court is contempt of court.

SECTION 7. AMENDMENT. Section 51-15-07 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 8. AMENDMENT. Section 51-15-08 of the North Dakota Century Code is amended and reenacted as follows:

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 mingled 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.

SECTION 9. AMENDMENT. Section 51-15-10 of the North Dakota Century Code is amended and reenacted as follows:

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 is entitled to recover costs, expenses, and attorney's fees incurred by the attorney general in the investigation and prosecution of such action. In any inquiry or investigation initiated under this chapter in which fraud is determined, the attorney general may request and collect costs, expenses, and attorney's fees incurred by the attorney general in the inquiry or investigation~~ 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, ~~and attorney's fees~~ received by the attorney general under this section must be deposited into the attorney general refund fund.

SECTION 10. AMENDMENT. Section 51-15-11 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2228 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 80 Nays 0 Absent 14

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at ____ o'clock _____ M.

Secretary of State