

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2228

Introduced by

Senators Trenbeath, Holmberg, Urlacher

Representatives Belter, Grosz

1 A BILL for an Act to amend and reenact sections 44-04-18.12, 51-15-01, 51-15-04, 51-15-05,
2 51-15-06, 51-15-06.1, 51-15-07, 51-15-08, 51-15-10, and 51-15-11 of the North Dakota
3 Century Code, relating to the confidentiality of agreements between a governmental agency in
4 another jurisdiction and the attorney general and to unlawful sales or advertising practices; to
5 provide a penalty; and to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 **44-04-18.12. Cooperative investigations and litigation.** A record acquired under a
10 ~~written~~ an agreement between or involving a governmental agency in another jurisdiction and
11 the attorney general is confidential, except for the purposes specified in the agreement, if the
12 attorney general determines:

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

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

18 **51-15-01. Definitions.** In this chapter, unless the context or subject matter otherwise
19 requires:

- 20 1. "Advertisement" includes the attempt by publication, dissemination, solicitation, or
21 circulation, oral or written, to induce, directly or indirectly, any person to enter into
22 any obligation or acquire any title or interest in any merchandise.
- 23 2. "Attorney general" means the attorney general of North Dakota or the attorney
24 general's authorized delegate.

- 1 3. "Merchandise" means any objects, wares, goods, commodities, intangibles, real
2 estate, charitable contributions, or services.
- 3 4. "Person" means any natural person or the person's legal representative,
4 partnership, corporation, limited liability company, company, trust, business entity,
5 or association, and any agent, employee, salesman, partner, officer, director,
6 member, stockholder, associate, trustee, or cestuique trust thereof.
- 7 5. "Sale" means any charitable solicitation, or any sale, offer for sale, or attempt to
8 sell any merchandise for any consideration.

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

11 **51-15-04. Powers of attorney general.** When it appears to the attorney general that a
12 person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter
13 or ~~any of the provisions of~~ by other provisions of law, including chapter 50-22, 51-12, 51-13,
14 51-14, 51-16.1, or 51-18, or when the attorney general believes it to be in the public interest
15 ~~that an investigation should be made to ascertain~~ to investigate whether a person in fact has
16 engaged in, is engaging in, or is about to engage in, any unlawful practice under this chapter or
17 other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the
18 attorney general may:

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

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

3 **51-15-05. Subpoena - Hearing - Rules.** To accomplish the objectives and to carry out
4 the duties prescribed by this chapter or by other provisions of law, including chapter 50-22,
5 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general, in addition to other powers
6 conferred upon the attorney general by this chapter, may issue subpoenas to any person,
7 administer an oath or affirmation to any person, conduct hearings in aid of any investigation or
8 inquiry, and prescribe forms and adopt rules as may be necessary.

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

11 **51-15-06. Failure to supply information or obey subpoena.** If any person fails or
12 refuses to file any statement or report, or obey any subpoena issued by the attorney general,
13 the attorney general may, after notice, apply to a district court and, after hearing thereon,
14 request an order:

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

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

27 **51-15-06.1. Assurance of discontinuance.** The attorney general may accept an
28 assurance of discontinuance of any act or practice the attorney general determines to be in
29 violation of this chapter, or other provisions of law, including chapter 50-22, 51-12, 51-13,
30 51-14, 51-16.1, or 51-18, from any person the attorney general alleges is engaging in, or has
31 engaged in, the act or practice. The assurance of discontinuance must be in writing and must

1 be filed with and is subject to the approval of the district court of the county in which the alleged
2 violator resides or has as a principal place of business or in Burleigh County. An assurance of
3 discontinuance may not be considered an admission of a violation. However, failure to comply
4 with an assurance of discontinuance which has been approved by the district court is contempt
5 of court.

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

8 **51-15-07. Remedies - Injunction - Other relief - Receiver - Cease and desist**
9 **orders - Civil penalties - Costs recoverable in adjudicative proceedings.** Whenever it
10 appears to the attorney general that a person has engaged in, or is engaging in, any practice
11 declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22,
12 51-13, 51-14, 51-16.1, or 51-18, the attorney general may seek and obtain in an action in a
13 district court an injunction prohibiting that person from continuing the unlawful practice or
14 engaging in the unlawful practice or doing any act in furtherance of the unlawful practice after
15 appropriate notice to that person. The notice must state generally the relief sought and be
16 served at least ten days before the hearing of the action. The court may make an order or
17 judgment as may be necessary to prevent the use or employment by a person of any unlawful
18 practices, or which may be necessary to restore to any person in interest any money, or
19 property that may have been acquired by means of any practice in this chapter, or in other
20 provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, declared to be
21 unlawful, including the appointment of a receiver.

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

30 When it appears to the attorney general that a person has engaged in, or is engaging
31 in, a practice declared to be unlawful by this chapter, or by other provisions of law, including

1 chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or by an order of the attorney general
2 issued under this chapter, the attorney general, without notice and hearing, may issue any
3 cease and desist order, which the attorney general deems necessary or appropriate in the
4 public interest, including if a person fails or refuses to file a statement or report, or to obey a
5 subpoena issued by the attorney general under this chapter, or under other provisions of law,
6 including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. In addition to any other
7 remedy authorized by this chapter, or by other provisions of law, including chapter 50-22,
8 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may impose by order and collect a
9 civil penalty against a person found in an adjudicative proceeding to have violated a cease and
10 desist order issued pursuant to this section, in an amount not more than one thousand dollars
11 for each violation. The attorney general may bring an action in district court to recover
12 penalties under this section. A person aggrieved by an order issued under this section may
13 request a hearing before the attorney general if a written request is made within ten days after
14 the receipt of the order. An adjudicative proceeding under this section must be conducted in
15 accordance with chapter 28-32, unless otherwise specifically provided herein. If the attorney
16 general prevails in an adjudicative proceeding pursuant to this section, the attorney general
17 may assess the nonprevailing person for all adjudicative proceeding and hearing costs,
18 including reasonable attorney's fees, investigation fees, costs, and expenses of any
19 investigation and action.

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

22 **51-15-08. Powers of receiver.** When a receiver is appointed by the court pursuant to
23 this chapter, the receiver may sue for, collect, receive, or take into possession all the goods
24 and chattels, rights and credits, moneys and effects, lands and tenements, books, records,
25 documents, papers, choses in action, bills, notes, and property of every description, derived by
26 means of any practice declared to be unlawful by this chapter, or by other provisions of law,
27 including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, including property with which
28 the property has been mingled if it cannot be identified in kind because of the commingling, and
29 sell, convey, and assign the property and hold and dispose of the proceeds under the direction
30 of the court. Any person who has suffered damages as a result of the use or employment of
31 any unlawful practices and submits proof to the satisfaction of the court that that person has in

1 fact been damaged may participate with general creditors in the distribution of the assets to the
2 extent that person has sustained out-of-pocket losses. The court has jurisdiction of all
3 questions arising in these proceedings and may make orders and judgments therein as may be
4 required.

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

7 **51-15-10. Costs recoverable.** In any action brought under the provisions of this
8 chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14,
9 51-16.1, or 51-18, the court shall award to the attorney general ~~is entitled to recover costs,~~
10 ~~expenses, and attorney's fees incurred by the attorney general in the investigation and~~
11 ~~prosecution of such action. In any inquiry or investigation initiated under this chapter in which~~
12 ~~fraud is determined, the attorney general may request and collect costs, expenses, and~~
13 ~~attorney's fees incurred by the attorney general in the inquiry or investigation~~ reasonable
14 attorney's fees, investigation fees, costs and expenses of any investigation and action brought
15 under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13,
16 51-14, 51-16.1, or 51-18. All attorney's fees, investigation fees, costs, and expenses, ~~and~~
17 ~~attorney's fees~~ received by the attorney general under this section must be deposited into the
18 attorney general refund fund.

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

21 **51-15-11. Civil penalties.** The court may assess for the benefit of the state a civil
22 penalty of not more than five thousand dollars for each violation of this chapter or for each
23 violation of chapter 51-12, 51-13, 51-14, or 51-18. The penalty provided in this section is in
24 addition to those remedies otherwise provided by this chapter or by chapter 50-22, 51-12,
25 51-13, 51-14, 51-16.1, or 51-18.

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