

## **CHAPTER 51-12 FALSE ADVERTISING**

### **51-12-01. False and misleading advertising prohibited.**

1. No person with intent to sell, dispose of, increase the consumption of, or induce the public to enter an obligation relative to or to acquire title or interest in any food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public may make, publish, disseminate, circulate, or place before the public, or directly or indirectly shall cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, tab, label, letter, or in any other way, an advertisement that contains any assertion, representation, or statement of fact, including the price thereof, which is untrue, deceptive, or misleading regarding such food, drug, medicine, patent and proprietary product, merchandise, security, service, performance, medical treatment, paint, varnish, oil, clothing, wearing apparel, machinery, or anything offered to the public.
2. It is not a violation of this section to advertise a performance by a performing group if at least one member of the performing group was a member of the recording group, the performance is identified as a "salute" or "tribute" to the recording group, the performance is expressly authorized in the advertising by the recording group, the advertising does not relate to a live music performance taking place in this state, or the advertising contains a disclaimer that the performing group is not the recording group or is not affiliated with the recording group.

**51-12-02. Penalty.** Any person who violates any of the provisions of section 51-12-01 is guilty of a class B misdemeanor.

**51-12-02.1. Popcorn toppings - Advertisement - Sale - Penalty.** No person advertising, offering for sale, or selling popcorn intended for consumption on the premises where purchased may use the word butter, or any derivative of the word butter, to describe a topping placed on popcorn, unless the topping is real butter or unless the word butter, or derivative of the word butter, is a part of the commercial brand name of the topping product. The allowable use under this section of the word butter, or any derivative of the word butter, as part of the commercial brand name of a topping product is limited to use in that manner and popcorn with such a topping may not be described as buttered popcorn. Any person who violates this section is guilty of an infraction.

**51-12-03. Enforcement of provision prohibiting false advertisement.** Repealed by S.L. 1961, ch. 310, § 2.

**51-12-04. Prohibiting use of certain federal and related names in sales of merchandise.** Repealed by S.L. 1975, ch. 106, § 673.

**51-12-05. Representation that article has federal relationship prohibited.** Repealed by S.L. 1975, ch. 106, § 673.

**51-12-06. Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**51-12-07. Injunction.** Repealed by S.L. 1975, ch. 106, § 673.

**51-12-08. False advertising - Generally.** It is unlawful for any person with intent, directly or indirectly, to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before

the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

**51-12-09. Representation as to worth or value.** For the purpose of sections 51-12-08 through 51-12-14 the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of the advertisement in the locality wherein the advertisement is published.

No price may be advertised as a former price of any advertised thing unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly, and conspicuously stated in the advertisement.

This section does not apply to any publisher, owner, or employee of a newspaper, magazine, broadcasting or cable station, advertising device, or other publication by any means of communication, who publishes an advertisement in good faith, without knowledge of its false, deceptive, or misleading character; nor to any owner, manager, or employee of an advertising agency or a printer that prepares, places, or prints an advertisement in good faith, without knowledge of its false, deceptive, or misleading character; nor to any employee of the person who offers the advertised thing if that employee in good faith relied on the statements of the person and did not have knowledge that the statements were false, deceptive, or misleading.

**51-12-10. Real estate.** It is unlawful for any person to make or disseminate any statement or assertion of fact in a newspaper, circular, form letter, or other publication published or circulated in any language in this state, concerning the extent, location, ownership, title, or other characteristic, quality, or attribute of any real estate located in this state or elsewhere, which is known to the person to be untrue and which is made or disseminated with the intention of misleading.

Nothing in this section may be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless the publisher or printer has an interest either as owner or agent, in the real estate so advertised.

**51-12-11. Used merchandise or seconds.** It is unlawful for any person in any newspaper, magazine, circular, form letter, or any open publication, published, distributed, or circulated in this state or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise, call attention to, or give publicity to the sale of any merchandise, which merchandise is secondhand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as "seconds", or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there be conspicuously displayed directly in connection with the name and description of such merchandise and each specified article, unit, or part thereof, a direct and unequivocal statement, phrase, or word which will clearly indicate that such merchandise or each article, unit, or part thereof so advertised is secondhand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof, as the fact shall be.

**51-12-12. Newspaper - Misrepresenting circulation.** It is unlawful for any proprietor or publisher of any newspaper or periodical willfully and knowingly to misrepresent the circulation of the newspaper or periodical, for the purpose of securing advertising or other patronage.

**51-12-13. Penalty.** Any person who violates any of the provisions of sections 51-12-08 through 51-12-12 is guilty of a class B misdemeanor.

**51-12-14. Injunction.** Any person who violates or proposes to violate any of the provisions of sections 51-12-08 through 51-12-12 may be enjoined by any court of competent jurisdiction.

Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in this state in the name of the people of the state of North Dakota upon their own complaint or upon the complaint of any board, officer, person, corporation, limited liability company, or association or by any person acting for the interests of itself, its members, or the general public.

**51-12-15. Product rebates - Acceptable mailing addresses.** A person who is eligible to receive a mail-in rebate for the purchase of a product or merchandise must be given the option of providing either a street address or a post-office box number as a mailing address.