

SENATE BILL NO. 2256

Introduced by

Senators Traynor, Heitkamp

Representatives Gulleason, Kliniske

1 A BILL for an Act to create and enact chapter 49-24 of the North Dakota Century Code, relating
2 to telephone solicitation sales; to provide a penalty; and to provide an effective date.

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

4 **SECTION 1.** Chapter 49-24 of the North Dakota Century Code is created and enacted
5 as follows:

6 **49-24-01. Definitions.** In this chapter, unless the context or subject matter otherwise
7 requires:

- 8 1. "Caller identification service" means a type of telephone service that permits
9 telephone subscribers to see the telephone number of incoming telephone calls.
- 10 2. "Residential subscriber" means a person who has subscribed to residential local
11 exchange telephone service or the other persons living or residing with that person.
- 12 3. "Telephone solicitation" means any voice communication over a telephone line for
13 the purpose of encouraging the purchase or rental of, or investment in, property,
14 goods, or services, but does not include communications to any residential
15 subscriber with that subscriber's prior express invitation or permission. The
16 communication, however, may be from a live operator, through the use of
17 automatic dialing-announcing device equipment or by other means.

18 **49-24-02. Prohibited telephone solicitations.** A person or entity may not make or
19 cause to be made any telephone solicitation to the telephone line of any residential subscriber
20 in this state who has given notice to the commission, in accordance with rules adopted under
21 section 49-24-03, of the subscriber's objection to receiving telephone solicitations.

22 **49-24-03. Establishment of data base by commission.** The commission shall
23 establish and provide for the operation of a data base to compile a list of telephone numbers of

1 residential subscribers who object to receiving telephone solicitations. The commission shall
2 have the data base in operation by August 1, 2000.

- 3 1. The data base may be operated by the commission or by another entity under
4 contract with the commission.
- 5 2. By August 1, 2000, the commission shall adopt rules that:
 - 6 a. Specify the methods by which the commission may inform residential
7 subscribers of the opportunity to provide notification to the commission or its
8 contractor that the subscriber objects to receiving telephone solicitations;
 - 9 b. Specify the methods by which each residential subscriber may give notice to
10 the commission or its contractor of the subscriber's objection to receiving
11 solicitations or revocation of the notice;
 - 12 c. Specify the length of time for which a notice of objection is effective and the
13 effect of a change of telephone number on the notice;
 - 14 d. Specify the methods by which the objections and revocations are collected
15 and added to the data base;
 - 16 e. Specify the methods by which any person or entity desiring to make telephone
17 solicitations may obtain access to the data base as required to avoid calling
18 the telephone numbers of residential subscribers included in the data base;
 - 19 f. Specify that the residential subscriber may elect to except from the notice
20 solicitations by or on behalf of a charitable organization, as defined in section
21 50-22-01, and licensed by the secretary of state at the time of the solicitations,
22 pursuant to chapter 50-22, to make charitable solicitations in this state; and
 - 23 g. Specify any other matters relating to the data base that the commission
24 deems desirable.

25 **49-24-04. Inclusion in national data base.** If, pursuant to section 227(c) of the
26 Telephone Consumer Protection Act of 1991 [Pub. L. 102-243; 105 Stat. 2394; 47 U.S.C.
27 227(c)], the federal communications commission establishes a single national data base of
28 telephone numbers of subscribers who object to receiving telephone solicitations, the
29 commission shall include the part of the single national data base that relates to North Dakota
30 in the data base established under this chapter.

1 **49-24-05. Fees.** A residential subscriber may be charged a fee of five dollars, payable
2 to the commission, for each notice for inclusion in, exclusion from, or change in the data base
3 established under this chapter. A person or entity conducting telephone solicitations shall pay
4 the commission a fee of ten dollars per year for access to the data base established under this
5 section. There may not be an additional charge for electronic copies of the data base. The
6 commission, however, may charge a cost not to exceed twenty-five cents per page for paper
7 copies of the data base. Information contained in the data base established under this section
8 may be used only for the purpose of compliance with this Act or in a proceeding or action under
9 this Act. Except as herein provided, the information is not subject to public inspection or
10 disclosure under section 44-04-18.

11 **49-24-06. Identification by caller.** A person or entity who makes a telephone
12 solicitation to the telephone line of any residential subscriber in this state, at the beginning of
13 the call, shall state clearly the identity of the person and entity initiating the call and the identity
14 of the person or entity on whose behalf the call is made. The identity of the person calling must
15 include the true first name and surname. Upon request, the caller shall provide a valid
16 telephone number and valid street and mailing address for both the person or entity initiating
17 the call and the person or entity on whose behalf the call is made. A telephone solicitation may
18 not be terminated without first disclosing the identification as herein provided. A person or
19 entity who makes a telephone solicitation to the telephone line of a residential subscriber in this
20 state may not utilize any method to block or otherwise circumvent the subscriber's use of a
21 caller identification service.

22 **49-24-07. Cease and desist orders - Civil penalties - Hearing.** If it appears to the
23 attorney general, either upon complaint or otherwise, that any person or entity has engaged in,
24 is engaging in, or is about to engage in any act or practice prohibited by this Act or by any order
25 of the attorney general issued under this Act, the attorney general may:

- 26 1. Issue any cease and desist order, which the attorney general deems necessary or
27 appropriate in the public interest, including if any person or entity fails or refuses to
28 file any statement or report, or obey a subpoena issued by the attorney general
29 pursuant to this chapter.
- 30 2. Impose by order and collect a civil penalty against a person or entity found in an
31 administrative action to have violated a provision of this chapter, or a rule or order

adopted or issued under this chapter, in an amount not to exceed two thousand dollars for each violation. The attorney general may bring an action to recover penalties pursuant to this section in district court. A person or entity aggrieved by an order issued pursuant to this subsection may request a hearing before the attorney general if a written request is made within ten days after receipt of the order. All administrative proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided.

49-24-08. Powers of attorney general to investigate - Rules. To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may:

1. Require a person or entity 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 that person's or entity's business activities or practices, as well as other data and information the attorney general may determine necessary.
2. Examine under oath any person or entity in connection with telemarketing or telephone solicitations in this state.
3. Examine any record, book, document, account, or paper as the attorney general may determine necessary.
4. Pursuant to an order of a district court, impound any record, book, document, account, or paper material to the person's or entity's business activities or practices and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.
5. Issue subpoenas to any person or entity, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry concerning violations of this chapter, and prescribe forms and adopt rules as may be necessary.

49-24-09. Costs recoverable. In an action brought under the provisions of this chapter, the attorney general is entitled to recover costs, expenses, and attorney's fees incurred by the attorney general in the investigation and prosecution of the action.

49-24-10. Private enforcement. A person who has received more than one telephone solicitation within any twelve-month period by or on behalf of a person or entity in violation of

1 section 49-24-02 or 49-24-06 may either bring an action to enjoin the violation; bring an action
2 to recover for actual monetary loss from the violation or to receive up to two thousand dollars in
3 damages for each violation, whichever is greater; or bring both actions. If the court determines
4 a person or entity is in violation of section 49-24-02 or 49-24-06, the court may award the
5 plaintiff costs, expenses, and attorney's fees.

6 **49-24-11. Limitation of actions.** An action or proceeding may not be brought under
7 section 49-24-08 or 49-24-10:

- 8 1. More than two years after the person bringing the action knew or should have
9 known of the occurrence of the alleged violation; or
- 10 2. More than two years after the termination of any proceeding or action by the state,
11 whichever is later.

12 **49-24-12. Nonexclusive remedies and penalties.** The remedies, duties, prohibitions,
13 and penalties of this Act are not exclusive and are in addition to all other causes of action,
14 remedies, and penalties in chapter 51-15 or otherwise provided by law.

15 **49-24-13. Caller identification service nonliability.** A provider of telephone caller
16 identification service may not be held liable for violations of this Act committed by other persons
17 or entities.

18 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on August 1, 1999, for
19 purpose of administrative establishment of the data base, including receipt of notices, by the
20 public service commission and becomes effective for all other purposes on August 1, 2000.