

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1388

Introduced by

Representatives Warner, Hawken, N. Johnson

Senators Andrist, Krauter

1 A BILL for an Act to create and enact chapter 51-27 of the North Dakota Century Code, relating
2 to commercial electronic mail solicitation; to provide a penalty; and to provide an expiration
3 date.

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

5 **SECTION 1.** Chapter 51-27 of the North Dakota Century Code is created and enacted
6 as follows:

7 **51-27-01. Definitions.** In this chapter, unless context otherwise requires:

- 8 1. "Assist the transmission" means actions taken by a person to provide substantial
9 assistance or support that enables any person to formulate, compose, send,
10 originate, initiate, or transmit a commercial electronic mail message when the
11 person providing the assistance knows or consciously avoids knowing that the
12 initiator of the commercial electronic mail message is engaged, or intends to
13 engage, in any practice that violates chapter 51-15.
- 14 2. "Commercial electronic mail message" means an electronic mail message sent to
15 promote real property, goods, or services for sale or lease. The term does not
16 mean an electronic mail message to which an interactive computer service
17 provider has attached an advertisement in exchange for free use of an electronic
18 mail account if the sender has agreed to such an arrangement.
- 19 3. "Electronic mail address" means a destination, commonly expressed as a string of
20 characters, to which electronic mail may be sent or delivered.
- 21 4. "Initiate the transmission" refers to the action by the original sender of an electronic
22 mail message, not to the action by any intervening interactive computer service
23 that may handle or retransmit the message, unless the intervening interactive
24 computer service assists in the transmission of an electronic mail message when

the interactive computer service knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates chapter 51-15.

5. "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and systems operated or services offered by libraries and educational institutions.

6. "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

51-27-02. False or misleading messages prohibited.

1. A person may not initiate the transmission, conspire with another to initiate the transmission, or assist the transmission of a commercial electronic mail message from a computer located in this state or to an electronic mail address that the sender knows, or has reason to know, is held by a resident of this state that:

a. Uses a third-party's internet domain name without permission of the third party or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

b. Contains false or misleading information in the subject line.

2. For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a resident of this state if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

51.27-03. Unpermitted or misleading electronic mail - Violation of consumer protection law.

1. It is a violation of chapter 51-15 to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that:

1 a. Uses a third-party's internet domain name without permission of the third
2 party or otherwise misrepresents or obscures any information in identifying
3 the point of origin or the transmission path of a commercial electronic mail
4 message; or

5 b. Contains false or misleading information in the subject line.

6 2. It is a violation of chapter 51-15 to assist in the transmission of a commercial
7 electronic mail message if the person providing the assistance knows, or
8 consciously avoids knowing, that the initiator of the commercial electronic mail
9 message is engaged, or intends to engage, in any act or practice that violates
10 chapter 51-15.

11 **51-27-04. Subject disclosure - Violation of consumer protection law.**

12 1. The subject line of a commercial electronic mail message must include "ADV" as
13 the first characters. If the message contains information that consists of material
14 of a sexual nature that may only be viewed by an individual eighteen years of age
15 or older, the subject line of the message must include "ADV-ADULT" as the first
16 characters.

17 2. For purposes of this section, a commercial electronic mail message does not
18 include a message if the recipient has consented to receive or has solicited
19 electronic mail messages from the initiator, from an organization using electronic
20 mail to communicate exclusively with its members, from an entity which uses
21 electronic mail to communicate exclusively with its employees or contractors, or if
22 there is a business or personal relationship between the initiator and the recipient.

23 3. For purposes of this section, a business relationship means a prior or existing
24 relationship formed between the initiator and the recipient, with or without an
25 exchange of consideration, on the basis of an inquiry, application, purchase, or
26 services offered by the initiator or an affiliate or agent of the initiator. "Affiliate"
27 means a person that directly or indirectly controls, is controlled by, or is under
28 common control with a specified person.

29 4. It is a violation of chapter 51-15 to conspire with another person to initiate the
30 transmission or to initiate the transmission of a commercial electronic mail
31 message that violates this section.

51-27-05. Toll-free number.

1. A sender initiating the transmission of a commercial electronic mail message shall establish a toll-free telephone number, a valid sender-operated return electronic mail address, or another easy-to-use electronic method that the recipient of the commercial electronic mail message may call or access by electronic mail or other electronic means to notify the sender not to transmit any further unsolicited commercial electronic mail messages. The notification process may include the ability for the commercial electronic mail messages recipient to direct the initiator to transmit or not transmit particular commercial electronic mail messages based upon products, services, divisions, organizations, companies, or other selections of the recipient's choice.
2. A commercial electronic mail message must include a statement informing the recipient of a toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or access by electronic mail or another electronic method established by the initiator, notifying the sender not to transmit to the recipient any further unsolicited commercial electronic mail messages to the electronic mail address specified by the recipient, and explaining the manner in which the recipient may specify what commercial electronic mail messages the recipient does and does not want to receive.

51-27-06. Violations - Damages.

1. Damages to the recipient of a commercial electronic mail message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.
2. Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater.

51-27-07. Blocking of commercial electronic mail by interactive computer service

- Immunity from liability.

1. An interactive computer service may block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this chapter.
2. An interactive computer service may not be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any

1 commercial electronic mail which it reasonably believes is, or will be, sent in
2 violation of this chapter.

3 **51-27-08. Nonexclusive causes of action, remedies, and penalties.** The remedies,
4 duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all
5 other causes of action, remedies, and penalties in chapter 51-15 or otherwise provided by law.

6 **51-27-09. Relationship to federal law.** If any federal law is enacted that regulates
7 false, misleading, or unsolicited commercial electronic mail messages, but does not preempt
8 state law on the subject, the federal law supersedes any conflicting provision of this chapter.

9 **SECTION 2. EXPIRATION DATE.** The governor shall certify to the legislative council
10 the effective date of any federal legislation that preempts state regulation of false, misleading,
11 or unsolicited commercial electronic mail messages. This Act becomes ineffective upon the
12 effective date contained in the certification of federal legislation that preempts state regulation of
13 false, misleading, or unsolicited commercial electronic mail messages.