

**HOUSE BILL NO. 1395**

Introduced by

Representatives Ekstrom, S. Kelsh

1 A BILL for an Act to create and enact a new section to chapter 49-21 of the North Dakota  
2 Century Code, relating to telemarketers; and to amend and reenact section 49-21-01 of the  
3 North Dakota Century Code, relating to definitions relating to telemarketing; and to provide a  
4 penalty.

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

6 **SECTION 1. AMENDMENT.** Section 49-21-01 of the 1997 Supplement to the North  
7 Dakota Century Code is amended and reenacted as follows:

8 **49-21-01. Definitions.** As used in this chapter, unless the context otherwise clearly  
9 requires:

- 10 1. "Access" means telecommunications services to connect a telecommunications  
11 customer or end user with a telecommunications company that allows for the  
12 origination or the termination, or both, of WATS, 800, and message toll  
13 telecommunications services and private line transport services. "Switched  
14 access" includes:
- 15 a. Local exchange central office switching and signaling;
  - 16 b. Operator and recording intercept of calls;
  - 17 c. Termination of end user lines in the local exchange central office;
  - 18 d. The carrier common line charge for the line between the end user's premises  
19 and the local exchange central office; and
  - 20 e. Telecommunications service, including connections, provided to allow  
21 transmission service and termination between an interexchange company's  
22 premises and the local exchange central office switch for the origination or  
23 termination of the interexchange company's switched telecommunications  
24 services.

- 1           2.   "Consumer telephone call" means an unsolicited call made to a residential  
2                   telephone number to solicit a sale of a consumer good or service, to solicit an  
3                   extension of credit for a consumer good or service, or to obtain information  
4                   intended to be used to solicit a sale of a consumer good or service or to extend  
5                   credit for the sale.
- 6           3.   "Essential telecommunications price factor" means:
- 7           a.   In the case of group I telecommunications companies, a factor determined  
8                   annually as the lower of:
- 9                   (1)   41.6667 percent of the percentage change of the average annual gross  
10                   national product price index; or
- 11                  (2)   The percentage change of the average annual gross national product  
12                   price index minus 2.75 percentage points.
- 13           b.   In the case of group II telecommunications companies, a factor determined  
14                   annually as the lower of:
- 15                  (1)   52.0834 percent of the percentage change of the average annual gross  
16                   national product price index; or
- 17                  (2)   The percentage change of the average annual gross national product  
18                   price index minus 2.0625 percentage points.
- 19           c.   For purposes of the determination of essential telecommunications price  
20                   factor, group I telecommunications companies are telecommunications  
21                   companies with over fifty thousand subscribers and group II  
22                   telecommunications companies are telecommunications companies with fifty  
23                   thousand or fewer subscribers.
- 24       ~~3.~~ 4.   "Essential telecommunications service" means service that is necessary for  
25                   switched access to interexchange telecommunications companies and necessary  
26                   for two-way switched communications for both residential and business service  
27                   within a local exchange area. A charge based on measured service may not be  
28                   required for residential and business local exchange service. Essential  
29                   telecommunications services are limited to:
- 30           a.   Switched access;

- 1           b. Any new product or service offered in North Dakota after July 1, 1989,
- 2           deemed essential by the commission after notice and hearing in accordance
- 3           with chapter 28-32;
- 4           c. Billing and collection of the billing company's own essential
- 5           telecommunications services and billing and collection recording for
- 6           interexchange carriers to which the local exchange carrier provides feature
- 7           group C access service;
- 8           d. Primary directory listing, including nonlisted and nonpublished service, and
- 9           local exchange directory assistance;
- 10          e. Emergency 911 services and emergency operator assistance in local
- 11          exchange areas in which emergency 911 service is not available;
- 12          f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area
- 13          service to designated nearby local exchange areas;
- 14          g. Installation of the service connection for essential services from the end user's
- 15          premises to the local exchange network;
- 16          h. Transmission service necessary for the connection between the end user's
- 17          premises and the local exchange central office switch including a trunk
- 18          connection that has direct inward dialing and necessary signaling service
- 19          such as touchtone used by end users for essential telecommunications
- 20          services;
- 21          i. Single or multiparty flat-rate or measured residence and business service;
- 22          j. Single or multiparty flat-rate or measured combination business and residence
- 23          service; and
- 24          k. The transmission service line for a coin or pay telephone.
- 25      ~~4.~~ 5. "Gross national product price index" means the fixed-weighted price index of prices
- 26      of all the goods and services that make up gross national product, as published
- 27      quarterly by the United States department of commerce, economics and statistics
- 28      administration, bureau of economic analysis. "Average annual gross national
- 29      product price index" means the mean of the gross national product price index
- 30      published in the third calendar quarter of a year through the second calendar
- 31      quarter of the following year.

- 1       ~~5-~~ 6. "Interexchange telecommunications company" means a person providing  
2                   telecommunications service to end users located in separate local exchange areas.
- 3       ~~6-~~ 7. "Local exchange area" means a geographic territorial unit established by a  
4                   telecommunications company for the administration of telecommunications  
5                   services as approved and regulated in accordance with chapter 49-03.1.
- 6       ~~7-~~ 8. "Mutual telephone company" means a telephone cooperative organized and  
7                   operating subject to the provisions of this chapter, and such a cooperative shall  
8                   also be subject to the general law governing cooperatives, except where such  
9                   general law is in conflict with this chapter.
- 10       ~~8-~~ 9. "Nonessential telecommunications service" means any telecommunications  
11                  service, other than those essential telecommunications services listed in  
12                  subsection ~~3~~ 4 that a customer has the option to purchase either in conjunction  
13                  with or separate from any essential telecommunications service. Nonessential  
14                  telecommunications services include, but are not limited to:
- 15               a. InterLATA and intraLATA message toll service;
- 16               b. Private line transport service;
- 17               c. Calling features and information or enhanced services such as call waiting,  
18               call forwarding, three-way calling, intracall, speed calling, call transfer, voice  
19               or data store and forward, message delivery, or caller identification;
- 20               d. Centrex services and features, not including transmission service described in  
21               subdivision h of subsection ~~3~~ 4 of this section ~~4~~;
- 22               e. Installation of service connections in addition or supplementary to that  
23               described in subdivision g of subsection ~~3~~ 4 which also provides transmission  
24               service between the end user's premises and the local exchange central  
25               office switch;
- 26               f. Mobile telecommunications services using radio spectrum or cellular  
27               technology; and
- 28               g. Packet-switched services.
- 29       ~~9-~~ 10. "Price" means any charge set and published in accordance with chapter 49-21 and  
30                  collected by a telecommunications company for any telecommunications service  
31                  offered by it to the public or other telecommunications companies.

1    ~~40.~~ 11. "Private line transport service" means a telecommunications service to a customer  
2                    over a circuit dedicated to the customer's exclusive use, within a local exchange  
3                    area, or between or among local exchanges. Private line transport service  
4                    includes services to customers who are end users and services to  
5                    telecommunications companies.

6    ~~41.~~ 12. "Service element" means a telecommunications function or service component that  
7                    is not useful to the user unless it is combined with one or more other  
8                    telecommunications functions or service components.

9    ~~42.~~ 13. "Telecommunications company" means a person engaged in the furnishing of  
10                    telecommunications service within this state.

11   ~~43.~~ 14. "Telecommunications service" means the offering for hire of telecommunications  
12                    facilities, or transmitting for hire telecommunications by means of such facilities  
13                    whether by wire, radio, lightwave, or other means.

14                15. "Telephone solicitor" means a person who makes or causes to be made a  
15                    consumer telephone call.

16                **SECTION 2.** A new section to chapter 49-21 of the North Dakota Century Code is  
17                created and enacted as follows:

18                **Telephone solicitor - Communicate source of number - Penalty.** A telephone  
19                solicitor shall inform each individual to whom a consumer telephone call is made of the source  
20                of the telephone number used by the telephone solicitor to call that individual. The commission  
21                may collect from a telephone solicitor who has violated this section an administrative penalty  
22                not to exceed one thousand dollars for each day or portion of a day a violation has occurred.