

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2256

Introduced by

Senators Traynor, Heitkamp

Representatives Gulleson, 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
12 person.
- 13 3. "Telecommunications company" means that term as defined in section 49-21-01.
- 14 4. "Telephone solicitation" means any voice communication over a telephone line for
15 the purpose of encouraging the purchase or rental of, or investment in, property,
16 goods, or services, but does not include communications to any residential
17 subscriber with that subscriber's prior express invitation or permission. The
18 communication, however, may be from a live operator, through the use of
19 automatic dialing-announcing device equipment or by other means.

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

1 **49-24-03. Establishment of data base by commission.** The commission shall
2 establish and provide for the operation of a data base to compile a list of telephone numbers of
3 residential subscribers who object to receiving telephone solicitations. The commission shall
4 have the data base in operation by August 1, 2000.

5 1. The data base may be operated by the commission or by another entity under
6 contract with the commission.

7 2. By August 1, 2000, the commission shall adopt rules that:

8 a. Specify the methods by which the commission may inform residential
9 subscribers of the opportunity to provide notification to the commission or its
10 contractor that the subscriber objects to receiving telephone solicitations,
11 except the commission may not require a telecommunications company to
12 provide that notification to its subscribers;

13 b. Specify the methods by which each residential subscriber may give notice to
14 the commission or its contractor of the subscriber's objection to receiving
15 solicitations or revocation of the notice, except the commission may not
16 require a telecommunications company to receive that notice from its
17 subscribers;

18 c. Specify the length of time for which a notice of objection is effective and the
19 effect of a change of telephone number on the notice;

20 d. Specify the methods by which the objections and revocations are collected
21 and added to the data base, except the commission may not require a
22 telecommunications company to receive or collect the objections and
23 revocations from its subscribers;

24 e. Specify the methods by which any person or entity desiring to make
25 telephone solicitations may obtain access to the data base as required to
26 avoid calling the telephone numbers of residential subscribers included in the
27 data base;

28 f. Specify that the residential subscriber may elect to except from the notice
29 solicitations by or on behalf of a charitable organization, as defined in section
30 50-22-01, and licensed by the secretary of state at the time of the

1 solicitations, pursuant to chapter 50-22, to make charitable solicitations in this
2 state; and

3 g. Specify any other matters relating to the data base that the commission
4 deems desirable.

5 **49-24-04. Inclusion in national data base.** If, pursuant to section 227(c) of the
6 Telephone Consumer Protection Act of 1991 [Pub. L. 102-243; 105 Stat. 2394; 47 U.S.C.
7 227(c)], the federal communications commission establishes a single national data base of
8 telephone numbers of subscribers who object to receiving telephone solicitations, the
9 commission shall include the part of the single national data base that relates to North Dakota
10 in the data base established under this chapter.

11 **49-24-05. Fees.** A residential subscriber may be charged a fee of five dollars, payable
12 to the commission, for each notice for inclusion in, exclusion from, or change in the data base
13 established under this chapter. A person or entity conducting telephone solicitations shall pay
14 the commission a fee of ten dollars per year for access to the data base established under this
15 section. There may not be an additional charge for electronic copies of the data base. The
16 commission, however, may charge a cost not to exceed twenty-five cents per page for paper
17 copies of the data base. Information contained in the data base established under this section
18 may be used only for the purpose of compliance with this Act or in a proceeding or action under
19 this Act. Except as herein provided, the information is not subject to public inspection or
20 disclosure under section 44-04-18.

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

1 **49-24-07. Cease and desist orders - Civil penalties - Hearing.** If it appears to the
2 attorney general, either upon complaint or otherwise, that any person or entity has engaged in,
3 is engaging in, or is about to engage in any act or practice prohibited by this Act or by any order
4 of the attorney general issued under this Act, the attorney general may:

- 5 1. Issue any cease and desist order, which the attorney general deems necessary or
6 appropriate in the public interest, including if any person or entity fails or refuses to
7 file any statement or report, or obey a subpoena issued by the attorney general
8 pursuant to this chapter.
- 9 2. Impose by order and collect a civil penalty against a person or entity found in an
10 administrative action to have violated a provision of this chapter, or a rule or order
11 adopted or issued under this chapter, in an amount not to exceed two thousand
12 dollars for each violation. The attorney general may bring an action to recover
13 penalties pursuant to this section in district court. A person or entity aggrieved by
14 an order issued pursuant to this subsection may request a hearing before the
15 attorney general if a written request is made within ten days after receipt of the
16 order. All administrative proceedings under this chapter must be conducted in
17 accordance with chapter 28-32 unless otherwise specifically herein provided.

18 **49-24-08. Powers of attorney general to investigate - Rules.** To accomplish the
19 objectives and to carry out the duties prescribed by this chapter, the attorney general may:

- 20 1. Require a person or entity to file, on forms the attorney general prescribes, a
21 statement or report in writing, under oath or otherwise, of all the facts and
22 circumstances concerning that person's or entity's business activities or practices,
23 as well as other data and information the attorney general may determine
24 necessary.
- 25 2. Examine under oath any person or entity in connection with telemarketing or
26 telephone solicitations in this state.
- 27 3. Examine any record, book, document, account, or paper as the attorney general
28 may determine necessary.
- 29 4. Pursuant to an order of a district court, impound any record, book, document,
30 account, or paper material to the person's or entity's business activities or

1 practices and retain the same in the attorney general's possession until the
2 completion of all proceedings undertaken under this section or in the courts.

3 5. Issue subpoenas to any person or entity, administer an oath or affirmation to any
4 person, and conduct hearings in aid of any investigation or inquiry concerning
5 violations of this chapter, and prescribe forms and adopt rules as may be
6 necessary.

7 **49-24-09. Costs recoverable.** In an action brought under the provisions of this
8 chapter, the attorney general is entitled to recover costs, expenses, and attorney's fees
9 incurred by the attorney general in the investigation and prosecution of the action.

10 **49-24-10. Private enforcement.** A person who has received more than one telephone
11 solicitation within any twelve-month period by or on behalf of a person or entity in violation of
12 section 49-24-02 or 49-24-06 may either bring an action to enjoin the violation; bring an action
13 to recover for actual monetary loss from the violation or to receive up to two thousand dollars in
14 damages for each violation, whichever is greater; or bring both actions. If the court determines
15 a person or entity is in violation of section 49-24-02 or 49-24-06, the court may award the
16 plaintiff costs, expenses, and attorney's fees.

17 **49-24-11. Limitation of actions.** An action or proceeding may not be brought under
18 section 49-24-08 or 49-24-10:

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

23 **49-24-12. Nonexclusive remedies and penalties.** The remedies, duties, prohibitions,
24 and penalties of this Act are not exclusive and are in addition to all other causes of action,
25 remedies, and penalties in chapter 51-15 or otherwise provided by law.

26 **49-24-13. Caller identification service nonliability.** A provider of telephone caller
27 identification service may not be held liable for violations of this Act committed by other persons
28 or entities.

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