

SENATE BILL NO. 2437

Introduced by

Senators Every, D. Mathern

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 otherwise requires:

- 7 1. "Caller identification service" means a type of telephone service that permits
8 telephone subscribers to see the telephone number of incoming telephone calls.
- 9 2. "Residential subscriber" means a person who has subscribed to residential local
10 exchange telephone service or the other persons living or residing with that person.
- 11 3. "Telecommunications company" means that term as defined in section 49-21-01.
- 12 4. "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 equipment or by other means.

18 **49-24-02. Prohibited telephone solicitations.** A person may not make or cause to be
19 made any telephone solicitation to the telephone line of any residential subscriber in this state
20 who has given notice to the commission, in accordance with rules adopted under section
21 49-24-03, of the subscriber's objection to receiving telephone solicitations. A person may not
22 use an automatic dialing-announcing device to contact the telephone line of any residential
23 subscriber for any telephone solicitation or for any other purpose unless the residential
24 subscriber subscribes to a service offered on an automatic dialing-announcing device.

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, 2002.

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, 2002, 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 telephone
25 solicitations may obtain access to the data base as required to avoid calling
26 the telephone numbers of residential subscribers included in the data base;

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

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

49-24-04. Inclusion in national data base. If the federal communications commission establishes a single national data base of telephone numbers of subscribers who object to receiving telephone solicitations, the commission shall include the part of the single national data base that relates to this state in the data base established under this chapter.

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

49-24-06. Identification by caller. A person who makes a telephone solicitation to the telephone line of any residential subscriber in this state, at the beginning of the call, shall state clearly the identity of the person and entity initiating the call and the identity of the person or entity on whose behalf the call is made. The identity of the person calling must include the true first name and surname. Upon request, the caller shall provide a valid telephone number and valid street and mailing address for both the person or entity initiating the call and the person or entity on whose behalf the call is made. The caller may not terminate a telephone solicitation without first disclosing the identification required by this section. A person who makes a telephone solicitation to the telephone line of a residential subscriber in this state may not utilize any method to block or otherwise circumvent the subscriber's use of a caller identification service.

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

- 1 1. Issue any cease and desist order, which the attorney general deems necessary or
2 appropriate in the public interest, including if any person fails or refuses to file any
3 statement or report, or obey a subpoena issued by the attorney general pursuant to
4 this chapter.
- 5 2. Impose by order and collect a civil penalty against a person found in an
6 administrative action to have violated this chapter, or a rule or order adopted to
7 implement this chapter, in an amount not to exceed two thousand dollars for each
8 violation. The attorney general may bring an action to recover penalties pursuant
9 to this section in district court. A person aggrieved by an order issued pursuant to
10 this subsection may request a hearing before the attorney general if a written
11 request is made within ten days after receipt of the order.

12 **49-24-08. Powers of attorney general to investigate - Rules.** To accomplish the
13 objectives and to carry out the duties prescribed by this chapter, the attorney general may:

- 14 1. Require a person to file, on forms the attorney general prescribes, a statement or
15 report in writing, under oath or otherwise, of all the facts and circumstances
16 concerning that person's or entity's business activities or practices, as well as other
17 data and information the attorney general may determine necessary.
- 18 2. Examine under oath any person in connection with telemarketing or telephone
19 solicitations in this state.
- 20 3. Examine any record, book, document, account, or paper as the attorney general
21 may determine necessary.
- 22 4. Pursuant to an order of a district court, impound any record, book, document,
23 account, or paper material to the person's business activities or practices and
24 retain the same in the attorney general's possession until the completion of all
25 proceedings undertaken under this section or in the courts.

26 **49-24-09. Costs recoverable.** In an action brought under this chapter, the attorney
27 general is entitled to recover costs, expenses, and attorney's fees incurred by the attorney
28 general in the investigation and prosecution of the action.

29 **49-24-10. Private enforcement.** A person who has received more than one telephone
30 solicitation within any twelve-month period by or on behalf of a person in violation of section
31 49-24-02 or 49-24-06 may either bring an action to enjoin the violation; bring an action to

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

5 **49-24-11. Limitation of actions.** An action or proceeding may not be brought under
6 section 49-24-08 or 49-24-10:

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

11 **49-24-12. Nonexclusive remedies and penalties.** The remedies, duties, prohibitions,
12 and penalties of this chapter are not exclusive and are in addition to all other causes of action,
13 remedies, and penalties in chapter 51-15 or otherwise provided by law.

14 **49-24-13. Caller identification service nonliability.** A provider of a telephone caller
15 identification service may not be held liable for violations of this chapter committed by other
16 persons.

17 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on August 1, 2001, for
18 purposes of administrative establishment of the data base, including receipt of notices, by the
19 public service commission and becomes effective for all other purposes on August 1, 2002.