CHAPTER 51-28
TELEPHONE SOLICITATIONS

51-28-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, including voice, text, or other electronic communication, regardless of its content.
6. "Subscriber" means a person who has subscribed to a residential telephone line or the other persons living or residing with the subscribing person.
7. "Telephone line" means a telephone service to a subscriber, regardless of the technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet protocol telephone service.
8. "Telephone solicitation" means any voice, text, or other electronic communication over a telephone line for the purpose of encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise, including as defined in subsection 3 of section 51-15-01, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device, or by other means. Telephone solicitation does not include communications:
   a. To any subscriber with that subscriber's prior express written request, consent, invitation, or permission.
   b. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
   c. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
      (1) The telephone call is made by a volunteer or employee of the charitable organization; and
      (2) The person who makes the telephone call immediately discloses the following information upon making contact with the consumer:
         (a) The person's true first and last name; and
         (b) The name, address, and telephone number of the charitable organization.
   d. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions, or votes, unless the communication is a text message.
   e. By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or

person who makes the initial call and the prospective purchaser, unless the communication is a text message.

f. By or on behalf of a political party, candidate, or other group with a political purpose, as defined in section 16.1-08.1-01, unless the communication is a text message.

51-28-02. Use of prerecorded or synthesized voice messages.

A caller may not use or connect to a telephone line an automatic dialing-announcing device or deliver a prerecorded or synthesized voice message to a subscriber unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

51-28-03. Message requirements.

When the message is immediately preceded by a live operator, the operator must disclose at the outset of the message:

1. The name of the business, firm, organization, association, partnership, or entity for which the message is being made;
2. The purpose of the message;
3. The identity or kinds of goods or services the message is promoting; and
4. If applicable, the fact that the message intends to solicit payment or commitment of funds.

51-28-04. Requirements on automatic dialing-announcing devices.

A caller may not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber. A caller may not use an automatic dialing-announcing device that uses a random or sequential number generator unless the equipment excludes calls to the following telephone numbers:

1. Emergency telephone numbers, including 911, of any hospital, medical physician, health care facility, ambulance or emergency medical provider, fire protection facility, or law enforcement agency.
2. Any guest room or patient room of a hospital, health care facility, elderly care home, or similar establishment.
3. A paging service, a cellular telephone service, a specialized mobile radio service, or any service for which the called party is charged for the call.
4. The telephone numbers maintained on a do-not-call list established pursuant to section 51-28-09.

51-28-05. Time of day limit.

A caller may not use an automatic dialing-announcing device nor make any telephone solicitation before eight a.m. or after nine p.m. at the telephone subscriber's location.

51-28-06. Prohibited telephone solicitations.

A caller may not make or cause to be made any telephone solicitation to the telephone line of any subscriber in this state who, for at least thirty-one days before the date the call is made, has been on the do-not-call list established and maintained or used by the attorney general under section 51-28-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

51-28-07. Identification by caller.

Any caller who makes a telephone solicitation to a subscriber in this state shall immediately and clearly state at the beginning of the call the caller's true first and last name, the caller's telephone number, the caller's city and state of location, and the name of the business on whose behalf the telephone solicitation is made.

51-28-08. Interference with caller identification.

A caller who makes a telephone solicitation to a subscriber in this state may not knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

51-28-08.1. Telephone caller identification system fraud - Exceptions - Definitions.

1. A person may not, in connection with any telecommunications service or internet protocol enabled voice service, knowingly cause any telephone caller identification system to:
   a. Transmit misleading or inaccurate caller identification information with the intent to defraud or cause harm; or
   b. Use or display a telephone number the caller does not own or has not received consent to use from the owner of the telephone number.
2. This section does not apply to:
   a. The blocking of caller identification information;
   b. A law enforcement agency of the federal, state, county, or municipal government;
   c. An intelligence or security agency of the federal government;
   d. A telecommunications, broadband, or voice over internet protocol service provider acting solely as an intermediary for the transmission of telephone service between the caller and the recipient;
   e. Activity engaged in under a court order that specifically authorizes the use of caller manipulation; or
   f. A caller who, based on the telephone number called, reasonably believes the recipient of the call is not physically within the state.
3. Any person who receives a call in violation of subsection 1 may bring a civil action in a court of this state in the county in which the call recipient resides to enjoin such action, or for damages, or both. If the plaintiff prevails, the court must award the plaintiff the plaintiff's actual damages or damages in an amount not less than five thousand dollars and not more than ten thousand dollars per violation, whichever is greater. Each call is a separate violation under this chapter. The court shall award the plaintiff's costs, expenses, and reasonable attorney's fees. The relief provided in this section is in addition to all remedies available to the attorney general under this chapter in any investigation or action brought by the attorney general against the caller in the plaintiff's private action. This section may not be interpreted to limit any other claims the person may have against the caller or any other claims the attorney general may bring under this chapter, chapter 51-15, or any other state or federal laws.
4. In addition to the remedies and penalties provided in this chapter, a person violating subsection 1 is guilty of a class A misdemeanor, and the venue must be in the county in which the call recipient received the call or the county in which the call recipient resides.
5. As used in this section:
   a. "Call" means any type of telephonic communication made using a public switched telephone network, wireless cellular telephone service, or voice over internet protocol service that has the capability of accessing users on the public switched telephone network or a successor network.
   b. "Caller" means a person that places a call, whether by telephone, over a telephone line, or on a computer.
   c. "Defraud" means taking anything of value, including money, property, or time, without consent from the recipient of a call.

d. "Telephone caller identification system" means a listing of a caller's name, telephone number, or name and telephone number shown to a recipient of a call when it is received.

51-28-09. Establishment of do-not-call list - Federal trade commission do-not-call registry.

1. The attorney general shall establish and maintain a list of telephone numbers of subscribers who object to receiving telephone solicitations. The attorney general may fulfill the requirements of this section by contracting with an agent for the establishment and maintenance of the list or by using the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310. The attorney general may adopt rules governing the establishment, distribution, and operation of the do-not-call list, as the attorney general deems necessary and appropriate to fully implement the provisions of this chapter, in addition to the following provisions:
   a. Any subscriber may contact the attorney general or the attorney general's agent and give notice, in the manner prescribed by the attorney general, that the subscriber objects to receiving telephone solicitations. The attorney general shall add the telephone number of any subscriber who gives notice of objection to the list maintained pursuant to this section.
   b. Any notice given by a subscriber under this section is effective for five years unless revoked by the subscriber. Any subsequent notices given by the same subscriber related to a different telephone number are separate from the original notice.
   c. The attorney general shall allow subscribers to give notice under this section by mail, telephone, or electronically.
   d. The attorney general shall establish the procedures by which a person wishing to make telephone solicitations may obtain access to the list. To the extent practicable, those procedures shall allow for access to paper or electronic copies of the list.
   e. The attorney general may include in the list established under this section subscribers who live in North Dakota and are included in the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310. The attorney general may provide to the federal trade commission the telephone numbers of North Dakota subscribers who are in the attorney general's do-not-call list or who have otherwise notified the attorney general of the subscriber's objection to receiving telephone solicitations for inclusion in the national do-not-call registry.
   f. A person or entity desiring to make telephone solicitations shall pay a fee, payable to the attorney general, for access to, or for paper or electronic copies of, the list established under section 51-28-09. The fee for acquisition of the list may not exceed two hundred dollars per quarter, or eight hundred dollars per year.
2. Notwithstanding any other provision of this chapter, the attorney general may designate the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 61, as the state do-not-call list.

51-28-10. Release of information.

Information contained in the list established under section 51-28-09 may not be used for any purposes except compliance with this chapter or in a proceeding or action under this chapter or chapter 51-15. The information contained in the list is an exempt record as defined in section 44-04-17.1.

51-28-11. Private enforcement.

Any person who receives a telephone solicitation or message in violation of this chapter may bring an action to enjoin such violation, or for damages, or both. The court may award the plaintiff the plaintiff's actual damages or damages up to two thousand dollars for each violation, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section shall not limit any other claims the person may have against the caller.

51-28-12. Limitation of actions.

No action or proceeding may be brought under this chapter:

1. More than one year after the person bringing the action knew or should have known of the alleged violation; or
2. More than one year after the termination of any proceeding or action by the attorney general, whichever is later.

51-28-13. Powers of the attorney general - Remedies - Injunction - Other relief.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, the attorney general, in enforcing this chapter, has all powers provided in this chapter or chapter 51-15, and may seek all remedies in this chapter or chapter 51-15.

51-28-14. Cease and desist orders.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order which the attorney general deems necessary or appropriate in the public interest, including if any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general under this chapter or chapter 51-15. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein.

51-28-15. Civil penalties in an adjudicative proceeding.

When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general may impose by order and collect a civil penalty against any person found in an adjudicative proceeding to have violated any provision of this chapter, or any rule or order adopted under this chapter, in an amount not more than two thousand dollars for each violation of this chapter or any rule or order adopted under this chapter. The attorney general may bring an action in district court to recover penalties under this section.

51-28-16. Costs recoverable in adjudicative proceeding - Hearing costs.

If the attorney general prevails in an adjudicative proceeding pursuant to section 51-28-14 or 51-28-15, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-28-17. Civil penalties in court proceeding.

The court may award the attorney general civil penalties of not more than two thousand dollars per violation of this chapter. A violation of this chapter constitutes a violation of chapter 51-15 and the court may award civil penalties under section 51-15-11.

51-28-18. Costs recoverable in court proceeding.

The attorney general is entitled to an award of reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-28-19. Separate violations - Nonexclusive remedies and penalties.

For each remedy or penalty under this chapter or chapter 51-15, or otherwise provided by law, each telephone solicitation or message shall constitute a separate violation for purposes of an adjudicative proceeding or an action in district court. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

51-28-20. Caller identification service nonliability.

No provider of caller identification service shall be held liable for violations of this chapter committed by other persons or entities.

51-28-21. Disposition of fees, penalties, and recoveries.

All fees, penalties, and recoveries of attorney's fees, investigation fees, costs, and expenses collected pursuant to this chapter shall be retained by the attorney general for enforcement of this chapter, including to pay costs, expenses, and attorney's fees and salaries incurred in the operation of the attorney general's consumer protection and antitrust division. However, the attorney general may deposit any excess funds not required for enforcement of this chapter in the attorney general refund fund under section 54-12-18.

51-28-22. Venue.

The attorney general or a plaintiff in a private enforcement action may bring an action pursuant to this chapter in either the county of the telephone subscriber's residence or Burleigh County.