

HOUSE BILL NO.

Introduced by

Representative Zaiser

1 A BILL for an Act to provide for a do not mail registry; and to provide a penalty.

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

3 **SECTION 1. Definitions.** As used in this Act:

4 1. "Resident" means any individual with an address in North Dakota.

5 2. "Solicitation" means any communication by mail for the purpose of soliciting the
6 sale of consumer goods or services or for the purpose of encouraging the
7 purchase or rental of, or investment in, property, goods, or services. The term
8 excludes a communication:

9 a. If the sender obtained the resident's prior express invitation or permission;

10 b. By or on behalf of any person with which a resident has had a business
11 contact in the past one hundred eighty days or has a current business
12 relationship;

13 c. By or on behalf of an entity organized under section 501(c)(3) of the Internal
14 Revenue Code of 1986, as amended, [26 U.S.C. 501(c)(3)] while the entity is
15 engaged in fundraising to support the charitable purpose for which the entity
16 was established; provided that a bona fide member of the exempt
17 organization makes the communication; and

18 d. By or on behalf of any entity over which a federal agency has regulator
19 authority to the extent that:

20 (1) The entity is required to maintain a license, permit, or certificate to sell
21 or provide the merchandise being offered by mail; and

22 (2) The entity is required by law or rule to develop and maintain a no mail
23 list.

1 **SECTION 2. Unlawful action.** A person may not mail or cause to be mailed any
2 solicitation to the mailing or physical address of any resident who has given notice of the
3 resident's objection to receiving any solicitation in accordance with rules adopted to implement
4 this Act.

5 **SECTION 3. Do not mail registry established.**

- 6 1. The attorney general shall establish and operate a database of mailing and
7 physical addresses of residents who object to receiving solicitations. The database
8 must be called the do not mail registry. The attorney general shall implement the
9 registry before January 1, 2010.
- 10 2. Before January 1, 2010, the attorney general shall adopt rules governing the
11 establishment of the do not mail registry. The rules must specify:
- 12 a. That there is no cost to a resident to be added to or removed from the
13 database;
- 14 b. The methods by which each resident may give notice to the attorney general
15 or the attorney general's contractor of the resident's objection to receiving
16 solicitations or revocation of the notice;
- 17 c. The length of time for which a notice of objection is effective and the effect of
18 a change of mailing address;
- 19 d. The methods by which objections and revocations are collected and added to
20 or removed from the database;
- 21 e. The methods by which any person intending to make solicitations may obtain
22 access to the information contained in the database to avoid mailing
23 solicitations to residents included in the database, including any cost
24 assessed to that person for access to the information; and
- 25 f. Other matters relating to the database that the attorney general deems
26 necessary or desirable to implement the Act.
- 27 3. The attorney general shall provide notice to residents:
- 28 a. Of the establishment of the registry; and
- 29 b. About the availability of instructions for requesting information from the
30 attorney general about the registry, including a resident's right to be included
31 in the registry.

- 1 4. The attorney general shall consult and work with the United States postal service
2 and other private entities to:
3 a. Ascertain the means by which the registry can be established and maintained
4 most efficiently; and
5 b. Take all steps possible to assist in ensuring that a resident on the registry
6 does not receive unwanted solicitations through the mail.

7 **SECTION 4. Use of information.** The information contained in the database
8 established under section 3 of this Act may be used only for the purpose of compliance with this
9 Act. The information contained in the database is an exempt record as defined in section
10 44-04-17.1.

11 **SECTION 5. Database maintenance.** In January and July of each year, the attorney
12 general shall obtain databases of North Dakota residents who are included on any national no
13 mail list and shall add the name and address of the residents to the state do not mail registry.

14 **SECTION 6. Violations - Proceeding - Penalties.**

- 15 1. When it appears to the attorney general that a person has engaged in, or is
16 engaging in, any practice declared to be unlawful by this Act, the attorney general,
17 in enforcing this Act, has all powers provided in this Act or chapter 51-15, and may
18 seek all remedies in this Act or chapter 51-15.
- 19 2. When it appears to the attorney general that a person has engaged in, or is
20 engaging in, any practice declared to be unlawful by this Act or by any rule or order
21 of the attorney general issued under this Act, the attorney general, without notice
22 and hearing, may issue any cease and desist order which the attorney general
23 deems necessary or appropriate in the public interest. A person aggrieved by an
24 order issued under this section may request a hearing before the attorney general
25 if a written request is made within ten days after the receipt of the order. An
26 adjudicative proceeding under this section must be conducted in accordance with
27 chapter 28-32, unless otherwise specifically provided herein.
- 28 3. When it appears to the attorney general that a person has engaged in, or is
29 engaging in, any practice declared to be unlawful by this Act or by any rule or order
30 of the attorney general issued under this Act, the attorney general may impose by
31 order and collect a civil penalty against any person found in an adjudicative

1 proceeding to have violated any provision of this Act, or any rule or order adopted
2 under this Act, in an amount not more than ten thousand dollars for each violation
3 of this Act or any rule or order adopted under this Act. The attorney general may
4 bring an action in district court to recover penalties under this section.

5 4. If the attorney general prevails in an adjudicative proceeding under this section, the
6 attorney general may assess the nonprevailing person for all adjudicative
7 proceeding and hearing costs, including reasonable attorneys fees, investigation
8 fees, costs, and expenses of any investigation and action brought under the
9 provisions of this Act.

10 5. A court may award the attorney general civil penalties of not more than ten
11 thousand dollars per violation of this Act. A violation of this Act constitutes a
12 violation of chapter 51-15 and the court may award civil penalties under section
13 51-15-11.

14 6. The attorney general is entitled to an award of reasonable attorneys fees,
15 investigation fees, costs, and expenses of any investigation and action brought
16 under the provisions of this Act.

17 7. All fees, penalties, and recoveries of attorneys fees, investigation fees, costs, and
18 expenses collected under this Act must be retained by the attorney general for
19 enforcement of this Act, including to pay costs, expenses, and attorneys fees and
20 salaries incurred in the operation of the attorney generals consumer protection and
21 antitrust division. However, the attorney general may deposit any excess funds not
22 required for enforcement of this Act in the attorney general refund fund under
23 section 54-12-18.

24 8. The remedies available in this Act are cumulative and in addition to any other
25 remedies available by law.

26 **SECTION 7. Suits by individuals.**

27 1. Any resident who has received more than one solicitation within a twelve-month
28 period by or on behalf of the same person in violation of this Act may bring an
29 action:

30 a. To enjoin the violation; and

31 b. To recover the greater of:

1 (1) Actual monetary damages resulting from the violation; or

2 (2) Up to ten thousand dollars in damages for each violation.

3 2. It is a defense against any claim made under this Act that the defendant has
4 diligently established and implemented reasonable practices and procedures to
5 prevent solicitations in violation of this Act.

6 **SECTION 8. Statute of limitations.** A claim may not be made under this Act more
7 than two years after the later of:

8 1. The resident making the claim knew or should have known of the violation; or

9 2. The termination of any proceeding or action arising out of the same violation by the
10 state.

11 **SECTION 9. Personal jurisdiction.** A court may exercise personal jurisdiction over
12 any nonresident or the nonresident's successor in interest for any proceeding or action based
13 on a violation of this Act.