

Introduced by

Senators Flakoll, Unruh, Warner

Representatives Beadle, Heilman, Oversen

1 A BILL for an Act to amend and reenact sections 13-07-01, 13-11-01, 51-15-06.1, 51-28-01, and
2 51-28-02 of the North Dakota Century Code, relating to consumer credit counseling services,
3 debt settlement providers, assurance of discontinuance, and telephone solicitations.

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

5 **SECTION 1. AMENDMENT.** Section 13-07-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **13-07-01. Consumer credit counseling service - Definition.**

8 As used in this chapter, "consumer credit counseling service" means a ~~nonprofit~~
9 ~~corporation~~person whose agreements contemplate that a debtor will liquidate the debtor's debts
10 by structured installments or that a creditor will reduce finance charges or fees for late
11 payments, default, or delinquency. ~~For purposes of this chapter, a nonprofit corporation means~~
12 ~~an entity that is:~~

- 13 1. ~~Organized and properly operating as a nonprofit entity under the laws of the state in~~
14 ~~which it was formed;~~
- 15 2. ~~Exempt from taxation under the federal Internal Revenue Code [26 U.S.C. 501]; and~~
- 16 3. ~~Not owned, operated, managed by, or affiliated with a for-profit entity.~~

17 **SECTION 2. AMENDMENT.** Section 13-11-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

- 19 7. a. "Debt-settlement service" means:
20 (1) Offering to provide advice or service, or acting as an intermediary between
21 or on behalf of a consumer and one or more of a consumer's creditors,
22 where the primary purpose of the advice, service, or action is to obtain a
23 settlement, adjustment, or satisfaction of the consumer's unsecured debt to
24 a creditor in an amount less than the full amount of the principal amount of

- 1 the debt or in an amount less than the current outstanding balance of the
2 debt;
- 3 (2) Offering to provide services related to or providing services advising,
4 encouraging, assisting, or counseling a consumer to accumulate funds for
5 the primary purpose of proposing or obtaining or seeking to obtain a
6 settlement, adjustment, or satisfaction of the consumer's unsecured debt to
7 a creditor in an amount less than the full amount of the principal amount of
8 the debt or in an amount less than the current outstanding balance of the
9 debt; or
- 10 (3) Offering to provide advice or service, or acting as an intermediary between
11 or on behalf of a person and a state or federal government agency where
12 the primary purpose of the advice, service, or action is to obtain a
13 settlement, adjustment, or satisfaction of the person's tax obligation to the
14 government agency in an amount less than the current outstanding balance
15 of the tax obligation.
- 16 b. "Debt-settlement service" does not include:
- 17 (1) Legal services provided in an attorney-client relationship by an attorney
18 licensed or otherwise authorized to practice law in this state;
- 19 (2) Accounting services provided in an accountant-client relationship by a
20 certified public accountant licensed to provide accounting services in this
21 state;
- 22 (3) Financial planning services provided in a financial planner-client relationship
23 by a member of a financial planning profession whose members the
24 commissioner, by rule, determines are:
- 25 (a) Licensed by this state;
- 26 (b) Subject to a disciplinary mechanism;
- 27 (c) Subject to a code of professional responsibility; and
- 28 (d) Subject to a continuing education requirement; or
- 29 (4) A ~~nonprofit corporation~~person engaged in consumer credit counseling
30 services under chapter 13-07.

1 **SECTION 3. AMENDMENT.** Section 51-15-06.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **51-15-06.1. Assurance of ~~discontinuance~~voluntary compliance.**

4 The attorney general may accept an assurance of ~~discontinuance of~~voluntary compliance
5 for any act or practice the attorney general determines to be in violation of this chapter, or other
6 provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, ~~or 51-18, 51-28, 51-29,~~
7 51-30, 51-31, 51-33, or 51-34, from any person the attorney general alleges is engaging in, or
8 has engaged in, the act or practice. The assurance of ~~discontinuance~~voluntary compliance must
9 be in writing and must be filed with and is subject to the approval of the district court of the
10 county in which the alleged violator resides or has as a principal place of business, conducts
11 business, or in Burleigh County. ~~An assurance of discontinuance may not be considered an~~
12 ~~admission of a violation. However, failure~~Failure to comply with an assurance of
13 ~~discontinuance~~voluntary compliance which has been approved by the district court is contempt
14 of court.

15 **SECTION 4. AMENDMENT.** Section 51-28-01 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **51-28-01. Definitions.**

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

- 20 1. "Automatic dialing-announcing device" means a device that selects and dials
21 telephone numbers and that, working alone or in conjunction with other equipment,
22 disseminates a prerecorded or synthesized voice message to the telephone number
23 called.
- 24 2. "Caller" means a person, corporation, firm, partnership, association, or legal or
25 commercial entity that attempts to contact, or that contacts, a subscriber in this state
26 by using a telephone or a telephone line.
- 27 3. "Caller identification service" means a telephone service that permits telephone
28 subscribers to see the telephone number of incoming telephone calls.
- 29 4. "Established business relationship" means a relationship between a seller and
30 consumer based on a free trial newspaper subscription or on the consumer's
31 purchase, rental, or lease of the seller's goods or services or a financial transaction

1 between the consumer and seller, within the twenty-four months immediately
2 preceding the date of a telemarketing call.

3 5. "Message" means any telephone call, including voice, text, or other electronic
4 communication, regardless of its content.

5 6. "Subscriber" means a person who has subscribed to a residential telephone line or the
6 other persons living or residing with the subscribing person.

7 7. "Telephone line" means a telephone service to a subscriber, regardless of the
8 technology used to provide such service, including traditional wireline or cable
9 telephone service; cellular, broadband PCS, or other wireless telephone service;
10 microwave, satellite, or other terrestrial telephone service; and voice over internet
11 protocol telephone service.

12 8. "Telephone solicitation" means any voice, text, or other electronic communication over
13 a telephone line for the purpose of encouraging charitable contributions, or the
14 purchase or rental of, or investment in, property, goods, services, or merchandise,
15 including as defined in subsection 3 of section ~~51-15-0351~~51-15-01, whether the
16 communication is made by a live operator, through the use of an automatic
17 dialing-announcing device, or by other means. Telephone solicitation does not include
18 communications:

19 a. To any subscriber with that subscriber's prior express written request, consent,
20 invitation, or permission.

21 b. By or on behalf of any person with whom the subscriber has an established
22 personal or business relationship.

23 c. By or on behalf of a charitable organization that is exempt from federal income
24 taxation under section 501 of the Internal Revenue Code, but only if the following
25 applies:

26 (1) The telephone call is made by a volunteer or employee of the charitable
27 organization; and

28 (2) The person who makes the telephone call immediately discloses the
29 following information upon making contact with the consumer:

30 (a) The person's true first and last name; and

- 1 (b) The name, address, and telephone number of the charitable
2 organization.
- 3 d. By or on behalf of any person whose exclusive purpose is to poll or solicit the
4 expression of ideas, opinions, or votes, unless the communication is ~~made~~
5 ~~through an automatic dialing-announcing device in a manner prohibited by~~
6 ~~section 51-28-02a~~ text message.
- 7 e. By the individual soliciting without the intent to complete, and who does not in
8 fact complete, the sales presentation during the call, but who will complete the
9 sales presentation at a later face-to-face meeting between the individual solicitor
10 or person who makes the initial call and the prospective purchaser, unless the
11 communication is a text message.
- 12 f. By or on behalf of a political party, candidate, or other group with a political
13 purpose, as defined in section 16.1-08.1-01, unless the communication is a text
14 message.

15 **SECTION 5. AMENDMENT.** Section 51-28-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **51-28-02. Use of prerecorded or synthesized voice messages.**

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