

New York

NEW YORK CONSOLIDATED LAW SERVICE
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*** THIS SECTION IS CURRENT THROUGH CH. 84. 05/29/2002 ***
*** WITH THE EXCEPTION OF CHS. 2-4, 50-51, and 53 ***

GENERAL BUSINESS LAW

ARTICLE 26. MISCELLANEOUS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

NY CLS Gen Bus @ 399-z (2002)

@ 399-z. Telemarketing; establishment of no telemarketing sales calls statewide registry

1. As used in this section, the following terms shall have the following meanings:

- a. "Board" shall mean the consumer protection board;
- b. "Director" means the executive director of the consumer protection board;
- c. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing;
- d. "Doing business in this state" means conducting telephonic sales calls: (i) from a location in this state; or (ii) from a location outside of this state to consumers residing in this state;
- e. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property or services of any kind;
- f. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity;
- g. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services.
- h. "Telemarketing" means any plan, program or campaign which is conducted to induce payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls.
- i. "Telemarketing sales call" means a telephone call made by a telemarketer

PAGE

to a customer for the purpose of inducing payment or the exchange of any other consideration for any goods or services;

j. "Unsolicited telemarketing sales call" means any telemarketing sales call other than a call made:

(i) in response to an express written or verbal request of the customer called; or

(ii) in connection with an established business relationship, which has not been terminated by either party; or

(iii) to an existing customer, unless such customer has stated to the telemarketer that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer; or

(iv) in which the sale of goods and services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or a meeting between the telemarketer and customer.

2. The board shall establish and maintain a no telemarketing sales calls statewide registry which shall contain a list of customers who do not wish to receive unsolicited telemarketing sales calls. The board may contract with a private vendor to establish and maintain such registry, provided the private vendor has maintained national no telemarketing sales calls registries for more than two years, and the contract requires the vendor to provide the no telemarketing sales calls registry in a printed hard copy format and in any other format as prescribed by the board.

3. No telemarketer or seller may make or cause to be made any unsolicited telemarketing sales call to any customer more than thirty days after the customer's name and telephone number or numbers appear on the then current quarterly no telemarketing sales calls registry made available by the board pursuant to subdivision two of this section.

4. a. The board shall provide notice to customers of the establishment of the no telemarketing sales calls registry. Any customer who wishes to be included on such listing shall notify the board by calling a toll-free number provided by the board, or in any other such manner and at such times as the board may prescribe which may include notification via the Internet. A customer on such registry shall be deleted from such registry upon the customer's written request. The board shall update such registry not less than quarterly and shall make such registry available to telemarketers for a fee as the board shall prescribe.

b. Any company that provides local telephone directories to customers in this state shall inform its customers of the provisions of this section by means of publishing a notice in such local telephone directories.

5. The board shall prescribe rules and regulations to administer this section.

6. a. Where it is determined after hearing that any person has violated one or more provisions of this section, the director, or any person deputized or so designated by him or her may assess a fine not to exceed [fig 1] five thousand dollars for each violation.

b. Any proceeding conducted pursuant to paragraph a of this subdivision shall be subject to the state administrative procedure act.

NORTH DAKOTA

Fifty-eighth Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2255
(Senators Traynor, Krebsbach, Lindaas)
(Representatives Hawken, Kasper, Warner)

AN ACT to create and enact chapter 51-26 of the North Dakota Century Code, relating to telephone solicitations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-26 of the North Dakota Century Code is created and enacted as follows:

51-26-01. **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, regardless of its content.
6. "Subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person, or a person who has subscribed to wireless or mobile telephone services.
7. "Telephone solicitation" means any voice 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 51-15-03, 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 made through an automatic dialing-announcing device in a manner prohibited by section 51-26-02.
- 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.
- 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.

51-26-02. Use of prerecorded or synthesized voice messages. A caller may not use or connect to a telephone line an automatic dialing-announcing device 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 51-26-05 do not apply to messages from school districts to students, parents, or employees, messages to subscribers with whom the caller has a current business relationship, or messages advising employees of work schedules.

51-26-03. 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.

51-26-04. 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 51-26-09.

51-26-05. 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.

51-26-06. 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 ninety 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 51-26-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

51-26-07. 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.

51-26-08. 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.

51-26-09. 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 51-26-09. 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.

51-26-10. Release of information. Information contained in the list established under section 51-26-09 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.

51-26-11. 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.

51-26-12. 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.

51-26-13. 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.

51-26-14. 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.

51-26-15. 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.

51-26-16. Costs recoverable in adjudicative proceeding - Hearing costs. If the attorney general prevails in an adjudicative proceeding pursuant to section 51-26-14 or 51-26-15, 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.

51-26-17. 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.

51-26-18. 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.

51-26-19. 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.

51-26-20. 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.

51-26-21. 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.

51-26-22. 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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2255.

Senate Vote: Yeas 44 Nays 2 Absent 1

House Vote: Yeas 62 Nays 30 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State

Source: [All Sources](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Statutes & Legislative Materials](#) > OK - Oklahoma Advance Legislative Service

Terms: telemarketer restriction act ([Edit Search](#))

2001 OK. SB 950, *

Oklahoma

OKLAHOMA ADVANCE LEGISLATIVE SERVICE
STATENET

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OKLAHOMA 2ND SESSION OF THE 48TH LEGISLATIVE SESSION

SENATE BILL NO. 950

2001 OK. SB 950

SYNOPSIS: An Act relating to telemarketing; creating **Telemarketer Restriction Act**; providing short title; defining terms; requiring the Attorney General to establish registry of consumers who do not wish to receive unsolicited telemarketing calls; providing for contracting with a vendor to establish and maintain the registry; requiring notice of establishment of the registry; providing a means for consumers to be included or removed; requiring quarterly updates; authorizing the Attorney General to adopt and promulgate rules; prohibiting telemarketing calls to registered consumers after certain time period; making telemarketing calls to registered consumers an unlawful telemarketing practice and a violation of the Oklahoma Consumer Protection Act; permitting administrative fines under certain circumstances; creating the Telemarketer Revolving Fund; providing for budgeting and expenditures from the fund; providing for codification; providing an effective date; and declaring an emergency.

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

[*1] SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "**Telemarketer Restriction Act**".

[*2] SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the **Telemarketer Restriction Act**:

1. "Commercial purposes" means the sale or offer for sale of goods or services. "Commercial purposes" does not mean solicitation of funds or other support for a charitable or religious activity; political candidate, cause, or organization; or any activity of a not-for-profit entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code;
2. "Consumer" means any natural person who is a resident of this state;

3. "Established business relationship" means a prior relationship formed within the preceding twenty-four (24) months or an existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party;

4. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries, or other business entity;

5. "Telemarketer" means any person who, for commercial purposes, initiates a telemarketing sales call to a consumer located in this state or any person who directly controls or supervises the conduct of a telemarketer; and

6. "Telemarketing" means any plan, program, or campaign which is conducted for commercial purposes, by use of one or more telephones and which involves a telephone call initiated by a telemarketer to a consumer located within this state at the time of the call; "telemarketing" may include use of random dialing or other devices for such purposes and use of recorded or simulated voices. "Telemarketing" does not include a telephone call which is made for the sole purpose of arranging a subsequent face to-face meeting between a salesperson and the consumer.

[*3] SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

Not later than January 1, 2003, the Attorney General shall establish, and thereafter maintain, a statewide registry which shall contain a list of consumers who desire not to receive unsolicited telemarketing sales calls. The Attorney General may, pursuant to the Oklahoma Central Purchasing Act, contract with a private vendor to establish and maintain the registry.

[*4] SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Attorney General shall publicize notice to consumers of the establishment of the no-telemarketing-sales-call registry and may provide, upon request, explanatory information concerning the provisions of the **Telemarketer Restriction Act**. Any consumer who desires to be included in the listing shall notify the Attorney General by calling a toll-free number provided by the Attorney General, or in any other manner, and at such times, as the Attorney General may prescribe, which may include notification via the Internet. The name and number, or numbers, of a consumer listed in the registry shall be removed from the registry either by the consumer calling a toll-free number provided by the Attorney General or upon written request by the consumer. The Attorney General shall implement a procedure to verify a consumer request to be added or removed from the registry. The Attorney General shall update the registry not less than quarterly and shall make the registry available to telemarketers by such means and for such fees as are determined by the Attorney General pursuant to the Administrative Procedures Act.

[*5] SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 775B.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Attorney General is authorized to adopt and promulgate rules for the implementation, administration, and enforcement of the **Telemarketer Restriction Act**.

O.R.S. § 646.551

Oregon

2001 OREGON REVISED STATUTES
 TITLE 50. TRADE REGULATIONS AND PRACTICES
 CHAPTER 646. TRADE PRACTICES AND ANTITRUST REGULATION. PRICE
 DISCRIMINATION
 IN COMMERCE AND FOOD COMMERCE
 TELEPHONE SOLICITATION
 (REGISTRATION OF TELEPHONIC SELLERS)

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 Current through End of 2001 Reg. Sess. and 2001 Cumulative Supp.

646.551. Definitions for ORS 646.551 to 646.557.

As used in ORS 646.551 to 646.557, unless the context requires otherwise:

- (1) "Telephonic seller" means a person who, on the person's own behalf, or on behalf of another person, causes or attempts to cause a telephone solicitation to be made under the following circumstances:
- (a) The person initiates telephonic contact with a prospective purchaser and represents or implies any of the following:
- (A) That a prospective purchaser who buys one or more goods or services unit will receive additional units, whether or not of the same type as purchased, without further cost. As used in this subparagraph, "further cost" does not include actual postage or common carrier delivery charges, if any;
- (B) That a prospective purchaser will receive a prize or gift if the person also encourages the prospective purchaser to do either of the following:
- (i) Purchase or rent any goods or services; or
- (ii) Pay any money, including, but not limited to a delivery or handling charge;
- (C) That a prospective purchaser who buys goods or services, because of some unusual event or imminent price increase, will be able to buy these items at prices which are below those usually charged or will be charged for those items;
- (D) That the seller is a person other than the actual seller;
- (E) That the items for sale or rent are manufactured or supplied by a person other than the actual manufacturer or supplier; or
- (F) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or
- (b) The telephone solicitation is made by the person in response to inquiries from prospective purchasers generated by advertisement, on behalf of the person and the solicitation is conducted as described in paragraph (a) of this subsection.
- (2) "Telephonic seller" does not include any of the following:
- (a) A person selling a security as defined in ORS 59.015, or securities which are exempt under ORS 59.025.
- (b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that chapter.
- (c) A person licensed pursuant to ORS 701.055 when the solicited transaction is governed by ORS chapter 701.
- (d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed by the Insurance Code.
- (e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS

650.005 to 650.085.

^ A person primarily soliciting the sale of a subscription to or advertising in a newspaper of general circulation.

(g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, including book or record clubs:

(A) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise, and which is regulated by the Federal Trade Commission trade regulation concerning "Use of Negative Option Plans by Sellers in Commerce"; or

(B) Using arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

(h) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(i) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sale presentation at a later face-to-face meeting between the solicitor and the prospective purchaser, unless at that later meeting the solicitor collects or attempts to collect payment for delivery of items purchased.

(j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or the United States.

^ A person soliciting the sale of funeral or burial services regulated by ORS 59.670 and 59.680 or by ORS chapter 692.

(L) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit issued by a governmental agency of this state, or subdivision thereof.

(m) A person or affiliate of a person whose business is regulated by the Public Utility Commission, or a telecommunications utility with access lines of 15,000 or less or a cooperative telephone association.

(n) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale which costs the purchaser in excess of \$100.

(o) An issuer or a subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) of that section.

(p) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(q) A person registered under the Charitable Solicitations Act.

(1989 c. 622 § 2; 1997 c. 249 § 196; 1997 c. 631 § 513; 1999 c. 59 § 188; 1999 c. 402 § 5; 2001 c. 445 § 177)

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

○ R. S. § 646.551
R ST § 646.551
END OF DOCUMENT

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SOUTH DAKOTA

Add Notes

AN ACT

ENTITLED, An Act to provide for the creation of a no solicitation calls list for persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation account, and to establish certain fees and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 49-31-1 be amended to read as follows:

49-31-1. Terms used in this chapter mean:

- (1) "Addressable," enabling users to connect and communicate with a specific party easily and securely on a dial-up, addressable basis;
- (2) "Available," ensuring that network services are available if the user requires them, even at times of peak usage; designed to be a nonblocking network, minimizing network contention;
- (3) "Broadband network," the broadband network extends the range of fully switched, addressable, robust transport services over the fiber network which increase in multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08 Mbps);
- (4) "Centron and centron-like services," services which provide custom switching features which include distributive dial tone, select number screening, toll restriction and screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting and screening;
- (5) "Commission," the Public Utilities Commission;
- (6) "Common carrier," anyone who offers telecommunications services to the public;
- (7) "Eligible telecommunications carrier," a local exchange carrier designated by the Commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to receive universal service support funding;
- (8) "Feature rich," providing the specific features and functionality required by users' voice, data, video, graphics, imaging, and multimedia applications; functionally beyond mere transport;

(8A) "Financial institution," any financial institution as defined in 15 U.S.C. § 6827 as of January 1, 2003, including any financial institution affiliate that controls, is controlled by, or is under common control with the financial institution;

(9) "Incumbent local exchange carrier," a local exchange carrier, including successors and assigns, which was providing local exchange service within a defined service area in this state on or before February 8, 1996;

(10) "Interexchange telecommunications service," telecommunications service between points in two or more exchanges;

(11) "LATA," a local access and transport area;

(12) "Local exchange area," any geographic area established by a local exchange carrier as filed with or approved by the commission for the administration of local telecommunications service which may consist of one or more central offices or wire centers together with associated facilities used in furnishing telecommunications service in that area;

(13) "Local exchange service," the access to and transmission of two-way switched telecommunications service within a local exchange area;

(14) "Narrowband network," a fully switched digital network covering the transport range from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B (Bearer) channels and a 16 Kbps signaling D (Delta) channel;

(15) "New products and services," any new product or service introduced after July 1, 1988, which is not functionally required to provide local exchange service. Repackaging of any product or service which is fully competitive with any service regulated as emerging competitive or noncompetitive

is not considered a new product or service;

(16) "Optional service," any limited or discretionary service offered by a telecommunications company which is not functionally required for the provision of noncompetitive services and which the customer has the option to purchase;

(17) "Private," ensuring confidentiality and integrity of network transport of messages without dependency on specialized customer premise security devices;

(18) "Rate of return regulation," the procedure used by the commission to approve the charge for a service which gives due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenues sufficient to enable it to meet its total current cost of furnishing such service, including taxes and interest, and including adequate provision for depreciation of its utility property used and necessary in rendering service to the public, and to earn a fair and reasonable return upon the value of its property;

(19) "Register," a list of names and telephone numbers of residential telephone subscribers who have properly enrolled to prevent unsolicited telephone calls;

(20) "Residential telephone subscriber," any person residing in the state who has residential telephone service, including cellular service, personal communications service, and wireless local loop service, primarily used for personal use;

(21) "Robust," easily and economically sustaining the rigors of growth and extensive public use;

(22) "Rural telephone company," any local exchange company as defined in 47 U.S.C. § 153(37) as of January 1, 1998;

(23) "Secure," physically precluding unwanted access to network and information;

(24) "Service area," a geographic area established by the commission for the purpose of determining universal service obligations and support mechanisms. For a rural telephone company, the service area is the company's study area or any other area designated jointly

by the commission and the Federal Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of January 1, 1998;

(25) "Standard," supporting universal interfaces and networking standards and protocols of generally accepted standards setting bodies;

(26) "Switched," providing circuit, packet, or channel type switching, each suited to specific application requirements;

(27) "Switched access," any exchange access service purchased for the origination and termination of interexchange telecommunications services which includes central office switching and signaling, local loop facility, or local transport;

(28) "Telecommunications company," any person or municipal corporation owning, operating, reselling, managing, or controlling in whole or in part, any telecommunications line, system, or exchange in this state, directly or indirectly, for public use. For purposes of this definition the term, for public use, means for the use of the public in general or for a specific segment of the public, or which connects to the public in general or for a specific segment of the public, or which connects to the public switched network for access to any telecommunications service;

(29) "Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means, or other similar means. It does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmissions by radio, television, and satellite stations regulated by the Federal Communications Commission and one-way cable television service;

(30) "Telephone solicitation call," any call made to a South Dakota consumer by a telephone solicitor, originating from South Dakota or elsewhere, for the purpose of soliciting a sale

of any consumer goods or services to the person called, for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for such purposes;

(31) "Telephone solicitor," any person or organization who individually or through salespersons, makes or causes to be made a telephone solicitation call. This term does not include any not-for-profit or charitable organization exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

(32) "Unsolicited telephone call," any telephone solicitation call other than a call made:

(a) In response to an express request of the person called;

(b) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;

(c) To any person with whom the telephone solicitor, or any business or financial institution on whose behalf the telephone call is being made has an established business relationship or a business relationship that existed within the immediately preceding twelve months; or

(d) To any person for the purpose of obtaining information and establishing a date and time for an appointment with the telephone solicitor which will take place at the solicitor's place of business or the consumer's home and the call is not made by an automated telephone dialing system. For purposes of this subsection, an automated telephone dialing system is any automatic terminal equipment that stores or produces numbers to be called randomly or sequentially;

(33) "Wideband network," the wideband network extends the range of fully switched, digital,

addressable information transport from the 144 Kbps to the DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and 6.312 Mbps, respectively.

Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that comply with the provisions of this Act for obtaining a list of persons who do not wish to receive unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor may make an unsolicited telephone call to any number listed on the register. The commission may promulgate rules, pursuant to chapter 1-26, concerning procedures and requirements regarding the implementation of a register, setting of fees for purchase of the register, form of the application, requirements for acquiring a copy of the register, requirements for enrollment on and removal from the register, procedures for maintaining a register, setting of fees to enroll or renew enrollment on the register, procedures for operating the register, standards concerning the use of the register, and application of the civil fines.

Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The commission shall maintain a register of names and telephone numbers of each South Dakota residential telephone subscriber who has elected not to receive unsolicited telephone calls. The commission may provide to the Federal Trade Commission, for inclusion in the national "do-not-call" registry, the telephone numbers listed in the register. The commission may include South Dakota residential telephone subscribers listed in the national "do-not-call" registry in the register.

Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential

telephone subscribers shall obtain a copy of the register.

Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

There is hereby established in the state treasury, the telephone solicitation account. Unless otherwise provided by law, this fund shall consist of all fees and fines imposed pursuant to this Act designated for

deposit in the fund. The fund shall be maintained separately and administered by the commission to implement and administer provisions of this Act. Any interest earned on money in the fund shall be deposited in the fund. Expenditures from the fund shall be budgeted through the normal budget process. Unexpended funds and interest shall remain in the fund until appropriated by the Legislature. Any expenditure from the fund shall be disbursed on warrants drawn by the state auditor and shall be supported by vouchers approved by the commission.

Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential telephone subscribers shall pay to the commission an annual fee of not more than five hundred dollars. Fees collected under this section shall be credited to the telephone solicitation account.

Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The commission shall establish or provide for the operation of a register. The register may be operated by the commission or by another entity under contract with the commission. A residential telephone subscriber may enroll on the register in accordance with procedures prescribed by the commission. A subscriber shall pay to the commission a fee, set pursuant to section 2 of this Act, of not more than five dollars to be listed on the register. Fees collected under this section shall be credited to the telephone solicitation account established in section 5 of this Act.

Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of this Act, the commission may use the national "do-not-call" registry established and maintained by the Federal Trade Commission as the register.

Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of chapter 49-1A, the commission may use amounts deposited in the gross receipts tax fund to implement this Act. All funds used shall be returned to the gross receipts tax fund within three years of implementation of the register.

Section 10. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any telecommunications company that provides local exchange service shall inform its customers of the provisions of this Act by publication of the notice in the consumer pages of its telephone directories.

Section 11. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any person who violates this Act or any rules promulgated pursuant to this Act is subject to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The commission may impose a civil fine of not more than five thousand dollars for each offense. In determining the amount of the penalty upon finding a violation, or the amount of a compromise settlement, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, prior offenses and compliance history, and the good faith of the person charged in attempting to achieve compliance. Any telephone solicitation made to a person whose name first appears on the register is not a violation of this Act if the solicitation is made within thirty

days of the receipt of the register. Any penalty collected pursuant to this section shall be credited to the telephone solicitation account established pursuant to section 5 of this Act.

An Act to provide for the creation of a no solicitation calls list for persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation account, and to establish certain fees and civil penalties.

<p>I certify that the attached Act originated in the</p> <p>SENATE as Bill No. 41</p>	<p>Received at this Executive Office this ____ day of _____,</p> <p>20__ at _____ M.</p>
---------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------

_____ Secretary of the Senate	By _____ for the Governor
_____ President of the Senate	The attached Act is hereby approved this _____ day of _____, A.D., 20__
Attest:	_____ Governor
_____ Secretary of the Senate	STATE OF SOUTH DAKOTA,
_____ Speaker of the House	Office of the Secretary of State
Attest:	Filed _____, 20__ at _____ o'clock __ M.
_____ Chief Clerk	_____ Secretary of State
Senate Bill No. 41	By _____ Asst. Secretary of State
File No. _____	
Chapter No. _____	

CHAPTER 43. TELEMARKETING

SUBCHAPTER A. GENERAL PROVISIONS

Texas

§ 43.001. Short Title

This chapter may be cited as the Texas Telemarketing Disclosure and Privacy Act.

Added by Acts 2001, 77th Leg., ch. 1429, § 1, eff. Jan. 1, 2002.

§ 43.002. Definitions

In this chapter:

(1) "Caller identification service" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.

(2) "Commission" means the Public Utility Commission of Texas.

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

(4) "Established business relationship" means a prior or existing relationship of a person formed by a voluntary two-way communication between a person and a consumer regardless of whether consideration is exchanged, regarding consumer goods or services offered by the person, that has not been terminated by either party.

(5) "Facsimile recording device" means any device capable of receiving a facsimile transmission.

(6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.

(7) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(8) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.

(9) "Telephone call" means a call or other transmission which is made to or received at a telephone number, including:

(A) a call made by an automated telephone dialing system; and

(B) a transmission to a facsimile recording device.

Added by Acts 2001, 77th Leg., ch. 1429, § 1, eff. Jan. 1, 2002.

§ 43.003. Telemarketing Calls Governed by Chapter

(a) For the purposes of this chapter, a telemarketing call is an unsolicited telephone call made to:

- (1) solicit a sale of a consumer good or service;
- (2) solicit an extension of credit for a consumer good or service; or
- (3) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(b) This chapter does not apply to a call made:

(1) by a consumer that is the result of a solicitation by a seller or telemarketer or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;

(2) in connection with:

(A) an established business relationship; or

(B) a business relationship that has been terminated, if the call is made before the later of the date the first Texas no-call list in which the consumer's telephone number appears is published or one year after the date of termination;

(3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business informed the telemarketer that the business does not wish to receive telemarketing calls from the telemarketer;

(4) to collect a debt; or

(5) by a state licensee if:

(A) the call is not made by an automated telephone dialing system;

(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller and the consumer is not required to pay or authorize payment until after the presentation; and

(C) the consumer has not informed the telemarketer that the consumer does not wish to receive telemarketing calls from the telemarketer.

Added by Acts 2001, 77th Leg., ch. 1429, § 1, eff. Jan. 1, 2002.

§ 43.004. Making Telemarketing Call

Under this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf

1. Murphy 18th

2. Shanahan 10 th

Georgia

HB 71

HB 71/AP

H. B. No. 71 (AS PASSED HOUSE AND S ENATE)

By: Representatives Murphy of the 18th and Shanahan of the 10th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 46 of the Official Code of
2 Georgia Annotated, relating to teleph one and telegraph
3 service, so as to make certain legisl ative findings; to
4 define certain terms; to prohibit tel ephone solicitations to
5 residential subscribers who have give n notice of their
6 objection to such solicitations to th e Georgia Public
7 Service Commission; to establish a da ta base to collect such
8 objections and provide for its operat ion by the Georgia
9 Public Service Commission; to provide for fees to be charged
10 to residential telephone subscribers who are included in the
11 data base or to persons or entities a ccessing the data base;
12 to restrict the use of information co ntained in the data
13 base and to provide that such informa tion is not subject to
14 public inspection or disclosure; to r equire any person or
15 entity who makes a telephone sollicita tion to state, at the
16 beginning of such call, the identity of the person or entity
17 initiating the call; to prohibit the blocking, by a person
18 or entity making a telephone sollicita tion, of a residential
19 subscriber's use of a caller identifi cation service; to
20 provide for enforcement by the admini strator of consumer
21 affairs, pursuant to certain provisio ns of Part 2 of Article
22 15 of Chapter 1 of Title 10, the "Fai r Business Practices
23 Act of 1975"; to provide for a civil action; to provide for
24 related matters; to provide an effect ive date; to repeal
25 conflicting laws; and for other purpo ses.

26 BE IT ENACTED BY THE GENERAL ASS EMBLY OF GEORGIA:

27 SECTION 1.

28 Chapter 5 of Title 46 of the Official Code of Georgia
29 Annotated, relating to telephone and telegraph service, is
30 amended by adding a new Code section, to be designated as
31 Code Section 46-5-27, to read as follows:

32 "46-5-27.

33 (a) The General Assembly finds that :

1 (1) The use of the telephone to market goods and
2 services to the home is pervasive now due to the
3 increased use of cost-effective telemarketing
4 techniques;

5 (2) Over 30,000 businesses actively telemarket goods and
6 services to business and residential customers;

7 (3) Every day, over 300,000 solicitors place calls to
8 more than 18 million Americans, including citizens of
9 this state;

10 (4) Telemarketing, however, can be an intrusive and
11 relentless invasion of the privacy and peacefulness of
12 the home;

13 (5) Many citizens of this state are outraged over the
14 proliferation of nuisance calls to their homes from
15 telemarketers;

16 (6) Individuals' privacy rights and commercial freedom
17 of speech can be balanced in a way that accommodates
18 both the privacy of individuals and legitimate
19 telemarketing practices; and

20 (7) It is in the public interest to establish a
21 mechanism under which the individual citizens of this
22 state can decide whether or not to receive telemarketing
23 calls in their homes.

24 (b) As used in this Code section, the term:

25 (1) 'Caller identification service' means a type of
26 telephone service which permits telephone subscribers to
27 see the telephone number of incoming telephone calls.

28 (2) 'Residential subscriber' means a person who has
29 subscribed to residential telephone service from a local
30 exchange company or the other persons living or residing
31 with such person.

32 (3) 'Telephone solicitation' means any voice
33 communication over a telephone line for the purpose of
34 encouraging the purchase or rental of, or investment in,
35 property, goods, or services, but does not include
36 communications:

37 (A) To any residential subscriber with that
38 subscriber's prior express invitation or permission;

1 (B) By or on behalf of any person or entity with whom
2 a residential subscriber has a prior or current

3 business or personal relationship; or
 4 (C) By or on behalf of a charitable organization which
 5 has filed a registration statement pursuant to Code
 6 Section 43-17-5, is exempt from such registration
 7 under paragraphs (1) through (6) of subsection (a) of
 8 Code Section 43-17-9, or is exempt from such
 9 registration as a religious organization or agency
 10 referred to in paragraph (2) of Code Section 43-17-2.

11 Such communication may be from a live operator, through
 12 the use of ADAD equipment as defined in Code Section
 13 46-5-23, or by other means.

14 (c) No person or entity shall make or cause to be made any
 15 telephone solicitation to the telephone line of any
 16 residential subscriber in this state who has given notice
 17 to the commission, in accordance with regulations
 18 promulgated under subsection (d) of this Code section, of
 19 such subscriber's objection to receiving telephone
 20 solicitations.

21 (d) (1) The commission shall establish and provide for
 22 the operation of a data base to compile a list of
 23 telephone numbers of residential subscribers who object
 24 to receiving telephone solicitations. It shall be the
 25 duty of the commission to have such data base in
 26 operation no later than January 1, 1999.

27 (2) Such data base may be operated by the commission or
 28 by another entity under contract with the commission.

29 (3) No later than January 1, 1999, the commission shall
 30 promulgate regulations which:

31 (A) Require each local exchange company to inform its
 32 residential subscribers of the opportunity to provide
 33 notification to the commission or its contractor that
 34 such subscriber objects to receiving telephone
 35 solicitations;

36 (B) Specify the methods by which each residential
 37 subscriber may give notice to the commission or its
 38 contractor of his or her objection to receiving such
 39 solicitations or revocation of such notice;

H. B. No. 71

-3-

HB 71/AP

1 (C) Specify the length of time for which a notice of
 2 objection shall be effective and the effect of a
 3 change of telephone number on such notice;

4 (D) Specify the methods by which such objections and
 5 revocations shall be collected and added to the data

Minnesota Statutes 2002, Table of Chapters

Table of contents for Chapter 325E

Minnesota

325E.311 Definitions.

Subdivision 1. Scope. For the purposes of sections 325E.311 to 325E.316, the terms in subdivisions 2 to 6 have the meanings given them.

Subd. 2. Caller. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a residential subscriber in this state by using a telephone or a telephone line.

Subd. 3. Caller identification service. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

Subd. 4. Commissioner. "Commissioner" means the commissioner of commerce.

Subd. 5. Residential subscriber. "Residential subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person.

Subd. 6. Telephone solicitation. "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber's prior express invitation or permission;

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship;

(3) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law; or

(4) by a person 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 solicitor who makes the call and the prospective purchaser.

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Missouri

telemarketing and are reasonably consistent with the requirements of section 407.1070 through section 407.1079 and which allow consumer redress pursuant to that agency's rules or applicable federal law;

(d) Between a telemarketer and any business except calls involving the retail sale of nondurable office and cleaning supplies.

2. The office of the attorney general shall receive telemarketing complaints by means of a toll-free telephone number, by a notice in writing or by electronic means. Complaints against entities who are licensed, certificated or permitted and whose telemarketing practices are regulated by the same state or federal agency and which agency has rules regulating telemarketing practices shall be forwarded for investigation by the office of the attorney general to such agency. All other complaints shall be handled by the office of the attorney general.

407.1095. As used in sections 407.1095 to 407.1113, the following words and phrases mean:

(1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

(2) "Residential subscriber", a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person;

(3) "Telephone solicitation", any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:

(a) To any residential subscriber with that subscriber's prior express invitation or permission;

(b) By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;

(c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;

(d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and

b. The entity is required by law or rule to develop and maintain a no-call list;

(e) By a natural person responding to a referral, or working from his or her primary residence, a person licensed by the state of Missouri to carry out a trade, occupation or profession who is soliciting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

Montana

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 6] the following definitions apply:

(1) "Caller identification service" means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

(ii) the entity is required by law or rule to develop and maintain a no-call list;

(e) by a natural person responding to a referral or working from the person's primary residence; or

(f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is seeking or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state.

NORTH DAKOTA

Fifty-eighth Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 7, 2003

SENATE BILL NO. 2255
(Senators Traynor, Krebsbach, Lindaas)
(Representatives Hawken, Kasper, Warner)

AN ACT to create and enact chapter 51-26 of the North Dakota Century Code, relating to telephone solicitations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-26 of the North Dakota Century Code is created and enacted as follows:

51-26-01. **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, regardless of its content.
6. "Subscriber" means a person who has subscribed to residential telephone services from a telephone company or the other persons living or residing with the subscribing person, or a person who has subscribed to wireless or mobile telephone services.
7. "Telephone solicitation" means any voice 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 51-15-03, 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: