

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2260
(Senators Flakoll, Unruh, Warner)
(Representatives Beadle, Heilman, Oversen)

AN ACT to amend and reenact sections 13-07-01, 13-11-01, 51-15-06.1, 51-28-01, and 51-28-02 of the North Dakota Century Code, relating to consumer credit counseling services, debt settlement providers, assurance of discontinuance, and telephone solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

SECTION 2. AMENDMENT. Subsection 7 of section 13-11-01 of the North Dakota Century Code is amended and reenacted as follows:

7. a. "Debt-settlement service" means:
 - (1) Offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt;
 - (2) Offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or
 - (3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation.
- b. "Debt-settlement service" does not include:

- (1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;
- (2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state;
- (3) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner, by rule, determines are:
 - (a) Licensed by this state;
 - (b) Subject to a disciplinary mechanism;
 - (c) Subject to a code of professional responsibility; and
 - (d) Subject to a continuing education requirement; or
- (4) A ~~nonprofit corporation~~ person engaged in consumer credit counseling services under chapter 13-07.

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

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

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

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

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 ~~51-15-03~~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 ~~made through an automatic dialing-announcing device in a manner prohibited by section 51-28-02a~~ 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.

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

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.

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 Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2260.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 94 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State