

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
-------------

DESCRIPTION

2195

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2195

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2195**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1744**

Committee Clerk Signature



Minutes:

**S Hacker: District. 42, GF – In Favor**

Places unwanted text messages under the "do not call" list. You get charged for the text message. Get bothersome, you get charged for these calls.

**S Andrist:** Does this language also cover emails?

**S Hacker:** No

**S Andrist:** Does this include other electronic devices?

**S Hacker:** It has to do with the telephone.

**Parrell Grossman – Director, Consumer Protection & Antitrust - In Favor**

**TESTIMONY # 1**

Covered testimony on past experience.

[Amendment suggested [pg 1, line 22 – see highlighted area]

**S Klein:** With privacy and technology, you've got your hands full.

**P Grossman:** Yes. Telephone subscribers appreciate the privacy that they get under this legislation.

**S Behm:** There is something that shows on their computer somewhere?

**P Grossman:** You type a message on a cell phone. Popular form of communication. Text messaging is good. [explains how it works]

**S Klein:** When I got my first bill, there were messages on there that my daughter had used.

**S Wanzek:** I have 2 kids at UND. I should check the bill so when there is unsolved minutes.

**P Grossman:** Yes, you get no choice.

**S Heitkamp:** This is unwanted solicitation. Spam calls at home are now on cell phone.

[suggested for home calls – place the phone down, walk away]

**P Grossman:** [14.59m tells handling phone scams]

**S Wanzek:** How come I don't get them?

**P Grossman:** You can disable that feature.

**Motion for DO PASS by S Hacker**

**Second: S Wanzek**

**Vote 7-0 Passed**

**Carrier S Hacker**



**REPORT OF STANDING COMMITTEE**

**SB 2195: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2195 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2195

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2195

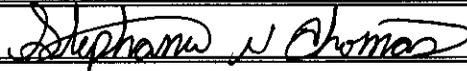
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4529

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on SB 2195.

**Parrell Grossman, Attorney General's Consumer Protection & Antitrust Division:**

Support SB 2195. See written testimony #1.

**Sen. Nick Hacker, District 42:** SB 2195 has been a fun piece of legislation for me. I have received some of these text messages on my cell phone to email if you're not aware of what the text message is. My cell phone carrier, I pay for 700 text messages a month, and when I go over that then I get charged. Some other different types of plans include no plan, which you still have the ability to get text messages; it will usually cost you 5 or 10 cents per text message. Once you have 100 text messages, it becomes an issue. This is just a consumer protection piece of legislation to simply put this under the do not call list, so I will no longer have to get those text messages.

**Rep. Clark:** Do you really get 700 text messages?

**Sen. Hacker:** I used to be on the 300 text message plan. It's a popular means of communication with lots of individuals, and maybe more common amongst the youth.

**Rep. Ruby:** You mentioned the intent of the change on page 2, line 10 was not to include internet. I'm wondering if under message it does say telephone call including voice text. Is there any concern that some of that might be construed to mean email?

**Parrell:** I think they could have included that. We felt that was a good way to address this, rather than change the language to make it clear in the legislative testimony that it doesn't include the television and the internet email when those charges are not voluntary. The concern would be that if you can receive television solicitations on your cell phone, for instance, and then you'd have to pay for those. I think it would be a concern in something commonly that could, or should be regulated under this statute in saying internet email. There are so many different ways that you can receive email, similar to text messaging. There are spam laws that would regulate that, and there are other laws that would address that, so we wanted to make it clear that this law does not contemplate those activities, unless it would be a situation in which consumers, or subscribers would be targeted with unwanted emails in which they would pay for. We were looking generally at landlines, wireless lines, and we're not trying to bring all kinds of different solicitations under the do not call, we're trying to keep it primarily targeted at do not call, but unfortunately with the change in technology, it just doesn't seem as simple to us as to try, and capture that by referring to wireless telephones, or landline telephones.

**Rep. Nottestad:** As we look at the rapid advancement in technology, it seems to me that unless you can come up with something that is universal, we're going to be one session behind on all of these things. Is there any kind of universal bill that's being used in any other state that would put us ahead of the game?

**Parrell:** I'm not aware of any. I try to follow the do not call laws in other states, and I think we're keeping pace in terms of our laws, and probably even ahead in terms of our actual

enforcement efforts, in regards to do not call laws. Technology just changes so fast; it's hard to anticipate the changes. We think we have drafted a pretty broad definition to include the activities that we think that the citizens would want prohibited, and the legislature would want prohibited.

**Rep. Keiser:** Does this effect, or does it not affect all of those things which were exempt from the no call law?

**Parrell:** This would not change the current exemption exceptions, it only tweaks it in regard to include text messages, but it wouldn't prohibit something via text message that would otherwise be authorized by the current law.

**Rep. Ruby:** How could it be done for political ads? I understand for calls it has to be a live person, but how do you do that with the text?

**Parrell:** The exceptions to the do not call law are exempted from the definition of telephone solicitation, so the do not call law really focuses in on what you consider a telephone solicitation, and things like the political calls are not telephone solicitation. The charitable fundraising calls are not telephone solicitations if they're conducted on behalf of the organization, or by volunteers, so there are a number of those exclusions. In this particular case if you conducted that activity through a text message, it's essentially not going to be a violation of the do not call law, because it's not a telephone solicitation, unless it was trying to sell you goods, or services.

**Rep. Kasper:** What is the penalty for a violation, and how can you enforce the violation that's made to a person's cell phone, or residence?

**Parrell:** The penalty would be the court could impose a fine up to \$2,000. How we would enforce that would be in the same manner as we currently enforce the law. If someone calls your home phone, and you have the identity of the caller, then we're able to peel back the

layers of the onion, and find out who made those calls. Sometimes it takes several subpoenas, and a great deal of investigative work, and we ultimately find who made those calls, and contact those companies, or those individuals. Assuming that the consumer saved that text message, we would have the ability to contact that entity, and say you sent a text message to this individual's cell phone in ND, and that's a violation of the law.

**Rep. Kasper:** The \$2,000 penalty, none of it goes to the consumer; it all goes to the Attorney General's office for the cost of the investigation, and so on?

**Parrell:** That is correct. The consumers do have the opportunity to bring up a private cause of action.

**Rep. Kasper:** What amount could a consumer recovery if they brought a private cause of action?

**Parrell:** I'm not aware of any situations in which consumers have done that, to I haven't looked at that provision in the Century Code here. It just seems like it never comes up, because I'm not aware of that provision.

**Rep. Keiser:** Why don't we have the emergency clause on this bill?

**Parrell:** I think the Attorney General would be happy to have the committee add an emergency clause to this legislation.

**Jack McDonald, Dehart & Darr, ND Newspaper Association, ND Broadcasters**

**Association, ND Cable Television Association:** Neutral to SB 2195. See written testimony #2.

**Rep. Keiser:** The last time I renewed my cell line, I had a mother and a young daughter in line with me, and the mother was mad. She had a \$400 bill for her teenager, and she said we didn't sign up for enough text messaging. I don't think it's right that somebody sends you text messages that you get charged for. So, I would support it.

**Rep. Ruby:** I was recently in one of these calling businesses as well, and there was a girl there that was debating a bill as well, because she had apparently when they gave her a number the person who had the number before owed a lot of money. So, she was getting these phone calls for money that was through electronic saying please hold for your message, and she knew it wasn't for her, but she was getting charged for it, and she had about a \$500 bill. I would make a motion for the emergency clause.

**Rep. Nottestad:** Second.

**Voice vote was taken, amendment adopted.**

**Rep. Johnson:** I would move a do pass, as amended.

**Rep. Dietrich:** Second.

**Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Ruby**

Hearing closed.

March 7, 2007

**House Amendments to SB 2195 (78295.0101) - Industry, Business and Labor  
Committee 03/07/2007**

Page 1, line 2, after "solicitations" insert "; and to declare an emergency"

**House Amendments to SB 2195 (78295.0101) - Industry, Business and Labor Committee  
03/07/2007**

Page 2, line 7, replace "PSC" with "PCS"

**House Amendments to SB 2195 (78295.0101) - Industry, Business and Labor Committee  
03/07/2007**

Page 3, after line 10, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency  
measure."

Renumber accordingly

Date: 3-17-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2195

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass, as amended

Motion Made By Rep. Johnson Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Ruby

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2195: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2195 was placed on the Sixth order on the calendar.**

Page 1, line 2, after "solicitations" insert "; and to declare an emergency"

Page 2, line 7, replace "PSC" with "PCS"

Page 3, after line 10, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2007 TESTIMONY

SB 2195

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
SENATOR JERRY KLEIN, CHAIRMAN  
JANUARY 24, 2007

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support of Senate Bill 2195.

North Dakota's Do Not Call laws have been very effective in providing North Dakota telephone subscribers from the invasion of unwanted telephone solicitations and prerecorded messages. The Attorney General has likened a telephone subscriber's registration on the Do Not Call list to hanging a "Do Not Disturb" sign on the subscriber's telephone. Subject to some limited exceptions, telemarketers are prohibited from calling subscribers on the Do Not Call list.

Many telemarketers, however, would not comply with the law without significant enforcement by the Attorney General. The Attorney General appreciates that the Legislature provides the necessary resources to vigorously enforce this law and thanks you for that support. We would like to provide a quick summary of our enforcement efforts by providing enforcement statistics between August 8, 2003 and January 23, 2007. The Consumer Protection Division initiated 117 investigations. It has entered into 70 settlements resulting in the collection of civil penalties and attorney's fees in the amount of \$119,900. The Attorney General has issued eight Cease & Desist Orders against violators. The Division has obtained 2 judgments in the combined total amount of approximately \$149,109. The violations include 358 calls to subscribers on the Do Not Call list and 330 prohibited prerecorded messages.

This law that has provided an excellent framework and the authority to protect our telephone privacy now requires some minor amendments to address a problem that was not an issue at the time of the enactment of the original Do Not Call laws. The Attorney General is now receiving some complaints regarding unauthorized text messaging. Some cell phone subscribers, particularly teens and young adults, now often use text messaging via cell phones, in lieu of a voice conversation. It has its advantages including privacy and it is not as invasive in public places such as restaurants, etc.

Cell phone subscribers, however, object to unsolicited text messages offering vacations, timeshares in Florida, or sweepstakes and illegal lotteries. Some subscribers, or perhaps their parents, pay a fixed monthly fee for unlimited text messages, while others pay a per text message fee of, for example, 5 cents per text message. As a result

#1  
2195

subscribers find that the unwanted text messages are both an intrusion and an expense.

These unsolicited text messages containing unwanted telephone solicitations arguably are not a violation of our Do Not Call laws under the current laws. The current definition of "telephone solicitation" hinges on a "voice" communication and does not appear to clearly include a "text" communication.

Subscribers who have registered for the Do Not Call list should be able to prohibit unwanted text messages. This legislation makes the appropriate changes in the law to include text messages.

The first change is on page 1, line 22 in the definition of "message" as contained in subsection 5 of section 51-28-01. It would be amended to include text or other electronic communication. The changes in subsection 6 and the addition of subsection 7 revise the definition of "subscriber" and add a new definition of "telephone line" in order to incorporate technology changes in telecommunications. Finally, the definition of "telephone solicitation" is amended to include "text or other electronic communication."

The Attorney General requests these amendments in order to enforce the Do Not Call laws as applied to text messaging.

The Attorney General respectfully asks the Senate Industry, Business and Labor Committee to give Senate Bill 2195, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

g:\cpa\parrell\legislation 2007\do not call\sb 2195 senate testimony.doc

**CHAPTER 51-28**  
**TELEPHONE SOLICITATIONS**

**51-28-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "Automatic dialing-announcing device" means a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, 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 51-28-02.
- 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.

**51-28-02. Use of prerecorded or synthesized voice messages.** A caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-28-05 do not apply to a message from a public safety agency notifying a person of an emergency; a message from a school district to a student, a parent, or an employee; a message to a subscriber with whom the caller has a current business relationship; or a message advising an employee of a work schedule.

**51-28-03. Message requirements.** When the message is immediately preceded by a live operator, the operator must disclose at the outset of the message:

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

**51-28-04. Requirements on automatic dialing-announcing devices.** A caller may not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber. A caller may not use an automatic dialing-announcing device that uses a random or sequential number generator unless the equipment excludes calls to the following telephone numbers:

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

**51-28-05. Time of day limit.** A caller may not use an automatic dialing-announcing device nor make any telephone solicitation before eight a.m. or after nine p.m. at the telephone subscriber's location.

**51-28-06. Prohibited telephone solicitations.** A caller may not make or cause to be made any telephone solicitation to the telephone line of any subscriber in this state who, for at least thirty-one days before the date the call is made, has been on the do-not-call list established and maintained or used by the attorney general under section 51-28-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

**51-28-07. Identification by caller.** Any caller who makes a telephone solicitation to a subscriber in this state shall immediately and clearly state at the beginning of the call the caller's true first and last name, the caller's telephone number, the caller's city and state of location, and the name of the business on whose behalf the telephone solicitation is made.

**51-28-08. Interference with caller identification.** A caller who makes a telephone solicitation to a subscriber in this state may not knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

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

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

of, the list established under section 51-28-09. The fee for acquisition of the list may not exceed two hundred dollars per quarter, or eight hundred dollars per year.

2. Notwithstanding any other provision of this chapter, the attorney general may designate the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 61, as the state do-not-call list.

**51-28-10. Release of information.** Information contained in the list established under section 51-28-09 may not be used for any purposes except compliance with this chapter or in a proceeding or action under this chapter or chapter 51-15. The information contained in the list is an exempt record as defined in section 44-04-17.1.

**51-28-11. Private enforcement.** Any person who receives a telephone solicitation or message in violation of this chapter may bring an action to enjoin such violation, or for damages, or both. The court may award the plaintiff the plaintiff's actual damages or damages up to two thousand dollars for each violation, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section shall not limit any other claims the person may have against the caller.

**51-28-12. Limitation of actions.** No action or proceeding may be brought under this chapter:

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

**51-28-13. Powers of the attorney general - Remedies - Injunction - Other relief.** When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, the attorney general, in enforcing this chapter, has all powers provided in this chapter or chapter 51-15, and may seek all remedies in this chapter or chapter 51-15.

**51-28-14. Cease and desist orders.** When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order which the attorney general deems necessary or appropriate in the public interest, including if any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general under this chapter or chapter 51-15. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein.

**51-28-15. Civil penalties in an adjudicative proceeding.** When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general may impose by order and collect a civil penalty against any person found in an adjudicative proceeding to have violated any provision of this chapter, or any rule or order adopted under this chapter, in an amount not more than two thousand dollars for each violation of this chapter or any rule or order adopted under this chapter. The attorney general may bring an action in district court to recover penalties under this section.

**51-28-16. Costs recoverable in adjudicative proceeding - Hearing costs.** If the attorney general prevails in an adjudicative proceeding pursuant to section 51-28-14 or 51-28-15, the attorney general may assess the nonprevailing person for all adjudicative proceeding and

hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

**51-28-17. Civil penalties in court proceeding.** The court may award the attorney general civil penalties of not more than two thousand dollars per violation of this chapter. A violation of this chapter constitutes a violation of chapter 51-15 and the court may award civil penalties under section 51-15-11.

**51-28-18. Costs recoverable in court proceeding.** The attorney general is entitled to an award of reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

**51-28-19. Separate violations - Nonexclusive remedies and penalties.** For each remedy or penalty under this chapter or chapter 51-15, or otherwise provided by law, each telephone solicitation or message shall constitute a separate violation for purposes of an adjudicative proceeding or an action in district court. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties in chapter 51-15, or otherwise provided by law.

**51-28-20. Caller identification service nonliability.** No provider of caller identification service shall be held liable for violations of this chapter committed by other persons or entities.

**51-28-21. Disposition of fees, penalties, and recoveries.** All fees, penalties, and recoveries of attorney's fees, investigation fees, costs, and expenses collected pursuant to this chapter shall be retained by the attorney general for enforcement of this chapter, including to pay costs, expenses, and attorney's fees and salaries incurred in the operation of the attorney general's consumer protection and antitrust division. However, the attorney general may deposit any excess funds not required for enforcement of this chapter in the attorney general refund fund under section 54-12-18.

**51-28-22. Venue.** The attorney general or a plaintiff in a private enforcement action may bring an action pursuant to this chapter in either the county of the telephone subscriber's residence or Burleigh County.

#1

#1

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
REPRESENTATIVE GEORGE J. KEISER, CHAIRMAN  
MARCH 7, 2007

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
SENATE BILL NO. 2195

Mr. Chairman and members of the House Industry, Business, and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support of Senate Bill 2195.

North Dakota's Do Not Call laws have been very effective in providing North Dakota telephone subscribers from the invasion of unwanted telephone solicitations and prerecorded messages. The Attorney General has likened a telephone subscriber's registration on the Do Not Call list to hanging a "Do Not Disturb" sign on the subscriber's telephone. Subject to some limited exceptions, telemarketers are prohibited from calling subscribers on the Do Not Call list.

Many telemarketers, however, would not comply with the law without significant enforcement by the Attorney General. The Attorney General appreciates that the Legislature provides the necessary resources to vigorously enforce this law and thanks you for that support. We would like to provide a quick summary of our enforcement efforts by providing enforcement statistics between August 8, 2003 and January 23, 2007. The Consumer Protection Division initiated 117 investigations. It has entered into 70 settlements resulting in the collection of civil penalties and attorney's fees in the amount of \$119,900. The Attorney General has issued eight Cease & Desist Orders against violators. The Division has obtained 2 judgments in the combined total amount of approximately \$149,109. The violations include 358 calls to subscribers on the Do Not Call list and 330 prohibited prerecorded messages.

This law that has provided an excellent framework and the authority to protect our telephone privacy now requires some minor amendments to address a problem that was not an issue at the time of the enactment of the original Do Not Call laws. The Attorney General is now receiving some complaints regarding unauthorized text messaging. Some cell phone subscribers, particularly teens and young adults, now often use text messaging via cell phones, in lieu of a voice conversation. It has its advantages including privacy and it is not as invasive in public places such as restaurants, etc.

Cell phone subscribers, however, object to unsolicited text messages offering vacations, timeshares in Florida, or sweepstakes and illegal lotteries. Some subscribers, or

perhaps their parents, pay a fixed monthly fee for unlimited text messages, while others pay a per text message fee of, for example, 5 cents per text message. As a result subscribers find that the unwanted text messages are both an intrusion and an expense.

These unsolicited text messages containing unwanted telephone solicitations arguably are not a violation of our Do Not Call laws under the current laws. The current definition of "telephone solicitation" hinges on a "voice" communication and does not appear to clearly include a "text" communication.

Subscribers who have registered for the Do Not Call list should be able to prohibit unwanted text messages. This legislation makes the appropriate changes in the law to include text messages.

*meat* The first change is on page 1, line 22 in the definition of "message" as contained in subsection 5 of section 51-28-01. It would be amended to include text or other electronic communication. The changes in subsection 6 and the addition of subsection 7 revise the definition of "subscriber" and add a new definition of "telephone line" in order to incorporate technology changes in telecommunications. Finally, the definition of "telephone solicitation" is amended to include "text or other electronic communication."

The Attorney General requests these amendments in order to enforce the Do Not Call laws as applied to text messaging.

The Attorney General does not intend the phrase "or other electronic" page 2, line 10, to include television or Internet e-mail that does not result in unauthorized or involuntary charges to the subscriber.

The Attorney General respectfully asks the House Industry, Business and Labor Committee to give Senate Bill 2195, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

g:\cpaf\parrell\legislation 2007\do not call\sb 2195 house testimony.doc

Wednesday, March 07, 2007

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE  
SB 2195

CHAIRMAN KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of Dehart & Darr, a marketing firm; the North Dakota Newspaper Association; the North Dakota Broadcasters Association; and the North Dakota Cable Television Association. We endorse the written testimony and intent of the Office of Attorney General that this legislation does not cover traditional internet e-mail marketing and television advertising.

We in no way oppose the Attorney General's intent to attack the problems outlined in the testimony from Mr. Grossman. This bill attempts to curb violations involving telephone number-to-number contact. However, when legislating in this new era of communications, there are constant problems involving what I like to call the law of unintended consequences. The legislation intends one thing, but ends up doing something else.

In SB 2195, lines 5-10 on page 2 define a telephone line in very broad terms, including broadband and voice over protocol, or VOIP. Lines 10-11 define telephone solicitation as communications over a telephone line for various purposes.

The problem arises because current technology uses these access lines for multiple purposes. For example, cable television now provides telephone, television, and internet access over the same broadband cable or line coming into your home. Many phone companies, such as Qwest or the Rural Telephone Cooperatives, provide similar services. Does this legislation mean that any electronic communication over this line, such as a television ad, advertising on a newspaper's web page or an e-mail solicitation, is actionable under this law? These are all now electronic communications over a telephone line.

This is not what was intended by this legislation, and the Attorney General's testimony indicates as much. However, there is concern from the various industries involved over this. You most likely will be revisiting these issues in coming sessions.

I will be happy to try to answer any questions. THANK YOU FOR YOUR TIME AND CONSIDERATION.