

# NORTH DAKOTA

Sections 51-27-01 through 51-27-10 of the *North Dakota Century Code* govern the transmission of commercial electronic mail. Those code sections:

- Apply to email sent from a North Dakota-based computer or to a person the sender knows or has reason to know is a North Dakota resident;
- Forbid a sender to "obscure" an email's routing information;
- Make it illegal for a sender to put false or misleading information in an email's subject line;
- Require a sender to put a label in the subject line of a commercial or sexually-oriented email;
- Forbid a sender to use another person's domain name without permission;
- Require a sender to provide a mechanism by which the recipient can ask not to be contacted;
- Forbid a person to conspire with another person or help another person commit a violation;
- Classify violations as unfair trade practices;
- Entitle a recipient or a service provider to sue a violator for damages; and
- Impose criminal penalties on violators.

## **N.D. Cent. Code**

### **§51-27-01. Definitions Pertaining to Commercial Electronic Mail**

In this chapter [*§§51-27-01 - 51-27-10, which regulate commercial electronic mail*], unless the context otherwise requires:

1. "Assist the transmission" means actions taken by a person to provide substantial assistance or support that enables any person to formulate, compose, send, originate, initiate, or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates chapter 51-15 [*which deals with unfair trade practices*].
2. "Commercial electronic mail message" means an electronic mail message sent to promote real property, goods, or services for sale or lease. The term does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account if the sender has agreed to such an arrangement.
3. "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.
4. "Identifying information" means any information that can be used to access an individual's financial account or to obtain goods and services,

including an individual's address, birth date, social security number, driver's license number, nondriver governmental identification number, telephone number, bank account number, student identification, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image, photograph, screen name, or password. The term does not include information that is lawfully obtained from publicly available sources or from federal, state, or local government records lawfully made available to the general public.

5. "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message, unless the intervening interactive computer service assists in the transmission of an electronic mail message when the interactive computer service knows, or consciously avoids knowing, that the person initiating the transmission is engaged, or intends to engage, in any act or practice that violates chapter 51-15.

6. "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and systems operated or services offered by libraries and educational institutions.

7. "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

8. "Web page" means a location that has a single uniform resource locator with respect to the world wide web or another location that can be accessed on the internet.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003. Amended by Chapter 436, §2, Laws of 2007, effective August 1, 2007.*

## **§51-27-02. Prohibited Acts Involving Commercial Electronic Mail**

1. A person may not initiate the transmission, conspire with another to initiate the transmission, or assist the transmission of a commercial electronic mail message from a computer located in this state or to an electronic mail address that the sender knows, or has reason to know, is held by a resident of this state that:

1.a. Uses a third-party's internet domain name without permission of the third party or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

1.b. Contains false or misleading information in the subject line.

2. For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a resident of this state if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

### **§51-27-03. Violations Classified as Unfair Trade Practices**

1. It is a violation of chapter 51-15 to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that:

1.a. Uses a third-party's internet domain name without permission of the third party or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

1.b. Contains false or misleading information in the subject line.

2. It is a violation of chapter 51-15 to assist in the transmission of a commercial electronic mail message if the person providing the assistance knows, or consciously avoids knowing, that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any act or practice that violates chapter 51-15.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

### **§51-27-04. Disclosures Required in Commercial Electronic Mail Messages**

1. The subject line of a commercial electronic mail message must include "ADV" as the first characters. If the message contains information that consists of material of a sexual nature that may only be viewed by an individual 18 years of age or older, the subject line of the message must include "ADV-ADULT" as the first characters.

2. For purposes of this section, a commercial electronic mail message does not include a message if the recipient has consented to receive or has solicited electronic mail messages from the initiator, from an organization using electronic mail to communicate exclusively with its members, from an entity which uses electronic mail to communicate exclusively with its employees or contractors, or if there is a business or personal relationship between the initiator and the recipient.

3. For purposes of this section, a business relationship means a prior or existing relationship formed between the initiator and the recipient, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or services offered by the initiator or an affiliate or agent of the initiator. "Affiliate"

means a person that directly or indirectly controls, is controlled by, or is under common control with a specified person.

4. It is a violation of chapter 51-15 to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that violates this section.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-05. Sender's Obligation to Provide Opt-Out Mechanism**

1. A sender initiating the transmission of a commercial electronic mail message shall establish a toll-free telephone number, a valid sender-operated return electronic mail address, or another easy-to-use electronic method that the recipient of the commercial electronic mail message may call or access by electronic mail or other electronic means to notify the sender not to transmit any further unsolicited commercial electronic mail messages. The notification process may include the ability for the commercial electronic mail messages recipient to direct the initiator to transmit or not transmit particular commercial electronic mail messages based upon products, services, divisions, organizations, companies, or other selections of the recipient's choice.

2. A commercial electronic mail message must include a statement informing the recipient of a toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or access by electronic mail or another electronic method established by the initiator, notifying the sender not to transmit to the recipient any further unsolicited commercial electronic mail messages to the electronic mail address specified by the recipient, and explaining the manner in which the recipient may specify what commercial electronic mail messages the recipient does and does not want to receive.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-06. Recipient's and Service Provider's Remedies**

1. Damages to the recipient of a commercial electronic mail message sent in violation of this chapter are \$500, or actual damages, whichever is greater.

2. Damages to an interactive computer service resulting from a violation of this chapter are \$1,000, or actual damages, whichever is greater.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-07. Service Provider's Rights**

1. An interactive computer service may block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will

be, sent in violation of this chapter.

2. An interactive computer service may not be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this chapter.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-08. Effect of Commercial Electronic Mail Laws on Other Rights**

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.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-09. Pre-Emptive Effect of Future Federal Law**

If any federal law is enacted that regulates false, misleading, or unsolicited commercial electronic mail messages, but does not preempt state law on the subject, the federal law supersedes any conflicting provision of this chapter.

*Created by Chapter 439, §1, Laws of 2003, effective August 1, 2003.*

#### **§51-27-10. Fraudulent or Misleading Communications: Definition; Criminal Penalties**

1. A person is guilty of a class C felony if, with intent to defraud or injure an individual, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by any other person:

1.a. The actor makes any communication that is not true and is calculated to mislead by purporting to be by or on behalf of another person without the authority or approval of that person; and

1.b. The actor uses that communication to induce, request, or solicit the individual to provide property or identifying information.

2. A person is guilty of a class C felony if, with intent to defraud or injure an individual, or with knowledge that a person is facilitating a fraud or injury to be perpetrated by any other person:

2.a. The actor creates or operates a web page that falsely represents the actor as being associated with another person without the authority or approval of that person and the web page may induce a user of the internet to provide property or identifying information; or

2.b. The actor alters a setting on a user's computer or similar device or software program through which the user may search the internet, the alteration causes the user to view a communication that falsely represents

the actor as being associated with another person, and the communication has been created or is operated without the authority or approval of the other person and induces, requests, or solicits the user to provide property or identifying information.

*Created by Chapter 436, §3, Laws of 2007, effective August 1, 2007.*