

Minnesota's Automatic Dialing-Announcing Device Law

TO: Candidates, Political Campaigns, Political Parties, Political Committees and Other Interested Persons
FROM: Minnesota Attorney General's Office
DATE: April 22, 2022
RE: Minnesota's Automatic Dialing-Announcing Device Law

This memorandum provides guidance to candidates, political campaigns, political parties, political committees, and others concerning Minnesota's automatic dialing-announcing device law. It is similar to memoranda first issued by the Minnesota Attorney General's Office ("AGO") in 2004.

Minnesota's ADAD Law

A copy of Minnesota's automatic dialing-announcing device ("ADAD") law, which is contained at Minn. Stat. §§ 325E.26-.31, is attached.

The law provides as follows:

A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

Minn. Stat. § 325E.27(a) (2020). An ADAD is "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." *Id.* § 325E.26, subd. 2. "Caller" includes "a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line." *Id.*, subd. 3. A "subscriber" is "a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person." *Id.*, subd. 5.

The ADAD law does not apply to "messages to subscribers with whom the caller has a current business or personal relationship." *Id.* § 325E.27.

Minnesota law also governs other aspects of using ADADs in Minnesota. For example, all ADADs (to the extent their use is not prohibited) must be designed and operated to disconnect within ten seconds after a subscriber terminates the telephone call. *Id.* § 325E.28. ADADs may not be used before 9:00 a.m. or after 9:00 p.m. *Id.* § 325E.30. In addition, when an ADAD message is immediately preceded by a live operator, the operator must make certain disclosures to the subscriber. *See id.* § 325E.29.

The constitutionality of the ADAD statute has been upheld by the Minnesota Supreme Court and the Eighth Circuit Court of Appeals. *See Gresham v. Swanson*, 866 F.3d 853, 856

(8th Cir. 2017) (upholding constitutionality of ADAD statute in challenge by telephone-solicitation firm and its managing member); *Van Bergen v. State*, 59 F.3d 1541, 1556 (8th Cir. 1995) (upholding constitutionality of ADAD statute in challenge by political candidate); *State v. Casino Mktg. Group, Inc.*, 491 N.W.2d 882, 891-92 (Minn. 1992) (upholding constitutionality of ADAD statute in challenge by telephone-solicitation firm).

Enforcement of the ADAD Law

The AGO is authorized to enforce the ADAD law and seek a court order to enjoin violations of it. *See, e.g.*, Minn. Stat. §§ 8.31, 325E.31. The AGO generally intends to follow the following policy:

Upon receiving a verified and substantiated complaint that the ADAD law has been violated, the AGO will promptly contact the campaign committee that had allegedly violated the law and advise it of the alleged ADAD violations. Upon receiving verified and substantiated complaints from at least three or more individuals involving an identified campaign committee, the AGO may ask the committee to sign an Assurance of Discontinuance. If the committee does not do so promptly, the AGO may file a lawsuit and seek a temporary restraining order to enjoin further violations of the law.

For a complaint to be verified and substantiated, the complainant must sign an affidavit that documents the following:

- 1) The date and time the subscriber received the ADAD message;
- 2) When available (i.e., when left on an answering machine), a recording of the message;
- 3) Substantiation of the identity of the caller;
- 4) A statement that the subscriber (which includes persons living or residing with the subscriber) did not knowingly or voluntarily request, consent to, permit, or authorize receipt of the message;
- 5) A statement that the message was not immediately preceded by a live operator who obtained the subscriber's consent (or the consent of a person living or residing with the subscriber) before the message was delivered; and
- 6) A statement that the subscriber (which includes other persons living or residing with the subscriber) does not have a current business or personal relationship with the caller.

The policy adopted in 2004 required at least three signed affidavits to balance the legitimate enforcement of the statute with "the potential for mischief by political opponents." The AGO intends to continue the same general policy in 2022.

Attachment

325E.26 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 325E.26 to 325E.30 have the meanings given them in this section.

Subd. 2. **Automatic dialing-announcing device.** "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.

Subd. 3. **Caller.** "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line.

Subd. 4. **Commercial telephone solicitation.** "Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e).

Subd. 5. **Subscriber.** "Subscriber" means a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person.

Subd. 6. **Message.** "Message" means any call, regardless of its content.

History: 1987 c 294 s 1; 1994 c 534 art 2 s 1; 2003 c 2 art 1 s 38

325E.27 USE OF PRERECORDED OR SYNTHESIZED VOICE MESSAGES.

(a) A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

(b) This section and section 325E.30 do not apply to (1) messages from school districts to students, parents, or employees, (2) messages to subscribers with whom the caller has a current business or personal relationship, or (3) messages advising employees of work schedules. This section does not apply to messages from a nonprofit tax-exempt charitable organization sent solely for the purpose of soliciting voluntary donations of clothing to benefit disabled United States military veterans and containing no request for monetary donations or other solicitations of any kind.

History: 1987 c 294 s 2; 2009 c 178 art 1 s 60

325E.28 REQUIREMENTS ON AUTOMATIC DIALING-ANNOUNCING DEVICES.

A caller shall 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.

History: 1987 c 294 s 3

325E.29 MESSAGE REQUIREMENTS.

Where the message is immediately preceded by a live operator, the operator must, at the outset of the message, disclose:

- (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.

History: 1987 c 294 s 4

325E.30 TIME OF DAY LIMIT.

A caller shall not use an automatic dialing-announcing device nor make any commercial telephone solicitation before 9:00 a.m. or after 9:00 p.m.

History: *1987 c 294 s 5*

325E.31 REMEDIES.

A person who is found to have violated sections 325E.27 to 325E.30 is subject to the penalties and remedies, including a private right of action to recover damages, as provided in section 8.31.

History: *1987 c 294 s 6*