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TO: **Candidates, Political Campaigns, Political Parties, Political Committees and Other Interested Persons**

FROM: **Minnesota Attorney General's Office**

DATE: **April 25, 2012**

RE: **Minnesota's Automatic Dialing-Announcing Device Law**

This Memorandum is to provide guidance to candidates, political campaigns, political parties, political committees, and others concerning Minnesota's automatic dialing-announcing device law. It is similar to Memoranda issued to such organizations by the Office in 2004, 2006, 2008, and 2010.

Minnesota's ADAD Law

A copy of Minnesota's automatic dialing-announcing device 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 (2010). An "automatic dialing-announcing device," or "ADAD," is defined as "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." Minn. Stat. § 325E.26, subd. 2 (2010). "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.* at subd. 3. "Subscriber" is defined as "a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person." *Id.* at subd. 5.

Minn. Stat. § 325E.27 (2010) does not apply to "messages to subscribers with whom the caller has a current business or personal relationship."

The attached law also contains other provisions relating to the use of ADADs in Minnesota. For example, all ADADs (to the extent their use is not prohibited) must be designed and operated to disconnect within ten (10) seconds after termination of the telephone call by the subscriber. Minn. Stat. § 325E.28 (2010). ADADs may not be used before 9:00 a.m. or after 9:00 p.m. Minn. Stat. § 325E.30 (2010). In addition, where an ADAD message is immediately preceded by a live operator, the operator must make certain disclosures to the subscriber. *See* Minn. Stat. § 325E.29 (2010).

The constitutionality of the ADAD statute has been upheld by the Minnesota Supreme Court and the Eighth Circuit Court of Appeals. *See State v. Casino Mktg. Group, Inc.,* 491 N.W.2d 882 (Minn. 1992) and *Van Bergen v. State of Minnesota,* 59 F.3d 1541 (8th Cir. 1995) (upholding constitutionality of ADAD statute in challenge by political candidate).

Enforcement of ADAD Law

The Minnesota Attorney General's Office ("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. This Office generally intends to follow this policy:

Upon receiving a verified and substantiated complaint that the above law has been violated, this Office will promptly contact the campaign that had allegedly violated the law and advise it of the ADAD violations. Upon receiving verified and substantiated complaints from three or more individuals involving an identified committee, this Office will promptly ask the committee to sign an Assurance of Discontinuance. If the committee does not do so promptly, the Office will file a lawsuit and seek a temporary restraining order ("TRO") to enjoin further violations of the law. In order 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) Where available (i.e., when left on an answering machine), a recording of the text 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 purpose of requiring three signed affidavits is to reduce the potential for mischief by political opponents. We have received complaints in past elections, which were heavily publicized by the "outraged" complainant in the media, where the complainant had, in fact, contributed to, attended a meeting of, or otherwise presented himself as a person who has a relationship to the "candidate." Such a relationship, while contrived by the complainant, still meets the exception which permits an ADAD call to a person who has a "relationship" to the particular campaign. The purpose of three complaints is to make sure there is a valid complaint and not just a contrived publicity stunt.

Attachment

AG: #2616263-v1

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*

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

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. 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*

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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*

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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*

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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*

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