

Introduced by

Senators Olafson, Hacker, Lindaas

Representatives Gulleeson, Koppelman

1 A BILL for an Act to create and enact chapter 51-34 of the North Dakota Century Code, relating  
2 to the unauthorized or fraudulent procurement, sale, or receipt of telephone records; to provide  
3 a penalty; to provide an effective date; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 51-34 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **51-34-01. Definitions.** In this chapter, unless the context or subject matter otherwise  
8 requires:

- 9 1. "Customer" means the person who subscribes to telephone service from a  
10 telephone company or in whose name such telephone service is listed and to  
11 whom the telephone record pertains.
- 12 2. "Procure" in regard to a telephone record means to obtain by any means, whether  
13 electronically, in writing, or in oral form, with or without consideration.
- 14 3. "Telephone" means any device used by a person for voice or other electronic  
15 communications, in connection with the services of a telephone company, whether  
16 such voice or other electronic communications are transmitted in analog, data, or  
17 any other form.
- 18 4. "Telephone company" means any person that provides commercial telephone  
19 services to a customer, regardless of the communications technology used to  
20 provide such service, including traditional wireline or cable telephone service;  
21 cellular, broadband PCS, or other wireless telephone service; microwave, satellite,  
22 or other terrestrial telephone service; and voice over internet telephone service.
- 23 5. "Telephone record" means information retained by a telephone company that  
24 relates to the telephone number dialed by the customer or other person using the

customer's telephone with such customer's permission, the incoming number of a call directed to a customer or other person using the customer's telephone with such customer's permission, or other data related to such call typically contained on a customer's telephone bill, including the times the call started and ended, the duration of the call, the time the call was made, and any charges applied. A telephone record does not include information collected and retained by a customer utilizing caller identification or similar technology or include a carrier network record.

**51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone records prohibited - Criminal penalties - Restitution.**

**1. A person may not:**

- a. Procure, attempt to procure, solicit, or conspire with another to procure, a telephone record of any resident of this state without the authorization of the customer or by fraudulent, deceptive, or false means;**
- b. Sell, or attempt to sell, a telephone record of any resident of this state without the customer's authorization; or**
- c. Receive a telephone record of any resident of this state when such record has been obtained without the customer's authorization or by fraudulent, deceptive, or false means.**

**2. Any person who knowingly violates this section is guilty of a class C felony.**

**3. In addition to any other punishment, a person found guilty of an offense under this section shall make restitution for any financial loss sustained by the customer or any other person who suffered financial loss as the direct result of the offense.**

**51-34-03. Jurisdiction - Conduct outside this state - Venue - Multiple offenses.**

**1. Notwithstanding section 29-03-01.1, a person who, while outside this state, engages in conduct in violation of section 51-34-02 is subject to prosecution under this chapter in the courts of this state. Except as provided in subsection 2, the venue is in the county in which the customer or victim resides or any other county in which any part of the crime occurred.**

**2. When a person commits violations of this section in more than one county involving either one or more customers or victims or the commission of acts**

1 constituting an element of the offense, the multiple offenses may be consolidated  
2 for commencement of prosecution in any county where one of the offenses was  
3 committed.

4 **51-34-04. Nonapplicability to valid legal process and law enforcement.**

- 5 1. This chapter does not apply to any person acting pursuant to a valid court order,  
6 warrant, or subpoena, a subpoena by the attorney general pursuant to this chapter  
7 or chapter 51-15, or other valid legal process.  
8 2. This chapter does not prevent any action by a law enforcement agency, or any  
9 officer, employee, or agent of such agency, to obtain telephone records in  
10 connection with the performance of the official duties of the agency as authorized  
11 by law.

12 **51-34-05. Permitted use by telephone companies.**

- 13 1. This chapter does not prohibit a telephone company from obtaining, using,  
14 disclosing, or permitting access to any telephone record, either directly or indirectly  
15 through its agents or contractors:  
16 a. As otherwise authorized by law;  
17 b. With the lawful consent of the customer;  
18 c. As may be necessarily incident to the rendition of the service or to the  
19 protection of the rights or property of the telephone company, or to protect the  
20 customer of those services and other carriers from fraudulent, abusive, or  
21 unlawful use of, or subscription to, such services;  
22 d. To a governmental entity, if the telephone company reasonably believes that  
23 an emergency involving immediate danger of death or serious physical injury  
24 to any person justifies disclosure of the information; or  
25 e. To the national center for missing and exploited children, in connection with a  
26 report submitted thereto under section 227 of the Victims of Child Abuse Act  
27 of 1990.  
28 2. This chapter does not apply to or expand upon the obligations and duties of any  
29 telephone company to protect telephone records beyond those otherwise  
30 established by federal law or state law or both as set forth in section 51-34-06.

1        3.    This chapter does not apply to a telephone company, and its agents or  
2            representatives, who reasonably and in good faith act pursuant to subsection 2,  
3            notwithstanding any later determination that the action was not in fact authorized.

4        **51-34-06. Information security - No private claim for relief.**

5        1.    Telephone companies that maintain telephone records of a resident of this state  
6            shall establish reasonable procedures to protect against unauthorized or fraudulent  
7            disclosure of the records which could result in substantial harm or inconvenience  
8            to a customer.

9        2.    This section does not authorize a private claim for relief for a violation of this  
10          section.

11       **51-34-07. Deceptive act or practice - Enforcement - Powers - Remedies - Venue.**

12    The state's attorney or attorney general may enforce this chapter. In enforcing this chapter, the  
13    attorney general has all the powers provided in chapter 51-15 and may seek all the remedies in  
14    chapter 51-15. A violation of this chapter is a violation of chapter 51-15. The remedies, duties,  
15    prohibitions, and penalties of this chapter are not exclusive and are in addition to all other  
16    causes of action, remedies, and penalties under chapter 51-15 and as otherwise provided by  
17    law. The attorney general may bring an action pursuant to this section in either the county of  
18    the customer's residence or Burleigh County.

19       **SECTION 2. EFFECTIVE DATE.** This Act becomes effective on June 1, 2007.

20       **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.