

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1316

Introduced by

Representatives Delmore, Boe, Griffin, Thoreson

Senators Fischer, Nething

1 A BILL for an Act to create and enact a new section to chapter 49-21 of the North Dakota
2 Century Code, relating to protection of consumer telephone records; and to provide a penalty.

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

4 **SECTION 1.** A new section to chapter 49-21 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Fraud related to consumer telephone records - Penalty.**

7 **1. In this section:**

- 8 a. "Procure" means to obtain by any means, whether electronically, in writing, or
9 in oral form, with or without consideration.
- 10 b. "Telephone company" means any person that provides commercial telephone
11 service to a customer, irrespective of the communications technology used to
12 provide the service, including traditional wire line or cable telephone service;
13 cellular, broadband personal communications services, or other wireless
14 telephone service; microwave, satellite, or other terrestrial telephone service;
15 and voice over internet telephone service.
- 16 c. "Telephone record" means information retained by a telephone company that
17 relates to a telephone number dialed from the customer's telephone, an
18 incoming call directed to a customer's telephone, or other data related to calls
19 typically contained on a customer's telephone bill, including the time the call
20 started and ended, the duration of the call, the time of day the call was made,
21 charges applied, and information indicating the location from which or to
22 which calls were made. For purposes of this section, any information
23 collected and retrieved by customers using caller identification or other similar
24 technology is not a telephone record.

- 1 2. A person may not:
 - 2 a. Knowingly procure, attempt to procure, solicit, or conspire with another to
 - 3 procure a telephone record of any resident of this state without the
 - 4 authorization of the customer to whom the record pertains or by fraudulent,
 - 5 deceptive, or false means;
 - 6 b. Knowingly sell or attempt to sell a telephone record of any resident of this
 - 7 state without the authorization of the customer to whom the record pertains; or
 - 8 c. Receive a telephone record of any resident of this state knowing that the
 - 9 record has been obtained without the authorization of the customer to whom
 - 10 the record pertains or by fraudulent, deceptive, or false means.
- 11 3. The first violation of this section is a class A misdemeanor and each subsequent
- 12 violation is a class C felony. In addition to the criminal penalty, a person in
- 13 violation of this section is subject to a five thousand dollar civil penalty. Except as
- 14 otherwise provided by this section, a violation of this section is an unlawful trade
- 15 practice under chapter 51-10.
- 16 4. A telephone company that maintains telephone records of a resident of this state
- 17 shall establish reasonable procedures to protect against unauthorized or fraudulent
- 18 disclosure of telephone records that could result in substantial harm or
- 19 inconvenience to a customer. A private right of action is not authorized under this
- 20 subsection.
- 21 5. This section does not prohibit a telephone company from obtaining, using,
- 22 disclosing, or permitting access to any telephone record, either directly or
- 23 indirectly, through its agents:
 - 24 a. Unless prohibited by law;
 - 25 b. With the lawful consent of the customer or subscriber;
 - 26 c. As may be necessarily incident to the rendition of the service, to initiate,
 - 27 render, bill, and collect customer charges, or to the protection of the rights or
 - 28 property of the provider of that service, or to protect users of those services
 - 29 and other carriers from fraudulent, abusive, or unlawful use of, or subscription
 - 30 to, the services;

- 1 d. In connection with the sale or transfer of all or part of a business, or the
2 purchase or acquisition of a portion or all of a business, or the migration of a
3 customer from one carrier to another;
4 e. To a governmental entity, if the telephone company reasonably believes that
5 an emergency involving immediate danger of death or serious physical injury
6 to any person justifies disclosure of the information; or
7 f. To the national center for missing and exploited children, in connection with a
8 report submitted under section 227 of the federal Victims of Child Abuse Act
9 of 1990.