

# SALES AND EXCHANGES

## CHAPTER 434

### SENATE BILL NO. 2266

(Senators Nething, Taylor)  
(Representatives DeKrey, Dosch)

## CHECK ENDORSEMENT ADVERTISING OBLIGATION

AN ACT to create and enact sections 51-15-02.1 and 51-15-02.2 of the North Dakota Century Code, relating to an obligation to advertise upon endorsement of a check and to solicitations of payments due; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 51-15-02.1 of the North Dakota Century Code is created and enacted as follows:

**51-15-02.1. Use of check endorsements for advertising obligations prohibited.** It is a deceptive act or practice in violation of this chapter for a person to offer, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of a check.

**SECTION 2.** Section 51-15-02.2 of the North Dakota Century Code is created and enacted as follows:

**51-15-02.2. Solicitation of payment by bill, invoice, or statement of account due.** It is a deceptive act or practice in violation of this chapter for a person to send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

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

Approved April 4, 2007  
Filed April 5, 2007

**CHAPTER 435****SENATE BILL NO. 2040**

(Legislative Council)  
(Judicial Process Committee)

**DECEPTIVE SALES PRACTICES**

AN ACT to create and enact a new section to chapter 51-15 of the North Dakota Century Code, relating to facilitating and assisting deceptive acts or practices; to amend and reenact section 51-15-09 of the North Dakota Century Code, relating to barred claims for relief; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 51-15 of the North Dakota Century Code is created and enacted as follows:

**Facilitating and assisting.** It is a deceptive act or practice in violation of this chapter for any person to provide assistance or support to any person engaged in any act or practice in violation of this chapter when the person providing assistance or support knows or consciously avoids knowing that the other person is engaged in an act or practice in violation of this chapter. This section does not authorize a private claim for relief for a violation of this section and no entity other than the attorney general may enforce this section.

**SECTION 2. AMENDMENT.** Section 51-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**51-15-09. Claims not barred.** The provisions of Except as provided in section 1 of this Act, this chapter ~~do~~ does not bar any claim for relief by any person against any person who has acquired any moneys or property by means of any practice declared to be unlawful in this chapter. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

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

Approved April 26, 2007

Filed April 27, 2007

## CHAPTER 436

### HOUSE BILL NO. 1507

(Representatives Thoreson, Kasper, L. Meier, Ruby)  
(Senators Flakoll, Hacker)

## COMPUTER AND INTERNET FRAUD

AN ACT to create and enact a new section to chapter 44-04 and a new section to chapter 51-27 of the North Dakota Century Code, relating to exempting electronic mail addresses and telephone numbers from open records requirements and to computer and internet fraud; to amend and reenact section 51-27-01 of the North Dakota Century Code, relating to definitions; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Electronic mail addresses and telephone numbers exempt.** The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record. This section may not be used to shield the identity of the individual communicating with the public entity.

**SECTION 2. AMENDMENT.** Section 51-27-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-27-01. (Contingent expiration date - See note) Definitions.** In this chapter, 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.
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.

**SECTION 3.** A new section to chapter 51-27 of the North Dakota Century Code is created and enacted as follows:

**Fraudulent or misleading communications - Penalty.**

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:
  - 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
  - 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:
  - 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

- 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.

Approved April 13, 2007

Filed April 16, 2007

## CHAPTER 437

### SENATE BILL NO. 2195

(Senators Hacker, Lindaas, Warner)  
(Representatives Dahl, Dosch, Hawken)

## TELEPHONE SOLICITATIONS

AN ACT to amend and reenact section 51-28-01 of the North Dakota Century Code, relating to telephone solicitations; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 51-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-28-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires, the terms shall have the meanings as follows:

1. "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.
2. "Caller" means a person, corporation, firm, partnership, association, or legal or commercial entity that attempts to contact, or that contacts, a subscriber in this state by using a telephone or a telephone line.
3. "Caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.
4. "Established business relationship" means a relationship between a seller and consumer based on a free trial newspaper subscription or on the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the twenty-four months immediately preceding the date of a telemarketing call.
5. "Message" means any telephone call, including voice, text, or other electronic communication, regardless of its content.
6. "Subscriber" means a person who has subscribed to a residential telephone services from a telephone company line or the other persons living or residing with the subscribing person, ~~or a person who has subscribed to wireless or mobile telephone services.~~
7. "Telephone line" means a telephone service to a subscriber, regardless of the technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial phone service; and voice over internet protocol telephone service.

8. "Telephone solicitation" means any voice, text, or other electronic communication over a telephone line for the purpose of encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise, including as defined in subsection 3 of section 51-15-03, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device, or by other means. Telephone solicitation does not include communications:
- a. To any subscriber with that subscriber's prior express written request, consent, invitation, or permission.
  - b. By or on behalf of any person with whom the subscriber has an established personal or business relationship.
  - c. By or on behalf of a charitable organization that is exempt from federal income taxation under section 501 of the Internal Revenue Code, but only if the following applies:
    - (1) The telephone call is made by a volunteer or employee of the charitable organization; and
    - (2) The person who makes the telephone call immediately discloses the following information upon making contact with the consumer:
      - (a) The person's true first and last name; and
      - (b) The name, address, and telephone number of the charitable organization.
  - d. By or on behalf of any person whose exclusive purpose is to poll or solicit the expression of ideas, opinions, or votes, unless the communication is made through an automatic dialing-announcing device in a manner prohibited by section 51-28-02.
  - e. By the individual soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the individual solicitor or person who makes the initial call and the prospective purchaser.
  - f. By or on behalf of a political party, candidate, or other group with a political purpose, as defined in section 16.1-08.1-01.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 4, 2007

Filed April 5, 2007

## CHAPTER 438

### HOUSE BILL NO. 1417

(Representatives Koppelman, Gulleson, Thoreson)  
(Senators Dever, Triplett)

## CONSUMER CREDIT REPORT FREEZES

AN ACT to create and enact chapter 51-33 of the North Dakota Century Code, relating to security freezes on consumer credit reports; to provide a penalty; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Chapter 51-33 of the North Dakota Century Code is created and enacted as follows:

**51-33-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681(a)(d).
2. "Consumer reporting agency" means any person that for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
3. "Proper identification" means information sufficient to verify identity. Only if the consumer is unable to sufficiently provide self-identifying information may a consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify the consumer's identity.
4. "Security freeze" means a notice placed in a consumer's consumer report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the consumer credit file or any information derived from it, without the express authorization of the consumer. If a security freeze is in place, information from a consumer's consumer credit file may not be released to a third party without prior express authorization from the consumer. A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.
5. "Victim of identity theft" means a consumer who has a copy of a valid police report, investigative report, or complaint to law enforcement evidencing that the consumer has alleged to be a victim of identity theft.

**51-33-02. Right to obtain security freeze.** A consumer may elect to place a security freeze on the consumer's consumer credit file by making a request to a consumer reporting agency. The consumer may make the request:



1. By mail;
2. By telephone by providing proper identification or certain personal identification required by the consumer reporting agency; or
3. Directly to the consumer reporting agency through a secure electronic mail connection if the connection is made available by the consumer reporting agency.

### **51-33-03. Response of consumer reporting agency.**

1. A consumer reporting agency shall place a security freeze on a consumer's consumer credit file no later than three business days after receiving from the consumer a request under section 51-33-02 which includes proper identification. If a victim of identity theft requests a security freeze, a consumer reporting agency shall place a security freeze on the consumer's credit report no later than forty-eight hours after receiving:
  - a. A notice under section 51-33-02; and
  - b. A copy of a valid police report, investigative report, or complaint to law enforcement evidencing the identity theft victim has alleged being a victim of identity theft. The copy may be transmitted to the consumer reporting agency by mail, facsimile, or secure electronic mail connection, if the connection is made available by the consumer reporting agency.
2. Effective August 1, 2009, if a victim of identity theft requests a security freeze, a consumer reporting agency shall place a security freeze on the consumer's credit report no later than twenty-four hours after receiving:
  - a. A notice under section 51-33-02; and
  - b. A copy of a valid police report, investigative report, or complaint to law enforcement evidencing the identity theft victim has alleged being a victim of identity theft. The copy may be transmitted to the consumer reporting agency by mail, facsimile, or secure electronic mail connection, if the connection is made available by the consumer reporting agency.
3. The consumer reporting agency, within five business days after receiving the request, shall send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of the consumer's consumer report for a specific party or period of time.
4. When a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, including the process for allowing access to information from the consumer's consumer report for a specific party or period of time while the freeze is in place.

**51-33-04. Temporary lifting or permanent removal of the freeze.**

1. If the consumer wishes to allow the consumer's consumer credit file to be accessed for a specific party or period of time while a freeze is in place, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:
  - a. Proper identification;
  - b. The unique personal identification number or password provided by the credit reporting agency under section 51-33-03;
  - c. The proper information regarding the third party who is to receive the consumer report or access the credit file or the time period for which the report or credit file is to be available to users of the consumer credit file; and
  - d. A fee if applicable.
2. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer credit file under this section shall comply with the request no later than three business days after receiving the request.
3. A consumer reporting agency may develop procedures involving the use of telephone, fax, internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report under this section in an expedited manner, with the goal of processing a request within fifteen minutes after the request.
4. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:
  - a. Upon consumer request under this section; or
  - b. When the consumer credit file was frozen due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to remove a freeze on a consumer credit file under this section, the consumer reporting agency shall notify the consumer in writing at least three business days prior to removing the freeze on the consumer credit file.
5. A security freeze remains in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:
  - a. Proper identification; and
  - b. The unique personal identification number or password provided by the credit reporting agency under section 51-33-03.

**51-33-05. Response by third party to denial of access.** When a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit or the opening of an

account and the consumer does not allow the consumer's consumer report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

**51-33-06. Nonapplicability.** Sections 51-33-01 through 51-33-05 do not apply to the use of a consumer report by any of the following:

1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 51-33-04 for purposes of facilitating the extension of credit or other permissible use;
3. Any federal, state, or local governmental entity, including a law enforcement agency, court, or its agents or assigns;
4. A private collection agency acting under a court order, warrant, or subpoena;
5. Any person or entity for the purposes of prescreening as provided for by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;
6. Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;
7. Any person or entity for the purpose of providing a consumer with a copy of the consumer's consumer report upon the consumer's request;
8. Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes. This exemption does not determine or affect whether these uses are permitted under other law; and
9. A consumer reporting agency for its data base or file that consists entirely of information concerning, and used solely for, one or more of the following:
  - a. Criminal record information;
  - b. Tenant screening;
  - c. Employment screening; and
  - d. Fraud prevention or detection.

**51-33-07. Information to government agencies not affected.** Sections 51-33-01 through 51-33-06 do not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment.

**51-33-08. Fees.**

1. A consumer reporting agency may charge a fee not to exceed five dollars for placing or temporarily lifting a security freeze unless:
  - a. The consumer is a victim of identity theft; and
  - b. The consumer provides, or has already provided in connection with the security freeze, the consumer reporting agency with a valid copy of a police report or a police case number documenting the identity theft, investigative report, or complaint to a law enforcement agency.
2. In addition to the charge, if any, permitted under this section, a consumer may be charged no more than five dollars if the consumer fails to retain the original personal identification number given to the consumer by the agency, but the consumer may not be charged for a one-time reissue of the same or a new personal identification number. The consumer may be charged no more than five dollars for subsequent instances of loss of the personal identification number. No other fees may be imposed in connection with the security freeze.

**51-33-09. Changes to information - Written confirmation required.** If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

**51-33-10. Security freeze not applicable to certain consumer reporting agencies.** A consumer reporting agency is not required to place a security freeze in a consumer credit file under this chapter if it acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies and does not maintain a permanent data base of credit information from which new consumer reports are produced. However, a consumer reporting agency must honor any security freeze placed on a consumer credit file by another consumer reporting agency.

**51-33-11. Exempt entities.** The following entities are not required to place a security freeze on a consumer credit file under this chapter:

1. A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

2. A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer's request for a deposit account at the inquiring bank or financial institution.

**51-33-12. Notice of rights.** At any time that a consumer is required to receive a summary of rights required under 15 U.S.C. 1681g or under North Dakota law, the following notice shall be included:

#### North Dakota Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer credit file at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your consumer credit file pursuant to North Dakota law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your consumer credit file without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit file, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit file or to temporarily authorize the release of your credit report or credit score for a specific party, parties, or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The unique personal identification number or password provided by the consumer reporting agency.
2. Proper identification to verify your identity.
3. The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze shall comply with the request no later than three business days after receiving the request.

A consumer reporting agency may charge you up to five dollars each time you freeze or temporarily lift the freeze, except a consumer reporting agency may not charge any amount to a victim of identity theft who has submitted a copy of a valid investigative report or complaint to a law enforcement agency about the unlawful use of the victim's information by another person.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze - either completely if you are shopping around, or specifically for a certain creditor - with enough advance notice before you apply for new credit for the lifting to take effect.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

### **51-33-13. Private enforcement.**

1. If a consumer reporting agency erroneously releases a consumer's credit file or any information derived from the file, the consumer reporting agency shall send written notification to the affected consumer within five business days following discovery or notification of the erroneous release, including specificity as to the information released and the third-party recipient of the information. In addition, the affected consumer in a civil action against the consumer reporting agency may recover:
  - a. Injunctive relief to prevent or restrain further violation of the security freeze;
  - b. The greater of actual damages or two thousand dollars in civil penalties for each violation; and
  - c. Reasonable expenses, court costs, investigative costs, and attorney's fees.
2. Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

**51-33-14. Enforcement by attorney general - Powers - Remedies - Separate violations - Venue.** The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is a violation of chapter 51-15. Each violation of the security freeze shall be counted as a separate violation. 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 under chapter 51-15 and as otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county of the consumer's residence or Burleigh County.

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

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

Approved April 23, 2007  
Filed April 24, 2007

## CHAPTER 439

### SENATE BILL NO. 2255

(Senators Olafson, Hacker, Lindaas)  
(Representatives Gulleason, Koppelman)

## FRAUDULENT PROCUREMENT OF TELEPHONE RECORDS

AN ACT to create and enact chapter 51-34 of the North Dakota Century Code, relating to the unauthorized or fraudulent procurement, sale, or receipt of telephone records; to provide a penalty; to provide an effective date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Customer" means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed and to whom the telephone record pertains.
2. "Procure" in regard to a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.
3. "Telephone" means any device used by a person for voice or other electronic communications, in connection with the services of a telephone company, whether such voice or other electronic communications are transmitted in analog, data, or any other form.
4. "Telephone company" means any person that provides commercial telephone services to a customer, regardless of the communications technology used to provide such service, including traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet telephone service.
5. "Telephone record" means information retained by a telephone company that 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 constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

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

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



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

1. This chapter does not prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents or contractors:
  - a. As otherwise authorized by law;
  - b. With the lawful consent of the customer;
  - c. As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;
  - d. To a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or
  - e. To the national center for missing and exploited children, in connection with a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990.
2. This chapter does not apply to or expand upon the obligations and duties of any telephone company to protect telephone records beyond those otherwise established by federal law or state law or both as set forth in section 51-34-06.
3. This chapter does not apply to a telephone company, and its agents or representatives, who reasonably and in good faith act pursuant to subsection 2, notwithstanding any later determination that the action was not in fact authorized.

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

1. Telephone companies that maintain telephone records of a resident of this state shall establish reasonable procedures to protect against unauthorized or fraudulent disclosure of the records which could result in substantial harm or inconvenience to a customer.
2. This section does not authorize a private claim for relief for a violation of this section.

**51-34-07. Deceptive act or practice - Enforcement - Powers - Remedies - Venue.** The state's attorney or attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is a violation of chapter 51-15. 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 under chapter 51-15 and as otherwise provided by law. The attorney general may bring an action pursuant to this section in either the county of the customer's residence or Burleigh County.

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

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

Approved April 4, 2007

Filed April 5, 2007