

SENATE BILL NO. 2255

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

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

8 **51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone**
9 **records prohibited - Criminal penalties - Restitution.**

- 10 1. A person may not:
- 11 a. Procure, attempt to procure, solicit, or conspire with another to procure, a
12 telephone record of any resident of this state without the authorization of the
13 customer or by fraudulent, deceptive, or false means;
- 14 b. Sell, or attempt to sell, a telephone record of any resident of this state without
15 the customer's authorization; or
- 16 c. Receive a telephone record of any resident of this state when such record has
17 been obtained without the customer's authorization or by fraudulent,
18 deceptive, or false means.
- 19 2. Any person who knowingly violates this section is guilty of a class C felony.
- 20 3. In addition to any other punishment, a person found guilty of an offense under this
21 section shall make restitution for any financial loss sustained by the customer or
22 any other person who suffered financial loss as the direct result of the offense.

23 **51-34-03. Jurisdiction - Conduct outside this state - Venue - Multiple offenses.**

- 24 1. Notwithstanding section 29-03-01.1, a person who, while outside this state,
25 engages in conduct in violation of section 51-34-02 is subject to prosecution under
26 this chapter in the courts of this state. Except as provided in subsection 2, the
27 venue is in the county in which the customer or victim resides or any other county
28 in which any part of the crime occurred.
- 29 2. When a person commits violations of this section in more than one county involving
30 either one or more customers or victims or the commission of acts constituting an
31 element of the offense, the multiple offenses may be consolidated for

1 commencement of prosecution in any county where one of the offenses was
2 committed.

3 **51-34-04. Nonapplicability to valid legal process and law enforcement.**

4 1. This chapter does not apply to any person acting pursuant to a valid court order,
5 warrant, or subpoena, or a subpoena by the attorney general pursuant to this
6 chapter or chapter 51-15.

7 2. This chapter does not prevent any action by a law enforcement agency, or any
8 officer, employee, or agent of such agency, to obtain telephone records in
9 connection with the performance of the official duties of the agency.

10 **51-34-05. Permitted use by telephone companies.**

11 1. This chapter does not prohibit a telephone company from obtaining, using,
12 disclosing, or permitting access to any telephone record, either directly or indirectly
13 through its agents:

14 a. As otherwise authorized by law;

15 b. With the lawful consent of the customer;

16 c. As may be necessarily incident to the rendition of the service or to the
17 protection of the rights or property of the telephone company, or to protect the
18 customer of those services and other carriers from fraudulent, abusive, or
19 unlawful use of, or subscription to, such services;

20 d. To a governmental entity, if the telephone company reasonably believes that
21 an emergency involving immediate danger of death or serious physical injury
22 to any person justifies disclosure of the information; or

23 e. To the national center for missing and exploited children, in connection with a
24 report submitted thereto under section 227 of the Victims of Child Abuse Act
25 of 1990.

26 2. This chapter does not apply to or expand upon the obligations and duties of any
27 telephone company to protect telephone records beyond those otherwise
28 established by federal law or state law or both as set forth in section 51-34-06.

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

1 **51-34-06. Information security - No private right of action.**

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

6 2. This section does not authorize a private right of action.

7 **51-34-07. Deceptive act or practice - Enforcement - Powers - Remedies - Venue.**

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

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

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