

Introduced by

Representatives Christensen, Becker, Ertelt, Jones, B. Koppelman, M. Ruby, Vetter

Senator D. Larsen

1 A BILL for an Act to amend and reenact subsection 5 of section 51-34-01 and sections
2 51-34-02, 51-34-04, and 51-34-05 of the North Dakota Century Code, relating to limitations on
3 the authorized access to telephone records and the sale or procurement of telephone records;
4 to provide a penalty; and to provide for application.

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

6 **SECTION 1. AMENDMENT.** Subsection 5 of section 51-34-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 5. "Telephone record" means information retained by a telephone company ~~that~~which
9 relates to the telephone number dialed by the customer or other person using the
10 customer's telephone with ~~such~~the customer's permission, the incoming number of a
11 call directed to a customer or other person using the customer's telephone with
12 ~~such~~the customer's permission, or other data related to ~~such~~the call typically
13 contained on a customer's telephone bill, including the times the call started and
14 ended, the duration of the call, the time the call was made, and any charges applied. ~~A~~
15 ~~telephone record~~The term includes text message records and data usage records.
16 The term does not include information collected and retained by a customer utilizing
17 caller identification or similar technology or include a carrier network record.

18 **SECTION 2. AMENDMENT.** Section 51-34-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone**
21 **records prohibited - Criminal penalties - Restitution.**

22 1. A person may not:

- 1 a. Procure, attempt to procure, solicit, or conspire with another to procure, a
2 telephone record of any resident of this state without ~~the authorization of a signed~~
3 release by the customer or by fraudulent, deceptive, or false means;
4 b. Sell, or attempt to sell, a telephone record of any resident of this state without the
5 customer's ~~authorization~~signed release; or
6 c. Receive a telephone record of any resident of this state when such record has
7 been obtained without the customer's ~~authorization~~signed release or by
8 fraudulent, deceptive, or false means.
- 9 2. To be enforceable, the release under subsection 1 must:
- 10 a. Inform the customer of any person that may receive the customer's telephone
11 record;
12 b. Be written in a clear and conspicuous manner on a separate and distinct page
13 from any other contract condition or term; and
14 c. Be signed by the customer separately from any other condition or contract term.
- 15 3. Any person who knowingly violates this section is guilty of a class C felony.
- 16 ~~3.4.~~ In addition to any other punishment, a person found guilty of an offense under this
17 section shall make restitution for any financial loss sustained by the customer or any
18 other person who suffered financial loss as the direct result of the offense.

19 **SECTION 3. AMENDMENT.** Section 51-34-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **51-34-04. ~~Nonapplicability to valid~~Valid legal process and law enforcement.**

- 22 1. ~~This chapter does not apply to any person acting pursuant to~~Except as otherwise
23 provided by law, a telephone company may not permit access to, disclose, or provide
24 a telephone record to any person without a valid court order, warrant, or subpoena, a
25 subpoena by the attorney general pursuant to this chapter or chapter 51-15, the
26 customer's signed release authorizing the disclosure or permitting access to the
27 record related to the request, or other valid legal process.
- 28 2. This chapter does not prevent any action by a law enforcement agency, or any officer,
29 employee, or agent of such agency, to obtain telephone records in connection with the
30 performance of the official duties of the agency in accordance with subsection 1 or as
31 specifically authorized by law.

1 **SECTION 4. AMENDMENT.** Section 51-34-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **51-34-05. Permitted use by telephone companies.**

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

7 a. As otherwise authorized by law;

8 b. With the lawful consent of the customer documented in a signed release
9 authorizing the disclosure or permitting access to the record under the relevant
10 circumstances;

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

15 d. To a governmental entity, if the ~~telephone company~~governmental entity
16 reasonably believes ~~that~~ an emergency involving immediate danger of death or
17 serious physical injury to ~~any person~~an individual has occurred or will occur
18 which justifies disclosure of the information related to the location of the
19 emergency; or

20 e. To the national center for missing and exploited children, in connection with a
21 report submitted thereto under section 227 of the Victims of Child Abuse Act of
22 1990.

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

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

29 **SECTION 5. APPLICATION.** This Act applies to telephone service contracts and
30 agreements entered after July 31, 2021.