

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

488M0421

## HOUSE ENGROSSED NO. **SB 81** - 02/23/2006

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Schoenbeck, Abdallah, Duniphan, Kelly, Kloucek, Koetzle, McCracken, Moore, and Olson (Ed) and Representatives Cutler, Haley, Jensen, McCoy, Murschel, Nelson, and Roberts

1 FOR AN ACT ENTITLED, An Act to prohibit the acquiring or selling of certain  
2 communications records.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Communications provider," a provider that offers telecommunications services for  
6 a fee to the public, regardless of the facilities used, or a provider of IP-enabled voice  
7 service;

8 (2) "Confidential communications records information," information that relates to the  
9 quantity, technical configuration, type, destination, incoming calls, outgoing calls,  
10 text messaging, location, or amount of use of a service offered by a communications  
11 provider subscribed to by any customer of that communications provider which is  
12 made available to a communications provider solely by virtue of the relationship  
13 between the communications provider and the customer, or information contained  
14 in any bill related to the product or service offered by a communications provider and



1 received by any customer of the communications provider;

2 (3) "IP-enabled voice service," the provision of real-time two-way voice communications  
3 offered to the public, transmitted through customer premises equipment using  
4 transmission control protocol/internet protocol (TCP/IP), or a successor protocol, for  
5 a fee, whether part of a bundle of services or separately, with two-way  
6 interconnection capability such that the service can originate traffic to, and terminate  
7 traffic from, a public switched telephone network.

8 Section 2. No person may obtain, or attempt to obtain, confidential communications records  
9 information from a communications provider, without authorization from the customer to whom  
10 such confidential communications records information relates, by knowingly and intentionally:

- 11 (1) Making false or fraudulent statements or representations to an employee of a  
12 communications provider;
- 13 (2) Making false or fraudulent statements or representations to a customer of a  
14 communications provider;
- 15 (3) Providing false documentation to a communications provider knowing that the  
16 documentation is false;
- 17 (4) Wrongfully accessing customer accounts of a communications provider via the  
18 internet; or
- 19 (5) Receiving confidential communications records information knowing such  
20 information has been obtained by fraudulent, deceptive, or false means.

21 A violation of this section is a Class 1 misdemeanor.

22 Section 3. No person may knowingly and intentionally sell, or attempt to sell, confidential  
23 communications records information from a communications provider without authorization  
24 from the customer to whom such confidential communications records information relates. A

1 violation of this section is a Class 6 felony.

2 Section 4. This Act may not be construed to prevent any action by a law enforcement  
3 agency, or any officer, employee, or agent of a law enforcement agency, to obtain confidential  
4 communications records information from a communications provider pursuant to a subpoena  
5 or court order.

6 Section 5. This Act does not prohibit a communications provider, including any affiliate or  
7 subsidiary of a communications provider, from obtaining, using, disclosing, or permitting access  
8 to any confidential communications records information, either directly or indirectly through  
9 its agents as otherwise authorized by law.

10 Section 6. This Act does not prohibit a communications provider from obtaining, using,  
11 disclosing, or permitting access to any confidential communications records information in  
12 connection with the sale or transfer of all or part of its business, the purchase or acquisition of  
13 all or part of a business, or the migration of a customer from one communications provider to  
14 another.

15 Section 7. Any customer or communications provider who claims to have been adversely  
16 affected by any act or practice declared to be unlawful by section 2 or 3 of this Act may bring  
17 a civil action against the person who violated section 2 or 3 of this Act for the recovery of twice  
18 the actual damages suffered or five hundred dollars, whichever is greater, as a result of the  
19 willful act or practice. In addition, the customer or communications provider may collect court  
20 costs and reasonable attorney fees expended by the customer to bring an action under this  
21 section.