

AN ACT

ENTITLED, An Act to prohibit the acquiring or selling of certain communications records.

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

Section 1. Terms used in this Act mean:

- (1) "Communications provider," a provider that offers telecommunications services for a fee to the public, regardless of the facilities used, or a provider of IP-enabled voice service;
- (2) "Confidential communications records information," information that relates to the quantity, technical configuration, type, destination, incoming calls, outgoing calls, text messaging, location, or amount of use of a service offered by a communications provider subscribed to by any customer of that communications provider which is made available to a communications provider solely by virtue of the relationship between the communications provider and the customer, or information contained in any bill related to the product or service offered by a communications provider and received by any customer of the communications provider;
- (3) "IP-enabled voice service," the provision of real-time two-way voice communications offered to the public, transmitted through customer premises equipment using transmission control protocol/internet protocol (TCP/IP), or a successor protocol, for a fee, whether part of a bundle of services or separately, with two-way interconnection capability such that the service can originate traffic to, and terminate traffic from, a public switched telephone network.

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

- (1) Making false or fraudulent statements or representations to an employee of a

- communications provider;
- (2) Making false or fraudulent statements or representations to a customer of a communications provider;
 - (3) Providing false documentation to a communications provider knowing that the documentation is false;
 - (4) Wrongfully accessing customer accounts of a communications provider via the internet;
or
 - (5) Receiving confidential communications records information knowing such information has been obtained by fraudulent, deceptive, or false means.

A violation of this section is a Class 1 misdemeanor.

Section 3. No person may knowingly and intentionally sell, or attempt to sell, confidential communications records information from a communications provider without authorization from the customer to whom such confidential communications records information relates. A violation of this section is a Class 6 felony.

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

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

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

part of a business, or the migration of a customer from one communications provider to another.

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

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I certify that the attached Act
originated in the

SENATE as Bill No. 81

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 81

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State