

**SENATE BILL NO. 2399**

Introduced by

Senators Mutzenberger, DeMers, Freborg

Representatives Ekstrom, Gulleon

1 A BILL for an Act to create and enact six new sections to chapter 11-16 and a new section to  
2 chapter 54-12 of the North Dakota Century Code, relating to the authority of state's attorneys  
3 and the attorney general to subpoena and require the production of records in welfare fraud  
4 investigations; and to provide a penalty.

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

6 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is  
7 created and enacted as follows:

8 **County state's attorneys - Criminal investigative subpoena authority.** The state's  
9 attorney and assistant state's attorney whom the state's attorney authorizes in writing, may  
10 subpoena and require the production of any records of telephone companies, cellular phone  
11 companies, paging companies, the names and addresses of subscribers of private computer  
12 networks including internet service providers or computer bulletin board systems, electric  
13 companies, gas companies, water utilities, chemical suppliers, hotels and motels, pawn shops,  
14 airlines, buses, taxis, and other entities engaged in the business of transporting people, and  
15 freight companies, warehousing companies, self-service storage facilities, package delivery  
16 companies, and other entities engaged in the businesses of transport, storage, or delivery, and  
17 records of the existence of safe deposit box account numbers and customer savings and  
18 checking account numbers maintained by financial institutions and safe deposit companies,  
19 insurance records relating to the monetary payment or settlement of claims, and wage and  
20 employment records of an applicant or recipient of public assistance who is the subject of a  
21 welfare fraud investigation relating to eligibility information for public assistance programs.  
22 Subpoenas may only be issued for records that are relevant to an ongoing legitimate law  
23 enforcement criminal investigation. Subpoenas may only be issued in welfare fraud cases if

1 there is probable cause to believe a crime has been committed. This provision applies only to  
2 the records of business entities and does not extend to private individuals or their dwellings.

3 **SECTION 2.** A new section to chapter 11-16 of the North Dakota Century Code is  
4 created and enacted as follows:

5 **Enforcement.** A subpoena under section 1 of this Act is enforceable through the  
6 district court.

7 **SECTION 3.** A new section to chapter 11-16 of the North Dakota Century Code is  
8 created and enacted as follows:

9 **Expenses.** The person directed to produce the records under section 1 of this Act must  
10 be paid reasonable expenses incurred in producing the records.

11 **SECTION 4.** A new section to chapter 11-16 of the North Dakota Century Code is  
12 created and enacted as follows:

13 **Disclosure prohibited.** A subpoena under section 1 of this Act must state that the  
14 person to whom the subpoena is directed may not disclose the fact that the subpoena was  
15 issued or the fact that the requested records have been given to law enforcement personnel  
16 except:

- 17 1. Insofar as the disclosure is necessary to find and disclose the records; or
- 18 2. Pursuant to court order.

19 A person who has knowledge that a subpoena has been issued under section 1 of this Act and  
20 gives, or attempts to give, notice of the issuance of the subpoena or the production of the  
21 documents to any other person with intent to obstruct, impede, or prevent the investigation for  
22 which the subpoena was issued is guilty of a class A misdemeanor.

23 **SECTION 5.** A new section to chapter 11-16 of the North Dakota Century Code is  
24 created and enacted as follows:

25 **Penalty.** The willful failure to produce the documents required by a subpoena under  
26 section 1 of this Act is a class A misdemeanor.

27 **SECTION 6.** A new section to chapter 11-16 of the North Dakota Century Code is  
28 created and enacted as follows:

29 **Ex parte order.** Upon the ex parte request of the attorney issuing the subpoena under  
30 section 1 of this Act, the district court may issue an order directing the production of the  
31 records. It is not necessary for either the request or the order to be filed with the court

1 administrator. Failure to comply with the court order subjects the person who fails to comply to  
2 contempt of court.

3 **SECTION 7.** A new section to chapter 54-12 of the North Dakota Century Code is  
4 created and enacted as follows:

5 **Criminal investigative subpoena authority.** The attorney general may subpoena and  
6 require the production of records as provided in sections 1 through 6 of this Act.