

2026 South Dakota Legislature

Senate Bill 44**AMENDMENT 44A
FOR THE INTRODUCED BILL**

An Act to establish investigative subpoena authority to gather business records in certain investigations.

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

Section 1. That a NEW SECTION be added to chapter 1-11:

Terms used in this Act mean:

(1) "Investigative subpoena," a written demand issued by the attorney general or the attorney general's designee, after judicial approval, requiring the production of business records relevant to an official criminal investigation;

(2) "Provider," any:

(a) Electronic communication service that provides users with the ability to send or receive wire or electronic communications;

(b) Electronic service provider that offers users the ability to send or receive wire or electronic communications, or to process or store data by means of an electronic communication system;

(c) Internet service provider engaged in the business of providing computer access or internet connectivity to the public or to subscribers;

(d) Remote computing service that provides computer storage or processing services to the public, by means of an electronic communications system;

or

(e) Telecommunications carrier that provides telecommunications services; and

(3) "Reasonable cause," a belief based on specific and articulable facts that the business records sought are relevant and material to an active criminal investigation.

Section 2. That a NEW SECTION be added to chapter 1-11:

1 In any criminal investigation conducted by the Division of Criminal Investigation
2 involving a state offense related to internet crimes against children or human trafficking,
3 the attorney general or the attorney general's designee may apply to a magistrate judge
4 or circuit judge of Hughes County for judicial approval to issue an investigative subpoena.
5 The attorney general or the attorney general's designee shall submit to the judge a written
6 application demonstrating reasonable cause to believe the business records of a provider
7 are material to an active criminal investigation.

8 **Section 3. That a NEW SECTION be added to chapter 1-11:**

9 Any magistrate judge or circuit court judge of Hughes County has statewide
10 authority to review, approve, and issue an investigative subpoena, regardless of:
11 (1) The county or judicial circuit in which the criminal investigation originates;
12 (2) The location of the business records sought or the provider to be subpoenaed; or
13 (3) The location where the investigative subpoena will be served or enforced.

14 **Section 4. That a NEW SECTION be added to chapter 1-11:**

15 A magistrate judge or circuit court judge ~~shall~~ may approve an investigative
16 subpoena upon finding that the application submitted pursuant to section 2 of this Act
17 establishes reasonable cause to believe the business records of a provider are material to
18 an active criminal investigation. Judicial approval may be provided by written order or by
19 signature on the investigative subpoena.

20 An investigative subpoena approved pursuant to this section is enforceable
21 anywhere in this state and has the same force and effect as any subpoena issued under
22 the laws of this state.

23 **Section 5. That a NEW SECTION be added to chapter 1-11:**

24 Upon judicial approval, the attorney general or the attorney general's designee
25 may issue and serve the investigative subpoena compelling the production of any of the
26 following business records:

- 27 (1) Subscriber information;
28 (2) Account holder name;
29 (3) Billing and service address;
30 (4) Account status;
31 (5) Telephone number;

- 1 (6) Device information and device identifiers;
2 (7) Email address;
3 (8) Internet username;
4 (9) Internet protocol address and any temporarily assigned address;
5 (10) Method of access to the internet; and
6 (11) Automatic number identification records, if access is by modem.

7 **Section 6. That a NEW SECTION be added to chapter 1-11:**

8 A provider served with an investigative subpoena shall produce the business
9 records required by the subpoena. The provider may not provide notice to the account
10 holder, customer, or subscriber whose records are sought if such a prohibition is contained
11 within the investigative subpoena.

12 **Section 7. That a NEW SECTION be added to chapter 1-11:**

13 If a provider refuses to comply with an investigative subpoena, the attorney
14 general or the attorney general's designee may apply to a court of competent jurisdiction
15 for an order compelling compliance.

16 **Section 8. That a NEW SECTION be added to chapter 1-11:**

17 Any business record obtained pursuant to an investigative subpoena must be used
18 solely for official law enforcement purposes and may not be disclosed except as necessary
19 to carry out a criminal investigation or a prosecution, or as otherwise required by law.

20 In examining business records obtained pursuant to an investigative subpoena, the
21 attorney general or the attorney general's designee shall take all reasonable steps to
22 safeguard the privacy rights of an individual and avoid unnecessary disclosure of personal
23 information concerning any identified person.

24 **Section 9. That a NEW SECTION be added to chapter 1-11:**

25 No cause of action lies in any court against a provider, or any agent, employee, or
26 officer of the provider, for providing assistance, information, or facilities in accordance
27 with the terms of an investigative subpoena.