ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2903

By: Adkins, Lindley, Harrison, McPeak, Shelton and Roan of the House

and

Bass of the Senate

An Act relating to telephone records; defining terms; prohibiting certain acts with telephone records without the authorization of the customer; providing penalties; providing for restitution; providing for determination of jurisdiction; allowing alternate prosecution; providing warrant exception; providing exemption from prohibition for certain law enforcement activities; providing certain specific exceptions for telecommunications carriers dealing with customer telephone records; requiring establishment of certain procedures by telecommunications carriers; prohibiting private action; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"An Act relating to telephone records; defining terms; prohibiting certain acts with telephone records without the authorization of the customer; providing penalties; providing for restitution; providing for determination of jurisdiction; allowing alternate prosecution; providing warrant exception; providing exemption from prohibition for certain law enforcement activities; providing certain specific exceptions for telephone companies dealing with customer telephone records; requiring establishment of certain procedures by telephone companies; prohibiting private action; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1742.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. “Telephone record” means information retained by a telephone company that relates to the telephone number dialed by the customer or any other person using the telephone of the customer with the permission of the customer, or the incoming number of a call directed to a customer or any other person using the telephone of the customer with the permission of the customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. For purposes of this act, any information collected and retained by or on behalf of a customer utilizing a Caller I.D. or equivalent service, or other similar technology, does not constitute a telephone record;

2. “Telephone company” means any person that provides commercial telephone services to a customer, irrespective of the communications technology used to provide such service including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over Internet telephone service;

3. “Telephone” means any device used by a person for voice communications, in connection with the services of a telephone company, whether such voice communications are transmitted in analog, data, or any other form;

4. “Customer” means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed;

5. “Person” means any individual, partnership, corporation, limited liability company, trust, estate, cooperative association, or other entity; and

6. “Procure” in regard to such a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1742.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Whoever:

1. Knowingly procures, attempts to procure, solicits, or conspires with another to procure a telephone record of any resident of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means;

2. Knowingly sells or attempts to sell a telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

3. Receives a telephone record of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means,

shall be punished in accordance with the provisions of subsection B of this section and shall be liable for restitution in accordance with subsection C of this section.

B. An offense under subsection A of this section is a felony and the punishment is:

1. Imprisonment for not more than five (5) years if the violation of subsection A of this section involves a single telephone record;

2. Imprisonment for not more than ten (10) years if the violation of subsection A of this section involves two to ten telephone records of a resident of this state;

3. Imprisonment for not more than twenty (20) years if the violation of subsection A of this section involves more than ten telephone records of a resident of this state; and

4. In all cases, forfeiture of any personal property used or intended to be used to commit the offense.

C. A person found guilty of an offense under subsection A of this section, in addition to any other punishment, shall be ordered to make restitution for any financial loss sustained by the customer or any other person who suffered financial loss as the direct result of the offense.

D. In a prosecution brought pursuant to subsection A of this section, the act of unauthorized or fraudulent procurement, sale, or receipt of telephone records shall be considered to have been committed in the county:

1. Where the customer whose telephone record is the subject of the prosecution resided at the time of the offense; or

2. In which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

E. A prosecution pursuant to subsection A of this section shall not prevent prosecution pursuant to any other provision of law when the conduct also constitutes a violation of some other provision of law.

F. Subsection A of this section shall not apply to any person acting pursuant to a valid court order, warrant, or subpoena.

G. Each violation of subsection A of this section shall be an unlawful practice pursuant to the provisions of the Oklahoma Consumer Protection Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1742.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

No provision of this act shall be construed:

1. So as to prevent any action by a law enforcement agency, or any officer, employee, or agent of a law enforcement agency, to obtain telephone records in connection with the performance of the official duties of the agency;

2. To prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly, through its agents:

a. as otherwise authorized by law,

b. with the lawful consent of the customer or subscriber,

c. as may be reasonably incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to such services,

d. to a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information, or

e. to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under Section 227 of the Victims of Child Abuse Act of 1990;

3. To apply to or expand upon the obligations and duties of any telephone company to protect telephone records beyond those otherwise established by federal and state law or as set forth in Section 4 of this act; or

4. To create a cause of action against a telephone company, its agents and/or representatives, who reasonably and in good faith act pursuant to this act, notwithstanding any later determination that such action was not in fact authorized.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1742.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Telephony companies that maintain telephone records of a resident of this state shall establish reasonable procedures to

protect against unauthorized or fraudulent disclosure of the records which could result in substantial harm or inconvenience to any customer. For purposes of this act, a telephone company's actions and procedures shall be deemed reasonable if the telephone company makes a good faith effort to comply with the provisions governing Customer Proprietary Network Information in 47 U.S.C., Section 222, and with regulations promulgated pursuant to that section by the Federal Communications Commission.

B. No private right of action is authorized under this act.

SECTION 5. This act shall become effective November 1, 2006."

Passed the Senate the 10th day of April, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2006.

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Presiding Officer of the House
of Representatives