

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2903

By: Miller (Ken)

COMMITTEE SUBSTITUTE

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.

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;

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 telecommunications carrier 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 necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, 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 telecommunications carrier 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 apply to a telephone company, its agents and/or representatives, who reasonably and in good faith act pursuant to this section, 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. Telecommunications carriers 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.

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

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

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