

EHB 2903

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE STATE SENATE
Wednesday, April 5, 2006

Committee Substitute for
ENGROSSED

House Bill No. 2903

ENGROSSED HOUSE BILL NO. 2903 - By: ADKINS, LINDLEY, HARRISON,
McPEAK, SHELTON and ROAN of the House and BASS of the Senate.

[telephone records - defining terms - penalties -
codification - 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

1 retained by or on behalf of a customer utilizing a Caller I.D. or
2 equivalent service, or other similar technology, does not constitute
3 a telephone record;

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

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

15 4. "Customer" means the person who subscribes to telephone
16 service from a telephone company or in whose name such telephone
17 service is listed;

18 5. "Person" means any individual, partnership, corporation,
19 limited liability company, trust, estate, cooperative association,
20 or other entity; and

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

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

4 A. Whoever:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 E. A prosecution pursuant to subsection A of this section shall
23 not prevent prosecution pursuant to any other provision of law when

1 the conduct also constitutes a violation of some other provision of
2 law.

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

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

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

11 No provision of this act shall be construed:

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

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

- 19 a. as otherwise authorized by law,
20 b. with the lawful consent of the customer or subscriber,
21 c. as may be reasonably incident to the rendition of the
22 service or to the protection of the rights or property
23 of the telephone company, or to protect users of those

1 services and other carriers from fraudulent, abusive,
2 or unlawful use of, or subscription to such services,
3 d. to a governmental entity, if the telephone company
4 reasonably believes that an emergency involving
5 immediate danger of death or serious physical injury
6 to any person justifies disclosure of the information,
7 or
8 e. to the National Center for Missing and Exploited
9 Children, in connection with a report submitted
10 thereto under Section 227 of the Victims of Child
11 Abuse Act of 1990;

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

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

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

1 A. Telephony companies that maintain telephone records of a
2 resident of this state shall establish reasonable procedures to
3 protect against unauthorized or fraudulent disclosure of the records
4 which could result in substantial harm or inconvenience to any
5 customer. For purposes of this act, a telephone company's actions
6 and procedures shall be deemed reasonable if the telephone company
7 makes a good faith effort to comply with the provisions governing
8 Customer Proprietary Network Information in 47 U.S.C., Section 222,
9 and with regulations promulgated pursuant to that section by the
10 Federal Communications Commission.

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-3-06 -
14 DO PASS, As Amended.