

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1058
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
4/24/07

Short Title: Telephone Records Privacy Protection Act. (Public)

Sponsors:

Referred to:

March 21, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE FRAUDULENT OBTAINING, SELLING, OR
3 SOLICITING OF TELEPHONE RECORDS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 14 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 19D.

8 "Telephone Records Privacy Protection Act.

9 **§ 14-113.30. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Caller identification record. – A record collected and retained by or on
12 behalf of a customer utilizing caller identification or similar
13 technology that is delivered electronically to the recipient of a
14 telephone call simultaneously with the reception of the telephone call
15 and that indicates the telephone number from which the telephone call
16 was initiated or similar information regarding the telephone call.
- 17 (2) Customer. – A person or the legal guardian of a person or a
18 representative of a business to whom a telephone service provider
19 provides telephone service to a number subscribed or listed in the
20 name of the person or business.
- 21 (3) Person. – An individual, business association, partnership, limited
22 partnership, corporation, limited liability company, or other legal
23 entity.
- 24 (4) Telephone record. – A record in written, electronic, or oral form,
25 except a caller identification record, Directory Assistance information,
26 and subscriber list information, that is created by a telephone service
27 provider and that contains any of the following information with
28 respect to a customer:

- a. Telephone numbers that have been dialed by the customer.
 - b. Telephone numbers that pertain to calls made to the customer.
 - c. The time when calls were made by the customer or to the customer.
 - d. The duration of calls made by the customer or to the customer.
 - e. The charges applied to calls, if any.
- (5) Telephone service. – The conveyance of two-way communication in analog, digital, or other form by any medium, including wire, cable, fiber optics, cellular, broadband personal communications services, or other wireless technologies, satellite, microwave, or at any frequency over any part of the electromagnetic spectrum. The term also includes the conveyance of voice communication over the Internet and telephone relay service.
- (6) Telephone service provider. – A person who provides telephone service to a customer without regard to the form of technology used, including traditional wire-line or cable communications service; cellular, broadband PCS, or other wireless communications service; microwave, satellite, or other terrestrial communications service; or voice over Internet communications service.

"§ 14-113.31. Prohibition of falsely obtaining, selling, or soliciting telephone records.

(a) No person shall obtain, or attempt to obtain, by any means, whether electronically, in writing, or in oral form, with or without consideration, a telephone record that pertains to a customer who is a resident of this State without the customer's consent by doing any of the following:

- (1) Making a false statement or representation to an agent, representative, or employee of a telephone service provider.
- (2) Making a false statement or representation to a customer of a telephone service provider.
- (3) Knowingly providing to a telephone service provider a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud, or that contains a false, fictitious, or fraudulent statement or representation.
- (4) Accessing customer accounts of a telephone service provider via the Internet without prior authorization from the customer to whom the telephone records relate.

(b) No person shall knowingly purchase, receive, or ask another person to obtain or purchase or attempt to obtain or purchase a telephone record of a third person without the prior authorization of the third person to whom the telephone record relates knowing or having reason to know that the other person will obtain the telephone record fraudulently.

(c) No person shall sell or offer to sell a telephone record that was obtained without the customer's prior consent knowing or having reason to know that the telephone record was obtained fraudulently.

1 **"§ 14-113.32. Exceptions.**

2 (a) The provisions of G.S. 14-113.31 shall not apply to any of the following:

3 (1) Any lawfully authorized investigative, protective, or intelligence
4 activity of a law enforcement agency in connection with the official
5 duties of the law enforcement agency.

6 (2) A disclosure by a telephone service provider if the telephone service
7 provider reasonably believes the disclosure is necessary to: (i) provide
8 telephone service to a customer, including sharing telephone records
9 with one of the provider's affiliates or (ii) protect an individual or
10 service provider from fraudulent, abusive, or unlawful use of telephone
11 service or a telephone record.

12 (3) A disclosure by a telephone service provider to the National Center for
13 Missing and Exploited Children.

14 (4) A disclosure by a telephone service provider that is authorized by State
15 or federal law or regulation.

16 (5) A disclosure by a telephone service provider to a governmental entity
17 if the provider reasonably believes there is an emergency involving
18 immediate danger of death or serious physical injury.

19 (6) Testing of a telephone service provider's security procedures or
20 systems for maintaining the confidentiality of customers' telephone
21 records.

22 (b) Nothing in this Article shall be construed to expand the obligation or duty of
23 a telephone service provider to maintain the confidentiality of telephone records beyond
24 the requirements of this Article or federal law or regulation. Any telephone service
25 provider or agent, employee, or representative of a telephone service provider who
26 reasonably and in good faith discloses telephone records shall not be criminally or
27 civily liable if the disclosure is later determined to be in violation of this Article.

28 **"§ 14-113.33. Punishment; liability.**

29 (a) Unless the conduct is covered under some other provision of law providing
30 greater punishment, any person who violates this Article is guilty of a Class G felony. In
31 any criminal proceeding brought under this Article, the crime is considered to be
32 committed in the county where the customer resides, where the defendant resides, where
33 any part of the offense took place, or in any other county instrumental to the completion
34 of the offense, regardless of whether the defendant was ever actually present in that
35 county.

36 (b) A customer whose telephone records were obtained, sold, or solicited in
37 violation of this Article may bring a civil action against any person who has violated
38 G.S. 14-113.31 to recover the following:

39 (1) The amount of the customer's pecuniary loss suffered because of a
40 violation of this Article or one thousand dollars (\$1,000), whichever is
41 greater.

42 (2) The amount of any gain to the person who violated G.S. 14-113.31 as
43 a result of the violation.

1 (c) In an action brought pursuant to subsection (b) of this section, the court may
2 award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant
3 willfully engaged in the act or practice, and the court may award reasonable attorneys'
4 fees to a prevailing defendant if the court finds that the plaintiff knew, or should have
5 known, that the action was frivolous and malicious.

6 (d) A violation of G.S. 14-113.31 is a violation of G.S. 75-1.1."

7 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
8 acts and offenses committed on or after that date.