

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2687 Session of  
2006

INTRODUCED BY QUIGLEY, CORNELL, FLICK, E. Z. TAYLOR, ARMSTRONG,  
BAKER, BALDWIN, BASTIAN, BOYD, CALTAGIRONE, CAWLEY, CIVERA,  
CRAHALLA, CREIGHTON, DeLUCA, DENLINGER, DeWEESE, FICHTER,  
GEIST, GEORGE, GINGRICH, GODSHALL, HARPER, HARRIS, HERSHEY,  
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SATHER, SAYLOR, SCHRODER, SIPTROTH, STABACK, R. STEVENSON,  
SURRA, THOMAS, TIGUE, WALKO, WOJNAROSKI AND YOUNGBLOOD,  
MAY 15, 2006

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MAY 15, 2006

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for the offense of unlawful  
3 procurement, sale or receipt of telephone records.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated Statutes  
7 is amended by adding a section to read:

8 § 4121. Unlawful procurement, sale or receipt of telephone  
9 records.

10 (a) Offense--Any person who:

11 (1) knowingly procures, attempts to procure or solicits  
12 or conspires with another to procure a telephone record of a  
13 resident of this Commonwealth without the authorization of  
14 the customer to whom the record pertains by fraudulent,  
15 deceptive or false means;

1           (2) knowingly sells or attempts to sell a telephone  
2 record of a resident of this Commonwealth without the  
3 authorization of the customer to whom the record pertains; or

4           (3) receives a telephone record of a resident of this  
5 Commonwealth knowing that the record has been obtained  
6 without the authorization of the customer to whom the record  
7 pertains or by fraudulent, deceptive or false means  
8 shall be punished in accordance with subsection (b) and shall  
9 be liable for restitution in accordance with subsection (c).

10 (b) Grading.--An offense under subsection (a) is:

11           (1) A misdemeanor of the first degree if the offense  
12 involves a single telephone record.

13           (2) A felony of the third degree if the offense involves  
14 two to ten telephone records of a resident of this  
15 Commonwealth.

16           (3) A felony of the second degree if the offense  
17 involves more than ten telephone records of a resident of  
18 this Commonwealth.

19 (c) Forfeiture and restitution.--In addition to the  
20 penalties set forth under subsection (b), a person who commits  
21 an offense under subsection (a) shall be ordered by the court:

22           (1) To forfeit any personal property used or intended to  
23 be used to commit the offense.

24           (2) To make restitution for any financial loss sustained  
25 by the customer or any other person who suffered financial  
26 loss as a direct result of the offense.

27 (d) Jurisdiction and venue.--In a prosecution brought  
28 pursuant to subsection (a), the conduct shall be considered to  
29 have been committed in the county:

30           (1) where the customer whose telephone record is the

1 subject of the prosecution resided at the time of the  
2 offense; or

3 (2) in which any part of the offense took place,  
4 regardless of whether the defendant was ever actually present  
5 in the county.

6 (e) Nonexclusivity.--A prosecution brought pursuant to  
7 subsection (a) shall not prevent prosecution pursuant to any  
8 other provision of law when the conduct also constitutes a  
9 violation of such other provision.

10 (f) Nonapplicability.--This section shall not apply to:

11 (1) A person who acts pursuant to a valid court order,  
12 warrant or subpoena.

13 (2) A telephone company or any of its agents or  
14 representatives who reasonably and in good faith acts  
15 pursuant to paragraph (1), notwithstanding any later  
16 determination that such action was not in fact authorized.

17 (g) Construction.--No provision of this section shall be  
18 construed to:

19 (1) Prevent any action by a law enforcement agency, or  
20 any officer, employee or agent thereof to obtain telephone  
21 records in connection with the performance of the official  
22 duties of the law enforcement agency.

23 (2) Apply to or expand the obligations and duties of a  
24 telephone company to protect telephone records beyond those  
25 otherwise established by Federal or State law or as set forth  
26 in subsection (i).

27 (3) Prohibit a telephone company from obtaining, using,  
28 disclosing or permitting access to a telephone record, either  
29 directly or indirectly through its agents:

30 (i) as otherwise authorized by law;

1           (ii) with the lawful consent of the customer;  
2           (iii) as may be necessarily incident to the  
3           rendition of the service or to the protection of the  
4           rights or property of the telephone company or to protect  
5           the customer of those services and other carriers from  
6           fraudulent, abusive or unlawful use of or subscription to  
7           such services;

8           (iv) to a governmental entity, if the telephone  
9           company reasonably believes that an emergency involving  
10           immediate danger of death or serious physical injury to  
11           any person justifies disclosure of the information; or

12           (v) to the National Center for Missing and Exploited  
13           Children, in connection with a report submitted thereto  
14           under law.

15       (h) Information security.--

16           (1) A telephone company that maintains telephone records  
17           of a resident of this Commonwealth shall establish reasonable  
18           procedures to protect against unauthorized or fraudulent  
19           disclosure of the records which could result in substantial  
20           harm or inconvenience to any customer.

21           (2) No private right of action is authorized under this  
22           subsection.

23       (i) Definitions.--As used in this section, the following  
24       words and phrases shall have the meanings given to them in this  
25       subsection:

26       "Customer." A person who subscribes to telephone service  
27       from a telephone company or in whose name such telephone service  
28       is listed.

29       "Procure." In regard to a telephone record, to obtain by any  
30       means, whether electronically, in writing or in oral form, with

1 or without consideration.

2 "Telephone." A device used by a person for voice  
3 communications, in connection with the services of a telephone  
4 company, whether the voice communications are transmitted in  
5 analog, data or any other form.

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

13 "Telephone record." Information retained by a telephone  
14 company that relates to the telephone number dialed by the  
15 customer, or other person using the customer's telephone with  
16 the customer's permission, or the incoming number of a call  
17 directed to a customer, or other person using the customer's  
18 telephone with the customer's permission, or other data related  
19 to such calls typically contained on a customer's telephone bill  
20 such as the time the call started and ended, the duration of the  
21 call, the time of day the call was made and any charges applied.  
22 The term does not include any information collected and retained  
23 by a customer utilizing caller identification or other similar  
24 technology.

25 Section 2. This act shall take effect in 60 days.