

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 81

Session of
2007

INTRODUCED BY TOMLINSON, STOUT, COSTA, FONTANA, ERICKSON,
BRUBAKER, RAFFERTY, TARTAGLIONE, CORMAN, D. WHITE AND MUSTO,
MARCH 7, 2007

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MARCH 7, 2007

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;

16 (2) knowingly sells or attempts to sell a telephone
17 record of a resident of this Commonwealth without the

authorization of the customer to whom the record pertains; or

(3) receives a telephone record of a resident of this Commonwealth 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 subsection (b) and shall be liable for restitution in accordance with subsection (c).

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

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

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

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

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

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

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

(d) Jurisdiction and venue.--In a prosecution brought pursuant to subsection (a), the conduct 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

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

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

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

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

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

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

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

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

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

28 (i) as otherwise authorized by law;

29 (ii) with the lawful consent of the customer;

30 (iii) as may be necessarily incident to the

1 rendition of the service or to the protection of the
2 rights or property of the telephone company or to protect
3 the customer of those services and other carriers from
4 fraudulent, abusive or unlawful use of or subscription to
5 such services;

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

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

13 (h) Information security.--

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

19 (2) No private right of action is authorized under this
20 subsection.

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

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

27 "Procure." In regard to a telephone record, to obtain by any
28 means, whether electronically, in writing or in oral form, with
29 or without consideration.

30 "Telephone." A device used by a person for voice

1 communications, in connection with the services of a telephone
2 company, whether the voice communications are transmitted in
3 analog, data or any other form.

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

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

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