

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Justice Appropriations Committee

BILL: CS/CS/SB 1488

INTRODUCER: Criminal Justice Committee, Communications and Public Utilities Committee, and Senators Aronberg, Miller, and Campbell

SUBJECT: Telephone Calling Records

DATE: March 29, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	<u>Sadberry</u>	<u>Sadberry</u>	<u>JA</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill:

- Prohibits a person from obtaining or attempting to obtain the wireline, cell phone, or voice-over-Internet-protocol (VoIP) calling records of another person without that person's permission by making false or fraudulent statements or by providing false or fraudulent documents to a telecommunications company, or by selling or offering to sell such calling records that were obtained in a fraudulent manner.
- Makes committing the first violation a first-degree misdemeanor and a second or subsequent violation a third-degree felony.
- Provides for certain penalties and exceptions.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

Subsection (2) of s. 364.24, F.S., provides that any officer or person in the employ of any telecommunications company¹ shall not disclose customer account records except as authorized

¹ The term "telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

- (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;

by the customer or as necessary for billing purposes, or required by subpoena, court order, or other process of court or as otherwise allowed by law. (Based upon the definition of the term “telecommunications company,” this provision applies to wireline telecommunications companies, not long distance providers, cable companies, cellular, or VoIP.) Any person who violates this provision commits a second degree misdemeanor punishable as provided in ss. 775.082 or 775.083, F.S. However, the provision provides customers’ names, addresses, or telephone numbers to the extent they are otherwise publicly available are not precluded from being disclosed. Telecommunications companies are not precluded from making available to its customers a customer’s own customer account record through telephonic means.

Within the Florida Deceptive and Unfair Trade Practices Act, s. 501.204, F.S., provides for unlawful acts and practices. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.² Moreover, the Act states that in construing this provision, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C., s. 45(a)(1), as of July 1, 2001.³

Certain events have been reported in the news about Internet sites offering to obtain calling records for a fee. According to the articles, some businesses running those sites would pose as the customer or use other unscrupulous means to obtain the calling records of other persons from the telecommunications company.

III. Effect of Proposed Changes:

A new section of the Florida Statutes is created that defines the terms “calling record;” “customer;” “law enforcement agency;” and “telecommunications company” for use in the new section. Under the definition of the term “telecommunications company” in this bill, land-line, cellular, and voice-over-Internet-protocol (VoIP) calling records would be covered.

The bill makes it a violation for a person to obtain or attempt to obtain the calling record of another person without that person’s permission by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications company or to a customer of a telecommunications company or by providing a document to an officer, employee, or agent of a telecommunications company, knowing that the document was forged, counterfeit, lost or stolen, fraudulently obtained, or contained false, fictitious, or fraudulent statements or representations. It is also a violation to ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in any manner just described. The bill provides that a person who violates these provisions for the first time commits a first degree misdemeanor; a second or subsequent violation is a third degree felony.

(d) A facsimile transmission service;

(e) A private computer data network company not offering service to the public for hire;

(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or

(g) An intrastate interexchange telecommunications company. s. 364.20(14), F.S.

² s. 501.204(1), F.S.

³ s. 501.204(2), F.S.

Finally, the bill provides that it is not a violation of this new section for a law enforcement agency to obtain a calling record in connection with the performance of the official duties of that agency in accordance with other applicable laws, or for a telecommunications company, or its officer, employee, or agent, to obtain a calling record of that company in the following circumstances: in the course of testing security procedures or systems; investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent; or recovering a calling record that was obtained or received by another person in any manner described in the new section as an unlawful means of obtaining a calling record.

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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