

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 871 CS Telephone Calling Records
SPONSOR(S): Ryan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Utilities & Telecommunications Committee</u>	<u>12 Y, 0 N</u>	<u>Cater</u>	<u>Holt</u>
3) <u>Justice Council</u>	<u>10 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

There are a number of companies which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called from a particular telephone number.

The bill makes it a first degree misdemeanor to:

- Obtain or attempt to obtain the calling record of another person without the permission of that person by:
 - Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
 - Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
 - Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
- 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 a manner described above.
- Sell or offer to sell a calling records obtained in any manner described above.

The bill contains exceptions to this prohibition. A second or subsequent violation of this section will be a third degree felony.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates a new criminal offense.

Promote personal responsibility: The bill makes it a crime to obtain a telephone calling record of another person by using fraudulent means.

B. EFFECT OF PROPOSED CHANGES:

There are a number of businesses which offer telephone calling records for sale. Numerous websites offer to obtain detailed information regarding the numbers that have been called by a particular telephone number. According to the Federal Trade Commission (FTC), records are obtained by "pretexting" – a practice where a person calls a telephone company pretending to be the account holder in order to gain access to the records from the company. Calling records are also illicitly obtained by unauthorized access of accounts via the internet.¹ According to the FTC, "[a]lthough the acquisition of telephone records does not present the opportunity for immediate financial harm as the acquisition of financial records does, it nonetheless is a serious intrusion into consumers' privacy and could result in stalking, harassment and embarrassment."²

Federal legislation has been filed entitled the "Consumer Telephone Records Protection Act of 2006".³ This bill prohibits obtaining confidential phone records information from a telecommunications carrier without authorization from the customer by knowingly and intentionally: making false or fraudulent statements or representations to an employee or customer of a telecommunications carrier; providing false documentation to a telecommunications carrier knowing that the document is false; or accessing customer accounts of a telecommunications carrier via the internet. Each occurrence would be punishable by up to five years in prison. The bill also prohibits any person from knowingly selling confidential phone records from a telecommunications carrier without authorization from the customer.

Currently, section 817.568, F.S. makes it a third degree felony for any person to willfully and without authorization fraudulently use or possess with intent to use, personal identification information concerning an individual without first obtaining that individual's consent.

Part II of Chapter 501, Florida Statutes is known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Section 501.204, F.S. provides that "[u]nfair 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." Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive.⁴ A person willfully violating the provisions of the FDUTPA is liable for a civil penalty of not more than \$10,000 per violation. This penalty is increased to \$15,000 for each violation if the willful violation victimizes or attempts to victimize senior citizens or handicapped persons. Individuals aggrieved by a violation of the act can seek a declaratory judgment that an act or practice violates the act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated the act may also seek actual damages from that person, plus attorney's fees and court costs.⁵ The state attorneys and the Department of Legal Affairs

¹ *Prepared Statement of the Federal Trade Commission before the Committee on Commerce, Science and Transportation, Subcommittee on Consumer Affairs, Product Safety and Insurance, U.S. Senate on Protecting Consumers' Phone Records, February 8, 2006.* <http://www.ftc.gov/os/2006/02/commissiontestimonypretexting060208.pdf>

² *Id.* at 7.

³ See S. 2178, sponsored by Senate Schumer.

⁴ See s. 501.2075, F.S.

⁵ See s. 501.211(1) and (2), F.S.

are the enforcing authorities for the FDUTPA. Section 501.207, F.S., specifies the actions that the enforcing authority may bring.

In January 2006, the Attorney General's office filed suit against a Florida corporation claiming that its actions in using personal identification information of a consumer without the consumer's consent in order to obtain calling records (which the company then sold) violated section 817.568, F.S. and was therefore a per se violation of FDUTPA.⁶ According to the Attorney General's office, the company's website has since been shut down.

HB 871 makes it a first degree misdemeanor to:

1. Obtain or attempt to obtain the calling record of another person without the permission of that person by:
 - a. Making a false, fictitious, or fraudulent statement or representation to an officer, employee or agent of a telecommunications company;
 - b. Making a false, fictitious or fraudulent statement or representation to a customer of a telecommunications company; or
 - c. Providing any document to an officer, employee or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious or fraudulent statement or representation.
2. 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 a manner described above.
3. Sell or offer to sell a calling records obtained in any manner described above.

A second or subsequent violation is a third degree felony. The bill defines the term "calling record" to mean a record held by a telecommunications company⁷ of the telephone calls made or text messages sent or received by a customer⁸ of that company.

The bill provides that it is not a violation of this section for:

1. A law enforcement agency⁹ to obtain a calling record in connection with the performance of the official duties of that agency in accordance with other applicable laws.
2. A telecommunications company, or an officer, employee, or agent of the telecommunications company, to obtain a calling record of that company in the course of:
 - a. Testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information;
 - b. Investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or

⁶ [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6L8KGC/\\$file/1stSource_Complaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-6L8KGC/$file/1stSource_Complaint.pdf)

⁷ The bill defines the term "telecommunications company" in conformity with s. 364.02, F.S. which defines the term as follow: "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;
- (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.

The bill also provides that the term includes providers of "VoIP service" (an acronym for voice-over-the internet-protocol) and commercial mobile radio service.

⁸ The bill defines the term "customer" to mean a person who has received telephone service from a telecommunications company.

⁹ The bill references the definition of the term "law enforcement agency" in s. 23.1225(1)(d), F.S.

- c. Recovering a calling record that was obtained or received by another person in a fraudulent manner, described above.

C. SECTION DIRECTORY:

Section 1. Prohibits obtaining calling records of another person.

Section 2. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:

None.

- 2. Expenditures:

The Criminal Justice Impact Conference has determined that this bill will have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:

None.

- 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would criminalize selling telephone calling records that are obtained through fraudulent means.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

- 2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted a strike-all amendment which:

- Included commercial mobile radio service providers within the definition of the term “telecommunications company”.
- Included records of text messages sent or received within the definition of the term “calling record”.
- Removed exceptions which were contained in the original bill – one involving public records and one involving activities of private investigators.
- Added language to require proof that the phone records were obtained without the consent of the owner of the records.