



House of Representatives

General Assembly

File No. 218

February Session, 2006

Substitute House Bill No. 5669

House of Representatives, March 29, 2006

The Committee on General Law reported through REP. STONE, C. of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONFIDENTIALITY OF TELEPHONE RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) (a) As used in this
2 section:

3 (1) "Telephone record" means information retained by a telephone
4 company that relates to a telephone number dialed by a customer or
5 another person using the customer's telephone with such customer's
6 permission, or the incoming number of a call directed to a customer or
7 another person using the customer's telephone with such customer's
8 permission, or other data related to such call typically contained on a
9 customer's telephone bill, including, but not limited to, the time the
10 call started and ended, the duration of the call, the time the call was
11 made and any charges applied. A telephone record does not include
12 information collected and retained by or on behalf of a customer
13 utilizing caller identification or similar technology;

14 (2) "Telephone company" means any person that provides
15 commercial telephone services to a customer, irrespective of the
16 communications technology used to provide such service, including,
17 but not limited to, traditional wireline or cable telephone service,
18 cellular, broadband PCS or other wireless telephone service,
19 microwave, satellite or other terrestrial telephone service, and voice
20 over Internet telephone service;

21 (3) "Telephone" means any device used by a person for voice
22 communications, in connection with the services of a telephone
23 company, whether such voice communications are transmitted in
24 analog, data or any other form;

25 (4) "Customer" means the person who subscribes to telephone
26 service from a telephone company or the person in whose name such
27 telephone service is listed;

28 (5) "Person" means any individual, partnership, corporation, limited
29 liability company, trust, estate, cooperative association or other entity;

30 (6) "Procure" in regard to a telephone record, means to obtain by
31 any means, whether electronically, in writing or in oral form, with or
32 without consideration.

33 (b) No person shall: (1) Knowingly procure, attempt to procure,
34 solicit or conspire with another to procure a telephone record of any
35 resident of this state without the authorization of the customer to
36 whom the record pertains, (2) knowingly sell or attempt to sell a
37 telephone record of any resident of this state without the authorization
38 of the customer to whom the record pertains, or (3) receive a telephone
39 record of any resident of this state with the knowledge such record has
40 been obtained without the authorization of the customer to whom the
41 record pertains or by fraudulent, deceptive or false means.

42 (c) The provisions of this section shall not apply to any person
43 acting pursuant to a valid court order, warrant or subpoena and shall
44 not be construed to prevent any action by a law enforcement agency,

45 or any officer, employee or agent of such agency, to obtain telephone
46 records in connection with the performance of the official duties of the
47 agency.

48 (d) The provisions of this section shall not be construed to prohibit a
49 telephone company from obtaining, using, disclosing or permitting
50 access to any telephone record, either directly or indirectly through its
51 agents (1) as otherwise authorized by law, (2) with the lawful consent
52 of the customer, (3) as may be necessarily incident to the rendition of
53 the service, including, but not limited to, initiating, rendering, billing
54 and collecting customer charges, or to the protection of the rights or
55 property of the telephone company, or to protect the customer of those
56 services and other carriers from fraudulent, abusive or unlawful use of
57 or subscription to, such services, (4) to a governmental entity, if the
58 telephone company reasonably believes that an emergency involving
59 immediate danger of death or serious physical injury to any person
60 justifies disclosure of the information, or (5) to the National Center for
61 Missing and Exploited Children, in connection with a report submitted
62 thereto under Section 227 of the Victims of Child Abuse Act of 1990.

63 (e) The provisions of this section shall not be construed to expand
64 upon the obligations and duties of any telephone company to protect
65 telephone records beyond those otherwise established by federal or
66 state law, including, but not limited to, provisions governing customer
67 proprietary network information in Section 222 of the
68 Communications Act of 1934, as amended, and 47 USC 222.

69 (f) The provisions of this section shall not apply to a telephone
70 company and its agents or representatives who act reasonably and in
71 good faith pursuant to this section.

72 (g) Each telephone company that maintains telephone records of a
73 resident of this state shall establish reasonable procedures to protect
74 against unauthorized or fraudulent disclosure of such records which
75 could result in substantial harm or inconvenience to any customer. For
76 purposes of this subsection, a telephone company's procedures shall be
77 deemed reasonable if the telephone company complies with the

78 provisions governing customer proprietary network information in
79 Section 222 of the Communications Act of 1934, as amended, and 47
80 USC 222.

81 (h) Any violation of subsection (b) of this section: (1) Involving a
82 single telephone record of a resident of this state shall be a class C
83 misdemeanor, (2) involving two to not more than ten telephone
84 records of a resident of this state shall be a class B misdemeanor, and
85 (3) involving more than ten telephone records of a resident of this state
86 shall be a class A misdemeanor.

87 (i) Any violation of subsection (b) of this section shall be deemed an
88 unfair or deceptive trade act or practice under subsection (a) of section
89 42-110b of the general statutes.

| | | |
|-------------------------------------------------------------------------------|-----------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2006 | New section |

GL *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 07 \$ | FY 08 \$ |
|-----------------------------------------------------------------|---------------------------|----------------------|----------------------|
| Judicial Dept.; Attorney General; Consumer Protection, Dept. | Various - Revenue Gain | Potential Minimal | Potential Minimal |
| Correction, Dept.; Judicial Dept. (Probation) | GF - Cost | Potential | Potential |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes it a crime to knowingly engage in the procurement, sale or receipt of any person's telephone record without authorization from the customer to whom the record pertains. Under the bill, the penalty for violating these provisions is contingent upon the number of records impacted.

To the extent that offenders are subject to incarceration or probation supervision in the community as a result of the bill, a potential cost to criminal justice agencies exists. On average, it costs the state \$2,150 to supervise an offender on probation in the community as compared to \$35,040 to incarcerate the offender (note that both figures include fringe benefits).

The bill makes any violation of its subsection (b) an unfair trade practice. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General can impose CUTPA fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the unrestricted resources of the General Fund.

Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 05, \$92,298 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 05, \$356,751 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General (OAG). The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 5669

AN ACT CONCERNING THE CONFIDENTIALITY OF TELEPHONE RECORDS.

SUMMARY:

This bill prohibits (1) knowingly procuring, attempting to procure, soliciting, or conspiring with another to procure a customer's telephone record without a customer's authorization; (2) knowingly selling or attempting to sell a customer's telephone record without the customer's authorization; and (3) receiving a customer's telephone record with the knowledge that it has been obtained without the customer's authorization or by fraudulent, deceptive, or false means. The bill defines "procure" as obtaining by any means, whether electronically, in writing, or orally and with or without consideration and applies to customers who it defines as telephone service subscribers and that are state residents.

It requires a telephone company that keeps customers' telephone records to establish reasonable procedures to protect against unauthorized or fraudulent disclosure that could result in substantial harm or inconvenience to the customer. It deems procedures reasonable if they comply with requirements of § 222 of the federal Communications Act.

It establishes penalties, explicitly authorizes certain business practices such as allowing companies to allow access to records for billing purposes, and provides that it does not apply to a telephone company or its agents or representatives who act reasonably and in good faith in accordance with the bill.

EFFECTIVE DATE: October 1, 2006

TELEPHONE RECORDS

The bill applies to “telephone records,” which it defines as information kept by a telephone company that relates to (1) a telephone number dialed by a customer or with a customer’s permission; (2) a number of an incoming call directed to a customer or to someone using the telephone with the customer’s permission; or (3) other information related to such calls, typically included in a customer’s bill, such as the call’s start and end times, duration, and charges. “Telephone records” do not include information collected and kept by or for a customer using caller identification or similar technology. A “telephone company” is any person providing commercial telephone services, regardless of the technology used, including land line, cable, telephone, cellular, broadband, other wireless, microwave, satellite, other terrestrial, and voice over Internet service.

LAW ENFORCEMENT

The bill provides that it does not apply to a person acting under a valid court order, warrant, or subpoena and must not be construed to prevent any action by law enforcement agencies, officers, or employees from obtaining telephone records in connection with performing their official duties.

TELEPHONE COMPANY BUSINESS PRACTICES

The bill provides that it must not be construed to prohibit a telephone company from obtaining, using, disclosing, or permitting access to a telephone record (1) as otherwise required by law; (2) with a customer’s lawful consent; (3) necessarily required to provide telephone service, such as by initiating, rendering, billing, and collecting customer charges, or to protect the telephone company’s rights or property, or to protect a customer from fraudulent, abusive, or unlawful use of, or subscription to, telephone services; (4) to a governmental entity, if the company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies the disclosure; or (5) to the National

Center for Missing and Exploited Children in connection with a report submitted under the federal Victims of Child Abuse Act.

The bill states that it must not be construed to expand on a telephone company's duties to protect telephone records beyond those otherwise established by federal or state laws, including provisions concerning customer proprietary network information in § 222 of the federal Communications Act, as amended.

PENALTIES

The bill makes a violation involving a single telephone record a class C misdemeanor, punishable by up to three months imprisonment, a fine of up to \$500, or both. A violation involving two to 10 telephone records is a class B misdemeanor, punishable by up to six months imprisonment, a fine of up to \$1,000, or both. A violation involving more than 10 telephone records is a class A misdemeanor, punishable by up to one year imprisonment, a fine of up to \$2,000, or both.

It also makes a violation an unfair trade practice under state law.

BACKGROUND

§ 227 of the Victims of Child Abuse Act

This law requires electronic communication services and remote computing services to report facts or circumstances related to child pornography to the Cyber Tip Line at the National Center for Missing or Exploited Children (42 USC § 13032).

§ 222 of the Communications Act

This law obligates every telecommunications carrier to protect the confidentiality of proprietary information of other carriers and customers. It defines "customer proprietary information" as information (1) that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by a customer and (2) in bills (47 USC § 222).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 0 (03/14/2006)