



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 261
[2005 Assembly Bill 1014]

Obtaining, Selling, or Soliciting Telephone Records Without Consent

2005 Wisconsin Act 261, in general, prohibits the obtaining, selling, or soliciting of a telephone record that pertains to another person without the person's consent.

Prohibitions

The Act establishes that no person may do any of the following:

- Obtain, or attempt to obtain, a telephone record that pertains to a customer who is a resident of this state, without the customer's consent by making a false statement to an agent or a customer of a telephone service provider, or by knowingly providing to a telephone service provider a document that is fraudulent, has been lost or stolen, or has been obtained by fraud.
- Ask another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner prohibited by the Act.
- Sell, or offer to sell, a telephone record obtained in a manner prohibited by the Act.

The Act defines a number of terms used in these prohibitions, including the following:

- A "customer" is a person who purchases telephone service.
- A "telephone record" is a written, electronic, or oral record, other than electronic record transmitted as part of a caller ID service, that is created by a telephone service provider and contains any of the following information: telephone numbers that have been dialed by, and from which calls have been made to, a customer; and the time and duration of calls by or to a customer.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- A “telephone service” is the conveyance of two-way voice communication by any medium, including wireline and wireless technologies, voice communication over the Internet, and a telephone relay service used by individuals with disabilities to communicate.
- A “telephone service provider” is a person who provides telephone service to a customer.

Exceptions

The Act specifies that the prohibitions described above, do not apply to any of the following:

- Action by a law enforcement agency in connection with the official duties of the agency.
- A disclosure by a telephone service provider, if the disclosure is made to the National Center for Missing and Exploited Children, is authorized by state or federal law or regulation, or the telephone service provider has reason to believe that the disclosure is necessary to do either of the following:
 - Provide telephone service to a customer.
 - Protect an individual from fraudulent, abusive, or unlawful use of telephone service or a telephone record.

Penalties

The Act specifies that a person who violates any of the above prohibitions is guilty of one of the following types of felonies, based upon the number of telephone records involved in the violation:

- If the violation involves one telephone record, a Class I felony.*
- If the violation involves two or more telephone records, a Class G felony.*
- If the violation involves more than 10 telephone records, a Class E felony.*

In addition to the above penalties, a person who violates a prohibition created by the Act may be required to forfeit personal property used or intended to be used in the violation. Also, in an action to enforce the Act’s prohibitions, the court must award to a person who is a subject of a telephone record involved in the violation all of the following:

- The greater of \$1,000 or the amount of the person’s pecuniary loss suffered because of the violation, if proof of the loss is submitted to the satisfaction of the court.
- The amount of any gain to the violator as a result of the violation.

* Section 939.50 (3), Stats., specifies the following penalties for the felonies specified in the Act: Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both; Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both; and a Class E felony, a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

Relation to Other Consumer Protection Laws

The Act specifies that the violation of a prohibition created by the Act may also constitute an unfair method of competition or unfair trade practice under s. 100.20, Stats., or a fraudulent representation under s. 100.18, Stats.

Effective Date: Act 261 took effect on April 20, 2006.

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