

2005 ASSEMBLY BILL 1014

February 10, 2006 – Introduced by Representatives MONTGOMERY, DAVIS, TRAVIS, NISCHKE, ZEPNICK, LOEFFELHOLZ, J. FITZGERALD, ZIEGELBAUER, KRAWCZYK, GUNDRUM, FREESE, MUSSER, F. LASEE, POCAN, GUNDERSON, NASS, OTT, ALBERS, STONE, GRONEMUS and COLON, cosponsored by Senators KANAVAS, PLALE, ERPENBACH, A. LASEE, COWLES, OLSEN, ROESSLER, DECKER, HANSEN and WIRCH. Referred to Committee on Energy and Utilities.

1 **AN ACT to create** 100.525 of the statutes; **relating to:** obtaining, selling, or
2 soliciting a telephone record that pertains to another person without the
3 person's consent and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill generally prohibits obtaining, soliciting, or selling a telephone record pertaining to another person without the person's consent, if the transaction involves fraud. Under the bill, "telephone record" is defined as a record in written, electronic, or oral form that contains any of the following information about a customer of a telephone service provider: 1) the number of telephone calls received or dialed by the customer; 2) the time when incoming or outgoing calls occurred; or 3) the duration of incoming or outgoing calls. The bill applies to a record regarding any type of two-way voice communication, including communication over the Internet, but does not apply to "caller I.D." information provided to the recipient of a telephone call.

The bill prohibits doing any of the following: 1) obtaining a telephone record that pertains to another person without the person's consent, by making a false statement to a telephone service provider or customer, or by knowingly providing a document that is fraudulent, that has been lost or stolen, or that has been obtained by fraud; 2) asking another person to obtain a telephone record knowing that the person will obtain the telephone record in a manner described above; or 3) selling or offering to sell a telephone record obtained in a manner described above. The prohibitions do not apply to action by a law enforcement agency in connection with official duties, or to certain disclosures by a telephone service provider, including a

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disclosure a telephone service provider reasonably believes is necessary to provide telephone service to a customer or to protect a customer from fraudulent, abusive, or unlawful use of telephone service.

A person who violates the prohibitions in the bill may be fined up to \$50,000, imprisoned up to 15 years, or both, and may be required to forfeit property used or intended to be used in the violation. Under the bill, a person who is the subject of a telephone record obtained or disclosed in violation of the provisions of the bill may bring an action against the violator for \$1,000 or the amount of the person's damages. Violations may also constitute unfair competition or unfair trade practices.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.525 of the statutes is created to read:

2 **100.525 Telephone records; obtaining, selling, or receiving without**
3 **consent. (1)** In this section:

4 (a) “Caller identification record” means a record that is delivered electronically
5 to the recipient of a telephone call simultaneously with the reception of the telephone
6 call and that indicates the telephone number from which the telephone call was
7 initiated or similar information regarding the telephone call.

8 (am) “Customer” means a person who purchases telephone service.

9 (b) “Telephone record” means a record in written, electronic, or oral form, except
10 a caller identification record, that is created by a telephone service provider and that
11 contains any of the following information with respect to a customer:

- 12 1. Telephone numbers that have been dialed by the customer.
- 13 2. Telephone numbers pertaining to calls made to the customer.
- 14 3. The time when calls were made by the customer or to the customer.

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1 4. The duration of calls made by the customer or to the customer.

2 (c) “Telephone service” means the conveyance of 2-way voice communication
3 in analog, digital, or other form by any medium, including wire, cable, fiber optics,
4 cellular, broadband personal communications services, or other wireless
5 technologies, satellite, microwave, or at any frequency over any part of the
6 electromagnetic spectrum. “Telephone service” includes the conveyance of voice
7 communication over the Internet.

8 (d) “Telephone service provider” means a person who provides telephone
9 service to a customer.

10 **(2)** No person may do any of the following:

11 (a) Obtain, or attempt to obtain, a telephone record that pertains to a customer
12 who is resident of this state, without the customer’s consent, by doing any of the
13 following:

14 1. Making a false statement to an agent of a telephone service provider.

15 2. Making a false statement to a customer of a telephone service provider.

16 3. Knowingly providing to a telephone service provider a document that is
17 fraudulent, that has been lost or stolen, or that has been obtained by fraud.

18 (b) Ask another person to obtain a telephone record knowing that the person
19 will obtain the telephone record in a manner prohibited under this section.

20 (c) Sell or offer to sell a telephone record obtained in a manner prohibited under
21 this section.

22 **(3)** (a) A person who violates this section is guilty of a Class I felony if the
23 violation involves one telephone record.

24 (b) A person who violates this section is guilty of a Class G felony if the violation
25 involves 2 or more telephone records.

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1 (c) A person who violates this section is guilty of a Class E felony if the violation
2 involves more than 10 telephone records.

3 (4) In addition to the penalties authorized under sub. (3), a person who violates
4 this section may be required to forfeit personal property used or intended to be used
5 in the violation.

6 (5) This section does not apply to any of the following:

7 (a) Action by a law enforcement agency in connection with the official duties
8 of the law enforcement agency.

9 (b) A disclosure by a telephone service provider, if any of the following applies:

10 1. The telephone service provider reasonably believes the disclosure is
11 necessary to do any of the following:

12 a. Provide telephone service to a customer.

13 b. Protect a customer from fraudulent, abusive, or unlawful use of telephone
14 service.

15 2. The disclosure is made to the National Center for Missing and Exploited
16 Children.

17 3. The disclosure is authorized by state or federal law or regulation.

18 (6) This section does not preempt the administration or enforcement of s.
19 100.18 or 100.20. A violation of this section may also constitute an unfair method
20 of competition or unfair trade practice under s. 100.20 or a fraudulent representation
21 under s. 100.18.

22 (7) A person who is the subject of a telephone record obtained or disclosed in
23 violation of this section may bring an action for damages against the violator. A
24 person who prevails in an action under this subsection shall recover all of the
25 following:

