



2005 DRAFTING REQUEST

Bill

Received: **01/18/2006**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **Adam Raschka**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit obtaining or selling another's phone records

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 01/19/2006	jdyer 01/20/2006		_____			
/P1	csundber 02/01/2006	jdyer 02/02/2006	jfrantze 01/20/2006	_____	lnorthro 01/20/2006		State Crime
/1	csundber 02/03/2006	jdyer 02/06/2006	jfrantze 02/02/2006	_____	mbarman 02/02/2006		State Crime
/2			jfrantze	_____	lnorthro	sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			02/06/2006 _____		02/06/2006	02/08/2006	

FE Sent For:

<END>

02-08-2006
(1/2")

see attached

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/?	csundber 01/19/2006	jdyer 01/20/2006		_____			
/P1	csundber 02/01/2006	jdyer 02/02/2006	jfrantze 01/20/2006	_____	lnorthro 01/20/2006		State Crime
/1		<i>2/2/06 jcd</i>	jfrantze 02/02/2006	_____	mbarman 02/02/2006		

To 2/4 *To/Ch 2/6*

FE Sent For:

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/?	csundber 01/19/2006	jdyer 01/20/2006		_____			
/P1		1 2/2 jcd	jfrantze 01/20/2006	_____	lnorthro 01/20/2006		

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Jb 2/2 *Jb/ch*
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/?	csundber	PI 1/20 ju	to 1/20	to 1/20	Ps		

FE Sent For:

<END>

1 **PROPOSED LEGISLATION TO PROTECT CUSTOMER**
2 **TELEPHONE RECORDS**

3 *An Act to prohibit the fraudulent or unauthorized procurement, sale or receipt*
4 *of customer telephone records.*

5 **SECTION 1. FINDINGS**

6 (a) Telephone companies have an obligation to protect the privacy of
7 customer telephone records and to disclose such records only with the approval
8 of the customer or as permitted or required by law; [47 U.S.C. § 222]

9 (b) Each year, telephone company service representatives receive
10 millions of calls from customers seeking to change service plans, troubleshoot
11 service problems, or simply to obtain copies of past phone bills. Easy access to
12 customer service is critical to ensuring customer satisfaction and the ability of
13 telephone companies to respond to and resolve any customer concerns;

14 (c) Telephone companies employ numerous techniques to identify and
15 authenticate customers to ensure that telephone records are not disclosed to
16 unauthorized third parties. However, because the customer is not physically
17 present to be identified, the risk of fraud is present despite the reasonable
18 security measures employed by telephone companies to validate customer
19 identity;

20 (d) Some unscrupulous third parties have impersonated customers to
21 fraudulently and illegally obtain telephone records. These third parties often
22 provide nonpublic personal information obtained from other than the telephone
23 company to authenticate the customer such as social security number, date of
24 birth and even mother's maiden name. Sometimes they impersonate law
25 enforcement to obtain information to respond to an "emergency." These
26 fraudulent acts often are referred to "pretexting." And, in some cases, rogue
27 carrier employees have been found to violate company rules by selling
28 telephone records. All of these activities are fraudulent and illegal.

29 (e) Now, some third parties offer telephone records for sale online and
30 recent news stories have suggested that telephone companies are being
31 defrauded regularly by these data thieves. Customer telephone records are
32 being offered for sale by online data brokers and the means and methods
33 employed by these companies are not completely known. But what is clear,

1 the tactics of these companies are illegal; telephone records are not for sale by
2 telephone companies and they do not knowingly release such records other
3 than with the consent of a customer who has properly identified themselves or
4 as required or permitted by law.

5 (f) The law should punish not only the third party that actually procures
6 the records or sells them, but also the person who receives them because the
7 telephone records actually are stolen property.

8 (g) Current law makes it illegal for any person to obtain financial
9 records by false pretenses; telephone records deserve the same protection.

10 **SECTION 2. PROHIBITION AGAINST UNAUTHORIZED OR**
11 **FRAUDULENT PROCUREMENT, SALE OR RECEIPT OF TELEPHONE**
12 **RECORDS**

13 (a) **Offense -**

14 The Criminal Code is amended by adding new section ____ as follows:

15 'Section ____ . Unauthorized or Fraudulent Procurement, Sale or Receipt of
16 Telephone Records.

17 (a) **Whoever -**

18 (1) knowingly procures, attempts to procure, solicits or conspires
19 with another to procure, a telephone record of any resident of this state without
20 the authorization of the customer to whom the record pertains or by fraudulent,
21 deceptive, or false means;

22 (2) knowingly sells, or attempts to sell, a telephone record of any
23 resident of this state without the authorization of the customer to whom the
24 record pertains; or

25 (3) receives a telephone record of any resident of this state
26 knowing that such record has been obtained without the authorization of the
27 customer to whom the record pertains or by fraudulent, deceptive, or false
28 means;

29 shall be punished in accordance with subsection (b).

30 (b) **Penalties -** The punishment for an offense under subsection (a) is --

1 (1) a fine under this title or imprisonment for not more than five (5)
2 years, or both if the violation of subsection (a)(1)-(3) involves a single
3 telephone record;

4 (2) a fine under this title or imprisonment for not more than ten (10)
5 years, or both if the violation of subsection (a)(1)-(3) involves two (2) to ten
6 (10) telephone record of a resident of this state;

7 (3) a fine under this title or imprisonment for not more than twenty (20)
8 years, or both if the violation of subsection (a)(1)-(3) involves more than 10
9 telephone records of a resident of this state; and

10 (4) in either case, forfeiture of any personal property used or intended
11 to be used to commit the offense.

12 **(c) Definitions -** In this subsection

13 (1) TELEPHONE RECORD means information retained by a
14 telecommunications carrier that relates to the telephone number dialed by the
15 customer or the incoming number of call directed to a customer, or other data
16 related to such calls typically contained on a customer telephone bill such as
17 the time the call started and ended, the duration of the call, the time of day the
18 call was made and any charges applied.

19 (2) PROCURE in regard to such a telephone record means to obtain by
20 any means, whether electronically, in writing or in oral form, with or without
21 consideration.

22 **SECTION 3. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES**

23 No provision of this section shall be construed so as to prevent any action by a
24 law enforcement agency, or any officer, employee, or agent of such agency, to obtain
25 telephone records in connection with the performance of the official duties of the
26 agency. [Note: Reflects definition from FACT Act, 15 U.S.C. § 6821(c)]

27 **SECTION 4. NONAPPLICABILITY TO TELECOMMUNICATIONS**
28 **CARRIERS**

29 No provision of this section shall be construed to prohibit a
30 telecommunications carrier from obtaining, using, disclosing, or permitting access to
31 any telephone record, either directly or indirectly through its agents—

32 (1) as otherwise authorized by law;

1 (2) with the lawful consent of the customer or subscriber;

2 (3) as may be necessarily incident to the rendition of the service or to the
3 protection of the rights or property of the provider of that service, or to protect
4 users of those services and other carriers from fraudulent, abusive, or unlawful
5 use of, or subscription to, such services;

6 (4) to a governmental entity, if the telecommunications carrier reasonably
7 believes that an emergency involving immediate danger of death or serious
8 physical injury to any person justifies disclosure of the information; or

9 (5) to the National Center for Missing and Exploited Children, in connection
10 with a report submitted thereto under section 227 of the Victims of Child
11 Abuse Act of 1990;

12 [Note: Exceptions currently in the law under ECPA, 18 U.S.C. § 2702(c)]

13 **SECTION 5. UNFAIR OR DECEPTIVE TRADE PRACTICES; CONSUMER**
14 **PROTECTION**

15 A violation of this Act shall constitute an unfair or deceptive trade practice.
16 The {Consumer Protection Agency} shall enforce this Act in the same manner, by the
17 same means, and with the same jurisdiction, powers, and duties as though all
18 applicable terms and provisions of the {Consumer Protection Act or similar law}.

19 **SECTION 6. CIVIL CAUSE OF ACTION**

20 (a) Cause of Action. In a civil action, a customer whose telephone records
21 were procured, sold or received in violation of Section 2 of this Act may
22 recover from the person or entity that violated that Section such relief as may
23 be appropriate.

24 (b) Relief. In a civil action under this section, appropriate relief includes—

25 (1) such preliminary and other equitable or declaratory relief as may be
26 appropriate;

27 (2) damages under subsection (c); and

28 (3) reasonable attorney fees and other litigation costs reasonably
29 incurred.

30 (c) Damages. The court may assess as damages in a civil action under this
31 section the sum of the actual damages suffered by the plaintiff and any profits

1 made by the violator as a result of the violation, but in no case shall a person
2 entitled to recover receive less than the sum of \$ 1,000. In the case of a
3 successful action to enforce liability under this section, the court may assess
4 the costs of the action, together with reasonable attorney fees determined by
5 the court.

6 (d) Limitation. A civil action under this section may not be commenced later
7 than two years after the date upon which the claimant first discovered or had a
8 reasonable opportunity to discover the violation.

9 [Note: Modeled on ECPA Section 2707 of Title 18]

10 **SECTION 7. INFORMATION SECURITY**

11 (a) Telecommunications carriers that maintain telephone records of a resident
12 of this State shall establish reasonable procedures to protect against unauthorized or
13 fraudulent disclosure of such records which could result in substantial harm or
14 inconvenience to any customer. [Note: FACT Act Security provision § 6801]

15 (b) No private right of action is authorized under this Section.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4435/2
CTS: A: ...
jld
PI RM/R

W. 1/19/06
Wanted Monday 1/23/06

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

Gen

1 AN ACT ...; relating to: obtaining, selling, or receiving a telephone record that
2 pertains to another person without the person's consent, procedures to protect
3 the security of telephone records, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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

5 100.525 Telephone records; obtaining, selling, or receiving without

6 consent. (1) In this section: (a) "Customer" means a person who receives
7 telecommunications service from a telecommunications provider.

8 (b) "Telecommunications provider" has the meaning given in s. 196.01 (8p).

9 (c) "Telephone record" means a record in written, electronic, or oral form that
10 is created by a telecommunications provider and that contains any of the following
11 information with respect to a customer:

SECTION 1

- 1 1. Telephone numbers that have been dialed by the customer.
- 2 2. Telephone numbers pertaining to calls made to the customer.
- 3 3. The time when calls were made by the customer or to the customer.
- 4 4. The duration of calls made by the customer or to the customer.
- 5 5. Charges pertaining to calls made by the customer or to the customer.

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

7 (a) Obtain, or attempt to obtain, a telephone record ✓ that pertains to a customer
8 who is resident of this state, without the customer’s consent.

9 (b) Sell, or attempt to sell, a telephone record that pertains to a customer who
10 is a resident of this state, without the customer’s consent.

11 (c) Receive a telephone record that pertains to a customer who is a resident of
12 this state, if the person knows the telephone record was obtained without the
13 customer’s consent.

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

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

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

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

23 **(5)** This section ✓ does not apply to any of the following:

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

1 (b) Action by a telecommunications provider or an agent of a
2 telecommunications provider that is any of the following:

3 1. A disclosure that the telecommunications provider reasonably believes is
4 necessary to provide telecommunications service to a customer or to protect a
5 customer from fraudulent, abusive, or unlawful use of telecommunications service.

6 2. A disclosure to a governmental entity that the telecommunications provider
7 reasonably believes is necessary to protect the life, property, or rights of a customer
8 of the telecommunications provider.

9 3. A disclosure to the national center for missing and exploited children.

10 (6) This section does not preempt the administration or enforcement of s.
11 100.18 or 100.20. A violation of this section may also constitute an unfair method of
12 competition or unfair trade practice under s. 100.20 or a fraudulent representation
13 under s. 100.18.

14 (7) A person who is the subject of a telephone record obtained, disclosed, or
15 received in violation of this section may bring an action for damages against the
16 violator. A person who prevails in an action under this subsection shall recover all
17 of the following:

18 (a) The amount of the person's pecuniary loss, or \$1,000, whichever is greater.

19 (b) The amount of any gain to the violator as a result of the violation.

20 (c) Costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

21 SECTION 2. 100.526 of the statutes is created to read:

22 **100.526 Telephone records; security procedures.** (1) A
23 telecommunications provider, as defined in s. 196.01 (8p), that maintains telephone
24 records, as defined in s. 100.525 (1), shall establish reasonable security procedures

(c)

telecommunications
providers

1 to protect against any unauthorized disclosure of the telephone records that could
2 result in substantial harm or inconvenience to the customer^s.

3 (2) This section does not create a private right of action against a
4 telecommunications provider.

5 (END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4435/P1dn

CTS:.....

JLD

Representative Montgomery:

This is a preliminary draft based on the sample language you provided. Please review it carefully to ensure it is consistent with your intent and note the following:

1. I have assumed it is your intent to include records pertaining to both "land line" customers and mobile (cellular) customers. Is this correct? ✓
2. In the penalty section, this draft references the felony classifications that authorize terms of imprisonment closest to the penalties included in the sample language. Please review the penalty provisions closely. ✓
3. This draft does not contain the legislative intent statement ✓ contained in the sample language. Long-standing LRB policy frowns on statements of legislative intent, because we cannot be sure of their legal effect. We would much rather state clearly the legal effect that the legislature intends rather than have a court infer a legal effect that the legislature did not intend. ✓
4. I have assumed that the provisions in this draft should be administered and enforced by ✓ DATCP. Is this correct?
5. Should the draft contain a delayed effective date to ensure a measure of notice of the provisions of the draft? ✓

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4435/P1dn
CTS:jld:jf

January 20, 2006

Representative Montgomery:

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Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Sundberg, Christopher

From: Raschka, Adam
Sent: Tuesday, January 31, 2006 10:51 AM
To: Sundberg, Christopher
Subject: RE: Phone Records

Attachments: LRB4435 P1 edits.doc



LRB4435 P1
edits.doc (45 KB)

From: Sundberg, Christopher
Sent: Wednesday, January 18, 2006 3:59 PM
To: Raschka, Adam
Subject: RE: Phone Records

I'll be drafting this one, Adam. I'll try to get a P-draft out ASAP. Let me know if you have any questions or changes.

From: Kunkel, Mark
Sent: Wednesday, January 18, 2006 1:58 PM
To: Sundberg, Christopher
Subject: FW: Phone Records

From: Raschka, Adam
Sent: Wednesday, January 18, 2006 1:49 PM
To: Kunkel, Mark
Subject: Phone Records

<< File: Phone Records.doc >>
Per our conversation. Thanks Mark.

Adam

Adam Raschka

Office of Representative Phil Montgomery
Chair - Assembly Energy & Utilities Committee
608-266-5840

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT *to create* 100.525 and 100.526 of the statutes; **relating to:** obtaining, selling, or receiving a telephone record that pertains to another person without the person's consent, procedures to protect the security of telephone records, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version

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

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

100.525 **Telephone records; obtaining, selling, or receiving without consent.**

(1) In this section:

(a) "Customer" means a person or the legal guardian or representative of a person, to whom a telecommunications provider provides telephone service on a telephone number subscribed or listed in the name of such person,

Deleted: a person who receives telecommunications service from a telecommunications provider

Deleted: has the meaning in s. 196.01 (8p)

(b) “Telecommunications provider” means any person that provides commercial telephone services to a customer, irrespective of the communications technology used to provide such service, including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCS, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet telephone service.

(c) “Telephone record” means a record in written, electronic, or oral form that is created by a telecommunications provider and that contains any of the following information with respect to a customer:

1. Telephone numbers that have been dialed by the customer.
2. Telephone numbers pertaining to calls made to the customer.
3. The time when calls were made by the customer or to the customer.
4. The duration of calls made by the customer or to the customer.

Any information collected and retained by customers utilizing Caller I.D., or other similar technology, does not constitute a telephone record.

Deleted: 5. Charges pertaining to calls made by the customer or to the customer.

(d) “Telephone” means any device used by a customer for voice communications, in connection with the services of a telecommunications provider, whether such voice communications are transmitted in analog, data, or any other form.

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

(a) Obtain, or attempt to obtain, a telephone record that pertains to a customer

who is resident of this state, without the customer’s consent by:

1. making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications provider;

2. making a false, fictitious, or fraudulent statement or representation to a customer of a telecommunications provider; or

3. providing any document to an officer, employee, or agent of a telecommunications provider, 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;

Deleted: .

(b) ask another person to obtain telephone records, knowing that the other person will obtain, or attempt to obtain, the telephone record from the telecommunications provider in any manner described in par. (a); or

Deleted: Sell, or attempt to sell, a telephone records that pertains to a customer who is a resident of this state, without the customer's consent.

(c) sell or offer to sell a telephone record obtained in any manner described in par. (a) or (b).

Deleted: Receive a telephone record that pertains to a customer who is a resident of this state, if the person knows the telephone record was obtained without the customer's consent.

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

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

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

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

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

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

(b) Action by a telecommunications provider or an agent of a telecommunication provider that is any of the following:

1. A disclosure that the telecommunications provider reasonably believes is one of the following:

a. necessary to provide telecommunications service to a customer,

b. necessary to protect a customer from fraudulent, abusive, or unlawful use of

telecommunications service, or

c. otherwise authorized by state or federal law or regulation.

2. A disclosure to a governmental entity that the telecommunications provider reasonable believes is necessary to protect the life, property, or rights of a customer of the telecommunications provider.

3. A disclosure to the national center for missing and exploited children.

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

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

- (a) The amount of the person's pecuniary loss, or \$1,000, whichever is greater.
- (b) The amount of any gain to the violator as a result of the violation.
- (c) Costs, including reasonable attorney fees, notwithstanding s. 814.04 (1).

Deleted: or

Deleted: Section 2. 100.526 of the statutes is created to read:¶
100.526 Telephone records; security procedures. (1) A telecommunications provider, as defined in s. 196.01(8p), that maintains telephone records, as defined in s. 100.525(1)(c), shall establish reasonable security procedures to protect against any unauthorized disclosure of the telephone records that could result in substantial harm or inconvenience to the telecommunications provider's customers.¶
(2) This section does not create a private right of action against a telecommunications provider.