



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4435/P1

CTS:jld:jf

In: 2/1/05

Wanted: Thursday ~~Afternoon~~ A.M.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

INS A ✓

- 1 AN ACT to create 100.525 and 100.526 of the statutes; relating to: obtaining,
- 2 selling, or receiving a telephone record that pertains to another person without
- 3 the person's consent <sup>soliciting</sup> & procedures to protect the security of telephone records,
- 4 and providing a penalty. ✓

regen

INS 1-7 ✓

*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:

- 5 SECTION 1. 100.525 of the statutes is created to read:
- 6 100.525 Telephone records; obtaining, selling, or receiving without
- 7 consent. (1) In this section:
- 8 ~~(a)~~ (am) (a) "Customer" means a person who receives telecommunications service from
- 9 a telecommunications provider.
- 10 ~~(b)~~ <sup>INSERT 1-9A + 1-9B</sup> "Telecommunications provider" has the meaning given in s. 196.01 (8p).

INS 1-8 ✓

INS 1-10 ✓

Telephone service

INSERT 1-9A (made to previous pages)

(g) "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.

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

(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.

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

(c) 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 is 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 than 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.

except a caller identification records

(end inst-9A)

by doing any of the following:

INS  
2-111

INS  
3-3 ✓

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

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

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

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

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

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

13 (6) This section does not preempt the administration or enforcement of s.  
14 100.18 or 100.20. A violation of this section may also constitute an unfair method  
15 of competition or unfair trade practice under s. 100.20 or a fraudulent representation  
16 under s. 100.18.

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

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

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

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

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



1

**Insert A:**

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. ~~NO~~

~~NO~~ 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 telephone number of 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 for which payment is made, including communication over the Internet, but does not apply to "called I.D." information provided to the recipient of a telephone call. <sup>telephone</sup>

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 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. <sup>der</sup>

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. ✓

2

**Insert 1-7:**

3

(a) "Caller identification record" means a record that is delivered electronically

4

to the recipient of a telephone call simultaneously with the reception of the telephone



1 call and that indicates the telephone number from which the telephone call was  
2 initiated or similar information regarding the telephone call. ✓

3 **Insert 1-8:**

4 ~~#26~~ purchases telephone service. ~~#26~~

5 **Insert 1-10:**

6 ~~#26~~ means a person who provides telephone service to a customer. ~~#26~~

7 **Insert ~~1-8A~~ 1-9B**

8 ~~#26~~ (a) "Telephone service" means the conveyance, in exchange for anything of  
9 value, of ~~two~~ <sup>two</sup>-way voice communication in analog, digital, or other form by wire,  
10 cable, fiber optics, or at any frequency over any part of the electromagnetic spectrum.  
11 "Telephone service" includes the conveyance of voice communication over the  
12 Internet. ✓

13 **Insert 2-11:**

- 14 ~~#26~~ 1. Making a false statement to an agent of a telephone service provider. ✓
- 15 ~~#26~~ 2. Making a false statement to a customer of a telephone service provider. ✓
- 16 ~~#26~~ 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 ~~#26~~ (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 ~~#26~~ (c) Sell or offer to sell a telephone record obtained in a manner prohibited under  
21 this section. ✓

22 **Insert 3-3:**

- 23 ~~#26~~ (b) A disclosure by a telephone service provider, if any of the following ~~apply~~ <sup>applies</sup>:  
24 ~~#26~~ 1. The telephone service provider reasonably believes the disclosure is  
25 necessary to do any of the following:



- 1        ~~Q~~ a. Provide telephone service to a customer.
- 2        ~~Q~~ b. Protect a customer from fraudulent, abusive, or unlawful use of telephone
- 3        service.
- ④        ~~Q~~ 2. The disclosure is made to the national center for missing and exploited
- ⑤        children.
- 6        ~~Q~~ 3. The disclosure is specifically authorized by state or federal law or regulation.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4435/1dn

CTS:.....  
^

JLD

Representative Montgomery:

This is a redraft of LRB-4435/P1, based on changes provided by your aide, Adam Raschka. Please review it carefully to ensure it is consistent with your intent, and note the following:

1. I have made a number of changes to the proposed language contained in the instructions to enhance clarity and readability and to conform to our drafting conventions. ✓
2. The drafting instructions refer to "caller I.D. or similar technology," but do not propose a definition for the term. In order to incorporate this concept, I have attempted to craft a definition. Does this definition correctly reflect your intent?
3. For consistency, I have changed references to "telecommunications" to "telephone." ✓  
Is this okay?
4. As in the previous draft, "telephone record" is defined in part as a document containing "telephone numbers." Should the draft make allowance for the possibility that other identifiers may be used to initiate voice communications using newer technology, e.g., voice over Internet protocol (VOIP)?
5. The drafting instructions indicate that the definition of "customer" should include a "legal guardian or representative" of a person. It is unclear what this change is intended to accomplish. If this language is incorporated, a person who violates the provisions of the draft would potentially face two private actions arising out of the same violation arising from a telephone record pertaining to a person who has a legal guardian or representative: one action by the person, and another action by the person's legal guardian. I have assumed this is not your intent. Current law generally authorizes a guardian to bring an action in the name of the minor or individual, so I have not included the suggested language.
6. Note that the definition of "telephone service" is restricted to paid services. I have assumed from the reference in the drafting instructions to "commercial telephone services" that you do not intend for the draft to apply to records pertaining to free communications services. Is this correct?

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-4435/1dn  
CTS:jld:jf

February 2, 2006

Representative Montgomery:

This is a redraft of LRB-4435/P1, based on changes provided by your aide, Adam Raschka. Please review it carefully to ensure it is consistent with your intent, and note the following:

1. I have made a number of changes to the proposed language contained in the instructions to enhance clarity and readability and to conform to our drafting conventions.
2. The drafting instructions refer to "caller I.D. or similar technology," but do not propose a definition for the term. In order to incorporate this concept, I have attempted to craft a definition. Does this definition correctly reflect your intent?
3. For consistency, I have changed references to "telecommunications" to "telephone." Is this okay?
4. As in the previous draft, "telephone record" is defined in part as a document containing "telephone numbers." Should the draft make allowance for the possibility that other identifiers may be used to initiate voice communications using newer technology, e.g., voice over Internet protocol (VOIP)?
5. The drafting instructions indicate that the definition of "customer" should include a "legal guardian or representative" of a person. It is unclear what this change is intended to accomplish. If this language is incorporated, a person who violates the provisions of the draft would potentially face two private actions arising out of the same violation arising from a telephone record pertaining to a person who has a legal guardian or representative: one action by the person, and another action by the person's legal guardian. I have assumed this is not your intent. Current law generally authorizes a guardian to bring an action in the name of the minor or individual, so I have not included the suggested language.
6. Note that the definition of "telephone service" is restricted to paid services. I have assumed from the reference in the drafting instructions to "commercial telephone services" that you do not intend for the draft to apply to records pertaining to free communications services. Is this correct?

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

## Sundberg, Christopher

---

**From:** Raschka, Adam  
**Sent:** Friday, February 03, 2006 2:10 PM  
**To:** Sundberg, Christopher  
**Subject:** LRB 4435 - Phone records

Chris,

Thanks for the changes to LRB 4435. The draft looks really good, but Rep. Montgomery would like a few more final tweaks.

Page 3, line 3-4, delete "in exchange for anything of value"

✓ Page 3, line 4, after "by" insert "any medium including but not limited to"

Page 3, line 5, delete "or" and insert "cellular, broadband personal communications services, other wireless technologies, satellite and microwave"

Page 4, line 17, delete "specifically"

With these changes the bill should be ready to go. Thanks for your expedited work on this bill.

Adam

**Adam Raschka**

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



State of Wisconsin  
2005 - 2006 LEGISLATURE

2  
LRB-4435/6 RMR  
CTS:jld:jf

In: 2/3/05  
Due: Monday PM

**2005 BILL**

D-N

Regen

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 for which payment is made, 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

**BILL**

official duties, or to certain disclosures by a telephone service provider, including a 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                    <sup>X</sup>  
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.

**BILL**

1           3. The time when calls were made by the customer or to the customer.

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

3           (c) "Telephone service" means the conveyance, in exchange for anything of  
4 value, of 2-way voice communication in analog, digital, or other form by wire, cable,  
5 fiber optics, or at any frequency over any part of the electromagnetic spectrum.

6 "Telephone service" includes the conveyance of voice communication over the  
7 Internet.

*cellular, broadband personal communications services, or other wireless technologies, satellite, microwave, any medium, including*

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.

**BILL****SECTION 1**

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 specifically 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:



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4435/2dn

CTS:.....

*Jld*

Rep. Montgomery:

This is a redraft of LRB-4435/1 based on instructions from your aide, Adam Raschka. Please review it carefully to ensure it is consistent with your intent and note the following:

1. I have added the proposed language to the definition of "telephone service." Note, however, that enumerating examples of specific technologies that are included in that term is problematic. LRB policy discourages such enumerations because they can undercut a statute's force by raising a question as to whether the statute applies to examples not enumerated or whether the statute applies only to examples of the same general type enumerated. With the additional language, the definition seems redundant. Could an agency or a court reasonably interpret "2-way voice communication in analog, digital, or other form by wire, cable, fiber optics, or at any frequency over any part of the electromagnetic spectrum" *not* to cover cellular, broadband personal communications services, other wireless technologies, satellite, and microwave?

2. Without the qualifier "specifically" on page 4, line 17, the scope of the exception for disclosures by a telephone service provider as authorized by state or federal regulation becomes extremely broad. Is this your intent? Also, because the scope of the exception could be broadened or narrowed by a change in federal law, it could be challenged as an unconstitutional delegation of legislative power to the federal government.

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-4435/2dn  
CTS:jld:jf

February 6, 2006

Rep. Montgomery:

This is a redraft of LRB-4435/1 based on instructions from your aide, Adam Raschka. Please review it carefully to ensure it is consistent with your intent and note the following:

1. I have added the proposed language to the definition of "telephone service." Note, however, that enumerating examples of specific technologies that are included in that term is problematic. LRB policy discourages such enumerations because they can undercut a statute's force by raising a question as to whether the statute applies to examples not enumerated or whether the statute applies only to examples of the same general type enumerated. With the additional language, the definition seems redundant. Could an agency or a court reasonably interpret "2-way voice communication in analog, digital, or other form by wire, cable, fiber optics, or at any frequency over any part of the electromagnetic spectrum" *not* to cover cellular, broadband personal communications services, other wireless technologies, satellite, and microwave?
2. Without the qualifier "specifically" on page 4, line 17, the scope of the exception for disclosures by a telephone service provider as authorized by state or federal regulation becomes extremely broad. Is this your intent? Also, because the scope of the exception could be broadened or narrowed by a change in federal law, it could be challenged as an unconstitutional delegation of legislative power to the federal government.

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

**Basford, Sarah**

---

**From:** Raschka, Adam  
**Sent:** Tuesday, February 07, 2006 5:58 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 05-4435/2 Topic: Prohibit obtaining or selling another's phone records

Please Jacket LRB 05-4435/2 for the ASSEMBLY.

## Barman, Mike

---

**From:** Sundberg, Christopher  
**Sent:** Tuesday, February 07, 2006 5:20 PM  
**To:** Barman, Mike  
**Subject:** FW: LRB 4435/2

Can you pass along the request for an expedited FE for LRB-4435/2?

---

**From:** Hanaman, Cathlene  
**Sent:** Tuesday, February 07, 2006 5:19 PM  
**To:** Sundberg, Christopher  
**Subject:** RE: LRB 4435/2

Tell Mike Barman. He's our FE guy.

---

**From:** Sundberg, Christopher  
**Sent:** Tuesday, February 07, 2006 5:19 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: LRB 4435/2

Can we request expedited fiscals?

---

**From:** Raschka, Adam  
**Sent:** Tuesday, February 07, 2006 11:37 AM  
**To:** Sundberg, Christopher  
**Cc:** Richards, Mike  
**Subject:** LRB 4435/2

Chris,

Can we please have a Senate companion drafted for LRB 4435/2? Also, we are having a public hearing next Tuesday, February 14th on the bill. Can you please put in a request for an expedited fiscal estimate?

Thanks for all of your help on this draft.

Adam

**Adam Raschka**

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