

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1058**

Short Title: Telephone Records Privacy Protection Act. (Public)

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Sponsors: Senators Stevens, Clodfelter; Allran, Apodaca, Atwater, Bingham, Brown, Brunstetter, Cowell, Forrester, Garrou, Goodall, Goss, Hartsell, Jones, Malone, Preston, Purcell, Rand, Smith, Tillman, and Weinstein.

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Referred to: Commerce, Small Business and Entrepreneurship.

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March 21, 2007

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE FRAUDULENT OBTAINING, SELLING, OR SOLICITING OF TELEPHONE RECORDS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 19D.

"Telephone Records Privacy Protection Act.

**"§ 14-113.30. Definitions.**

The following definitions apply in this Article:

- (1) Caller identification record. – A record collected and retained by or on behalf of a customer utilizing caller identification or similar technology that is delivered electronically to the recipient of a telephone call simultaneously with the reception of the telephone call and that indicates the telephone number from which the telephone call was initiated or similar information regarding the telephone call.
- (2) Customer. – A person or the legal guardian of a person or a representative of a business to whom a telephone service provider provides telephone service to a number subscribed or listed in the name of the person or business.
- (3) Person. – An individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity.
- (4) Telephone record. – A record in written, electronic, or oral form, except a caller identification record, Directory Assistance information, and subscriber list information, that is created by a telephone service

1 provider and that contains any of the following information with  
2 respect to a customer:

- 3 a. Telephone numbers that have been dialed by the customer.
- 4 b. Telephone numbers that pertain to calls made to the customer.
- 5 c. The time when calls were made by the customer or to the  
6 customer.
- 7 d. The duration of calls made by the customer or to the customer.
- 8 e. The charges applied to calls, if any.

9 (5) Telephone service. – The conveyance of two-way communication in  
10 analog, digital, or other form by any medium, including wire, cable,  
11 fiber optics, cellular, broadband personal communications services, or  
12 other wireless technologies, satellite, microwave, or at any frequency  
13 over any part of the electromagnetic spectrum. The term also includes  
14 the conveyance of voice communication over the Internet and  
15 telephone relay service.

16 (6) Telephone service provider. – A person who provides telephone  
17 service to a customer without regard to the form of technology used,  
18 including traditional wire-line or cable communications service;  
19 cellular, broadband PCS, or other wireless communications service;  
20 microwave, satellite, or other terrestrial communications service;  
21 or voice over Internet communications service.

22 **§ 14-113.31. Prohibition of falsely obtaining, selling, or soliciting telephone**  
23 **records.**

24 (a) No person shall obtain, or attempt to obtain, by any means, whether  
25 electronically, in writing, or in oral form, with or without consideration, a telephone  
26 record that pertains to a customer who is a resident of this State without the customer's  
27 consent by doing any of the following:

- 28 (1) Making a false statement or representation to an agent, representative,  
29 or employee of a telephone service provider.
- 30 (2) Making a false statement or representation to a customer of a  
31 telephone service provider.
- 32 (3) Knowingly providing to a telephone service provider a document that  
33 is fraudulent, that has been lost or stolen, or that has been obtained by  
34 fraud, or that contains a false, fictitious, or fraudulent statement or  
35 representation.
- 36 (4) Accessing customer accounts of a telephone service provider via the  
37 Internet without prior authorization from the customer to whom the  
38 telephone records relate.

39 (b) No person shall knowingly purchase, receive, or ask another person to obtain  
40 or purchase or attempt to obtain or purchase a telephone record of a third person without  
41 the prior authorization of the third person to whom the telephone record relates knowing  
42 or having reason to know that the other person will obtain the telephone record  
43 fraudulently.

1       (c) No person shall sell or offer to sell a telephone record that was obtained  
2 without the customer's prior consent knowing or having reason to know that the  
3 telephone record was obtained fraudulently.

4 **"§ 14-113.32. Exceptions.**

5       (a) The provisions of G.S. 14-113.31 shall not apply to any of the following:

6           (1) Any lawfully authorized investigative, protective, or intelligence  
7 activity of a law enforcement agency in connection with the official  
8 duties of the law enforcement agency.

9           (2) A disclosure by a telephone service provider if the telephone service  
10 provider reasonably believes the disclosure is necessary to: (i) provide  
11 telephone service to a customer, including sharing telephone records  
12 with one of the provider's affiliates or (ii) protect an individual or  
13 service provider from fraudulent, abusive, or unlawful use of telephone  
14 service or a telephone record.

15           (3) A disclosure by a telephone service provider to the National Center for  
16 Missing and Exploited Children.

17           (4) A disclosure by a telephone service provider that is authorized by State  
18 or federal law or regulation.

19           (5) A disclosure by a telephone service provider to a governmental entity  
20 if the provider reasonably believes there is an emergency involving  
21 immediate danger of death or serious physical injury.

22           (6) Testing of a telephone service provider's security procedures or  
23 systems for maintaining the confidentiality of customers' telephone  
24 records.

25       (b) Nothing in this act shall be construed to expand the obligation or duty of a  
26 telephone service provider to maintain the confidentiality of telephone records beyond  
27 the requirements of this act or federal law or regulation. Any telephone service provider  
28 or agent, employee, or representative of a telephone service provider who reasonably  
29 and in good faith discloses telephone records shall not be liable criminally or civilly in  
30 state court if the disclosure is later determined to be in violation of this act.

31 **"§ 14-113.33. Punishment; liability.**

32       (a) Unless the conduct is covered under some other provision of law providing  
33 greater punishment, any person who violates this Article is guilty of a Class G felony. In  
34 any criminal proceeding brought under this Article, the crime is considered to be  
35 committed in the county where the customer resides, where the perpetrator resides,  
36 where any part of the offense took place, or in any other county instrumental to the  
37 completion of the offense, regardless of whether the defendant was ever actually present  
38 in that county.

39       (b) A customer whose telephone records were obtained, sold, or solicited in  
40 violation of this Article may bring an action against any person who has violated  
41 G.S. 14.113.31 in civil court to recover the following:

42           (1) The amount of the customer's pecuniary loss suffered because of a  
43 violation of this Article, if proof of the loss is submitted to the

1                    satisfaction of the court, or one thousand dollars (\$1,000), whichever is  
2                    greater.

3                    (2) The amount of any gain to the violator as a result of the violation.

4                    (c) In an action brought pursuant to subsection (b) of this section, the court may  
5                    award a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant  
6                    willfully engaged in the act or practice, and the court may award reasonable attorneys'  
7                    fees to a prevailing defendant if the court finds that the plaintiff knew, or should have  
8                    known, that the action was frivolous and malicious.

9                    (d) Actions brought pursuant to subsection (b) of this section shall be tried in the  
10                    county where the plaintiff resides at the time of the commencement of the action.

11                    (e) A violation of G.S. 14-113.31 is a violation of G.S. 75-1.1."

12                    **SECTION 2.** This act is effective when it becomes law.