

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 613, 1030 & 899
93RD GENERAL ASSEMBLY

Reported from the Committee on Utilities April 20, 2006 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 613, 1030 & 899 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

3468L.13C

AN ACT

To repeal section 570.223, RSMo, and to enact in lieu thereof three new sections relating to obtaining, receiving, and selling telephone records without consent, with penalty provisions and an emergency clause for certain sections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 570.223, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 570.222, 570.223, and 1, to read as follows:

570.222. 1. As used in this section the following terms shall mean:

- (1) "Procure", in regard to a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration;
- (2) "Telecommunications carrier", any corporation providing telecommunications service as defined in section 386.020, RSMo. For purposes of this section only, the definition of telecommunications carrier includes a commercial mobile radio service provider defined in 47 U.S.C. 332(d);
- (3) "Telephone record", any information retained by a telecommunications carrier that relates to the telephone numbers dialed by the customer or the incoming numbers of calls directed to a customer, or other data related to such calls typically contained on a

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 customer telephone bill such as the time the call started and ended, the duration of calls,
12 the time of day calls were made and any charges applied. For purposes of this section any
13 information collected and retained by or on behalf of customers utilizing Caller I.D., or
14 other similar technology, does not constitute a telephone record.

15 2. A person commits the crime of obtaining, receiving, or selling a telephone record
16 without consent of the customer if such person:

17 (1) Knowingly procures, attempts to procure, solicits, or conspires with another to
18 procure, a telephone record of any resident of this state without the authorization of the
19 customer to whom the record pertains; or

20 (2) By fraudulent, deceptive, or false means:

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

23 (b) Receives a telephone record of any resident of this state knowing that such
24 record has been obtained without the authorization of the customer to whom the record
25 pertains or by fraudulent, deceptive, or false means.

26 3. Obtaining, receiving, or selling a telephone record without consent of the
27 customer is a felony punishable as follows:

28 (1) A fine of not less than five hundred dollars nor more than one thousand dollars
29 or imprisonment for not more than two years, or both such fine and imprisonment if the
30 violation of subsection 2 of this section involves a single telephone record of a resident of
31 this state;

32 (2) A fine of not less than one thousand dollars nor more than five thousand dollars
33 or imprisonment for not more than five years, or both such fine and imprisonment if the
34 violation of subsection 2 of this section involves two to ten telephone records of a resident
35 of this state;

36 (3) A fine of not less than five thousand dollars and not more than ten thousand
37 dollars or imprisonment for not more than ten years, or both such fine and imprisonment
38 if the violation of subsection 2 of this section involves more than ten telephone records of
39 a resident of this state.

40 4. No provision of this section shall be construed so as to prevent any action by a
41 law enforcement agency or state agency with jurisdiction over telecommunications
42 companies as defined in section 386.020, RSMo, or any officer, employee, or agent of such
43 agency, to obtain telephone records in connection with the performance of the official
44 duties of the agency.

45 **5. No provision of this section shall be construed to prohibit a telecommunications**
46 **carrier from obtaining, using, disclosing, or permitting access to any telephone record,**
47 **either directly or indirectly through its agents:**

48 **(1) As otherwise authorized by law;**

49 **(2) With the lawful consent of the customer or subscriber;**

50 **(3) As may be necessarily incident to the rendition of the service or to the protection**
51 **of the rights or property of the provider of that service, or to protect users of those services**
52 **and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such**
53 **services;**

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

57 **(5) To the National Center for Missing and Exploited Children, in connection with**
58 **a report submitted thereto under section 227 of the Victims of Child Abuse Act of 1990 (42**
59 **U.S.C. 13032, as amended);**

60 **(6) No provision of this section shall apply to or expand upon the obligations and**
61 **duties of any telephone company, its agents, employees or contractors to protect telephone**
62 **records beyond those otherwise established by federal or state law, including but not**
63 **limited to provisions governing Customer Proprietary Network Information in section 222**
64 **of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations**
65 **promulgated thereunder.**

66 **6. In a civil action, a customer or telecommunications carrier or both whose**
67 **telephone records were procured, sold, or received in violation of subsection 2 of this**
68 **section may recover from the person or entity that violated subsection 2 of this section such**
69 **relief as may be appropriate including, but not limited to, the following:**

70 **(1) Such preliminary and other equitable or declaratory relief as may be**
71 **appropriate;**

72 **(2) Damages as described in subsection 7 of this section; and**

73 **(3) Reasonable attorney fees and other litigation costs reasonably incurred.**

74 **7. The court may assess as damages in a civil action under this section the sum of**
75 **the actual damages suffered by the plaintiff and any profits made by the violator as a result**
76 **of the violation, but in no case shall a person entitled to recover receive less than the sum**
77 **of one thousand dollars. The court may assess as punitive damages an amount not to**
78 **exceed ten times the amount awarded for actual damages and illicit profit. In the case of**
79 **a successful action to enforce liability under this section, the court may assess costs of the**
80 **action, together with reasonable attorney fees determined by the court.**

81 **8. A civil action under this section may not be commenced later than two years**
82 **after the date upon which the claimant first discovered or had a reasonable opportunity**
83 **to discover the violation.**

84 **9. Telecommunications carriers that maintain telephone records of a resident of**
85 **this state shall establish reasonable procedures to protect against unauthorized or**
86 **fraudulent disclosure of such records which could result in substantial harm or**
87 **inconvenience to any customer. For purposes of this section, a telecommunications**
88 **carrier's procedures shall be deemed reasonable if the telecommunications carrier complies**
89 **with the provisions governing Customer Proprietary Network Information in section 222**
90 **of the Communications Act of 1934, as amended, 47 U.S.C. 222 and regulations**
91 **promulgated thereunder.**

92 **10. No private right of action is authorized under subsection 9 of this section.**

93 **11. No provision of this section shall apply to a telecommunications carrier, its**
94 **agents and representatives or agents or representatives, who reasonably and in good faith**
95 **acts under subsection 5 or 9 of this section, notwithstanding any later determination that**
96 **such action was not in fact authorized.**

 570.223. 1. A person commits the crime of identity theft if he or she knowingly and with
2 the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts to obtain, transfer
3 or use, one or more means of identification not lawfully issued for his or her use.

4 2. The term "means of identification" as used in this section includes, but is not limited
5 to, the following:

- 6 (1) Social Security numbers;
- 7 (2) Drivers license numbers;
- 8 (3) Checking account numbers;
- 9 (4) Savings account numbers;
- 10 (5) Credit card numbers;
- 11 (6) Debit card numbers;
- 12 (7) Personal identification (PIN) code;
- 13 (8) Electronic identification numbers;
- 14 (9) Digital signatures;
- 15 (10) Any other numbers or information that can be used to access a person's financial
16 resources;
- 17 (11) Biometric data;
- 18 (12) Fingerprints;
- 19 (13) Passwords;
- 20 (14) Parent's legal surname prior to marriage;

21 (15) Passports; [or]

22 (16) Birth certificates; or

23 **(17) Telephone record as defined in section 570.222.**

24 3. A person found guilty of identity theft shall be punished as follows:

25 (1) Identity theft or attempted identity theft which does not result in the theft or
26 appropriation of credit, money, goods, services, or other property is a class B misdemeanor;

27 (2) Identity theft which results in the theft or appropriation of credit, money, goods,
28 services, or other property not exceeding five hundred dollars in value is a class A misdemeanor;

29 (3) Identity theft which results in the theft or appropriation of credit, money, goods,
30 services, or other property exceeding five hundred dollars and not exceeding five thousand
31 dollars in value is a class C felony;

32 (4) Identity theft which results in the theft or appropriation of credit, money, goods,
33 services, or other property exceeding five thousand dollars and not exceeding fifty thousand
34 dollars in value is a class B felony;

35 (5) Identity theft which results in the theft or appropriation of credit, money, goods,
36 services, or other property exceeding fifty thousand dollars in value is a class A felony.

37 4. In addition to the provisions of subsection 3 of this section, the court may order that
38 the defendant make restitution to any victim of the offense. Restitution may include payment
39 for any costs, including attorney fees, incurred by the victim:

40 (1) In clearing the credit history or credit rating of the victim; and

41 (2) In connection with any civil or administrative proceeding to satisfy any debt, lien,
42 or other obligation of the victim arising from the actions of the defendant.

43 5. In addition to the criminal penalties in subsections 3 and 4 of this section, any person
44 who commits an act made unlawful by subsection 1 of this section shall be liable to the person
45 to whom the identifying information belonged for civil damages of up to five thousand dollars
46 for each incident, or three times the amount of actual damages, whichever amount is greater. A
47 person damaged as set forth in subsection 1 of this section may also institute a civil action to
48 enjoin and restrain future acts that would constitute a violation of subsection 1 of this section.
49 The court, in an action brought under this subsection, may award reasonable attorneys' fees to
50 the plaintiff.

51 6. If the identifying information of a deceased person is used in a manner made unlawful
52 by subsection 1 of this section, the deceased person's estate shall have the right to recover
53 damages pursuant to subsection 5 of this section.

54 7. Civil actions under this section must be brought within five years from the date on
55 which the identity of the wrongdoer was discovered or reasonably should have been discovered.

56 8. Civil action pursuant to this section does not depend on whether a criminal

57 prosecution has been or will be instituted for the acts that are the subject of the civil action. The
58 rights and remedies provided by this section are in addition to any other rights and remedies
59 provided by law.

60 9. This section and section 570.224 shall not apply to the following activities:

61 (1) A person obtains the identity of another person to misrepresent his or her age for the
62 sole purpose of obtaining alcoholic beverages, tobacco, going to a gaming establishment, or
63 another privilege denied to minors. Nothing in this subdivision shall affect the provisions of
64 subsection 10 of this section;

65 (2) A person obtains means of identification or information in the course of a bona fide
66 consumer or commercial transaction;

67 (3) A person exercises, in good faith, a security interest or right of offset by a creditor
68 or financial institution;

69 (4) A person complies, in good faith, with any warrant, court order, levy, garnishment,
70 attachment, or other judicial or administrative order, decree, or directive, when any party is
71 required to do so;

72 (5) A person is otherwise authorized by law to engage in the conduct that is the subject
73 of the prosecution.

74 10. Any person who obtains, transfers, or uses any means of identification for the
75 purpose of manufacturing and providing or selling a false identification card to a person under
76 the age of twenty-one for the purpose of purchasing or obtaining alcohol shall be guilty of a class
77 A misdemeanor.

78 11. Notwithstanding the provisions of subdivision (1) or (2) of subsection 3 of this
79 section, every person who has previously pled guilty to or been found guilty of identity theft or
80 attempted identity theft, and who subsequently pleads guilty to or is found guilty of identity theft
81 or attempted identity theft of credit, money, goods, services, or other property not exceeding five
82 hundred dollars in value is guilty of a class D felony and shall be punished accordingly.

83 12. The value of property or services is its highest value by any reasonable standard at
84 the time the identity theft is committed. Any reasonable standard includes, but is not limited to,
85 market value within the community, actual value, or replacement value.

86 13. If credit, property, or services are obtained by two or more acts from the same person
87 or location, or from different persons by two or more acts which occur in approximately the same
88 location or time period so that the identity thefts are attributable to a single scheme, plan, or
89 conspiracy, the acts may be considered as a single identity theft and the value may be the total
90 value of all credit, property, and services involved.

**Section 1. Upon the written request of a subscriber, a wireless telephone provider
2 shall not transmit the wireless phone records of the subscriber via electronic mail or**

3 **facsimile. Such provider shall only transmit such records through United States mail to**
4 **the billing address of the subscriber or make such records available through a password-**
5 **protected web site that utilizes secure socket layer or similar encryption during the session.**

Section B. Because of the need to protect the consumers of the state of Missouri, section
2 A of this act is deemed necessary for the immediate preservation of the public health, welfare,
3 peace and safety, and is hereby declared to be an emergency act within the meaning of the
4 constitution, and section A of this act shall be in full force and effect upon its passage and
5 approval.

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