

SECOND REGULAR SESSION

# HOUSE BILL NO. 1632

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (120) (Sponsor), RECTOR, WILSON (119), DAY, AVERY, HUNTER, BIVINS, SMITH (118), WETER, SANDERS BROOKS, WILDBERGER, TILLEY, WOOD, YAEGER, FLOOK, RUESTMAN, EMERY, YATES, MUNZLINGER, BROWN (30) AND MCGHEE (Co-sponsors).

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

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### AN ACT

To amend chapter 570, RSMo, by adding thereto one new section relating to obtaining, receiving, and selling telephone and cellular phone records without consent, with penalty provisions.

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

Section A. Chapter 570, RSMo, is amended by adding thereto one new section, to be known as section 570.222, to read as follows:

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

**(1) "Procedure", 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) "Telephone record", any proprietary or personally identifiable information retained by a telecommunications carrier about its wireless or wireline service customers. Telephone record includes, but is not limited to, information that relates to the telephone numbers dialed by the customer or the incoming numbers of calls directed to a customer, or other data typically contained on a customer telephone bill such as the type of rate plan to which the customer subscribes, the duration of calls, the time of day calls were made and any charges applied.**

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

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.

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

16           **(2) By fraudulent, deceptive, or false means:**

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

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

22           **3. Obtaining, receiving, or selling a telephone record without consent is a felony**  
23 **punishable as follows:**

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

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

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

36           **4. No provision of this section shall be construed so as to prevent any action by a**  
37 **law enforcement agency, or any officer, employee, or agent of such agency, to obtain**  
38 **telephone records in connection with the performance of the official duties of the agency.**

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

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

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

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

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

51           **(5) To the National Center for Missing and Exploited Children, in connection with**  
52 **a report submitted thereto under section 227, RSMo, of the Victims of Child Abuse Act of**  
53 **1990.**

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

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

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

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

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

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

72           **9. Telecommunications carriers that maintain telephone records of a resident of**  
73 **this state shall establish reasonable procedures to protect against unauthorized or**  
74 **fraudulent disclosure of such records which could result in substantial harm or**  
75 **inconvenience to any customer.**

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

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

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