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BILL ANALYSIS

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Senate Bill 1202 (as enrolled)
Sponsor: Senator Bruce Patterson
Senate Committee: Technology and Energy
House Committee: Energy and Technology

PUBLIC ACT 246 of 2006

Date Completed: 7-24-06

RATIONALE

On May 3, 2006, the Federal Trade Commission (FTC) announced that it had filed complaints in Federal court against five internet-based businesses that obtained confidential cell phone records from wireless providers by posing as customers, in a practice called "pretexting", and sold that information to third parties. The FTC maintains that this practice violates the FTC Act, and has requested the court to prohibit the sales and order the companies to relinquish any money they received for providing the records. Apparently, certain online companies charge \$50 to \$200 to obtain records of a person's calls, typically those made over the previous 30 days, without the person's authorization. There also have been reports of purchasers' using the information in the records to harass or threaten others. To prevent these practices in Michigan, it was suggested that confidential telephone records be added to the State law prohibiting the use of a person's identifying information to obtain something of value or commit an illegal act, and that procuring, selling, or receiving phone records without the authorization of the person to whom they pertain also be prohibited.

CONTENT

The bill amended the Identity Theft Protection Act to prohibit a person from using the personal identifying information of another person to obtain his or her confidential telephone record; and from knowingly procuring, selling, or receiving the confidential telephone

record of another person without his or her authorization.

The bill took effect on June 30, 2006.

Section 5 of the Act prohibits a person from using or attempting to use the personal identifying information of another person to obtain credit, goods, services, money, property, a vital record, medical records or information, or employment, or to commit another unlawful act, either with intent to defraud or violate the law, or by concealing, withholding, or misrepresenting the violator's identity. The bill also prohibits a person from engaging in those acts to obtain a confidential telephone record.

(A violation of Section 5 is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$25,000. The Act defines "personal identifying information" as a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts; the term includes, for example, a driver license number, telephone number, Social Security number, credit card number, and mother's maiden name.)

The bill added Section 5a to prohibit a person from doing any of the following:

- Knowingly procuring, attempting to procure, or soliciting or conspiring with another to procure a confidential telephone record of any Michigan resident without the authorization of the customer

- to whom the record pertains or by fraudulent, deceptive, or false means.
- Knowingly selling or attempting to sell a confidential telephone record of any Michigan resident without the authorization of the customer to whom the record pertains.
- Receiving a confidential telephone record of any Michigan resident, knowing that the record was obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means.

The bill specifies that nothing in Section 5a prohibits any action by a law enforcement agency or any officer, employee, or agent of a law enforcement agency from obtaining confidential telephone records in connection with the performance of the agency's official duties. Additionally, it does not prohibit a telecommunication provider from obtaining, using, disclosing, or permitting access to any confidential telephone record, either directly or indirectly, through its agents, subcontractors, affiliates, or representatives in the normal course of business. Section 5a does not expand the obligations and duties of a telecommunication provider to protect confidential telephone records beyond those obligations and duties otherwise established by Federal and State law.

The bill defines "confidential telephone record" as any of the following:

- Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a service offered by a telecommunication provider subscribed to by any customer of that provider.
- Information that is made available to a telecommunication provider by a customer solely by virtue of the relationship between the provider and the customer.
- Information contained in any bill related to the product or service offered by a provider and received by any customer of that provider.

"Telecommunication provider" means all of the following:

- A provider of IP-enabled voice service.
- A provider of any telecommunication service.

- A telecommunication provider as that term is defined in the Michigan Telecommunications Act (MTA).

"IP-enabled voice service" means an interconnected voice over internet protocol service that enables real-time, two-way voice communications, requires a broadband connection from the user's location using IP-compatible equipment, and permits users generally to receive calls that originate on and to terminate calls to the public switched telephone network.

"Telecommunication service" means all of the following:

- Cellular telephone service.
- Broadband personal communication service.
- Covered specialized mobile radio.
- A telecommunication service as defined in the MTA.

"Covered specialized mobile radio service" means a commercial mobile radio service that offers real-time, two-way switched voice or data service and is interconnected with the public switched network using an in-network switching facility.

(The MTA defines "telecommunication provider" as a person that for compensation provides one or more telecommunication services. Under the MTA, "telecommunication service" means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.)

MCL 445.65 & 445.65a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Telephone and cell phone companies are prohibited by Federal law from releasing customer records and other account information to anyone except customers, and typically take steps to verify the identity of a person requesting the information. A provider can be tricked into releasing the records, however, by an unscrupulous actor who is able to provide personal information,

such as the customer's password or the last four digits of his or her Social Security number. The practice of posing as a telephone customer to obtain his or her records constitutes a serious breach of privacy, and selling those records to another person compounds the violation.

Federal law provides for the confidentiality of financial records, and Michigan law prohibits the use of an individual's personal identifying information to obtain his or her medical or vital records. Previously, however, there was nothing in State law to safeguard the privacy of telephone records. Some telephone customers might be trying to protect themselves from people who have physically abused them, or who are stalking or otherwise harassing them. Reportedly, criminals have been able to threaten police officers by purchasing their cell phone records. In order to protect the privacy and safety of individuals, it is critical that confidential telephone records have the same level of protection as given to the records that already were specified in the law.

The FTC is pursuing companies that obtain individuals' phone records by underhanded means under Federal law, and various proposals to criminalize pretexting have been introduced in Congress. These include H.R. 4709, proposing the "Telephone Records and Privacy Protection Act of 2006", which has been passed by the U.S. House of Representatives. It is important that privacy protections and criminal penalties also be implemented at the State level.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of obtaining a confidential telephone record involving the factors described in the Act. There also are no data to indicate how many offenders previously have been convicted of violating the Act. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional

penal fine revenue will benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.