
SUBSTITUTE SENATE BILL 5350

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline and Hargrove)

READ FIRST TIME 02/07/07.

1 AN ACT Relating to telephone records; amending RCW 9.26A.140 and
2 19.86.090; and adding a new section to chapter 19.86 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.26A.140 and 2006 c 193 s 1 are each amended to read
5 as follows:

6 (1) A person is guilty of the unauthorized sale, transfer, or
7 procurement of telephone records if the person:

8 (a) (~~Intentionally~~) Knowingly sells or transfers without
9 consideration to any public or private third party the telephone record
10 of any resident of this state without the authorization of the customer
11 to whom the record pertains;

12 (b) By fraudulent, deceptive, or false means obtains the telephone
13 record of any resident of this state to whom the record pertains;

14 (c) Knowingly purchases the telephone record of any resident of
15 this state without the authorization of the customer to whom the record
16 pertains; or

17 (d) Knowingly receives the telephone record of any resident of this
18 state without the authorization of the customer to whom the record
19 pertains.

1 (2) This section does not apply to:

2 (a) Any action by a government agency, or any officer, employee, or
3 agent of such agency, to obtain telephone records in connection with
4 the performance of (~~the official~~) rate setting duties of the agency;

5 (b) A telecommunications company that obtains, uses, discloses, or
6 permits access to any telephone record, either directly or indirectly
7 through its agents, that is:

8 (i) With the lawful consent of the customer or subscriber;

9 (ii) Authorized by law, including, but not limited to:

10 (A) Providing telephone records to a government agency, or any
11 officer, employee, or agent of such agency, in response to a judicial
12 subpoena, for which notice to the customer to whom the records pertain
13 shall not be required; or

14 (B) Providing telephone records in response to discovery in civil
15 or criminal litigation, with respect to one or more persons who are
16 given notice and an opportunity to be heard in a judicial proceeding;

17 (iii) Necessarily incident to the rendition of the service or to
18 the protection of the rights or property of the provider of that
19 service, or to protect users of those services and other carriers from
20 fraudulent, abusive, or unlawful use of, or subscription to, such
21 services; or

22 (iv) In connection with the sale or transfer of all or part of its
23 business, or the purchase or acquisition of a portion or all of a
24 business, or the migration of a customer from one carrier to another.

25 (3) A violation of subsection (1)(a), (b), or (c) of this section
26 is a class C felony. A violation of subsection (1)(d) of this section
27 is a gross misdemeanor.

28 (4) In a prosecution under subsection (1)(a) of this section, the
29 state is not required to show that the content of the conversation was
30 recorded or listened to.

31 (5) A person who violates this section is subject to legal action
32 for injunctive relief and either actual damages, including mental pain
33 and suffering, or liquidated damages of five thousand dollars per
34 violation, whichever is greater. Reasonable attorneys' fees and other
35 costs of litigation are also recoverable.

36 (~~(5)~~) (6) The definitions in this subsection apply throughout
37 this section unless the context clearly requires otherwise.

1 (a) "Telecommunications company" has the meaning provided in RCW
2 9.26A.100 and includes "radio communications service companies" as
3 defined in RCW 80.04.010.

4 (b) "Telephone record" means information retained by a
5 telecommunications company that relates to the telephone number dialed
6 by the customer or the incoming number or call directed to a customer,
7 or other data related to such calls typically contained on a customer
8 telephone bill such as the time the call started and ended, the
9 duration of the call, the time of day the call was made, and any
10 charges applied. "Telephone record" does not include any information
11 collected and retained by customers using caller identification or
12 other similar technologies.

13 (c) "Procure" means to obtain by any means, whether electronically,
14 in writing, or in oral form, with or without consideration.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.86 RCW
16 to read as follows:

17 (1) A violation of RCW 9.26A.140(1)(a) is declared to be an unfair
18 or deceptive act or practice in the conduct of trade or commerce for
19 the purpose of application of this act.

20 (2) A violation shall be found when the violator is in the regular
21 course of business. The violator need not be in the business of
22 telephone communications, telecommunications, data processing, or
23 information technology functions that handle billing.

24 (3) For the purposes of this section, "violator" means a person,
25 firm, corporation, or association.

26 **Sec. 3.** RCW 19.86.090 and 1987 c 202 s 187 are each amended to
27 read as follows:

28 Any person who is injured in his or her business or property by a
29 violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, (~~(or)~~)
30 19.86.060, or section 2 of this act, or any person so injured because
31 he or she refuses to accede to a proposal for an arrangement which, if
32 consummated, would be in violation of RCW 19.86.030, 19.86.040,
33 19.86.050, (~~(or)~~) 19.86.060, or section 2 of this act, may bring a
34 civil action in the superior court to enjoin further violations, to
35 recover the actual damages sustained by him or her, or both, together
36 with the costs of the suit, including a reasonable attorney's fee, and

1 the court may in its discretion, increase the award of damages to an
2 amount not to exceed three times the actual damages sustained:
3 PROVIDED, That such increased damage award for violation of RCW
4 19.86.020 may not exceed ten thousand dollars: PROVIDED FURTHER, That
5 such person may bring a civil action in the district court to recover
6 his or her actual damages, except for damages which exceed the amount
7 specified in RCW 3.66.020, and the costs of the suit, including
8 reasonable attorney's fees. The district court may, in its discretion,
9 increase the award of damages to an amount not more than three times
10 the actual damages sustained, but such increased damage award shall not
11 exceed the amount specified in RCW 3.66.020. For the purpose of this
12 section "person" shall include the counties, municipalities, and all
13 political subdivisions of this state.

14 Whenever the state of Washington is injured by reason of a
15 violation of RCW 19.86.030, 19.86.040, 19.86.050, (~~or~~) 19.86.060, or
16 section 2 of this act, it may sue therefor in the superior court to
17 recover the actual damages sustained by it and to recover the costs of
18 the suit including a reasonable attorney's fee.

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