

CHAPTER 159

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 06-091

BY SENATOR(S) Tupa, Groff, Bacon, Entz, Fitz-Gerald, Gordon, Hanna, Isgar, Johnson, Jones, Keller, Lamborn, Mitchell, Owen, Shaffer, Tapia, Taylor, Tochtrop, Traylor, Williams, and Windels;
also REPRESENTATIVE(S) Riesberg, Coleman, Gallegos, Todd, Benefield, Berens, Borodkin, Carroll M., Carroll T., Cerbo, Frangas, Hall, Kerr J., Knoedler, Larson, McGihon, Paccione, Pommer, Romanoff, Schultheis, and Weissmann.

AN ACT**CONCERNING A PROHIBITION AGAINST USING TELEPHONE RECORDS WITHOUT AUTHORIZATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 13 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-13-125. Telephone records - sale or purchase. (1) A PERSON COMMITS UNAUTHORIZED TRADING IN TELEPHONE RECORDS IF THE PERSON, WITHOUT LAWFUL AUTHORIZATION:

- (a) KNOWINGLY PROCURES OR ATTEMPTS TO PROCURE A TELEPHONE RECORD;
- (b) KNOWINGLY SELLS, BUYS, OFFERS TO SELL, OR OFFERS TO BUY A TELEPHONE RECORD;
- (c) POSSESSES A TELEPHONE RECORD WITH THE INTENT TO USE SUCH RECORD, OR INFORMATION CONTAINED IN SUCH RECORD, TO HARM ANOTHER PERSON; OR
- (d) RECEIVES A TELEPHONE RECORD OF A RESIDENT OF COLORADO KNOWING THAT SUCH RECORD WAS OBTAINED WITHOUT LAWFUL AUTHORIZATION OR BY FRAUD OR DECEPTION.

(2) FOR THE PURPOSES OF THIS SECTION:

(a) "LAWFUL AUTHORIZATION" MEANS AUTHORIZATION FROM THE PERSON OR THE AGENT OF THE PERSON TO WHOM THE TELEPHONE NUMBER IS ASSIGNED OR FROM THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PERSON OR THE AGENT OF THE PERSON WHO PURCHASES THE TELEPHONE SERVICE.

(b) "PROCURE" MEANS TO OBTAIN BY ANY MEANS, WITH OR WITHOUT CONSIDERATION.

(c) "TELECOMMUNICATIONS PROVIDER" MEANS A COMPANY AND ITS AFFILIATES THAT PROVIDE COMMERCIAL TELEPHONE SERVICE TO A CUSTOMER, IRRESPECTIVE OF THE TECHNOLOGY EMPLOYED, INCLUDING, WITHOUT LIMITATION, WIRED, WIRELESS, CABLE, BROADBAND, SATELLITE, OR VOICE-OVER-INTERNET PROTOCOL.

(d) (I) "TELEPHONE RECORD" MEANS INFORMATION RETAINED BY A TELECOMMUNICATIONS PROVIDER THAT RELATES TO THE NUMBER DIALED BY THE CUSTOMER OR SUBSCRIBER, TO THE NUMBER OF A PERSON WHO DIALED THE CUSTOMER, OR TO OTHER DATA THAT ARE TYPICALLY CONTAINED ON A CUSTOMER'S TELEPHONE BILL FOR EITHER WIRED OR WIRELESS TELEPHONE SERVICE, INCLUDING, WITHOUT LIMITATION, THE TIME A CALL WAS MADE, THE DURATION OF A CALL, OR THE CHARGES FOR A CALL.

(II) "TELEPHONE RECORD" SHALL NOT INCLUDE A DIRECTORY LISTING OR INFORMATION COLLECTED AND RETAINED BY CUSTOMERS UTILIZING CALLER IDENTIFICATION TECHNOLOGY OR SIMILAR TECHNOLOGY.

(3) (a) THIS SECTION SHALL NOT PROHIBIT A PEACE OFFICER, A LAW ENFORCEMENT AGENCY, OR AN EMPLOYEE OR AGENT OF A LAW ENFORCEMENT AGENCY FROM OBTAINING TELEPHONE RECORDS IN THE PERFORMANCE OF THEIR DUTIES OR AS AUTHORIZED BY LAW.

(b) THIS SECTION SHALL NOT PROHIBIT A TELECOMMUNICATIONS PROVIDER FROM OBTAINING, USING, DISCLOSING, OR PERMITTING ACCESS TO A TELEPHONE RECORD WHEN SUCH ACCESS:

(I) IS OTHERWISE AUTHORIZED BY COLORADO LAW, ANY OTHER STATE LAW, OR FEDERAL LAW, INCLUDING, WITHOUT LIMITATION, THE RULES PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION;

(II) IS NECESSARY TO OPERATIONS OF THE TELECOMMUNICATIONS PROVIDER, OR TO PROVIDE SERVICES OR PRODUCTS, OR TO PROTECT THE RIGHTS AND PROPERTY OF THE TELECOMMUNICATIONS PROVIDER;

(III) PROTECTS USERS OF THE SERVICE AND OTHER TELECOMMUNICATIONS PROVIDERS FROM FRAUDULENT, ABUSIVE, OR UNLAWFUL USE OF OR SUBSCRIPTION TO SUCH SERVICE;

(IV) IS MADE TO A GOVERNMENT ENTITY IF THE TELECOMMUNICATIONS PROVIDER REASONABLY BELIEVES THAT AN EMERGENCY INVOLVING IMMEDIATE DANGER OF SERIOUS PHYSICAL INJURY TO ANY PERSON JUSTIFIES DISCLOSURE OF THE INFORMATION;

(V) IS MADE TO THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN OR ITS SUCCESSOR ENTITY AND CONCERNS A REPORT SUBMITTED UNDER 42 U.S.C. SEC. 13032;

(VI) IS IN CONNECTION WITH THE SALE, PURCHASE, OR TRANSFER OF ALL OR PART OF A TELECOMMUNICATIONS PROVIDER'S BUSINESS; OR

(VII) IS IN CONNECTION WITH THE MIGRATION OF A CUSTOMER FROM ONE TELECOMMUNICATIONS PROVIDER TO ANOTHER.

(c) THIS SECTION SHALL NOT BE CONSTRUED TO IMPLY THAT TELEPHONE RECORDS BELONG TO A PERSON OTHER THAN THE TELECOMMUNICATIONS PROVIDER THAT MAINTAINS THEM.

(4) UNAUTHORIZED TRADING IN TELEPHONE RECORDS IS A CLASS 1 MISDEMEANOR.

(5) THIS SECTION SHALL NOT APPLY TO A TELECOMMUNICATIONS PROVIDER OR ITS AGENTS OR REPRESENTATIVES WHO REASONABLY AND IN GOOD FAITH ACT PURSUANT TO COLORADO LAW, ANY OTHER STATE LAW, OR FEDERAL LAW, INCLUDING, WITHOUT LIMITATION, THE RULES PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION, NOTWITHSTANDING A LATER DETERMINATION THAT THE ACT WAS NOT AUTHORIZED BY SUCH LAW.

SECTION 2. Part 1 of article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-21-122.5. Civil liability for trading in telephone records. (1) IN ADDITION TO ANY OTHER REMEDIES PROVIDED UNDER THIS ARTICLE, A PERSON WHO SUFFERS DAMAGES AS A RESULT OF A VIOLATION OF SECTION 18-13-125, C.R.S., SHALL HAVE A PRIVATE CIVIL RIGHT OF ACTION AGAINST THE PERPETRATOR WHO COMMITTED THE CRIME, REGARDLESS OF WHETHER THE PERPETRATOR WAS CONVICTED OF THE CRIME. IN SUCH ACTION, THE PLAINTIFF SHALL BE ENTITLED TO ACTUAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REPUTATION OR CREDIT RATING, PUNITIVE DAMAGES, AND ATTORNEY FEES AND COSTS. IF SUCH DAMAGES ARE LESS THAN FIVE THOUSAND DOLLARS PER TELEPHONE RECORD, THE PLAINTIFF SHALL BE ENTITLED TO STATUTORY DAMAGES OF FIVE THOUSAND DOLLARS PER TELEPHONE RECORD PROCURED, BOUGHT, SOLD, POSSESSED, OR RECEIVED IN VIOLATION OF SECTION 18-13-125, C.R.S.

(2) NO TELECOMMUNICATIONS PROVIDER SHALL BE LIABLE FOR DAMAGES IN A CLAIM BASED, IN WHOLE OR IN PART, ON ACTS OF THIRD PARTIES THAT VIOLATE SECTION 18-13-125, C.R.S.

(3) THIS SECTION SHALL NOT BE CONSTRUED TO CREATE A NEW DUTY OR EXPAND THE EXISTING DUTY OF A TELECOMMUNICATIONS PROVIDER TO PROTECT TELEPHONE RECORDS BEYOND THOSE OTHERWISE ESTABLISHED BY COLORADO LAW, ANY OTHER STATE LAW, OR FEDERAL LAW, INCLUDING, WITHOUT LIMITATION, THE RULES PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION.

(4) THIS SECTION SHALL NOT APPLY TO A TELECOMMUNICATIONS PROVIDER OR ITS AGENTS OR REPRESENTATIVES WHO REASONABLY AND IN GOOD FAITH ACT PURSUANT TO COLORADO LAW, ANY OTHER STATE LAW, OR FEDERAL LAW, INCLUDING, WITHOUT LIMITATION, THE RULES PROMULGATED BY THE FEDERAL COMMUNICATIONS COMMISSION, NOTWITHSTANDING A LATER DETERMINATION THAT

THE ACT WAS NOT AUTHORIZED BY SUCH LAW.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to offenses committed on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 24, 2006