

Calendar No. 368

109TH CONGRESS
2ND SESSION

S. 2178

To make the stealing and selling of telephone records a criminal offense.

IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2006

Mr. SCHUMER (for himself, Mr. SPECTER, Mr. NELSON of Florida, Mr. BURNS, Mr. CORNYN, Mr. REID, Ms. SNOWE, Mr. DORGAN, Ms. CANTWELL, Mr. BAYH, Mr. KERRY, Mr. DEWINE, Mrs. BOXER, Mrs. FEINSTEIN, Mr. LEVIN, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. KYL, Mr. BINGAMAN, Mr. KOHL, Mr. STEVENS, Mr. DURBIN, Mr. COLEMAN, Mr. SANTORUM, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 2, 2006

Reported by Mr. SPECTER, without amendment

A BILL

To make the stealing and selling of telephone records a criminal offense.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Telephone
5 Records Protection Act of 2006”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) telephone records can be of great use to
4 criminals because the information contained in call
5 logs listed in such records include a wealth of per-
6 sonal data;

7 (2) many call logs reveal the names of tele-
8 phone users' doctors, public and private relation-
9 ships, business associates, and more;

10 (3) although other personal information such as
11 social security numbers may appear on public docu-
12 ments, which can be accessed by data brokers, the
13 only warehouse of telephone records is located at the
14 phone companies themselves;

15 (4) telephone records may be accessed without
16 authorization of the customer by—

17 (A) an employee of the telephone company
18 selling the data;

19 (B) “pretexting,” whereby a data broker or
20 other person pretends to be the owner of the
21 phone and convinces the telephone company's
22 employees to release the data to them; or

23 (C) unauthorized access of accounts via the
24 Internet; and

25 (5) because telephone companies encourage cus-
26 tomers to manage their accounts online, many set up

1 the online capability in advance. Many customers
 2 never access their Internet accounts, however. If
 3 someone seeking the information activates the ac-
 4 count before the customer, he or she can gain unfet-
 5 tered access to the telephone records and call logs of
 6 that customer.

7 **SEC. 3. FRAUD AND RELATED ACTIVITY IN CONNECTION**
 8 **WITH OBTAINING CONFIDENTIAL PHONE**
 9 **RECORDS INFORMATION FROM A COVERED**
 10 **ENTITY.**

11 Chapter 47 of title 18, United States Code, is amend-
 12 ed by inserting after section 1038 the following:

13 **“SEC. 1039. FRAUD AND RELATED ACTIVITY IN CONNEC-**
 14 **TION WITH OBTAINING CONFIDENTIAL**
 15 **PHONE RECORDS INFORMATION FROM A**
 16 **COVERED ENTITY.**

17 “(a) CRIMINAL VIOLATION.—Whoever obtains, or at-
 18 tempts to obtain, confidential phone records information
 19 from a covered entity, without authorization from the cus-
 20 tomer to whom such confidential phone records informa-
 21 tion relates, by knowingly and intentionally—

22 “(1) making false or fraudulent statements or
 23 representations to an employee of a covered entity;

24 “(2) making such statements or representations
 25 to a customer of a covered entity;

1 “(3) providing false documentation to a covered
2 entity knowing that such document is false; or

3 “(4) accessing customer accounts of a covered
4 entity via the Internet;

5 shall, for each such occurrence, be fined in accordance
6 with this title, imprisoned for not more than 5 years, or
7 both.

8 “(b) PROHIBITION ON SALE OF CONFIDENTIAL
9 PHONE RECORDS INFORMATION.—Except as otherwise
10 provided by applicable law, any person, including any em-
11 ployee of a covered entity or any data broker, who know-
12 ingly and intentionally sells, or attempts to sell, confiden-
13 tial phone records information from a covered entity, with-
14 out authorization from the customer to whom such con-
15 fidential phone records information relates, shall be fined
16 in accordance with this title, imprisoned for not more than
17 5 years, or both.

18 “(c) ENHANCED PENALTIES FOR AGGRAVATED
19 CASES.—Whoever violates, or attempts to violate, sub-
20 section (a) while violating another law of the United
21 States or as part of a pattern of any illegal activity involv-
22 ing more than \$100,000, or more than 50 customers of
23 a covered entity, in a 12-month period shall be fined twice
24 the amount provided in subsection (b)(3) or (c)(3) (as the

1 case may be) of section 3571 of this title, imprisoned for
 2 not more than 10 years, or both.

3 “(d) NONAPPLICABILITY TO LAW ENFORCEMENT
 4 AGENCIES.—Subsection (a) shall be construed so as to not
 5 prevent any action by a law enforcement agency, or any
 6 officer, employee, or agent of such agency, to obtain con-
 7 fidential phone records information from a covered entity
 8 in connection with the performance of the official duties
 9 of the agency, in accordance with other applicable laws.

10 “(e) DEFINITIONS.—In this section:

11 “(1) CONFIDENTIAL PHONE RECORDS INFOR-
 12 MATION.—The term ‘confidential phone records in-
 13 formation’ means—

14 “(A) information that—

15 “(i) relates to the quantity, technical
 16 configuration, type, destination, location,
 17 and amount of use of a service offered by
 18 a covered entity subscribed to by any cus-
 19 tomer of that covered entity; and

20 “(ii) is made available to a covered
 21 entity by a customer solely by virtue of the
 22 relationship between the covered entity and
 23 the customer; and

24 “(B) information contained in any bill re-
 25 lated to the product or service offered by a cov-

1 ered entity and received by any customer of the
2 covered entity.

3 “(2) COVERED ENTITY.—The term ‘covered en-
4 tity’—

5 “(A) has the same meaning given the term
6 ‘telecommunications carrier’ in section 3 of the
7 Communications Act of 1934 (47 U.S.C. 153);
8 and

9 “(B) includes any provider of IP-enabled
10 voice service.

11 “(3) CUSTOMER.—The term ‘customer’ means,
12 with respect to a covered entity, any person, or au-
13 thorized representative of a person, to whom the cov-
14 ered entity provides a product or service.

15 “(4) DOCUMENT.—The term ‘document’ means
16 any information in any form.

17 “(5) IP-ENABLED VOICE SERVICE.—The term
18 ‘IP-enabled voice service’ means the provision of
19 real-time 2-way voice communications offered to the
20 public, or such class of users as to be effectively
21 available to the public, transmitted through cus-
22 tomer premises equipment using TCP/IP protocol,
23 or a successor protocol, for a fee (whether part of
24 a bundle of services or separately) with 2-way inter-
25 connection capability such that the service can origi-

- 1 nate traffic to, and terminate traffic from, a public
- 2 switched telephone network.”.

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