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H. B. 2413

(By Delegates Sobonya, Sumner, Moore and C. Miller)
[Introduced January 12, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §24-6A-1, §24-6A-2,
§24-6A-3 and §24-6A-4, all relating to creating the "Telephone
Record Confidentiality Act"; providing definitions;
prohibiting telephone records from being obtained, sold or
received without consent; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §24-6A-1, §24-6A-2,
§24-6A-3 and §24-6A-4, all to read as follows:

ARTICLE 6A. TELEPHONE RECORD CONFIDENTIALITY ACT.

§24-6A-1. Title.

This article is known as the "Telephone Record Confidentiality
Act".

1 **§24-6A-2. Definitions.**

2 As used in this article:

3 (a) "Caller identification record" means a record that is
4 delivered electronically to the recipient of a telephone call
5 simultaneously with the reception of the telephone call and that
6 indicates the telephone number from which the telephone call was
7 initiated or similar information regarding the telephone call.

8 (b) "Customer" means a person who purchases telephone service.

9 (c) "Telephone record" means a record in written, electronic,
10 or oral form, except a caller identification record, that is
11 created by a telephone service provider and that contains any of
12 the following information with respect to a customer:

13 (1) Telephone numbers that have been dialed by the customer;

14 (2) Telephone numbers pertaining to calls made to the
15 customer;

16 (3) The time when calls were made by the customer or to the
17 customer;

18 (4) The duration of calls made by the customer or to the
19 customer.

20 (d) "Telephone service" means the conveyance of two-way voice
21 communication in analog, digital, or other form by any medium,
22 including wire, cable, fiber optics, cellular, broadband personal
23 communications services, or other wireless technologies, satellite,
24 microwave, or at any frequency over any part of the electromagnetic

1 spectrum. "Telephone service" includes the conveyance of voice
2 communication over the Internet and telephone relay service.

3 (e) "Telephone service provider" means a person who provides
4 telephone service to a customer.

5 **§24-6A-3. Obtaining, selling or receiving telephone records**
6 **prohibited without consent.**

7 A person may not do any of the following:

8 (a) Obtain, or attempt to obtain, a telephone record that
9 pertains to a customer who is a resident of this state, without the
10 customer's consent, by doing any of the following:

11 (1) Making a false statement to an agent of a telephone
12 service provider;

13 (2) Making a false statement to a customer of a telephone
14 service provider;

15 (3) Knowingly providing to a telephone service provider a
16 document that is fraudulent, that has been lost or stolen, or that
17 has been obtained by fraud.

18 (b) Ask another person to obtain a telephone record knowing
19 that the person will obtain the telephone record in a manner
20 prohibited under this section; and

21 (c) Sell or offer to sell a telephone record obtained in a
22 manner prohibited under this section.

23 **§24-6A-4. Penalties.**

24 (a) A person who violates this article is guilty of a

1 misdemeanor if the violation involves one telephone record and,
2 upon conviction thereof, shall be fined not more than \$500 or
3 confined in jail not more than one year, or both fined and
4 confined.

5 (b) A person who violates this section is guilty of a felony
6 if the violation involves more than ten telephone records and, upon
7 conviction thereof, shall be fined not more than \$1,000 or
8 imprisoned in a state correctional facility not less than one year,
9 or both fined and imprisoned.

10 (c) In addition to the penalties authorized under subsections
11 (a) and (b) of this section, a person who violates this section may
12 be required to forfeit personal property used or intended to be
13 used in the violation.

14 (d) In an action to enforce this section, the court shall
15 award to a person who is the subject of a telephone record involved
16 in a violation of this section all of the following:

17 (1) The amount of the person's pecuniary loss suffered because
18 of a violation of this section, if proof of the loss is submitted
19 to the satisfaction of the court, or \$1,000, whichever is greater.

20 (2) The amount of any gain to the violator as a result of the
21 violation.

22 (e) This section does not apply to any of the following:

23 (1) Action by a law-enforcement agency in connection with the
24 official duties of the law-enforcement agency.

1 (2) A disclosure by a telephone service provider, if any of
2 the following applies:

3 (A) The telephone service provider reasonably believes the
4 disclosure is necessary to provide telephone service to a customer,
5 or to protect an individual from fraudulent, abusive, or unlawful
6 use of telephone service or a telephone record;

7 (B) The disclosure is made pursuant to the National Center for
8 Missing and Exploited Children; and

9 (C) The disclosure is authorized by state or federal law or
10 regulation.

NOTE: The purpose of this bill is to establish the "Telephone Record Confidentiality Act"; to define terms; to prohibit any person from obtaining, selling or receiving a person's telephone record without their consent; and to provide criminal penalties.

This article is new; therefore, it has been completely underscored.