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HOUSE BILL NO. 1518

Offered January 20, 2006

A *BILL to amend the Code of Virginia by adding a section numbered 8.01-40.3 and by adding in Chapter 5 of Title 18.2 an article numbered 7.2, consisting of sections numbered 18.2-152.17 and 18.2-152.18, relating to fraudulent procurement of telephone records; civil action; penalty.*

Patrons—Albo and Scott, J.M.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-40.3 and by adding in Chapter 5 of Title 18.2 an article numbered 7.2, consisting of sections numbered 18.2-152.17 and 18.2-152.18, as follows:

§ 8.01-40.3. *Action for injury resulting from unauthorized or fraudulent procurement, sale, or receipt of telephone records.*

A. *In a civil action, a customer whose telephone records were procured, sold, or received in violation of § 18.2-152.17 may recover from the person or entity that violated the section such relief as may be appropriate.*

B. *In a civil action under this section, appropriate relief includes (i) such preliminary and other equitable or declaratory relief as may be appropriate, (ii) damages under subsection C, and (iii) reasonable attorney fees and other litigation costs reasonably incurred.*

C. *The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.*

D. *A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.*

Article 7.2.**Unauthorized or Fraudulent Procurement, Sale, or Receipt of Telephone Records.**

§ 18.2-152.17. *Unauthorized or fraudulent procurement, sale, or receipt of telephone records.*

A. *Whoever (i) knowingly procures, attempts to procure, solicits, or conspires with another to procure a telephone record of any resident of this Commonwealth without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means; (ii) knowingly sells, or attempts to sell, a telephone record of any resident of this Commonwealth without the authorization of the customer to whom the record pertains; or (iii) receives a telephone record of any resident of this Commonwealth knowing that such record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means shall be punished in accordance with subsection B.*

B. *The punishment for an offense under subsection A is (i) a Class 3 misdemeanor if the violation involves a single telephone record of a resident of this Commonwealth, (ii) a Class 2 misdemeanor if the violation involves two to 10 telephone records of a resident of this Commonwealth, (iii) a Class 1 misdemeanor if the violation involves more than 10 telephone records of a resident of this Commonwealth, and (iv) in any case, forfeiture of any personal property used or intended to be used to commit the offense.*

C. *As used in this section.*

"Procure" *in regard to such a telephone record means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.*

"Telephone record" *means information retained by a telecommunications carrier that relates to the telephone number dialed by the customer or the incoming number of a call directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied.*

D. *Nothing in this section shall be construed to prevent any action by a law-enforcement agency, or any officer or employee of such agency, to obtain telephone records in connection with the performance of the official duties of the agency.*

E. *Nothing in this section shall be construed to prohibit a telecommunications carrier from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly*

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HB1518

59 *through its agents (i) as otherwise authorized by law; (ii) with the lawful consent of the customer or*
60 *subscriber; (iii) as may be necessarily incident to the rendition of the service or to the protection of the*
61 *rights or property of the provider of that service, or to protect users of those services and other carriers*
62 *from fraudulent, abusive, or unlawful use of, subscription to, such services; (iv) to a governmental*
63 *entity, if the telecommunications carrier reasonably believes that an emergency involving immediate*
64 *danger of death or serious physical injury to any person justifies disclosure of the information; or (v) to*
65 *the National Center for Missing and Exploited Children, in connection with a report submitted thereto*
66 *under the Victims of Child Abuse Act of 1990.*

67 *§ 18.2-152.18. Information security.*

68 *A. Telecommunications carriers that maintain telephone records of a resident of this Commonwealth*
69 *shall establish reasonable procedures to protect against unauthorized or fraudulent disclosure of such*
70 *records that could result in substantial harm or inconvenience to any customer.*

71 *B. No private right of action is authorized under this section.*