

**Department of Legislative Services**  
 Maryland General Assembly  
 2006 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1301 (Delegates Vallario and Simmons)

Economic Matters and Judiciary

Finance

**Telephone Privacy Act of 2006**

This bill prohibits a person from knowingly buying, selling, or otherwise obtaining or distributing the telephone records of a customer without authorization or a court order or through fraudulent or deceptive means. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for two years and/or a fine of \$2,000. A violation of the bill's provisions is an unfair or deceptive trade practice.

**Fiscal Summary**

**State Effect:** General fund administrative expenditures could increase by at least \$52,700 in FY 2007. Future years reflect annualization and inflation. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Additional expenditures could be required if warranted by a large number of complaints. Any cost recovery resulting from actions brought under the Consumer Protection Act cannot be quantified beforehand.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	52,700	65,100	68,700	72,600	76,800
Net Effect	(\$52,700)	(\$65,100)	(\$68,700)	(\$72,600)	(\$76,800)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential increase expenditures due to the bill's penalty provision.

**Small Business Effect:** Potential minimal.

## Analysis

**Bill Summary:** This bill provides that a person may not: (1) knowingly obtain, attempt to obtain, or solicit or conspire with another to obtain, a “telephone record” without the authorization of the customer to whom the record pertains, or by fraudulent, deceptive, or false means; (2) knowingly sell or attempt to sell a telephone record without the authorization of the customer to whom the record pertains; or (3) receive a telephone record, knowing that the record has been obtained without the authorization of the customer to whom the record pertains, or by fraudulent, deceptive, or false means.

A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for two years and/or a fine of \$2,000. A violation is also an unfair or deceptive trade practice. A prosecution for a violation of the bill may be commenced in any county in which an element of the crime occurred or the victim resides.

A “telephone record” is information retained by a telephone company that relates to (1) the telephone number dialed by a customer or other person using the customer’s telephone with permission; (2) the incoming number of a call directed to a customer or other person using the customer’s telephone with permission; or (3) other data related to calls typically contained on a customer’s telephone bill, such as the time the call started and ended, the duration of the call, and any charges applied. A telephone record does not include information collected or retained by customers using caller I.D. or similar technology.

The bill does not apply to a person acting under a valid court order, warrant, or subpoena, or a law enforcement officer acting in the performance of official duty.

The bill may not be construed to prohibit a telephone company from obtaining, using, disclosing, or allowing access to a customer’s telephone record:

- as otherwise authorized by law;
- with the consent of the customer;
- in connection with rendition of service to the customer;
- for purposes of billing or collection from the customer;
- as necessary to prevent fraudulent or abusive practices;
- to a governmental entity, if the telephone company reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

- to the National Center for Missing and Exploited Children, in connection with a report submitted under the federal Victims of Child Abuse Act of 1990.

**Current Law:** State law does not prohibit the lawful purchase, sale, acquisition, or distribution of the call records of a subscriber of cellular telephone service.

State law does prohibit a person from violating the Telemarketing and Consumer Fraud and Abuse Prevention Act as implemented by the Federal Trade Commission and the Telephone Consumer Protection Act as implemented by the Federal Communications Commission. These federal laws generally prohibit businesses or their representatives from contacting a person who has added his/her phone number to a national “do not call” list unless the person has a previous relationship with the business or has otherwise given consent to be contacted. A violation of these provisions is an unfair or deceptive trade practice.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

**Background:** According to the Insurance Information Institute, over 200 million people use wireless phones in the United States. There are numerous web sites that claim to sell the phone records of wireless phone customers. Because these records are often available on the Internet, it has been relatively easy for people to purchase phone records. According to ZDNet, a web-based news service, a web blogger based in Washington, DC discussed how easy it was for him to buy his own phone records and the records of General Wesley Clark, a former candidate for President.

Privacy experts believe that cell phone record information is widely available because it is relatively easy for a person to pretend to be an account holder and then request cell phone information. A number of companies provide access to cell phone records on the Internet without requiring a personal identification number to access the information. A person pretending to be a customer can then have the records faxed or electronically mailed to an address that is not listed on the account. This practice is called “pretexting.”

Also, records may be leaked through the mishandling of data by employees in call centers or by companies hired to do outsourcing tasks for wireless companies.

Privacy experts have criticized wireless phone companies for not implementing security measures stringent enough to prevent unauthorized access to wireless phone records. For example, privacy experts have suggested that wireless phone companies send requested phone records only to the mailing address on the account. Some experts have also suggested that wireless phone companies make password access to phone records mandatory and that companies could send text messages to phone users whenever access to their records is requested, so that the phone users can authorize access before it is provided.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures in the Office of the Attorney General could increase by \$52,747 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. The estimate reflects the cost of hiring one investigator to investigate the unauthorized or fraudulent acquisition of telephone records. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salar and Fringe Benefits	\$45,762
Operating Expenses	<u>6,985</u>
<b>Total FY 2007 State Expenditures</b>	<b>\$52,747</b>

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional expenditures could be required to hire an additional Assistant Attorney General if a large number of complaints are filed under this bill.

General fund expenditures could increase minimally as a result of the incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,974 per month. This bill alone, however, should not create the need for additional beds,

personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$341 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2007.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Information Insurance Institute, ZD Net News Service, Department of Legislative Services

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