

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2255

2007 SENATE JUDICIARY

SB 2255

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2255**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2246

Committee Clerk Signature

Mona L Solbe

Minutes: Relating to the unauthorized or fraudulent procurement of telephone records.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Curtis Olafson, Dist. #10 (meter :45) introduced the bill

Parrell Grossman, Director of the Attorney General Consumer Protection and Antitrust Div.

(meter 1:20) Gave Testimony – Att. #1 and presented an amendment Att #1b.

Committee discussed a typo.

Sen. Nelson stated that if it is “illegal” why are you not already (meter 7:00) prosecuting.

Discussion of terminology and how this law would affect some one searching a phone number or address on the internet.

Sen. Fiebiger asked how many complaints they had received in ND from people who owned cell phones. None, only inquires. Mr. Grossman spoke of a situation of a C.E.O.'s investigation and the use of his cell phone records. **Sen. Fiebinger** still asked if we have not had any problem, why create a new law. **Mr. Grossman** spoke of law enforcement and social workers phone numbers getting out the problems this would cause. Discussion of page 2, (meter 12:40) penalty, being a “class C” felony why? This was taken from Connecticut law,

and the committee could use what they thought most appropriate. Mr. Grossman stated what the other states used and this was between most.

Kent Brinkentier, Qwest representative (meter 12:69) Spoke in support of the legislation.

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Additional Testimony Submitted:

Tony Clark Public Service Commissioner – Att. #2

Job Number: 2252

Senator David Nething, Chairman reopened the hearing and handed out an amendment.

Sen. Fiebinger stated that if it is not a problem why are we passing a bill? Discussion of keeping people/trouble from other states away from ND by having the law. There was no one to testify against on the bill either.

Sen. Lyson made the motion to Do Pass the amendment 1b and **Sen. Nelson** seconded the motion. All members were in favor and the motion passes.

Sen. Lyson made the motion to Do Pass and **Sen. Olafson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

SB 2255: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2255 was placed on the Sixth order on the calendar.

Page 2, line 7, after "technology" insert "or include a carrier network record"

Page 3, line 5, remove the second "or"

Page 3, line 6, after "51-15" insert ", or other valid legal process"

Page 3, line 9, after "agency" insert "as authorized by law"

Page 3, line 13, after "agents" insert "or contractors"

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2255

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2255

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4051

Committee Clerk Signature

W Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2255.

Sen. Curtis Olafson: Sponsor of bill, explained bill, it is about pretexting, which has come about as a result of the expanse of the internet and as the internet has expanded, the criminal element has expanded with it, and we are fortunate to have an AG and staff in that office who are trying their best to keep ahead of the criminal element and also we are blessed to have a lot of them here to help explain the bill in greater detail. Pretexting is a deceitful and deceptive practice involving misrepresentations to telecommunications companies to obtain phone records by posing as customers, agents, or employees of the company or making misrepresentations to the companies by posing as customers to gain unauthorized access to online accounts. Then they turn around and sell these confidential cell and phone records through websites. This poses a potential serious danger, for example, to domestic abuse victims, law enforcement personnel, etc.

Chairman DeKrey: Thank you. Further testimony in support.

Wayne Stenehjem, AG: Parrell Grossman is here to give the testimony on the bill itself. Here is the reason that the bill was introduced and other states are looking at the same kind of thing. It's something that has alarmed a number of our citizens, and that is, for about \$100 I can find

out who you call on your cell phone in December, how long you talked and who called you on your cell phone. Aside from being a serious invasion of privacy, for people who are victims of domestic violence, for law enforcement officers, for any number of people that you can imagine, that is not a good thing. This bill simply gives additional tool for criminal penalties to people who provide that information and they usually do it by lying. They will call the phone company and claim to be you and ask for a record of your telephone calls. If you have enough information about you, the telephone company thinking that you are the person, will provide it, and then once they have that information, they will sell it to somebody who is interested in having it. It is a practice that needs to stop and that's what this bill is directed to.

Chairman DeKrey: Thank you. Further testimony in support.

Parrell Grossman, Director, Consumer Protection and Antitrust Division, AG's Office:

(see attached testimony).

Rep. Griffin: I know you can look up a phone number on the internet and something will come up that says for \$20 you can get more information. Would you be guilty if you paid the \$20 to get the information.

Parrell Grossman: I suppose that possibility exists, if that company had illegally obtained that information without the consent and you were purchasing that information and you didn't take any steps to verify whether that information was provide pursuant to the customer's consent or whether it was provided legally by the customer. I suppose there is a possibility that person could be prosecuted for that practice. I frankly cannot image a state's attorney that would be interested in prosecuting a case like that, technically that sort of conduct could fall within the prescriptions of this legislation.

Rep. Griffin: In the jurisdiction section, is that very common.

Parrell Grossman: They are becoming more common because of the nature of telemarketing acts and this kind of conduct, where a lot of these activities might take place outside the state of ND or might originate outside the state of ND, but they affect a ND consumer. So let's just say that we have this similar authority in ND law for identity theft and telemarketing acts so that, in fact, if the crime is originated outside the state of ND, but they steal money from a consumer in ND, that sends money from their bank account to Ohio someplace, that ND consumer doesn't have to depend upon a state's attorney or criminal prosecutor in Ohio deciding whether or not to pursue that criminal act, it would give the authority to a ND prosecutor and a ND court. That is the reason for that kind of authority.

Rep. Klemin: You make it sound like it is pretty easy to get these records, for the persons that are pretexting, don't these telephone companies have any obligation to make sure that they are giving it to the right person.

Parrell Grossman: I think the telecommunication companies have cracked down. I think it's become a lot more difficult. I think a number of states have passed these acts, first to get at the individuals who may be doing the pretexting so that the actions aren't directed at the telecommunication companies, but clearly if is the telecommunication companies haven't followed some protocol and make some effort to protect that information, then they could become liable in those circumstances. I think it's accurate to say that telecommunication companies are doing a better job of protecting this information.

Rep. Klemin: A lot of times a husband and wife both have cell phones and the bill comes out with both names on it. Can a husband then get the records on the wife without violating the statute, or vice versa. Sometimes it may be a domestic situation.

Parrell Grossman: I would think if it is on the same bill, on a combined bill, the spouse could get that information. I don't know, they might be in violation of the statute if they got the

information and it was on a separate bill, if they weren't the subscriber that was paying that telephone bill and if that telephone number didn't belong to them; technically that could be a violation. Again a potential problem, I just hadn't thought about it in terms of this legislation or any legislation of trying to take care of the spousal issue. It gets rather difficult to anticipate what one spouse might do.

Rep. Klemin: I'm thinking it's not uncommon in some divorce situations where somebody wants to check up on the other party or whatever. If it was on a common bill I don't see an issue there, but where they don't have a common bill, because of two different companies, etc. it might be a problem. Let's say an investigator that works for a law firm, for example, is trying to get the telephone records on the adverse party before a lawsuit starts for a divorce, is there going to be a possible violation of this statute.

Parrell Grossman: I believe there would. Of course, my response would be that there is the ability to go to the lawyer in a lawful process to get that. It is hard for me to imagine why you would try and say if there are people we don't like they can't get this information, but somebody who is an investigator working for someone else, can use deceptive or misleading means of acquiring that information. Even in that particular instance, if that phone number belongs to that spouse, he or she is entitled to the confidentiality of that information I think to the same extent as they would want to prohibit that information from another party. I can understand that you as legislator might think differently, but I'm not sure how you would parcel out that conduct.

Rep. Koppelman: With caller ID on the phone, and internet sites with phone numbers, and you are directed to another site where you can buy information for that person. I don't know if that would be a violation based on the definition of telephone record, at the bottom of page 1, and top of page 2 and it talks about information basically dialed by a customer or incoming

number of a call directed to a customer. If you are publishing an online telephone directory, whether you are doing that free or whether you are selling that directory information, what is your thought .

Parrell Grossman: I guess I probably hadn't dissected in my mind the difference between just getting the phone number and getting the records, I think the information that is protected is the calls and the times, etc.

Rep. Kretschmar: Under current law, are there any sanctions for this type of crime.

Parrell Grossman: We would have argued, just as I believe the other AG's around the country argued, that it is a deceptive practice. When you call a telecommunication company pretending to have a legitimate need or authorization to obtain that information, when in fact you don't. We, of course, would argue that is a deceptive practice. Generally, that is something reserved for businesses as opposed to individuals. I think the AG could make a good faith argument without this law, that engaging in this kind of conduct is deceptive, if in fact the individuals are engaging in illegal or deceptive means to get that information. I think that is essentially what the other Attorneys General relied on in their lawsuits throughout the country. After that, there was a move to make this both a criminal practice and the state legislatures gave the attorneys general authority to enforce this statute. I would note that I believe in December, the President signed federal legislation that made this a federal crime, it does not address the civil aspects, but Congress has spoken clearly on this, that they believe that this is not an acceptable practice and it can now be prosecuted as a federal crime. As of this time, they have not preempted on any civil means, and have not otherwise addressed the law. It's possible at some point that they will look at this and decide whether this is something that should be enforced civilly on a federal basis.

Rep. Klemin: On page 4, line 5, subsection 1 of this section, where it talks about establishing reasonable procedures, about unauthorized disclosure of these records. Line 9, subsection 2 says this section does not authorize a private right of action. Does this mean if your telephone company doesn't maintain the confidentiality of your records appropriately, that you can't sue.

Parrell Grossman: Yes, it would mean that the AG would have to bring that lawsuit.

Rep. Klemin: Against the telephone company.

Parrell Grossman: Against the telephone company or any other individuals that were engaged in that. There wouldn't be any private cause of action for an individual to bring that claim against the phone company.

Rep. Klemin: So if I'm damaged by the failure of the phone company to say, follow its own procedures that they developed, and I had some loss of that, I have no remedy.

Parrell Grossman: That's correct, other than having the AG bring that particular action. You wouldn't, as a private citizen, have any remedy. Again, that is a policy decision. I imagine if you were to change that, you will hear some objections from the telecommunication industry.

Rep. Klemin: But right now, if they violated their own rules and provide unauthorized disclosure of my telephone records to someone else that's not entitled to it and I'm damaged as a result of that, right now I can sue the phone company for doing that. Under this, I can't. I'm not quite sure that I understand the reason why not.

Parrell Grossman: I don't know enough about a cause of action, if there currently exists a cause of action, because I don't know all the rules that telecommunication companies operate under. Assuming you're correct, and there are rules or laws that prohibit that, then yes that would be the situation. On the other hand, there may be causes of action, there may be a basis, but I don't know now that there is anything that makes that information confidential. Although I should say there are some rather involved CPNI (Customer Proprietary Network

Information) rules that I think recently have protected this information. So there probably are such rules in place. Until recently, I don't know that there were. Yes, that is correct.

Rep. Klemin: Does the federal law have a similar provision to the state.

Parrell Grossman: As to a private right of action, I'm not sure. The federal law that I referred to, is a criminal law. As to someplace buried in the telecommunications act, and the CPNI legislation, I can't honestly say what is authorized under that statute. I'm not aware of anybody bringing a private cause of action under those circumstances, but I think you are technically correct. If such a private right of action were to exist under federal or state law, this might create some problems. Again, I think this statute says that for the obligations imposed under this law, there is no private right of action. I don't think that would address other legal theories, or if you had some separate right under federal law, I'm not sure that I would be of the opinion that this law would preclude that. I think it would preclude bringing an enforced private right of action under this statute.

Rep. Klemin: This is kind of an immunity that we're granting the telephone company here, even if it violates its own rules. I'm not sure if I actually heard you tell me why you should do this.

Parrell Grossman: I think that's a policy decision. I find in almost all of the statutes, in which the consumer protection division is involved in, there is a general concern by business and industry, that they don't want every citizen to have the same right to bring the same cause of action that the AG has. They tend to feel that the AG has some obligation to be the gatekeeper on some of these and when you start enacting all these laws, they think there may be some unintended consequences and everybody with time on their hands may bring a lawsuit. I'm not defending that position, but I just have to tell you, it's a reality in crafting every one of these pieces of legislation is deciding, are you going to get that legislation passed, or is

business going to say that somebody is going to irresponsibly use that particular legislation. I don't want to suggest that the AG is opposed to a provision that creates a private cause of action. It's merely a compromise on our part to address those interests.

Rep. Klemin: Regarding the terminology of right of action, if we change that language to "claim for relief".

Parrell Grossman: Good point, I think this legislation very closely mirrors CT's legislation and similar legislation. I think that's a good point that the change should be made.

Rep. Koppelman: What are our citizens' rights today, without this law on the books in this area, if they were to pursue a telephone company for harm. Would those rights be at all compromised by this bill, or is the cause in the bill that talks about a right of action simply say that the things that are addressed in this piece of legislation would not create a new cause of action or a specific body of law under which to bring a cause of action. In other words, I'm asking are those same rights more or less if we pass this bill.

Parrell Grossman: I believe they would. I believe that provision in this legislation, on page 4, line 9 that says this section does not authorize a private right of action, and merely means that this legislation doesn't create a new private right of action for a consumer under this authority. I don't think this affects any existing federal law that would permit such an action, or state law. Lawyers are very creative and I can't say that some lawyer right now, couldn't bring some claim if somebody illegally obtained this information, pretending to be somebody else, and then somebody was harmed by it. I think right now, that a private individual could bring a cause of action without this particular statute. The penalties that would be provided to the AG, wouldn't apply, but certainly if they were harmed in some way, I think they would have a cause of action. In my opinion, this would only limit a private cause of action, or private claim for relief in these particular circumstances. That's one opinion and I would defer to the committee

and Rep. Klemin has practiced many more years than I have. If that's a legitimate concern to him, I would defer to that.

Rep. Onstad: On page 3, line 13, "This chapter does not prohibit a cell phone company from obtaining, using..." then on line 17, "With the lawful consent of the customer". If this is a new section, is the cell phone company obligated to go back to their customers to sign off if they are able to disclose out the number.

Parrell Grossman: I imagine that would be in your service agreement. That if they need to disclose your number to an agent, actually I think there is another exception, and they could do that. I can't necessarily imagine a situation where they are going to be going back to individual consumers to say, such and such has requested your number, can we release it. I would imagine, that unless there is some circumstances in which the customer has designated that the information may be released, they wouldn't release it. I don't think it imposes any really further and new obligation. I think it may just give them the ability to do that. Let's say that you become the guardian of an elderly person or relative and now you need access to that information. It may be that the telephone company will say that I can't release that information to you without the consent of the customer, so get me that consent in writing. So I imagine that there could be a number of circumstances in which that might occur.

Rep. Meyer: Under that same section, on page 3, this chapter would not prohibit the telephone company from, if you have one of their agents, or contractors you have listed here, they want to put together a database and have a company call in, instead of pretexting individual, couldn't they as a telephone company just sell this database under this language.

Parrell Grossman: There is an exception that would allow their agents or contractors to have access to that information. I think if it is a legitimate purpose to carry on the purpose and responsibility of the telephone company, then they could provide that information.

Rep. Meyer: But could they provide it as a money making tool for the telephone company. If they wanted to sell this database, this chapter wouldn't prevent them from doing that, would it. Couldn't they be putting together a database with all this information and they are more valuable than anything we have now. Under this language, couldn't they either through their agents or contractors, it doesn't prohibit them from using or disclosing or permitting access to any phone records. Couldn't they use that to compile their own database, just as an agent or contractor.

Parrell Grossman: My initial reaction is I don't think they could. Because I don't think they would the consent of the customer. I think this legislation would prevent that. I think they only have access to it for their legitimate use, the legislation doesn't prohibit, I don't think, you or me from getting that information, but then allows them to gather it and sell it to someone else without the customer's consent.

Rep. Meyer: I've never read my telephone contract that I have. I've never read my credit card application's fine print. That could very easily be in there. You could have someone, when they sign up for their two year contract, under different cell phone companies and that could be right in the bottom of your information, that we all just sign without reading. If they have that put into one of their contracts, that could allow them to sell a database couldn't it.

Parrell Grossman: I imagine, if there is something contractual, where you have agreed in order to get that service, that you've agreed that they can disclose that information or sell that information, I image they could. Yes, you would probably need specific language prohibiting that unless there is something under federal law, that wouldn't give the state the authority to prohibit that practice. The telecommunication carriers, particularly interstate carriers, are highly regulated under federal law. But yes, under your hypothetical, it does strike me that it

would be possible for them to sell that information, if it were part of the agreement and you had authorized that or they were otherwise authorized by law to do that.

Rep. Klemin: Back to the private right of action, line 9, I was wondering if we amended that subsection 2 to say "this section does not authorize a private claim for relief for violation of this section". I think that language then, would narrow it down to this particular section, which imposes this statutory requirement. There may be some other reason that somebody might sue the phone company for negligently releasing records. I think that what the intent was is that you don't want to have a private right of action for violation of this section and not provide this blanket immunity to the telephone companies for releasing records that are criminal otherwise.

Parrell Grossman: I think that is an excellent suggestion. That had not occurred to me. It already refers to this section does not authorize a private right of action, and I think if this committee wants to make that perfectly clear that the statute is just saying that it doesn't authorize a private right of action for violation of this section, that would be good suggestion.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2255

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/5/07

Recorder Job Number: 4367

Committee Clerk Signature

D. Penix

Minutes:

Chairman DeKrey: We will take a look at SB 2255.

Rep. Klemin: Explained his amendment. I move the amendment.

Rep. Koppelman: Second.

Chairman DeKrey: Voice vote, motion carried. We have the bill before us as amended.

What are the committee's wishes.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Wolf: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2255

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/12/07

Recorder Job Number: 4903

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will have to reconsider our actions on SB 2255.

Rep. Meyer: I move that we reconsider our actions by which we passed out SB 2255.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried.

Rep. Meyer: We are going to be removing the amendment that I wanted from page 3, line 17. It was pointed out to me in the email, that this is all covered in federal law. It isn't needed.

Chairman DeKrey: If it's already in federal law, why do we have to take it off.

Kent Blickensdorfer, Qwest: In regard to your question about if it is covered in federal law why can't it be in here. The AG's office had asked for this general authority in SB 2255 to go after some perpetrators of pretexting because they didn't feel like they were always getting the result that they wanted when they reported things to the FCC. That is the genesis of SB 2255. Under the permitted use by phone companies, on page 3, starting on line 12, this whole section was put in by AG Stenehjem, to make sure that we weren't holding telephone companies liable for the actions of people who are doing pretexting. That's who you are after, not the phone companies. We've seen this in other pieces of legislation over the years; no call list on telemarketing activities and while we are trying to be vigilant to make sure that we aren't

holding the carrier responsible for something that they can't possibly be responsible for. The language that Rep. Meyer then suggested, we suggested would be unnecessary because our federal laws on CPNI (Customer Proprietary Network Information) are much more stringent as far as information sharing than anything in state law.

Chairman DeKrey: So specifically what amendment are we talking about.

Rep. Meyer: Page 3, line 17.

Chairman DeKrey: So that's the one we need to remove.

Rep. Dahl: I move that we remove line 17, on page 3.

Rep. Meyer: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

What are the committee's wishes.

Rep. Klemin: I move a Do Pass as amended.

Rep. Delmore: Second.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

**House Amendments to Engrossed SB 2255 (78305.0201) - Judiciary Committee
03/06/2007**

Page 3, line 17, after "lawful" insert "written" and after "customer" insert "on a separate document that is not incorporated into the contract for service"

**House Amendments to Engrossed SB 2255 (78305.0201) - Judiciary Committee
03/06/2007**

Page 4, line 4, replace "right of action" with "claim for relief"

Page 4, line 9, replace "right of action" with "claim for relief for a violation of this section"

Renumber accordingly

Date: 3/5/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2255, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2255 was placed on the Sixth order on the calendar.

Page 3, line 17, after "lawful" insert "written" and after "customer" insert "on a separate document that is not incorporated into the contract for service"

Page 4, line 4, replace "right of action" with "claim for relief"

Page 4, line 9, replace "right of action" with "claim for relief for a violation of this section"

Renumber accordingly

Date: 3/12/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad		
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2255, as engrossed and amended: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2255, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 879 of the House Journal, Engrossed Senate Bill No. 2255 is amended as follows:

Page 4, line 4, replace "right of action" with "claim for relief"

Page 4, line 9, replace "right of action" with "claim for relief for a violation of this section"

Renumber accordingly

2007 TESTIMONY

SB 2255

AH #1

1-30-07

SENATE JUDICIARY COMMITTEE
SENATOR DAVE NETHING, CHAIRMAN
JANUARY 30, 2007

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2255

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support Senate Bill No. 2255.

In 2006, it was discovered that there were a multitude of companies that were improperly obtaining and improperly selling confidential cell phone and telephone record through web sites. This practice and invasion of personal privacy outraged the public and telecommunications companies alike. This practice presented a dangerous situation for persons such as domestic abuse victims and law enforcement personnel.

There were many lawsuits by Attorneys General and telecommunications companies throughout the country against these companies. The confidential cell and telephone records were obtained by "pretexting," which is making misrepresentations to telecommunications companies to obtain phone records by calling companies and posing as the consumers, agents, or employees of the companies or making misrepresentations to telecommunications companies online by posing as customers to gain unauthorized access to online accounts. These companies then sell the illegally obtained phone records, and may misrepresent to consumers that the records were legally obtained.

To obtain the confidential telephone records, the purchaser only has to provide the cell phone or land line telephone number for the records they are seeking. These companies will provide up to 100 outgoing calls with dates within the most recent billing cycle. Some of these web sites might offer purchasers additional options such as call times and durations.

These web sites can use or manipulate the data or information they provide in several ways. They can offer a reverse look-up service in which the "customers" or purchasers can look at the outgoing calls purchased from the web sites and then have the web sites convert that telephone number into a name and address.

Illegally obtaining and selling obtaining confidential telephone records is a deceptive and sleazy practice that is potentially very harmful to domestic abuse victims, law enforcement personnel, etc. In addition to lawsuits by the Attorneys General of states, other states also are enacting legislation to ensure that individuals or companies

engaged in the deceptive and illegal practices are subject to both criminal and civil prosecution. Attorney General Stenehjem and the sponsors of this legislation are asking for North Dakota legislation to prohibit the illegal practices and prosecute the perpetrators who illegally procure, sell, or receive these telephone records by fraudulent, deceptive, or false means, or without the customer's consent.

The Attorney General has worked with representatives of the telecommunications field in regard to this legislation. As a result the Attorney General is proposing some amendments at this time to clarify some issues in the legislation.

The Attorney General respectfully asks the Senate Judiciary Committee to give Senate Bill 2255, with the proposed amendments, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

g:\cpat\parrell\legislation 2007\pretexting\sb 2255 senate testimony.doc

PROPOSED AMENDMENTS TO SENATE BILL NO. 2255
SENATE JUDICIARY COMMITTEE
DAVE NETHING, CHAIRMAN
JANUARY 30, 2007

PRESENTED BY
PARRELL D. GROSSMAN, DIRECTOR
CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Page 2, line 7, after "technology" insert "and does not include carrier network records"

Page 3, line 6 after "51-15" insert ", or other valid legal process"

Page 3, line 9, after "agency" insert "as authorized by law"

Page 3, line 13, after "agents" insert "or contractors"

Renumber accordingly

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AH #2
1-30-07

SENATE BILL 2255

Presented by: Tony Clark, Public Service Commissioner
Before: Senate Judiciary Committee
Honorable Dave Nething, Chairman
Date: January 30, 2007

TESTIMONY

Mr. Chairman and committee members, for your record my name is Public Service Commissioner Tony Clark. I am before you today to speak on behalf of the entire Public Service Commission. The PSC is pleased to offer its support HB 2255.

Within the last couple of years, the issue of pre-texting, or the unauthorized procurement of a customer's phone records, has become a major concern of officials across the nation. Action has been taken at the federal level, both in Congress and at the Federal Communications Commission. In addition, a number of states have specifically created state enforcement authority of similar laws. This is often advantageous because experience has shown that state officials tend to be better equipped to handle compliance and enforcement of specific consumer protection complaints than our federal counterparts.

I currently serve as Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC), which is the association that represents the interests of states and state commissions in matters of national importance on utility matters. I have attached to our testimony

a copy of a resolution passed by our membership in support of measures that crack-down on those who participate in the sleazy business of pre-texting.

As a matter of background, I would note that President Bush recently signed into law a federal bill that prohibits the practice of pre-texting. In addition, the FCC is consistently undergoing rulemakings that require telecommunications companies to protect consumer phone information. To date, federal officials have not pre-empted states from enacting these types of statutes, though it has been tried on many occasions, and undoubtedly will in the future.

We would recommend that however the legislature chooses to approach this issue, that it strive to create as much uniformity with federal rules as possible. This will ensure that conflicting rules do not apply to telecommunications companies that also must comply with federal standards. The PSC would be willing to work with industry and the committee is further research in this area is needed.

This completes my testimony, I would be happy to answer any questions you might have.

Resolution on Theft and Unauthorized Sale of Consumer's Telephone Records

WHEREAS, American jurisprudence recognizes the fundamental right to privacy in personal communications, and the Courts and Congress have recognized the paramount interest citizens have in protecting their privacy; *and*

WHEREAS, Dozens of online services are advertising the selling of private telephone call records, raising security concerns among law enforcement and consumers who have an expectation that their telephone records are confidential and will be kept private; *and*

WHEREAS, It is a growing concern that such telephone records can be exploited by criminals, such as stalkers or abusive spouses, and can lead to violence; *and*

WHEREAS, The Federal Communications Commission and the Federal Trade Commission have launched inquiries into the method of procurement of consumer records, whether telephone service providers are following disclosure rules, and are coordinating efforts to combat the rising fraud related to the access of telephone records; *and*

WHEREAS, Several States have introduced specific legislation prohibiting the unauthorized sale or release of telephone records; *and*

WHEREAS, Telephone service providers across the nation, concerned about improper methods of accessing customer records (e.g., "pretexting," which is obtaining customer information from a provider by pretending to be someone else), are seeking various legal methods to tackle the theft of their customer telephone records; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has been a long time advocate of customer privacy and related consumer protection issues (truth-in-billing, caller ID, slamming, etc.) and its member State commissions play an important role in ensuring that public safety and consumer protection goals are met; *and*

WHEREAS, NARUC has consistently encouraged and supported the FCC's efforts to maintain an effective, strong and cooperative relationship with NARUC and its member States as it addresses consumer issues, including development of rules and policies, enforcement actions against violators, and developing and distributing related consumer education materials; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its February 2006 Winter Meetings in Washington, D.C., supports and commends FCC Chairman Martin and his colleagues, Commissioners Tate, Adelstein, and Copps, for taking leadership in addressing the theft and sale of personal telephone records and recognizing that quick action by the FCC is needed to address this issue and prevent the illegal theft of Americans' phone records; *and be it further*

RESOLVED, That NARUC is committed to working with Congress, the FCC and the industry on a comprehensive approach to the issue in order to educate and protect consumers regarding the protection of the privacy of their telephone records.

*Sponsored by the Consumer Affairs Committee and the Committee on Telecommunications
Adopted by the NARUC Board of Directors February 15, 2006*

HOUSE JUDICIARY COMMITTEE
DUANE L. DEKREY, CHAIRMAN
FEBRUARY 28, 2007

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
ENGROSSED SENATE BILL NO. 2255

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support Engrossed Senate Bill No. 2255.

In 2006, it was discovered that there were a multitude of companies that were improperly obtaining and improperly selling confidential cell phone and telephone records through web sites. This practice and invasion of personal privacy outraged the public and telecommunications companies alike. This practice presented a dangerous situation for persons such as domestic abuse victims and law enforcement personnel.

There were many lawsuits by Attorneys General and telecommunications companies throughout the country against these companies. The confidential cell and telephone records were obtained by "pretexting," which is making misrepresentations to telecommunications companies to obtain phone records by calling companies and posing as the consumers, agents, or employees of the companies or making misrepresentations to telecommunications companies online by posing as customers to gain unauthorized access to online accounts. These companies then sell the illegally obtained phone records, and may misrepresent to consumers that the records were legally obtained.

To obtain the confidential telephone records, the purchaser only has to provide the cell phone or land line telephone number for the records they are seeking. These companies will provide up to 100 outgoing calls with dates within the most recent billing cycle. Some of these web sites might offer purchasers additional options such as call times and durations.

These web sites can use or manipulate the data or information they provide in several ways. They can offer a reverse look-up service in which the "customers" or purchasers can look at the outgoing calls purchased from the web sites and then have the web sites convert that telephone number into a name and address.

Illegally obtaining and selling confidential telephone records is a deceptive and sleazy practice that is potentially very harmful to domestic abuse victims, law enforcement personnel, etc. In addition to lawsuits by the Attorneys General of states, other states also are enacting legislation to ensure that individuals or companies engaged in the

deceptive and illegal practices are subject to both criminal and civil prosecution. Attorney General Stenehjem and the sponsors of this legislation are asking for North Dakota legislation to prohibit the illegal practices and prosecute the perpetrators who illegally procure, sell, or receive these telephone records by fraudulent, deceptive, or false means, or without the customer's consent.

The Attorney General has closely worked with representatives of the telecommunications field regarding this legislation. He wants to ensure this law will prohibit the illegal acquisition and use of customer telephone records, but not unduly burden legitimate telecommunication companies. The Attorney General and the telecommunication companies have the common goal of prohibiting these third party deceptive practices and protecting the privacy of customers' telephone records. Qwest Communications supports this legislation.

The Attorney General respectfully asks the House Judiciary Committee give Engrossed Senate Bill 2255 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.