



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 1014

**Assembly Amendment 1 and
Senate Amendment 1**

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Assembly Bill 1014, in general, prohibits the obtaining, selling, or soliciting of a telephone record that pertains to another person without the person's consent.

Assembly Amendment 1

Inclusion of Telephone Relay Service in the Definition of "Telephone Service"

The *bill* defines a "telephone record" to be a record, other than a caller identification record, that is created by a telephone service provider and that contains any of the specified information. A "telephone service provider" is a person who provides telephone service to a customer. "Telephone service" is the conveyance of two-way voice communications by any of the specified means, including the conveyance of voice communication over the Internet.

Assembly Amendment 1 amends the definition of "telephone service" to include telephone relay service. Individuals with disabilities, including hearing impaired individuals, use a telephone relay service to communicate.

Disclosure Exception to Protect a Customer

The *bill* specifies a number of exceptions to the prohibition it creates on obtaining, selling, or soliciting a telephone record that pertains to another person without the person's consent. One of the exceptions is for the disclosure of a telephone record by a telephone service provider if the provider reasonably believes that the disclosure is necessary to protect a customer from fraudulent, abusive, or unlawful use of telephone service.

Assembly Amendment 1 modifies this exemption to be for disclosure that the provider reasonably believes is necessary to "protect an individual from fraudulent, abusive, or unlawful use of telephone service or a telephone record." These modifications allow a telephone service provider to

invoke this exception to protect any individual and not just the provider's customer, such as the customer of another telephone service provider, and to protect the individual from fraudulent, abusive, or unlawful use of not only telephone service but also of a telephone record.

Relation to General Consumer Protection Laws

The **bill** specifies that the provisions created by the bill do not preempt the administration or enforcement of s. 100.18 or 100.20. In addition, the bill specifies that a violation of the provisions created by the bill may also constitute an unfair method of competition or unfair trade practice under s. 100.20 or fraudulent representation under s. 100.18. Sections 100.18 and 100.20 are general consumer protection laws relating to fraudulent representations and methods of competition and trade practices, respectively.

Assembly Amendment 1 deletes the provision in the bill that states the provisions created by the bill do not preempt the administration or enforcement of ss. 100.18 and 100.20. This part was problematic because its inclusion could be misconstrued to imply that other specific consumer protection laws that did not contain a comparable sentence were intended to preempt the administration or enforcement of s. 100.18 or 100.20.

Senate Amendment 1

The **bill** provides a private cause of action to a person, who is the subject of a telephone record obtained or disclosed in violation of the bill's prohibitions, for damages against the violator. A person who prevails in such an action shall recover all of the following:

- The greater of \$1,000 or the amount of the person's pecuniary loss.
- The amount of any gain to the violator as a result of the violation.
- Costs, including reasonable attorney fees.

Senate Amendment 1 deletes this private cause of action and adds to the bill a requirement relating to damages in an action brought by the Department of Agriculture, Trade and Consumer Protection to enforce the bill's prohibitions. In such an action, the amendment requires the court to award to a person who is the subject of a telephone record involved in a violation of the bill's prohibitions all of the following:

- The greater of \$1,000 or the amount of the person's pecuniary loss suffered because of a violation, if proof of the loss is submitted to the satisfaction of the court.
- The amount of any gain to the violator as a result of the violation.

Legislative History

On February 23, 2006, Representative Montgomery offered Assembly Amendment 1. On February 23, 2006, the Assembly adopted Assembly Amendment 1 and passed Assembly Bill 1014, as amended, on separate voice votes.

Senator Kanavas offered Senate Amendment 1 on March 7, 2006. The Senate adopted Senate Amendment 1 on a voice vote and concurred in Assembly Bill 1014, as amended, by a vote of Ayes, 33; Noes, 0 on March 8, 2006.

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