S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. DINOWITZ, PHEFFER, GALEF, MILLMAN, BENEDETTO, AUBRY, PAULIN, COLTON, GABRYSZAK, JAFFEE -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CAHILL, COOK, CROUCH, CUSICK, CYMBROWITZ, DESTITO, ENGLEBRIGHT, FARRELL, FINCH, GANTT, GIGLIO, GLICK, GOTTFRIED, GUNTHER, HEASTIE, HIKIND, HOOPER, HOYT, JACOBS, LATIMER, LAVINE, V. LOPEZ, LUPARDO, MAGEE, MAGNARELLI, MARKEY, MAYERSOHN, McDONOUGH, McENENY, J. MILLER, MORELLE, OAKS, PEOPLES-STOKES, PERRY, PRETLOW, RAIA, REILLY, J. RIVERA, P. RIVERA, ROBINSON, SAYWARD, SCARBOROUGH, SCHIMMINGER, THIELE, WEISENBERG, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the dissemination of confidential information by telephone corporations and wireless phone services providers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration. The legislature hereby finds that unauthorized third parties are able to obtain, procure, purchase or sell a person's telephone or wireless phone records related to any given period of time. Access to this information can sometimes be useful to law enforcement personnel. Such information, however, can be dangerous if the confidential information released is that of an undercover officer, other authorized law enforcement personnel or government employee. Unauthorized release of call records also can be damaging to commerce by revealing private business relationships. The unauthorized release of the phone records of counselors, including clergy, physicians, psychotherapists, financial consultants and non-profit organizations, can undermine these relationships of trust and in some instances jeopardize the well being of these counselors and their clients. In addition, most private individuals expect that their phone call logs or their information related to their telephone account is confidential and will not be disseminated to unauthorized persons.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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The legislature further finds that, despite the strong interest that authorized personnel and private citizens have in protecting access to this information, such information is sometimes obtained fraudulently or without authorization, and subsequently sold or otherwise released for commercial or other purposes. As a result, confidential phone records that are obtained and released without authorization or otherwise have had adverse consequences including: (1) the exposure of undercover law enforcement personnel; (2) an increase in identity fraud crimes; (3) an increase in intrusive and deceptive telephone, direct mail and internet solicitations; (4) an invasion of privacy for individuals who have had personal information revealed without their consent; (5) revealing confidential business communications; (6) harmful to counselors and their clients; (7) a disruption to telecommunications service providers and their provision of service to their legitimate customers; and (8) the dissemination of false and spurious information which has led to denial or refusal of housing, employment, insurance and other services and opportunities.

The legislature, therefore, finds and declares that it is in the public's and state's interest to protect against the release of confidential information and limit the release of confidential information from telephone corporation and wireless service providers to instances where such a release of information is requested by or authorized by the telecommunications service customer and where release procedures have been established and followed; or where a subpoena, search warrant or court-ordered request for customer records is issued. Such limitations and requisite penalties will meaningfully and substantially advance the state's interests in protecting personal privacy in a manner that is narrowly tailored to avoid adverse impact on other rights and needs of telecommunication service consumers and the providers of such services.

S 2. The general business law is amended by adding a new article 32-A to read as follows:

ARTICLE 32-A

PROTECTION OF TELEPHONE RECORDS

SECTION 676. DEFINITIONS.

676-A. PRIVACY OF CONFIDENTIAL INFORMATION.

676-B. NOTICE.

676-C. CIVIL ENFORCEMENT.

S 676. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "TELEPHONE CORPORATION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION TWO OF THE PUBLIC SERVICE LAW.

2. "WIRELESS PHONE SERVICE" MEANS ALL COMMERCIAL MOBILE SERVICES, AS THAT TERM IS DEFINED IN SECTION 332(D) OF TITLE 47, UNITED STATES CODE, AS AMENDED FROM TIME TO TIME, INCLUDING, BUT NOT LIMITED TO, ALL BROADBAND PERSONAL COMMUNICATIONS SERVICES, WIRELESS RADIO TELEPHONE SERVICES, SATELLITE PROVIDERS, GEOGRAPHIC AREA SPECIALIZED AND ENHANCED SPECIALIZED MOBILE RADIO SERVICES, AND INCUMBENT-WIDE AREAS SPECIALIZED MOBILE RADIO LICENSEES, WHICH OFFER REAL TIME, TWO-WAY VOICE OR DATA SERVICE THAT IS INTERCONNECTED WITH THE PUBLIC SWITCHED TELEPHONE NETWORK OR OTHERWISE PROVIDES ACCESS TO EMERGENCY COMMUNICATIONS SERVICES, OR ANY OTHER TELEPHONE SERVICE.

3. "COVERED ENTITY" MEANS A TELEPHONE CORPORATION OR WIRELESS PHONE SERVICE PROVIDER, AND INCLUDES ANY PROVIDER OF IP-ENABLED VOICE SERVICE.

4. "CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION" OR "CONFIDENTIAL INFORMATION" MEANS:

(A) INFORMATION THAT RELATES TO THE QUALITY, TECHNICAL CONFIGURATION, TYPE, DESTINATION, LOCATION, AND AMOUNT OF USE OF A TELECOMMUNICATIONS SERVICE SUBSCRIBED TO BY ANY CUSTOMER OF A COVERED ENTITY; AND

(B) INFORMATION CONTAINED IN CUSTOMERS' BILLING STATEMENTS PERTAINING TO TELEPHONE EXCHANGE SERVICE OR TELEPHONE TOLL SERVICE RECEIVED BY A CUSTOMER OF A COVERED ENTITY; PROVIDED, HOWEVER, CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION SHALL NOT INCLUDE INFORMATION REGARDING A CONSUMER'S PAYMENT HISTORY PURSUANT TO ARTICLE TWENTY-FIVE OF THIS CHAPTER.

5. "UNAFFILIATED THIRD PARTY" MEANS ANY ENTITY OR PERSON THAT IS NOT AN AFFILIATE OF, OR RELATED BY COMMON OWNERSHIP OR AFFILIATED BY CORPORATE CONTROL WITH THE COVERED ENTITY, BUT DOES NOT INCLUDE A JOINT EMPLOYEE OF SUCH INSTITUTION.

6. "AFFILIATE" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION NINE HUNDRED TWELVE OF THE BUSINESS CORPORATION LAW.

7. "PERSON" MEANS ANY NATURAL PERSON AND ANY FIRM, ORGANIZATION, PARTNERSHIP, ASSOCIATION, CORPORATION, NOT-FOR-PROFIT ORGANIZATION, OR OTHER ENTITY.

8. "IP-ENABLED VOICE SERVICE" MEANS:

(A) THE SERVICE ENABLES REAL-TIME, TWO-WAY VOICE COMMUNICATIONS;

(B) THE SERVICE REQUIRES A BROADBAND CONNECTION FROM THE USERS' LOCATION;

(C) THE SERVICE REQUIRES IP-COMPATIBLE END-USER EQUIPMENT; AND

(D) THE SERVICE OFFERING PERMITS USERS GENERALLY TO RECEIVE CALLS THAT ORIGINATE ON THE PUBLIC SWITCHED TELEPHONE NETWORK (PSTN) AND TO TERMINATE CALLS TO THE PSTN.

9. "CUSTOMER" MEANS, WITH RESPECT TO A COVERED ENTITY, ANY PERSON OR AUTHORIZED REPRESENTATIVE OF A PERSON TO WHOM THE COVERED ENTITY PROVIDES A PRODUCT OR SERVICE.

10. "PROCURE" MEANS TO OBTAIN CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION BY ANY MEANS, WHETHER ELECTRONICALLY, IN WRITING OR ORAL FORM, WITH OR WITHOUT CONSIDERATION.

S 676-A. PRIVACY OF CONFIDENTIAL INFORMATION. 1. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE, A COVERED ENTITY SHALL NOT DIRECTLY OR THROUGH AN AFFILIATE DISCLOSE CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION TO AN UNAFFILIATED THIRD PARTY, UNLESS:

(A) THE COVERED ENTITY SHALL HAVE FIRST AFFIRMATIVELY OBTAINED VIA VERIFIABLE MEANS INFORMED CONSENT FOR SUCH DISCLOSURE FROM THE PERSON WHOSE CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION IS SOUGHT, AND SUCH CONSENT HAS NOT BEEN WITHDRAWN; THE COVERED ENTITY SHALL HAVE FIRST RECEIVED FROM THE PERSON REQUESTING DISCLOSURE POSITIVE AND VERIFIABLE IDENTIFICATION THAT SUCH PERSON IS AUTHORIZED PURSUANT TO THIS ARTICLE TO RECEIVE SUCH CONFIDENTIAL INFORMATION IN ACCORD WITH THE PROCEDURES ESTABLISHED BY THE COVERED ENTITY;

(B) THE COVERED ENTITY IS AUTHORIZED PURSUANT TO COURT ORDER OR SUBPOENA TO RELEASE SUCH CONFIDENTIAL INFORMATION OR IS OTHERWISE REQUIRED TO DO SO BY LAW;

(C) DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION IS NECESSARY TO THE RENDITION OF THE SERVICE OR TO THE PROTECTION OF THE RIGHTS OR PROPERTY OF THE COVERED ENTITY, OR TO PROTECT THE CUSTOMER OF THOSE SERVICES FROM FRAUDULENT, ABUSIVE, OR UNLAWFUL USE OF, OR SUBSCRIPTION TO, SUCH SERVICES;

(D) DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION IS MADE TO A LAW ENFORCEMENT OR OTHER GOVERNMENTAL AGENCY UPON THE REASONABLE BELIEF THAT EXIGENT CIRCUMSTANCES INVOLVING THE IMMEDIATE DANGER OF DEATH OR SERIOUS PHYSICAL INJURY TO ANY PERSON EXIST; OR

(E) DISCLOSURE OF SUCH CONFIDENTIAL INFORMATION IS MADE TO THE NATIONAL CENTER OF MISSING AND EXPLOITED CHILDREN IN CONNECTION WITH A REPORT SUBMITTED THERETO PURSUANT TO SECTION 227 OF THE FEDERAL "VICTIMS OF CHILD ABUSE ACT OF 1990."

2. NO UNAFFILIATED THIRD PARTY WHO MAY BE IN RECEIPT OF CONFIDENTIAL TELECOMMUNICATION RECORDS INFORMATION RETAINED BY A COVERED ENTITY OR ANY OF ITS AFFILIATES SHALL RELEASE SUCH CONFIDENTIAL INFORMATION TO ANOTHER PERSON, EXCEPT THAT SUCH CONFIDENTIAL INFORMATION MAY BE DISCLOSED BY A LAW ENFORCEMENT AGENCY IN THE FURTHERANCE OF THE LAW ENFORCEMENT PURPOSE.

S 676-B. NOTICE. 1. A COVERED ENTITY SHALL ABIDE BY A WRITTEN POLICY REGARDING THE PRIVACY OF CUSTOMER INFORMATION IN ACCORDANCE WITH THIS ARTICLE AND APPLICABLE FEDERAL AND STATE LAW AND WILL MAKE SUCH PRIVACY POLICY AVAILABLE TO ITS CUSTOMERS, AND TO PROSPECTIVE CUSTOMERS PRIOR TO THEIR ENTERING INTO AN AGREEMENT OR CONTRACT WITH A COVERED ENTITY, EITHER BY POSTING SUCH PRIVACY POLICY CONSPICUOUSLY ON ITS WEBSITE OR BY MAKING IT AVAILABLE THROUGH OTHER VERIFIABLE MEANS. SUCH PRIVACY POLICY SHALL BE SET FORTH IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5-702 OF THE GENERAL OBLIGATIONS LAW.

2. THE WRITTEN PRIVACY POLICY REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL CLEARLY AND CONSPICUOUSLY STATE OR DESCRIBE:

(A) THE TYPES OF CONFIDENTIAL INFORMATION THAT THE COVERED ENTITY MAY SEEK TO DISCLOSE;

(B) THE CIRCUMSTANCES UNDER WHICH DISCLOSURE MAY BE MADE;

(C) THE TYPES OF UNAFFILIATED THIRD PARTIES TO WHICH DISCLOSURE MAY BE MADE; AND

(D) WHETHER AND HOW CUSTOMER CONSENT WILL BE OBTAINED, WHEN APPLICABLE.

S 676-C. CIVIL ENFORCEMENT. 1. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE OR ANY RULES OR REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT FEWER THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS PER VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. AN ACTION BROUGHT BY THE ATTORNEY GENERAL MAY ALSO INCLUDE OTHER CAUSES OF ACTION.

2. THE REMEDIES, DUTIES, PROHIBITIONS AND PENALTIES PROVIDED IN THIS ARTICLE ARE NOT EXCLUSIVE AND ARE IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES, AND PENALTIES PROVIDED BY LAW.

S 3. Every covered entity doing business in the state shall have in place and enforce internal procedures designed to prevent the unauthorized procurement, sale or release of confidential telecommunication records information, including, but not limited to, procedures to ensure

the identity of a customer and procedures for authorizing consent for the release of any such confidential information. No confidential information shall be released except pursuant to these procedures. The procedures required by this provision shall be available to the attorney general upon written request.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the secretary of state, in consultation with the attorney general and the public service commission, on or before such effective date.