

Chapter 13

Pretexting

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I. OVERVIEW

§ 13:1 Pretexting—In general

Pretexting is an issue that caught the attention of regulators, in-house lawyers, and outside counsel in 2006. There are a number of laws that can regulate the practice of pretexting. A good working definition of pretexting is obtaining certain forms of information under false pretenses. Mainly this relates to the gathering of telephone records and financial information, though certain states, including Illinois, have expanded the definition of covered information. Illegal pretexting can be improper depending upon the type of data, the type of person seeking it, and the purpose of the request.

This typically addresses two main forms of conduct—conduct that is directed at identity theft, or some other fraudulent gain, and investigation related conduct, which is not done for direct financial gain. A third, less common goal, is another criminal act—stalking of individuals.

Pretexting has a practice has undergone significant scrutiny in recent times, but the context of the investigations that many companies must conduct cannot be lost in the current furor. As discussed in Chapter 4, there are countless examples of employees, or other agents, stealing trade secrets via e-mail, or other electronic means. In many cases, a company will need to conduct this type of investigation in secret, which is not necessarily pretexting, but it can involve pretexting. Sarbanes-Oxley whistleblower cases can also involve similar issues. Other examples of investigations that may call for secrecy include:

- Disability claims;
- Collection cases/background checks;
- Investigating falsification of records;
- Competitive intelligence;
- Misappropriation of trade secrets;
- Theft of corporate assets;

- Derivative claims;
- Litigation related investigations;
- “Non-compete” investigations;
- To find witnesses, research alibis; or
- Finance/accounting fraud allegations.

While the Gramm-Leach-Bliley Act (GLB)¹ has a pretexting rule, not surprisingly, the FTC view pretexting in certain cases as a violation of the FTC Act. Several states, including California, Georgia, and Illinois have passed legislation addressing pretexting, and Georgia has a law, discussed in Section 13:13, specific to private investigators. Care should be taken in any investigation to comply with these laws. Additionally many states’ identity theft laws may be implicated when information is obtained under false pretenses. Common law fraud, wire fraud, and potentially RICO liability could, in theory exist as well.

Running a proper investigation can also rely on a number of other steps. First, determining whether an investigation should be run internally by company employees, or by an independent contractor should be considered up front. There are pros and cons to each decision, but in many cases not having attorneys involved and having internal personnel completely involved, may limit the application of the attorney work-product protection. If a third-party is used, performing some form of background check on your investigator is a step that should be considered. Additionally, taking steps such as assessing what laws are applicable to your business, particularly in the state law context, is important.

Examining whether you actually need the information you are seeking is also a critical issue to consider. In certain cases gathering particular types of information trigger additional laws and if that information is not truly needed, but gathered because it is available, it should not be gathered via pretexting. Some companies are also considering enacting explicit policies regarding this issue, including policies that restrict the gathering of certain forms of information through false pretenses. Placing codes of conduct in an investigator’s contract regarding the scope of permissible investigatory techniques is also something to consider.

[Section 13:1]

¹See §§ 9:2 et seq.

A related, but different issue, is employee monitoring of information that is in the employer's possession, or in the work place.²

One final issue is worth considering. In many cases attorneys are involved, in some form, in these investigations. Given the type of conduct involved, the rules governing attorney's ethical obligations can also be implicated and lawyers who are involved in these investigations need to consider what the rules of ethics require.

§ 13:2 Telephone Records and Privacy Act

The federal government has recently enacted the Telephone Records and Privacy Protection Act of 2006, which governs pretexting.¹ It should be noted that this law not only applies to traditional telephone services, but also any IP enabled voice service, if the service can originate traffic to, or terminate traffic from, the public switched telephone network, or a successor network.

§ 13:3 Obtaining telephone records

It is a crime for any person, in interstate or foreign commerce, to knowingly and intentionally obtain, or attempt to obtain, confidential phone record¹ information² of a covered

²See § 13:11.

[Section 13:2]

¹18 U.S.C.A. § 1039.

[Section 13:3]

¹The term used in the statute is technically confidential phone records information.

²The term "confidential phone records information" means information that: (A) relates to the quantity, technical configuration, type, destination, location, or amount of use of a service offered by a covered entity, subscribed to by any customer of that covered entity, and kept by or on behalf of that covered entity solely by virtue of the relationship between that covered entity and the customer; (B) is made available to a covered entity by a customer solely by virtue of the relationship between that covered entity and the customer; or (C) is contained in any bill, itemization, or account statement provided to a customer by or on behalf of a covered entity solely by virtue of the relationship between that covered entity and the customer. 18 U.S.C.A. § 1039(h)(1).

entity³, by: making false or fraudulent statements or representations to an employee of a covered entity; making a false or fraudulent statements or representations to a customer of a covered entity; providing a document to a covered entity knowing that the document is false or fraudulent; or accessing customer accounts of a covered entity via the Internet, or by means of conduct that violates 18 U.S.C.A. § 1030 (the CFAA, discussed in Chapter 3), without prior authorization from the customer⁴ to whom the confidential phone record information relates.⁵ Violation of this law is punishable by fines, a prison term of up to 10 years, or both.⁶

§ 13:4 Prohibitions on sales or transfers of records

It is also illegal to, unless otherwise permitted by law, knowingly and intentionally sell, transfer, or attempt to sell or transfer, confidential phone record information of a covered entity, without prior authorization from the customer to whom the confidential phone record information relates, or knowing or having reason to know the information was fraudulently obtained. This is also a crime, punishable by a fine, a prison term of not more than 10 years, or both.¹ It should be noted that the exceptions to this restriction include the exceptions in § 222(d) of the Communications Act of

³The term “covered entity”: (A) has the same meaning given the term “telecommunications carrier” in section 3 of the Communications Act of 1934 (47 U.S.C.A. § 153); and (B) includes any provider of IP-enabled voice service. 18 U.S.C.A. § 1038(h)(2). The term “IP-enabled voice service” means the provision of real-time voice communications offered to the public, or such class of users as to be effectively available to the public, transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol, (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network, or a successor network. 18 U.S.C.A. § 1039(h)(4).

⁴The term “customer” means, with respect to a covered entity, any individual, partnership, association, joint stock company, trust, or corporation, or authorized representative of such customer, to whom the covered entity provides a product or service. 18 U.S.C.A. § 1039(h)(3).

⁵18 U.S.C.A. § 1039(a).

⁶18 U.S.C.A. § 1039(a).

[Section 13:4]

¹18 U.S.C.A. § 1039(b)(1).

1934.²

§ 13:5 Prohibition on purchase or receipt of confidential phone records

It is also illegal for any person to knowingly and intentionally purchase or receive, or attempt to purchase or receive, a confidential phone record information of a covered entity, without prior authorization from the customer to whom the confidential phone record information relates, or if the person, knows or has reason to know, that this information was obtained fraudulently.¹ This crime is punishable by a fine, a prison term of not more than 10 years, or both.² It should be noted that the exceptions to this restriction also include the exceptions in § 222(d) of the Communications Act of 1934.³

§ 13:6 Enhanced penalties

In addition to the penalties otherwise provided, a person that violates this law will be fined twice the amount provided in § 3571(b)(3),(c)(3), imprisoned for not more than 5 years, or both, if this law is violated in connection with the violation of any other law of the United States, or as part of a pattern of illegal activity involving more than \$100,000, or more than 50 customers of a covered entity in a 12-month period.¹ Violation of this law, in connection with certain other crimes², also gives rise to additional fines and a prison term of up to 5 years, or both.³

²18 U.S.C.A. § 1039(b)(2). *See* Chapter 5.

[Section 13:5]

¹18 U.S.C.A. § 1039(c)(1).

²18 U.S.C.A. § 1039(c)(1).

³18 U.S.C.A. § 1039(b)(2). *See* Chapter 5.

[Section 13:6]

¹18 U.S.C.A. § 1039(d).

²Those that are described in §§ 2261, 2261A, 2262, or any other crime of violence, as well as an offense under §§ 111, 115, 1114, 1503, 1512, 1513, or to intimidate, threaten, harass, injure, or kill any Federal, State, or local law enforcement officer.

³18 U.S.C.A. § 1039(e)(1) to (2).

§ 13:7 Exceptions

This law does not apply to any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.¹

II. PRETEXTING**§ 13:8 California—Restrictions on pretexting**

California has made it illegal for an person¹ to purchase, sell, offer to purchase or sell,² or conspire to purchase or sell any telephone calling pattern record or list,³ without the

[Section 13:7]

¹18 U.S.C.A. § 1039(g).

[Section 13:8]

¹“Person” includes an individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity. Cal. Penal Code § 638(c)(1).

²For purposes of this law, “purchase” and “sell” shall not include information provided to a collection agency or assignee of the debt by the telephone corporation, and used exclusively for the collection of the unpaid debt assigned by the telephone corporation, provided that the collection agency or assignee of the debt shall be liable for any disclosure of the information that is in violation of this law. Cal. Penal Code § 638(c)(4).

³“Telephone calling pattern record or list” means information retained by a telephone company that relates to the telephone number dialed by the subscriber, or other person using the subscriber’s telephone with permission, or the incoming number of a call directed to the subscriber, or other data related to such calls typically contained on a subscriber telephone bill such as the time the call started and ended, the duration of the call, any charges applied, and any information described in subdivision (a) of Section 2891 of the Public Utilities Code whether the call was made from or to a telephone connected to the public switched telephone network, a cordless telephone, as defined in Section 632.6, a telephony device operating over the Internet utilizing voice over Internet protocol, a satellite telephone, or commercially available interconnected mobile phone service that provides access to the public switched telephone network via a mobile communication device employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services, and digital Specialized Mobile Radio. Cal. Penal Code § 638(c)(2). A “telephone company” means a telephone corporation as defined in Section 234 of the Public Utilities Code or any other person that provides residential or commercial telephone service to

written consent of the subscriber.⁴ It is also illegal for any person to obtain through fraud and deceit, or attempt to procure through fraud or deceit any telephone calling pattern record or list.⁵ This law in no way restricts law enforcement from lawfully obtaining records.⁶

§ 13:9 California—Enforcement

This crime is punishable by a fine of not more than \$2,500, a prison term of up to 1 year, or both. If this is a repeat offence, it is punishable by a fine of not more than \$10,000, a prison term of up to 1 year, or both.¹

§ 13:10 California—Exclusion from evidence

California law followed the lead of the Illinois anti-pretexting law, and makes any personal information contained in a telephone calling pattern inadmissible as evidence in any judicial, administrative, legislative, or other proceeding except when the information is offered as proof in an action or prosecution for a violation of this law, or when otherwise authorized by law, in any criminal prosecution.¹

§ 13:11 California—Employer liability

An employer or entity that contracts with a person that violates this law is only subject to liability if the employer or entity knowingly allowed the employee or contractor to engage in the conduct contained in sub-section (a). It appears that this requires knowledge of the improper acts, not just knowledge of the investigation, so the law appears to be

a subscriber utilizing any of the technologies or methods enumerated in paragraph (2). Cal. Penal Code § 638(c)(3).

⁴Cal. Penal Code § 638(a).

⁵Cal. Penal Code § 638(a).

⁶Cal. Penal Code § 638(f).

[Section 13:9]

¹Cal. Penal Code § 638(a).

[Section 13:10]

¹Cal. Penal Code § 638(b).

of a limited scope.¹

§ 13:12 Florida—Pretexting of telephone records

It is a violation of Florida law for a person to obtain or attempt to obtain the calling record¹ of another person without the permission of that person by: making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a telecommunications company;² making a false, fictitious, or fraudulent statement or representation to a customer³ of a telecommunications company; or providing any document to an officer, employee, or agent of a telecommunications company, knowing that the document is forged, is counterfeit, was lost or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.⁴ It is also a violation of Florida law to ask another person to obtain a calling record, knowing that the other person will obtain, or attempt to obtain, the calling record from the telecommunications company in any manner described above, or sell or offer to sell a calling record obtained in any manner described in above.⁵

A first time violation of this law is a misdemeanor of the first degree, punishable as provided in §§ 775.082 or 775.083.⁶ A second or subsequent violation constitutes a felony of the third degree, punishable as provided in §§ 775.082 or 775.083.⁷

[Section 13:11]

¹Cal. Penal Code § 638(d).

[Section 13:12]

¹“Calling record” means a record held by a telecommunications company of the telephone calls made or text messages sent or received by a customer of that company. Fl. Stat. § 817.484(1)(a).

²“Telecommunications company” has the same meaning as in § 364.02, except that the term includes VoIP service and commercial mobile radio service providers. Fl. Stat. § 817.484(1)(d).

³“Customer” means a person who has received telephone service from a telecommunications company. Fl. Stat. § 817.484(1)(b).

⁴Fl. Stat. § 817.484(2)(a)(1) to (3).

⁵Fl. Stat. § 817.484(2)(b) to (c).

⁶Fl. Stat. § 817.484(3).

⁷Fl. Stat. § 817.484(3).

§ 13:13 Florida—Exemptions

It is not a violation of this law for a law enforcement agency¹ to obtain a calling record in connection with the performance of the official duties of that agency in accordance with other applicable laws, or for a telecommunications company, or an officer, employee, or agent of a telecommunications company, to obtain a calling record of that company in the course of: testing the security procedures or systems of the telecommunications company for maintaining the confidentiality of customer information; investigating an allegation of misconduct or negligence on the part of an officer, employee, or agent of the telecommunications company; or recovering a calling record that was obtained or received by another person in any manner described in subsection (2).²

§ 13:14 Georgia—Restrictions on release of telephone records

As noted elsewhere,¹ Georgia has enacted the Telephone Records Privacy Protection Act, as well as additional restrictions on the release of telephone records. These laws should be, in essence, considered to be restrictions on pretexting regarding telephone records.

§ 13:15 Georgia—Restrictions upon private investigators

Georgia has also recently enacted new restrictions upon private investigators. These regulations restrict the collection of telephone records.¹

§ 13:16 Illinois—Pretexting

Illinois also recently addressed the pretexting issue by

[Section 13:13]

¹“Law enforcement agency” has the same meaning as in § 23.1225(1)(d). Fl. Stat. § 817.484(1)(c).

²Fl. Stat. § 817.484(4)(a) to (b)(3).

[Section 13:14]

¹See §§ 12:24 to 12:25.

[Section 13:15]

¹Ga. Code Ann. § 43-38-11(a)(16).

expanding the law referenced above. It is now also a crime to use any personal identification information or personal identification document of another to portray himself as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person, or to use any personal identification information or personal identification document of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person.¹

§ 13:17 Illinois—Civil remedies for pretexting

While other laws present potential remedies for pretexting, Illinois also added a new civil remedy for violation of this law.¹ If a person is convicted of a violation of this portion of the law, where damages cannot be proven, the person who had their personal identification information or personal identification documents used in the violation can recover damages of \$2,000.² This solves, at least for violations of this law, the damage issues that are frequently encountered in these type of matters. This topic is discussed more fully in Chapter 25.

Illinois has also attempted to end pretexting by excluding from evidence any information obtained in violation of this law, except to the extent it is admitted in a civil or criminal matter provided by this law, or a disciplinary or licensure-related proceeding arising from the violation of this law, unless express consent is obtained from the person identified in the information.³

While this law has expanded in certain ways, there are new exemptions. The law does not prohibit the capture or transmission of personal identifying information in the

[Section 13:16]

¹720 ILCS 5/16-15(a)(6) to (7).

[Section 13:17]

¹720 ILCS 5/16G-21.

²720 ILCS 5/16G-21.

³720 ILCS 5/16G-30(e).

ordinary and lawful course of business, apply to any peace officer of Illinois, or the federal government, or any agent of the same, while in the lawful performance of the officer's duties; prohibit a licensed private detective or licensed private detective agency from representing himself, herself, or itself as any another person, provided that he, she, or it may not portray himself, herself, or itself as the person whose information he, she, or it is seeking except as permitted by this law. The law also does not prohibit any actions that are authorized by other statutes.⁴

§ 13:18 Maryland—Telephone Privacy Act of 2006

Many states have become increasingly concerned about the collection and dissemination of telephone records, including through a practice called pretexting—pretending to be an authorized person, or at least having a proper purpose to gather telephone records. Maryland has enacted the Telephone Privacy Act of 2006, which restricts these practices and generally provides for privacy regarding telephone records.¹

Maryland also recently amended its wiretapping statute.² With certain exceptions, it is generally illegal to:

- Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
- Willfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle; or
- Willfully use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic

⁴720 ILCS 5/16G-40(a)(1) to (4).

[Section 13:18]

¹Md. Code Ann., [Com. Law] §§ 13-304, et seq.

²Md. Code Ann., [Com. Law] §§ 10-402 and 10-406.

communication in violation of this law.³

§ 13:19 Maryland—Pretexting prohibitions

A person cannot knowingly obtain, attempt to obtain, or solicit or conspire with another to obtain, a telephone¹ record² without the authorization of the customer³ to whom the record pertains, or by fraudulent, deceptive, or false means.⁴ It is also illegal to knowingly sell or attempt to sell a telephone record without the authorization of the customer to whom the record pertains; or 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.⁵

§ 13:20 Maryland—Exemptions

This law 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.¹ It also does not prohibit a telephone company² from obtaining, using, disclosing, or allowing access to a customer's telephone

³Md. Code Ann., [Com. Law] § 10-402.

[Section 13:19]

¹“Telephone” means a device used by a person for voice communications transmitted in analog, data, or any other form. Md. Code Ann., Criminal Law § 7-304(a)(3).

²“Telephone record” means 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; 2. the incoming number of a call directed to a customer or other person using the customer's telephone; 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. “Telephone record” does not include information collected or retained by customers using caller I.D. or similar technology. Md. Code Ann., Criminal Law § 7-304(a)(5).

³“Customer” means a person who subscribes to, or is financially responsible for a subscription to, telephone service from a telephone company. Md. Code Ann., Criminal Law § 7-304(a)(2).

⁴Md. Code Ann., Criminal Law § 7-304(c)(1).

⁵Md. Code Ann., Criminal Law § 7-304(c)(2).

[Section 13:20]

¹Md. Code Ann., Criminal Law § 7-304(b)(1) to (2).

²“Telephone company” means a person that provides commercial

record:

- as otherwise authorized by law;
- with the consent of the customer;
- in connection with service provided to the customer;
- for purposes of billing or collection from the customer;
- as necessary to prevent fraud 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 telephone record; or
- to the National Center for Missing and Exploited Children, in connection with a report submitted under § 227 of the federal Victims of Child Abuse Act of 1990.³

§ 13:21 Maryland—Criminal enforcement

A person who violates this law is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.¹

§ 13:22 Maryland—Civil enforcement

Violation of this law is an unfair or deceptive trade practice under Title 13 of the Commercial Law Article.¹

§ 13:23 Michigan—Pretexting of telephone records

It is illegal in Michigan for a person to: knowingly procure, attempt to procure, or solicit or conspire with another to

telephone service to a customer, regardless of the communication technology used, including: (i) traditional wireline or cable telephone service; (ii) cellular, broadband PCs, or other commercial mobile radiotelephone service; (iii) microwave, satellite, or other terrestrial telephone service; and (iv) voice over Internet telephone service. Md. Code Ann., Criminal Law § 7-304(a)(4).

³Md. Code Ann., Criminal Law § 7-304(f)(1) to (7).

[Section 13:21]

¹Md. Code Ann., Commercial Law § 13-301(14)(xxxiii).

[Section 13:22]

¹Md. Code Ann., Criminal Law § 7-304(d)(1).

procure a confidential telephone record¹ of any resident of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive, or false means; knowingly sell or attempt to sell a confidential telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or receive a confidential telephone record of any resident of this state 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.²

This law does not prohibit any action by a law enforcement agency, or any officer, employee, or agent of such agency, from obtaining confidential telephone records in connection with the performance of the official duties of the agency.³ It also does not prohibit a telecommunication provider⁴ from obtaining, using, disclosing, or permitting access to any confidential telephone record, either directly or

[Section 13:23]

¹“Confidential telephone record” means any of the following: (i) Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a service offered by a telecommunication provider subscribed to by any customer of that telecommunication provider. (ii) Information that is made available to a telecommunication provider by a customer solely by virtue of the relationship between the telecommunication provider and the customer. (iii) Information contained in any bill related to the product or service offered by a telecommunication provider and received by any customer of the telecommunication provider. Mich. Stat. Ann. § 445.65a(1)(a).

²Mich. Stat. Ann. § 445.65a(2)(a) to (c).

³Mich. Stat. Ann. § 445.65a(3).

⁴“Telecommunication provider” means all of the following: (i) A provider as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. (ii) A provider of IP-enabled voice service. (iii) A provider of any telecommunication service. Mich. Stat. Ann. § 445.65a(1)(d). “IP-enabled voice service” means an interconnected voice over internet protocol service that enables real-time, 2-way voice communications, requires a broadband connection from the user’s location using internet protocol-compatible equipment, and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. Mich. Stat. Ann. § 445.65a(1)(c). “Telecommunication service” means all of the following: (i) A service as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. (ii) Cellular telephone service. (iii) Broadband personal communication service. (iv) Covered specialized mobile radio. Mich. Stat. Ann. § 445.65a(1)(a).

indirectly, through its agents, subcontractors, affiliates, or representatives in the normal course of business. Mich. Stat. Ann. § 445.65a(4). Finally, Michigan’s law does not expand the obligations and duties of a telecommunication provider to protect confidential telephone records beyond those obligations and duties otherwise established by federal and state law.⁵

§ 13:24 New York—Consumer Communication Records Privacy Act

In the wake of recent pretexting issues, New York took action to limit disclosure of certain telephone records. The legislature has declared that users or wireless and traditional wireline telephone customers have a right and expectation of privacy for personal information relating to telephone communication, including but not limited to the content of communications, the telephone numbers called and the telephone numbers from which calls are received, the date and time of the calls, the duration of such calls and the charges applied for these calls. The legislature also recognizes the legitimate need of law enforcement agencies and litigants to obtain certain records where there is a legitimate interest. The legislature wanted to prohibit the procurement of, sale or use of telephone record information without the authorization of the customer.

It is illegal for any person, firm, partnership, association, limited liability company, corporation, trust, business or other entity to knowingly and intentionally procure,¹ attempt to procure, solicit or conspire with another to procure, offer for sale, sell or fraudulently transfer or use or attempt to sell or fraudulently transfer or use, telephone record² in-

“Covered specialized mobile radio service” means a commercial mobile radio service that offers real-time, 2-way switched voice or data service and is interconnected with the public switched network utilizing an in-network switching facility. Mich. Stat. Ann. § 445.65a(1)(b).

⁵Mich. Stat. Ann. § 445.65a(4).

[Section 13:24]

¹“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. NY Gen. Bus. Law. § 399-dd(1)(e).

²“Telephone record” means information retained by a telephone

formation from a telephone company,³ without written authorization from the customer⁴ to whom the telephone record information, unless the transfer is otherwise permitted by law.⁵

This law in no way prevents any action pursuant to a subpoena or by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain telephone record information from a telephone company in connection with the performance of the official duties thereof, in accordance with other applicable laws.⁶

Whenever the Attorney General believes that there has been a violation of this law, he may bring an in the name and on behalf of the people of to enjoin and restrain the continuation of the violation.⁷ Preliminary relief may be granted under Article 63 of the C.L.P.R.⁸ The Court can also award reasonable attorneys' fees and damages for actual

company that relates to the telephone number dialed from the telephone of a customer or the incoming number of a call directed to the telephone of a customer, the content of alphanumeric messages sent to or from a telephone or other data related to such calls typically contained on a telephone bill of a customer including but not limited to the time the call started and ended, the duration of the call, the time of day the call was made and any charges applied, provided, however, that information commonly known as caller identification or caller ID information transmitted to or retained by the recipient of a call shall not constitute a telephone record. NY Gen. Bus. Law. § 399-DD(1)(A).

³“Telephone company” means any person, firm, partnership, association, limited liability company, corporation, trust, business or other entity that provides commercial or residential telephone services to a customer, irrespective of the communications technology used to provide such service, including, but not limited to, traditional wireline or cable telephone service; cellular, broadband PCs, or other wireless telephone service; microwave, satellite, or other terrestrial telephone service; and voice over internet telephone service. NY Gen. Bus. Law. § 399-DD(1)(B) “Telephone” means any device used by a person for voice communications, in connection with the services of a telephone company, whether such voice communications are transmitted in analog, data, or any other form. NY Gen. Bus. Law. § 399-DD(1)(C).

⁴“Customer” means the person who subscribes to telephone service from a telephone company or in whose name such telephone service is listed. NY Gen. Bus. Law. § 399-DD(1)(D).

⁵NY Gen. Bus. Law. § 399-DD(2).

⁶NY Gen. Bus. Law. § 399-DD(2).

⁷NY Gen. Bus. Law. § 399-DD(3)(A).

⁸NY Gen. Bus. Law. § 399-DD(3)(A).

costs or losses incurred by a customer whose telephone records were sold or fraudulently transferred or were attempted to be sold or fraudulently transferred.⁹ A civil penalty of \$1,000 per violation can also be imposed.¹⁰

⁹NY Gen. Bus. Law. § 399-DD(3)(A).

¹⁰NY Gen. Bus. Law. § 399-DD(3)(A).