

By: King of Parker

H.B. No. 106

A BILL TO BE ENTITLED

AN ACT

relating to the protection of customer telephone records; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 64, Utilities Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PROTECTION OF CUSTOMER TELEPHONE RECORDS

Sec. 64.251. DEFINITIONS. In this subchapter:

(1) "Commercial mobile service provider" means a provider of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66).

(2) "Telephone record" means proprietary or personally identifiable information retained by a commercial mobile service provider or billing utility about its customers, including:

(A) the telephone number:

(i) dialed by a customer or other person using the customer's telephone number with the customer's permission; or

(ii) of an incoming call directed to a customer;

(B) information that indicates the location from

1 which or to which a call was made; and

2 (C) other confidential information typically  
3 contained on a customer telephone bill such as the time a call  
4 started and ended, the duration of the call, the time of day the  
5 call was made, the type of rate plan to which the customer  
6 subscribes, and any charges applied.

7 Sec. 64.252. CONSTRUCTION OF SUBCHAPTER. Except as  
8 provided by Section 64.253, this subchapter does not expand the  
9 obligations or duties of a commercial mobile service provider or  
10 billing utility to protect telephone records under federal and  
11 state law.

12 Sec. 64.253. PROCEDURES. (a) A commercial mobile service  
13 provider or billing utility that maintains telephone records of a  
14 resident of this state shall establish reasonable procedures to  
15 protect against unauthorized or fraudulent disclosure of the  
16 records that may result in substantial harm or inconvenience to the  
17 resident.

18 (b) This section does not create a private cause of action.

19 Sec. 64.254. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE,  
20 OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense  
21 if the person:

22 (1) knowingly procures, attempts to procure, or  
23 solicits or conspires with another to procure a telephone record of  
24 a resident of this state:

25 (A) without the authorization of the resident to  
26 whom the record pertains; or

27 (B) by fraudulent, deceptive, or false means;

1           (2) knowingly sells, or attempts to sell, a telephone  
2 record of a resident of this state without the authorization of the  
3 resident to whom the record pertains; or

4           (3) receives a telephone record of a resident of this  
5 state knowing that the record has been obtained:

6                 (A) without the authorization of the resident to  
7 whom the record pertains; or

8                 (B) by fraudulent, deceptive, or false means.

9           (b) A violation of this section is a:

10                 (1) state jail felony if the violation involves a  
11 single telephone record;

12                 (2) felony of the third degree if the violation  
13 involves at least two but not more than 10 telephone records; and

14                 (3) felony of the second degree if the violation  
15 involves more than 10 telephone records.

16           (c) In addition to the penalties provided by Subsection (b),  
17 a person convicted of an offense under this section may be ordered  
18 to make restitution for financial loss sustained by the resident or  
19 other person who suffered financial loss as the direct result of the  
20 offense.

21           (d) An offense under this section may be prosecuted in:

22                 (1) the county where the customer whose telephone  
23 record is the subject of the prosecution resided at the time of the  
24 offense; or

25                 (2) any county in which any part of the offense took  
26 place regardless of whether the defendant was present in the  
27 county.

1       (e) If conduct constituting an offense under this section  
2 also constitutes an offense under another section of this code or  
3 the Penal Code, the actor may be prosecuted under either section or  
4 under both sections.

5       Sec. 64.255. EXCEPTIONS. Section 64.254 does not apply to:

6           (1) a person acting according to a valid court order,  
7 warrant, or subpoena; or

8           (2) a commercial mobile service provider or billing  
9 utility that obtains, uses, discloses, or permits access to a  
10 telephone record, either directly or indirectly through its agent:

11                   (A) as otherwise authorized by law;

12                   (B) with the consent of the customer to whom the  
13 record pertains;

14                   (C) acting reasonably and in good faith according  
15 to Section 64.252, notwithstanding a later determination that the  
16 action was not authorized;

17                   (D) as necessary to:

18                           (i) provide service;

19                           (ii) protect the rights or property of the  
20 commercial mobile service provider or billing utility; or

21                           (iii) protect the customer to whom the  
22 record pertains and other carriers from fraudulent, abusive, or  
23 unlawful use of or subscription to services;

24                   (E) to a governmental entity, if the commercial  
25 mobile service provider or billing utility reasonably believes that  
26 an emergency involving immediate danger of death or serious  
27 physical injury to a person justifies disclosure of the

1 information; or

2 (F) to the National Center for Missing and  
3 Exploited Children in connection with a report submitted under 42  
4 U.S.C. 13032.

5 Sec. 64.256. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A  
6 violation of this subchapter is a deceptive trade practice under  
7 Subchapter E, Chapter 17, Business & Commerce Code.

8 SECTION 2. Article 59.01(2), Code of Criminal Procedure, is  
9 amended to read as follows:

10 (2) "Contraband" means property of any nature,  
11 including real, personal, tangible, or intangible, that is:

12 (A) used in the commission of:

13 (i) any first or second degree felony under  
14 the Penal Code;

15 (ii) any felony under Section 15.031(b),  
16 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
17 31, 32, 33, 33A, or 35, Penal Code;

18 (iii) any felony under The Securities Act  
19 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

20 (iv) any offense under Chapter 49, Penal  
21 Code, that is punishable as a felony of the third degree or state  
22 jail felony, if the defendant has been previously convicted three  
23 times of an offense under that chapter;

24 (B) used or intended to be used in the commission  
25 of:

26 (i) any felony under Chapter 481, Health  
27 and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code; ~~or~~

(viii) a Class B misdemeanor under Section 35.60, Business & Commerce Code; or

(ix) any felony under Section 64.254, Utilities Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to

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1 facilitate the commission of a felony under Section 15.031 or  
2 43.25, Penal Code.

3 SECTION 3. This Act takes effect September 1, 2006.