

BILL ANALYSIS

Senate Research Center

H.B. 73
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently, identity theft has become a critical problem in this state and across the country. One of the methods used to obtain someone else's personal information is referred to as "pretexting." Pretexting is the practice of obtaining one's personal information under false pretenses. When one thinks of their own personal assets, chances are their home, car, and savings and investments come to mind, but not their Social Security number, telephone records, and bank and credit card account numbers. To people known as "pretexters," such information is a personal asset as well. The expanded reliance on wireless phones over the past two decades has prompted the abuse of these records and has placed telecommunications customers and companies in a dangerous situation. Not expressly penalizing the person who commits such identity theft or who conspires to do so will allow pretexting to continue to invade the private lives of many.

H.B. 73 clarifies that a specific offense of fraudulently obtaining or conspiring to obtain personal information from a telephone company is a Class A misdemeanor and provides for restitution to the victim. Furthermore, this bill provides that transferring records without authorization (although not fraudulently) and advertising the ability to fraudulently obtain records also constitute such an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 35, Business & Commerce Code, by adding Subchapter L, as follows:

SUBCHAPTER L. PROTECTION OF CUSTOMER TELEPHONE RECORDS

Sec. 35.151. DEFINITIONS. Defines "caller identification record," "telephone company," and "telephone record."

Sec. 35.152. CONSTRUCTION OF SUBCHAPTER. Provides that this subchapter does not apply to expand the obligations or duties of a telephone company under federal or other state law to protect telephone records.

Sec. 35.153. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE, OR RECEIPT OF TELEPHONE RECORDS. (a) Provides that a person commits an offense if the person engages in certain actions related to fraudulently obtaining telephone records of a resident of this state.

(b) Provides that an offense under this section is a Class A misdemeanor, except that a fine is prohibited from exceeding \$20,000.

(c) Authorizes a person convicted of an offense under this section to be required to forfeit personal property used or intended to be used in violation of this section in addition to the penalties provided by Subsection (b).

(d) Requires a person convicted of an offense under this section to be ordered to pay to a resident whose telephone record was obtained in a manner prohibited by this section an amount equal to a certain sum in addition to the penalties provided by Subsections (b) and (c).

(e) Authorizes an offense under this section to be prosecuted in certain counties.

(f) Authorizes a defendant, if venue lies in more than one county under Subsection (e), to be prosecuted in only one county for the same conduct.

(g) Authorizes an actor to be prosecuted under either section or under both sections if conduct constituting an offense under this section also constitutes an offense under another section of this code or of any other law, including the Penal Code.

(h) Provides that this section does not create a private right of action.

Sec. 35.154. EXCEPTIONS. Provides exceptions to the application of Section 35.153.

Sec. 35.155. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. Provides that a violation of this subchapter is a false, misleading, or deceptive act or practice under Section 17.46 (Deceptive Trade Practices Unlawful) and is subject to action only by the consumer protection division of the attorney general's office as provided by Section 17.46(a) (regarding deceptive trade practices).

Sec. 35.156. CONSISTENCY WITH FEDERAL LAW. Prohibits this subchapter from being construed in a manner that is inconsistent with 18 U.S.C. Section 1038, 47 U.S.C. Section 222, or any other applicable federal law or rule.

Sec. 35.157. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES. Provides that this subchapter does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a state, or a political subdivision of a state or of an intelligence agency of the United States.

SECTION 2. Amends Article 59.01(2), Code of Criminal Procedure, to redefine "contraband."

SECTION 3. Effective date: September 1, 2007.