

BILL ANALYSIS

C.S.H.B. 73
By: Flynn
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently, identity theft has become a critical problem in Texas 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 getting your personal information under false pretenses. When you think of your own personal assets, chances are your home, car, and savings and investments come to mind. But what about your Social Security number (SSN), telephone records, and your bank and credit card account numbers? To people known as "pretexters," that information is a personal asset too. The expanded reliability on wireless phones of the past two decades has prompted the abuse of these records and put telecommunications customers and companies in a dangerous spot. Without expressly penalizing the person who commits this identity theft or conspires to do so, pretexting will continue to invade the private lives of many.

C.S.H.B. 73 clarifies that specific offense of fraudulently obtaining or conspiring to obtain personal information from a telephone company is a Class A misdemeanor and provides restitution to the victim. In addition to obtaining records fraudulently, under C.S.H.B. 73, transferring records without authorization (although not fraudulently) is also an offense as is advertising the ability to fraudulently obtain records..

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 73 amends the Business & Commerce Code to add a new subchapter (new subchapter) to provide that a person commits an offense of unauthorized or fraudulent procurement, sale, or receipt of telephone records (record) if the person obtains, attempts to obtain, or conspires with another to obtain a record of a resident of this state without authorization of the resident to whom the record pertains by certain prohibited means as set forth in the bill (prohibited means). The bill prohibits asking another person to obtain a telephone record knowing the record will be obtained by prohibited means. The bill prohibits a person from selling, transferring, or attempting to sell or transfer a record without authorization of the resident to whom the record pertains or offering to obtain or offering to sell a record that has been or will be obtained without authorization from the resident to whom the record pertains. The bill sets forth penalties for a violation, proper venue, and provides exceptions.

C.S.H.B. 73 clarifies that the bill does not apply to expand the obligations or duties of a telephone company under federal or other state law to protect telephone records and does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency. The bill prohibits the new subchapter from being construed in a manner that is inconsistent with applicable federal law or rules.

C.S.H.B. 73 also sets forth that a violation of the new subchapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code. The bill sets forth definitions for the meaning of "caller identification record," "telephone company," and "telephone record."

C.S.H.B. 73 amends Article 59.01(2), Code of Criminal Procedure by amending the definition of "contraband."

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 73 modifies the original by adding the new subchapter to the Business & Commerce Code rather than the Utilities Code.

The substitute modifies the original by defining "telephone company" as a provider of commercial services, regardless of technology. The substitute replaces the terms "commercial mobile service provider" and "billing utility" with "telephone company" throughout the entire bill.

The substitute modifies the original by clarifying that a telephone record means a record collected and retained by or on behalf of a customer, created by a telephone company, that also includes either the telephone number dialed or received, the time, duration, or location from or at which a call was received. The definition of telephone record is also modified, replacing "and" with "or" to protect any and all parts of a customer telephone record.

The substitute modifies the original by clarifying that C.S.H.B. 73 does not require a telephone company to expand upon its duties under state or federal law.

The substitute expands the offense to include: conspiring to obtain a telephone record without authorization; accessing a customer's telephone record over the Internet; providing to a telephone company a document that the person knows contains a false, fictitious, or fraudulent statement or representation; selling, transferring, or attempting to sell or transfer a telephone record without authorization; or offering to obtain or offering to sell or transfer a telephone record without authorization.

The substitute modifies the original by changing the offense from a graduated penalty including felonies to a Class A misdemeanor, except that a fine not to exceed \$20,000 is authorized. The substitute modifies the original by allowing that a person convicted of an offense be required to forfeit personal property used or intended to be used in a violation. The substitute modifies the original by clarifying that an offense may be prosecuted in either the county of residence of the customer affected or any county in which any part of the offense took place, regardless of whether the defendant was ever present in the county, and clarifies that the actor may only be prosecuted in one county for the same conduct. The substitute modifies the original by clarifying that if an offense also constitutes an offense under another section of this or any other law, including the Penal Code, the actor may be prosecuted under either section or both. Finally, the committee substitute provides that a private right of action is not created under this new subchapter.

The substitute modifies the original by amending the exception relating to a person acting in connection with the official duties of a law enforcement to specifically list that to be excepted from this offense, a person must act pursuant to a valid court order, warrant, subpoena, or civil investigative demand.

The substitute modifies the original by amending the exception relating to the disclosure of a telephone record by a telephone company, adding that a telephone company may disclose such records to protect its rights or property. Further, the substitute adds four additional exceptions relating to the disclosure of a telephone record by a telephone company, including such disclosure made: to test the company's security procedures or systems for maintaining the confidentiality of customer information; by a government entity, if an emergency involving danger of death or serious physical injury to a person; to provide information necessary for the sale or transfer of all or part of the company's business, the purchase or acquisition of all or part of another company's business, or the migration of a customer from one company to another; to render service, initiate, render, bill and collect customer charges, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such services. A final exception was made to exempt from prosecution companies acting reasonably and in good faith, notwithstanding later determination of an authorized action.

C.S.H.B. 73 80(R)

The substitute modifies the original by prohibiting C.S.H.B. 73 from being construed in a manner that is inconsistent to any federal law or rule. The substitute also adds that C.S.H.B. 73 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.

The substitute modifies the original by amending the penalty added to the Code of Criminal Procedure, Article 59.01(2)(ix), from a felony to a Class A misdemeanor.

The substitute modifies the original by correcting the effective date from September 1, 2006 to September 1, 2007.