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H.B. No. 73

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 35, Business & Commerce Code, is amended
by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CUSTOMER TELEPHONE RECORDS

Sec. 35.151. DEFINITIONS. In this subchapter:

(1) "Caller identification record" means a record
that:

(A) is delivered electronically to the recipient
of a telephone call simultaneously with the reception of the call;
and

(B) indicates the telephone number from which the
telephone call was made or other similar information regarding the
call.

(2) "Telephone company" means a provider of commercial
telephone services, or a provider that bills for those services,
regardless of the technology used to provide that service,
including landline, radio, wireless, microwave, satellite, Voice
over Internet Protocol (VoIP), or other cable, broadband, or
digital technology.

(3) "Telephone record" means a written, electronic, or
oral record, other than a caller identification record collected

1 and retained by or on behalf of a customer, created by a telephone
2 company about a customer, that includes:

- 3 (A) the telephone number:
4 (i) dialed by a customer; or
5 (ii) of an incoming call made to a customer;
6 (B) the time a call was made to or by a customer;
7 (C) the duration of a call made to or by a
8 customer; or
9 (D) the location from which a call was initiated
10 or at which a call was received by a customer.

11 Sec. 35.152. CONSTRUCTION OF SUBCHAPTER. This subchapter
12 does not apply to expand the obligations or duties of a telephone
13 company under federal or other state law to protect telephone
14 records.

15 Sec. 35.153. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE,
16 OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense
17 if the person:

18 (1) obtains, attempts to obtain, or conspires with
19 another to obtain a telephone record of a resident of this state
20 without the authorization of the resident to whom the record
21 pertains by:

22 (A) making a statement the person knows to be
23 false to an agent of a telephone company;

24 (B) making a statement the person knows to be
25 false to a telephone company;

26 (C) fraudulently accessing the record through
27 the telephone company's Internet website; or

1 (D) providing to a telephone company a document
2 that the person knows:

- 3 (i) is fraudulent;
4 (ii) has been lost or stolen;
5 (iii) has been obtained by fraud; or
6 (iv) contains a false, fictitious, or
7 fraudulent statement or representation;

8 (2) asks another person to obtain a telephone record
9 of a resident of this state knowing that the record will be obtained
10 in a manner prohibited by this section;

11 (3) sells, transfers, or attempts to sell or transfer
12 a telephone record of a resident of this state without
13 authorization of the resident to whom the record pertains; or

14 (4) offers to obtain or offers to sell a telephone
15 record that has been or will be obtained without authorization from
16 the resident to whom the record pertains.

17 (b) An offense under this section is a Class A misdemeanor,
18 except that a fine shall not exceed \$20,000.

19 (c) In addition to the penalties provided by Subsection (b),
20 a person convicted of an offense under this section may be required
21 to forfeit personal property used or intended to be used in
22 violation of this section.

23 (d) In addition to the penalties provided by Subsections (b)
24 and (c), a person convicted of an offense under this section shall
25 be ordered to pay to a resident whose telephone record was obtained
26 in a manner prohibited by this section an amount equal to the sum
27 of:

1 (1) the greater of the resident's financial loss, if
2 proof of the loss is submitted to the satisfaction of the court, or
3 \$1,000; and

4 (2) the amount of any financial gain received by the
5 person as the direct result of the offense.

6 (e) An offense under this section may be prosecuted in:

7 (1) the county in which the customer whose telephone
8 record is the subject of the prosecution resided at the time of the
9 offense; or

10 (2) any county in which any part of the offense took
11 place regardless of whether the defendant was ever present in the
12 county.

13 (f) If venue lies in more than one county under Subsection
14 (e), a defendant may be prosecuted in only one county for the same
15 conduct.

16 (g) If conduct constituting an offense under this section
17 also constitutes an offense under another section of this code or of
18 any other law, including the Penal Code, the actor may be prosecuted
19 under either section or under both sections.

20 (h) This section does not create a private right of action.

21 Sec. 35.154. EXCEPTIONS. Section 35.153 does not apply to:

22 (1) a person who acted pursuant to a valid court order,
23 warrant, subpoena, or civil investigative demand; or

24 (2) a telephone company that disclosed a telephone
25 record:

26 (A) the disclosure of which is otherwise
27 authorized by law;

1 (B) reasonably believing the disclosure was
2 necessary to:

- 3 (i) provide service to a customer;
4 (ii) protect an individual from fraudulent,
5 abusive, or unlawful use of a telephone record or telephone
6 service; or
7 (iii) protect the rights or property of the
8 company;

9 (C) to the National Center for Missing and
10 Exploited Children in connection with a report submitted under 42
11 U.S.C. Section 13032;

12 (D) for purposes of testing the company's
13 security procedures or systems for maintaining the confidentiality
14 of customer information;

15 (E) to a governmental entity, if the company
16 reasonably believed that an emergency involving danger of death or
17 serious physical injury to a person justified disclosure of the
18 information;

19 (F) in connection with the sale or transfer of
20 all or part of the company's business, the purchase or acquisition
21 of all or part of another company's business, or the migration of a
22 customer from one telephone company to another telephone company;

23 (G) necessarily incident to the rendition of the
24 service, to initiate, render, bill, and collect the customer's
25 charges, or to protect the customer of those services and other
26 carriers from fraudulent, abusive, or unlawful use of, or
27 subscription to, such services; or

1 (H) while acting reasonably and in good faith,
2 notwithstanding a later determination that the action was not
3 authorized.

4 Sec. 35.155. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A
5 violation of this subchapter is a false, misleading, or deceptive
6 act or practice under Section 17.46 and is subject to action only by
7 the consumer protection division of the attorney general's office
8 as provided by Section 17.46(a).

9 Sec. 35.156. CONSISTENCY WITH FEDERAL LAW. This
10 subchapter may not be construed in a manner that is inconsistent
11 with 18 U.S.C. Section 1038, 47 U.S.C. Section 222, or any other
12 applicable federal law or rule.

13 Sec. 35.157. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.
14 This subchapter does not prohibit any lawfully authorized
15 investigative, protective, or intelligence activity of a law
16 enforcement agency of the United States, a state, or a political
17 subdivision of a state or of an intelligence agency of the United
18 States.

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

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

23 (A) used in the commission of:

24 (i) any first or second degree felony under
25 the Penal Code;

26 (ii) any felony under Section 15.031(b),
27 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,

1 31, 32, 33, 33A, or 35, Penal Code;

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

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

8 (B) used or intended to be used in the commission
9 of:

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

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

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

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

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

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

23 (vii) any felony under Chapter 31, 32, or
24 37, Penal Code, that involves the state Medicaid program, or any
25 felony under Chapter 36, Human Resources Code; [~~or~~]

26 (viii) a Class B misdemeanor under Section
27 35.60, Business & Commerce Code; or

1 (ix) a Class A misdemeanor under Section
2 35.153, Business & Commerce Code;

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

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

11 (E) used to facilitate or intended to be used to
12 facilitate the commission of a felony under Section 15.031 or
13 43.25, Penal Code.

14 SECTION 3. This Act takes effect September 1, 2007.