

By: Flynn

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 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) "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) "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).

(3) "Telephone record" means a written, electronic, or oral record, other than a caller identification record, created by a commercial mobile service provider or billing utility about a

1 customer, that includes:

2 (A) the telephone number:

3 (i) dialed by a customer; or

4 (ii) of an incoming call made to a customer;

5 (B) the time a call was made to or by a customer;

6 and

7 (C) the duration of a call made to or by a  
8 customer.

9 Sec. 64.252. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE,  
10 OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense  
11 if the person:

12 (1) obtains or attempts to obtain a telephone record  
13 of a resident of this state without the authorization of the  
14 resident to whom the record pertains by:

15 (A) making a statement the person knows to be  
16 false to an agent of a mobile service provider or a billing utility;

17 (B) making a statement the person knows to be  
18 false to a customer of a mobile service provider or billing utility;

19 or

20 (C) providing to a mobile service provider or  
21 billing utility a document that the person knows:

22 (i) is fraudulent;

23 (ii) has been lost or stolen; or

24 (iii) has been obtained by fraud;

25 (2) asks another person to obtain a telephone record  
26 of a resident of this state knowing that the record will be obtained  
27 in a manner prohibited by this section; or

1           (3) sells or attempts to sell a telephone record of a  
2 resident of this state that has been obtained in a manner prohibited  
3 by this section.

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

5           (1) state jail felony if the violation involves a  
6 single telephone record;

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

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

11           (c) In addition to the penalties provided by Subsection (b),  
12 a person convicted of an offense under this section shall be ordered  
13 to pay to a resident whose telephone record was obtained in a manner  
14 prohibited by this section an amount equal to the sum of:

15           (1) the greater of the resident's financial loss, if  
16 proof of the loss is submitted to the satisfaction of the court, or  
17 \$1,000; and

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

20           Sec. 64.253. EXCEPTIONS. Section 64.252 does not apply to:

21           (1) a person acting in connection with the official  
22 duties of a law enforcement agency; or

23           (2) a commercial mobile service provider or billing  
24 utility that discloses a telephone record:

25                   (A) as otherwise authorized by law;

26                   (B) reasonably believing the disclosure is  
27 necessary to:

1                   (i) provide service to a customer; or  
2                   (ii) protect an individual from fraudulent,  
3 abusive, or unlawful use of a telephone record or telephone  
4 service; or

5                   (C) to the National Center for Missing and  
6 Exploited Children in connection with a report submitted under 42  
7 U.S.C. Section 13032.

8                   Sec. 64.254. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A  
9 violation of this subchapter is a deceptive trade practice under  
10 Subchapter E, Chapter 17, Business & Commerce Code.

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

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

15                   (A) used in the commission of:

16                   (i) any first or second degree felony under  
17 the Penal Code;

18                   (ii) any felony under Section 15.031(b),  
19 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
20 31, 32, 33, 33A, or 35, Penal Code;

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

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

27                   (B) used or intended to be used in the commission

1 of:

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

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

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

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

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

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

15 (vii) any felony under Chapter 31, 32, or  
16 37, Penal Code, that involves the state Medicaid program, or any  
17 felony under Chapter 36, Human Resources Code; ~~[or]~~

18 (viii) a Class B misdemeanor under Section  
19 35.60, Business & Commerce Code; or

20 (ix) any felony under Section 64.252,  
21 Utilities Code;

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

26 (D) acquired with proceeds gained from the  
27 commission of a felony listed in Paragraph (A) or (B) of this

1 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this  
2 subdivision, or a crime of violence; or

3 (E) used to facilitate or intended to be used to  
4 facilitate the commission of a felony under Section 15.031 or  
5 43.25, Penal Code.

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