

1-1 By: Flynn, et al. (Senate Sponsor - Van de Putte) H.B. No. 73
1-2 (In the Senate - Received from the House April 10, 2007;
1-3 April 11, 2007, read first time and referred to Committee on
1-4 Business and Commerce; May 4, 2007, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 4, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 73 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the protection of customer telephone records; providing
1-11 a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 35, Business & Commerce Code, is amended
1-14 by adding Subchapter L to read as follows:

1-15 SUBCHAPTER L. PROTECTION OF CUSTOMER TELEPHONE RECORDS

1-16 Sec. 35.151. DEFINITIONS. In this subchapter:

1-17 (1) "Caller identification record" means a record
1-18 that:

1-19 (A) is delivered electronically to the recipient
1-20 of a telephone call simultaneously with the reception of the call;
1-21 and

1-22 (B) indicates the telephone number from which the
1-23 telephone call was made or other similar information regarding the
1-24 call.

1-25 (2) "Telephone company" means a provider of commercial
1-26 telephone services, or a provider that bills for those services,
1-27 regardless of the technology used to provide that service,
1-28 including landline, radio, wireless, microwave, satellite, Voice
1-29 over Internet Protocol (VoIP), or other cable, broadband, or
1-30 digital technology.

1-31 (3) "Telephone record" means a written, electronic, or
1-32 oral record, other than a caller identification record collected
1-33 and retained by or on behalf of a customer, created by a telephone
1-34 company about a customer, that includes:

1-35 (A) the telephone number:
1-36 (i) dialed by a customer; or
1-37 (ii) of an incoming call made to a customer;
1-38 (B) the time a call was made to or by a customer;
1-39 (C) the duration of a call made to or by a
1-40 customer; or

1-41 (D) the location from which a call was initiated
1-42 or at which a call was received by a customer.

1-43 Sec. 35.152. CONSTRUCTION OF SUBCHAPTER. This subchapter
1-44 does not apply to expand the obligations or duties of a telephone
1-45 company under federal or other state law to protect telephone
1-46 records.

1-47 Sec. 35.153. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE,
1-48 OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense
1-49 if the person:

1-50 (1) obtains, attempts to obtain, or conspires with
1-51 another to obtain a telephone record of a resident of this state
1-52 without the authorization of the resident to whom the record
1-53 pertains by:

1-54 (A) making a statement the person knows to be
1-55 false to an agent of a telephone company;

1-56 (B) making a statement the person knows to be
1-57 false to a telephone company;

1-58 (C) fraudulently accessing the record through
1-59 the telephone company's Internet website; or

1-60 (D) providing to a telephone company a document
1-61 that the person knows:

1-62 (i) is fraudulent;
1-63 (ii) has been lost or stolen;

2-1 (iii) has been obtained by fraud; or
2-2 (iv) contains a false, fictitious, or
2-3 fraudulent statement or representation;
2-4 (2) asks another person to obtain a telephone record
2-5 of a resident of this state knowing that the record will be obtained
2-6 in a manner prohibited by this section;
2-7 (3) sells, transfers, or attempts to sell or transfer
2-8 a telephone record of a resident of this state without
2-9 authorization of the resident to whom the record pertains; or
2-10 (4) offers to obtain or offers to sell a telephone
2-11 record that has been or will be obtained without authorization from
2-12 the resident to whom the record pertains.
2-13 (b) An offense under this section is a Class A misdemeanor,
2-14 except that a fine shall not exceed \$20,000.
2-15 (c) In addition to the penalties provided by Subsection (b),
2-16 a person convicted of an offense under this section may be required
2-17 to forfeit personal property used or intended to be used in
2-18 violation of this section.
2-19 (d) In addition to the penalties provided by Subsections (b)
2-20 and (c), a person convicted of an offense under this section shall
2-21 be ordered to pay to a resident whose telephone record was obtained
2-22 in a manner prohibited by this section an amount equal to the sum
2-23 of:
2-24 (1) the greater of the resident's financial loss, if
2-25 proof of the loss is submitted to the satisfaction of the court, or
2-26 \$1,000; and
2-27 (2) the amount of any financial gain received by the
2-28 person as the direct result of the offense.
2-29 (e) An offense under this section may be prosecuted in:
2-30 (1) the county in which the customer whose telephone
2-31 record is the subject of the prosecution resided at the time of the
2-32 offense; or
2-33 (2) any county in which any part of the offense took
2-34 place regardless of whether the defendant was ever present in the
2-35 county.
2-36 (f) If venue lies in more than one county under Subsection
2-37 (e), a defendant may be prosecuted in only one county for the same
2-38 conduct.
2-39 (g) If conduct constituting an offense under this section
2-40 also constitutes an offense under another section of this code or of
2-41 any other law, including the Penal Code, the actor may be prosecuted
2-42 under either section or under both sections.
2-43 (h) This section does not create a private right of action.
2-44 Sec. 35.154. EXCEPTIONS. Section 35.153 does not apply to:
2-45 (1) a person who acted pursuant to a valid court order,
2-46 warrant, subpoena, or civil investigative demand;
2-47 (2) a telephone company that disclosed a telephone
2-48 record:
2-49 (A) the disclosure of which is otherwise
2-50 authorized by law;
2-51 (B) reasonably believing the disclosure was
2-52 necessary to:
2-53 (i) provide service to a customer;
2-54 (ii) protect an individual from fraudulent,
2-55 abusive, or unlawful use of a telephone record or telephone
2-56 service; or
2-57 (iii) protect the rights or property of the
2-58 company;
2-59 (C) to the National Center for Missing and
2-60 Exploited Children in connection with a report submitted under 42
2-61 U.S.C. Section 13032;
2-62 (D) for purposes of testing the company's
2-63 security procedures or systems for maintaining the confidentiality
2-64 of customer information;
2-65 (E) to a governmental entity, if the company
2-66 reasonably believed that an emergency involving danger of death or
2-67 serious physical injury to a person justified disclosure of the
2-68 information;
2-69 (F) in connection with the sale or transfer of

3-1 all or part of the company's business, the purchase or acquisition
 3-2 of all or part of another company's business, or the migration of a
 3-3 customer from one telephone company to another telephone company;
 3-4 (G) necessarily incident to the rendition of the
 3-5 service, to initiate, render, bill, and collect the customer's
 3-6 charges, or to protect the customer of those services and other
 3-7 carriers from fraudulent, abusive, or unlawful use of, or
 3-8 subscription to, such services; or
 3-9 (H) while acting reasonably and in good faith,
 3-10 notwithstanding a later determination that the action was not
 3-11 authorized; or
 3-12 (3) a person or a telephone company that acted in
 3-13 connection with the official duties of a 9-1-1 governmental entity
 3-14 or a public agency solely for purposes of delivering or assisting in
 3-15 the delivery of 9-1-1 emergency services and other emergency
 3-16 services.
 3-17 Sec. 35.155. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A
 3-18 violation of this subchapter is a false, misleading, or deceptive
 3-19 act or practice under Section 17.46 and is subject to action only by
 3-20 the consumer protection division of the attorney general's office
 3-21 as provided by Section 17.46(a).
 3-22 Sec. 35.156. CONSISTENCY WITH FEDERAL LAW. This
 3-23 subchapter may not be construed in a manner that is inconsistent
 3-24 with 18 U.S.C. Section 1038, 47 U.S.C. Section 222, or any other
 3-25 applicable federal law or rule.
 3-26 Sec. 35.157. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.
 3-27 This subchapter does not prohibit any lawfully authorized
 3-28 investigative, protective, or intelligence activity of a law
 3-29 enforcement agency of the United States, a state, or a political
 3-30 subdivision of a state or of an intelligence agency of the United
 3-31 States.
 3-32 SECTION 2. Article 59.01(2), Code of Criminal Procedure, is
 3-33 amended to read as follows:
 3-34 (2) "Contraband" means property of any nature,
 3-35 including real, personal, tangible, or intangible, that is:
 3-36 (A) used in the commission of:
 3-37 (i) any first or second degree felony under
 3-38 the Penal Code;
 3-39 (ii) any felony under Section 15.031(b),
 3-40 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
 3-41 31, 32, 33, 33A, or 35, Penal Code;
 3-42 (iii) any felony under The Securities Act
 3-43 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
 3-44 (iv) any offense under Chapter 49, Penal
 3-45 Code, that is punishable as a felony of the third degree or state
 3-46 jail felony, if the defendant has been previously convicted three
 3-47 times of an offense under that chapter;
 3-48 (B) used or intended to be used in the commission
 3-49 of:
 3-50 (i) any felony under Chapter 481, Health
 3-51 and Safety Code (Texas Controlled Substances Act);
 3-52 (ii) any felony under Chapter 483, Health
 3-53 and Safety Code;
 3-54 (iii) a felony under Chapter 153, Finance
 3-55 Code;
 3-56 (iv) any felony under Chapter 34, Penal
 3-57 Code;
 3-58 (v) a Class A misdemeanor under Subchapter
 3-59 B, Chapter 365, Health and Safety Code, if the defendant has been
 3-60 previously convicted twice of an offense under that subchapter;
 3-61 (vi) any felony under Chapter 152, Finance
 3-62 Code;
 3-63 (vii) any felony under Chapter 31, 32, or
 3-64 37, Penal Code, that involves the state Medicaid program, or any
 3-65 felony under Chapter 36, Human Resources Code; ~~or~~
 3-66 (viii) a Class B misdemeanor under Section
 3-67 35.60, Business & Commerce Code; or
 3-68 (ix) a Class A misdemeanor under Section
 3-69 35.153, Business & Commerce Code;

4-1 (C) the proceeds gained from the commission of a
4-2 felony listed in Paragraph (A) or (B) of this subdivision, a
4-3 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a
4-4 crime of violence;

4-5 (D) acquired with proceeds gained from the
4-6 commission of a felony listed in Paragraph (A) or (B) of this
4-7 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this
4-8 subdivision, or a crime of violence; or

4-9 (E) used to facilitate or intended to be used to
4-10 facilitate the commission of a felony under Section 15.031 or
4-11 43.25, Penal Code.

4-12 SECTION 3. This Act takes effect September 1, 2007.

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